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CENDANT

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October 5, 2000

Manager
Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

Docket No. 2000-68

Re: Proposed Regulations: Consumer Protections for Depository Sales of Insurance

Ladies and Gentlemen:

Cendant Corporation ("Cendant") welcomes the opportunity to provide the following comments on the proposed regulations to implement Section 47 of the Federal Deposit Insurance Act added by Section 305 of the Gramm-Leach-Bliley Act which directly addresses the "face-to-face" and "electronic" distribution of insurance products through depository institutions but not distribution through mail or telephone.

Cendant is a global provider of consumer services, including direct marketing. Cendant provides access to insurance and other services primarily to customers of affinity partners, including depository institutions through its wholly-owned subsidiaries, Benefits Consultants, Inc. and FISI*Madison LLC (collectively, "BCI/FISI"). From our understanding of the proposed regulations, BCI/FISI's relationship with its depository institution partners and the methods used in the sale, solicitation, advertisement and offer of insurance to the customers of such depository institutions make it a "covered person" under the proposed regulations. Accordingly, Cendant has a strong interest in the proposed regulations and how they will affect our operations and relationships with the depository institutions with which we do business and their customers.

Specifically, BCI/FISI is an agent and third party administrator for several national insurance companies and offers insurance products to customers of over 4,500 depository institutions across the United States. BCI/FISI largely distributes these products through the mail with a small percentage through the telephone. With both distribution channels, the sale is initiated and completed solely through that particular media.. BCI/FISI has enrolled over 40 million consumers in such insurance products which illustrates the value of such distribution channels to depository institutions and their customers.

1. Disclosure Requirements Not Appropriate for Transactions Occurring Solely Through the Mail or Telephone

Section __.40(b)(1)(i) of the proposed regulations states as follows:

> "The disclosures required by paragraph (a) of this section must be provided orally AND in writing before the completion of the initial sale of an insurance product or annuity to a consumer. (*emphasis added*).

In transactions such as the ones typically used by BCI/FISI, wherein the sale of the insurance product is initiated and completed solely through the mail or telephone, there is obviously no way for a covered person to provide both oral and written notice to the prospective purchaser. Furthermore, it appears from the proposed regulation that without the required combination of an oral and written disclosure, the disclosures do not meet the "meaningful" requirement as provided by Section __.40(b)(4)(i). Quite simply, if both oral and written disclosures are required for the disclosures to be "meaningful", then BCI/FISI will not be able offer insurance products to customers of depository institutions.

However, it is noted that Sections __.40(b)(2) and __.40(b)(4)(i) and (ii) of the proposed regulations provide accommodations for disclosures in transactions concluded via electronic means. Arguably, similar accommodations should be made for transactions occurring through the mail or telephone. For example, with respect to mail transactions, it seems logical that there should be no oral disclosure requirement. Verification of the written disclosure is easily evidenced in the writing itself. Similarly, with respect to transactions conducted by telephone, it seems logical that there should be no written requirement. Verification of the oral disclosure is easily captured by recording the call (with, of course, the express consent of the prospective purchaser). The required written or oral disclosure documentation could then be maintained by the covered person for verification of compliance. Cendant respectfully argues that when employing these two distribution channels, proving both oral and written disclosures provides no real value to the consumer and, furthermore, is nonsensical.

2. Obligation to Obtain Consumer Acknowledgement Requires Clarification

Section __.40(b)(5) of the proposed regulation states, in part:

> "Consumer acknowledgement. A covered person must obtain from the consumer, at the time a consumer receives the disclosures required under this section or at the time of the initial purchase by the consumer of an

insurance product or annuity, a written acknowledgement by the consumer that the consumer received the disclosures." (*emphasis added*).

This section raises several concerns for covered persons, such as BCI/FISI, offering insurance through the mail or telephone.

The first concern is that the process to obtain a written acknowledgement requires two events to take place. The first event is for the covered person to send the prospective customer the required disclosure and acknowledgement with the initial solicitation. The second required event is for the prospective purchaser to return the signed acknowledgement to the covered person. At least with mail transactions, the covered person has the ability to control the first event, but not the second. Clearly, neither of these is feasible for transactions conducted solely by telephone. The most a covered person could do in with respect to a telephone transaction is send a written acknowledgement after the sale has been completed but as with mail transactions, the covered person has no control over the prospective purchaser returning the acknowledgment.

A second concern raised by this section is that it requires a covered person to obtain a signed acknowledgement from a "consumer". Section __.20(c) defines a "consumer" as "... an individual who obtains, applies to obtain, <u>or is solicited to obtain</u> insurance products or annuities from a covered person."(*emphasis added*). At least with respect to the sale of insurance through the mail or telephone, the definition is overly broad and further complicates the obligations of a covered person. Under a literal reading of section __.40(B)(5), a covered person using the mail or telephone for offering insurance products is required to obtain a signed acknowledgement from every recipient of the offer. Such a result is not only impractical, but there is simply no value in obtaining such an acknowledgement from persons who have no interest in purchasing the proffered insurance.

As a result, the proposed regulations need to be revised to permit the covered person offering insurance through the mail or telephone to be able to process the consumer's request for the insurance product even if the purchaser has failed to return the signed acknowledgement provided that the covered person can demonstrate that the disclosure and acknowledgement were provided to the prospective purchaser. In addition the proposed regulations need to clarify that covered persons offering insurance through the mail or telephone have no obligation to obtain signed acknowledgements from persons receiving the solicitation who express no interest in purchasing the insurance product. While alternative approaches to this issue might be possible, such as requiring the covered person to send follow-up letters to both the purchasers of the insurance product as well as to the significantly larger group of all persons solicited, such alternatives would do little to protect the interests of the purchasers and would become a significant irritant to those persons having no interest in the insurance product.

While admittedly not specifically addressing the sales of insurance through the mail or telephone, Section 47(c)(1)(E) of FDIA provides ample discretion to the agencies to promulgate regulations containing necessary adjustments "… to provide for the most appropriate and complete form of disclosure and acknowledgements." Cendant believes that the variations suggested herein with respect to sales of insurance through the mail and by telephone are well within the intent of Congress, as expressed in this section, that the agencies develop effective disclosure and acknowledgement regimes that work for every method of insurance solicitation.

Cendant appreciates the opportunity to provide its comments on these proposed regulations and would be pleased to work with you to address the issues noted herein affecting the solicitation of insurance through these delivery methods.

Sincerely,

Samuel H. Wright