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MEMORANDUM

November 22, 2000

To: Our Clients and Friends

Re: Agencies' Final Rule on Depository Institution Insurance Sales

The Federal Deposit Insurance Corporation ("FDIC") has approved a final rule regarding insurance sales by or on behalf of banks and thrift institutions ("banks"). The rule implements § 47 of the Federal Deposit Insurance Act (the "FDI Act"), as amended by § 305 of the Gramm-Leach-Bliley Act ("GLB Act"). Section 47 of the FDI Act requires the FDIC, the Federal Reserve Board, the Office of the Comptroller of the Currency ("OCC") and the Office of Thrift Supervision to adopt identical rules relating to insurance sales by or on behalf of banks. It is expected that the other federal agencies will be adopting the rule within the next few days. The final rule is effective April 1, 2001.

The rule is a significant improvement over the proposal published by the agencies in August. For example, the rule eliminates the proposed provision that would have required certain disclosures where the bank shares a common logo with the entity selling insurance. The agencies also addressed concerns with the broad scope of coverage of the proposed rule by narrowing when insurance sales are to be regarded as being conducted "on behalf of" a bank. In addition, the agencies have determined that the rule supersedes the Interagency Statement on Retail Sales of Nondeposit Products wherever a conflict exists.

The following presents a summary of the significant provisions of the rule.

SCOPE OF COVERAGE

The rule applies to depository institutions and any person that sells, solicits, advertises or offers any insurance product (including annuities) to a consumer at an office of the depository institution or on behalf of the depository institution.

DEFINITIONS

CONSUMER. The rule defines a consumer as an individual who obtains, applies for or is solicited to obtain insurance primarily for personal, household or family purposes. Accordingly, the rule does not apply to sole proprietorships and small businesses.

COVERED PERSON. The definition of covered person is considerably narrower than that contained in the proposed rule. A covered person is a depository institution or a person who sells, solicits, advertises or offers insurance at an office of a bank or on behalf of the bank. A transaction is on behalf of a bank when:

- (1) a person represents to the consumer that the insurance transaction is by or on behalf of the bank;
- (2) the bank refers a consumer to the seller and the bank has a contractual arrangement to receive commissions or fees from sales resulting from referrals; or
- (3) documents evidencing the transaction identify or refer to the bank.

The preamble to the rule states that the rule does not apply to the sharing of customer lists. The rule also does not apply merely because the bank's logo is used by the insurance provider. In addition, a link established from an Internet web site generally does not come within the scope of a covered person.

INSURANCE. The rule does not define the term insurance. Rather, the agencies indicate that they will look to a variety of sources to determine what products are insurance, including common usage, conventional definitions, judicial interpretations and Federal law.

PROHIBITED PRACTICES

The rule prohibits a covered person from engaging in any practice that would lead a consumer to believe that an extension of credit is conditioned upon either:

- (1) the purchase of insurance from the bank or an affiliate, or
- (2) an agreement by the consumer not to obtain an insurance product from an unaffiliated entity.

A covered person may not engage in a practice or use an advertisement on behalf of a bank that could mislead a person into believing that the insurance product is insured by the FDIC or backed up by the federal government, or that an extension of credit by the bank is conditioned on the purchase of insurance.

In addition, a covered person selling life or health insurance may not consider the status of the consumer as a victim of domestic violence in connection with underwriting, pricing, renewal, scope of coverage or payment of claims except as permitted by state law.

REQUIRED DISCLOSURES

A covered person must disclose to a consumer in connection with the initial purchase of insurance that, to the extent accurate, the insurance:

- (1) is not a deposit or other bank obligation, or guaranteed by the bank or an affiliate of the bank;
- (2) is not insured by the FDIC, an agency of the United States, the bank or an affiliate of the bank; and
- (3) involves investment risk, including possible loss of value (if the product involves investment risk.)

In connection with an application for credit in which insurance is solicited, a covered person must disclose that the bank may not condition the extension of credit on the consumer's purchase of insurance from the bank or an affiliate, or on the consumer's agreement not to obtain an insurance product from an unaffiliated entity.

TIMING. The required disclosures must be provided orally and in writing before the completion of the initial sale of insurance. However, if the transaction is conducted by mail, no oral disclosures need be provided. If the transaction occurs by telephone, the required disclosures must be provided by mail within three days. Disclosures may also be made by electronic means with the consumer's consent.

The required disclosures must also be made orally and in writing when the consumer applies for credit when insurance is solicited, offered or sold.

CUSTOMER ACKNOWLEDGEMENT. A covered person must obtain a written acknowledgement from the consumer at the time the consumer receives the disclosures or at the time of initial purchase of insurance. If the disclosures were made by telephone, an oral acknowledgement must be obtained from the consumer and reasonable efforts must be made to obtain a written acknowledgement from the consumer. The rule does not specify what happens if an acknowledgement is not obtained from a consumer in connection with a transaction conducted by mail.

The required disclosures must also appear in advertisements and other promotional material for insurance.

LOCATION OF INSURANCE ACTIVITIES

A bank is required, to the extent practicable, to keep the area where insurance transactions occur physically separated from the areas where retail deposits are routinely accepted. A bank is also required to identify the areas where insurance sales activities occur and clearly delineate the area from the location where retail deposits are taken. The preamble to the rule clarifies that the location at which retail deposits are routinely accepted is limited generally to teller windows and teller lines. Accordingly, the physical separation requirement does not apply to a bank's platform area.

A teller may refer a consumer to a person selling insurance only if the teller receives no more than a one-time nominal fee of a fixed dollar amount for each referral regardless of whether or not an insurance sale is made.

LICENSING REQUIREMENTS

A bank may not permit anyone who is not qualified and licensed under State insurance licensing requirements to sell insurance at its offices or on its behalf.

CONSUMER GRIEVANCE PROCESS

The rule provides that a consumer who believes that a bank is violating the insurance sales rule should contact the federal banking agency which supervises the bank. The preamble to the rule states that the agencies will share complaints that raise issues under State law with State insurance commissioners.

EFFECT ON STATE LAW

The rule will not apply where State statutes, rules, orders or interpretations are inconsistent with, or contrary to, the agencies' rule. However, if the OCC, FDIC and Federal Reserve jointly conclude that the protection provided by the agencies' rule is greater than the protection provided by the State provisions, the agencies' rule will preempt contrary or inconsistent State law. A State, however, may enact legislation within three years to override the agencies' preemption.