
Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #2000-16
September 2000

August 29, 2000

Steven J. Eisen, Esq.
Baker, Donelson, Bearman & Caldwell
511 Union Street, Suite 1700
Nashville, Tennessee 37219

Re: Frontier National Bank, Sylacauga, Alabama
Application Control No. 2000-SE-08-0042

Dear Mr. Eisen:

This letter is in response to the operating subsidiary application you submitted on behalf of Frontier National Bank, Sylacauga, Alabama (“Bank”) dated July 12, 2000, to the Office of the Comptroller of the Currency (“OCC”). The Bank proposes to establish an operating subsidiary, The Frontier Reinsurance Company, Inc. (“OpSub”), to reinsure credit life, accident, disability, and health insurance (“credit-related insurance products”) in connection with loans to customers made by the Bank and its affiliates. The OpSub will be organized as a 100%-owned subsidiary of The Frontier Agency, Inc., which is a 100%-owned subsidiary of the Bank.

You originally submitted this request under the OCC’s former operating subsidiary regulation at 12 C.F.R. § 5.34. However, with the passage of the Gramm-Leach-Bliley Act of 1999 (“GLBA”), the OCC revised its operating subsidiary regulation effective March 11, 2000. Accordingly, the OCC will consider the Bank’s application under 12 C.F.R. § 5.34(e)(5)(i)(A) because reinsurance of these credit-related insurance products is not currently listed as an enumerated activity eligible for notice under 12 C.F.R. § 5.34(e)(5)(v)(L). For the reasons discussed below, we conclude that the Bank’s application is permissible under the GLBA, and therefore the application is approved.

I. Background

The Bank proposes to organize the OpSub as a credit life reinsurance company that is a 100%-owned second-tier subsidiary of the Bank. The OpSub will be an Arizona corporation and will obtain any necessary life insurance company underwriting licenses from the states of Tennessee

and Arizona. The Plateau Insurance Company (“Plateau”), a Tennessee domiciled corporation and Tennessee licensed insurance company, will underwrite the credit-related insurance products offered to customers in connection with the loans of the Bank and its affiliates. Plateau will provide administrative functions, including the booking of the business, payment of claims, and reporting, as well as providing regulatory functions including the preparation of annual statements, federal tax returns, and any other required regulatory filings. The OpSub will not have a separate office, as it will have no direct contact with customers. It will, however, maintain separate books and records, including corporate and accounting records.

II. Discussion

A. GLBA Section 302 Preserves the Ability of National Banks and their Subsidiaries to Provide Insurance as Principal under Certain Circumstances

Under Section 302 of the GLBA, national banks and their subsidiaries may provide “authorized products” but may not otherwise provide insurance as principal. The statutory language provides in relevant part:

- (a) In General.--...a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

- (b) Authorized Products.--For the purposes of this section, a product is authorized if--
 - (1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;
 - (2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and
 - (3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

- (c) Definition.--For purposes of this section, the term “insurance” means--
 - (1) any product regulated as insurance as of January 1, 1999, in accordance with the relevant State insurance law, in the State in which the product is provided;
 - (2) any product first offered after January 1, 1999, which--

(A) a State insurance regulator determines shall be regulated as insurance. .

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Thus, the GLBA preserves the ability of national banks and their subsidiaries to provide as principal insurance products previously authorized by the OCC.²

B. OCC Previously Authorized National Banks and their Subsidiaries to Provide Reinsurance Products

Section 302's language plainly states that a product is "authorized" if as of January 1, 1999, the OCC had determined in writing that national banks may provide the product as principal, or national banks were lawfully providing the product as principal and a court of competent jurisdiction had not overturned an OCC decision permitting national banks to offer the product. In addition, the product may not be title insurance or a specified type of annuity contract.

The OCC recently considered GLBA's section 302 and concluded that the authorized product exception applies to credit-related insurance.³ Credit-related insurance products guarantee or secure payment of an outstanding obligation in a credit transaction in the event that the borrower is unable to pay, *e.g.*, because of death, disability, or unemployment.⁴ The precise terms of credit-related insurance products may vary based on the terms and conditions of a particular loan. Prior to January 1, 1999, the OCC had established in writing that national banks and their subsidiaries may provide credit-related insurance products as principal in conjunction with installment loans, credit cards, and residential mortgages, among others.

Prior to January 1, 1999, the OCC also had established in writing the authority of national banks and their subsidiaries to provide reinsurance products as part of, or incidental to, the business of banking through a long line of precedents.⁵ Reinsurance products protect insurers from financial losses should

¹ Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, 113 Stat. 1338, § 302(a), (b), and (c) (Nov. 12, 1999).

² The GLBA also sets new standards for the application of state law to insurance activities of depository institutions, including national banks and their subsidiaries. *See, e.g.*, 15 U.S.C. § 6701 (GLBA Section 104).

³ *See* Interpretive Letter No. 886 (Mar. 27, 2000).

⁴ Certain other insurance arrangements also could be considered "credit-related" where the existence of the insurance is integral to the borrower's ability to repay a loan in the event specified events occur. *See, e.g., Independent Insurance Agents of America v. Hawke*, 211 F.3d 638, 641 (D.C. Cir. 2000) (distinguishing "credit-related insurance products" as specialized types of products that name the bank as beneficiary not the bank customer, from other forms of insurance).

⁵ *See, e.g.*, Interpretive Letter No. 835 (July 31, 1998) (reinsuring credit-related insurance on loans originated by lenders with an ownership interest in a non-controlling entity); Corp. Decision No. 98-28 (May 11, 1998) (authorizing reinsurance of credit life, disability, and involuntary unemployment insurance products); Corp. Decision No. 97-92 (Oct. 17, 1997) (authorizing reinsurance of credit disability and involuntary unemployment insurance products); Interpretive Letter No. 277 (Dec. 13, 1983) (authorizing reinsurance of credit life insurance products as a logical complement to a national bank's power to sell credit life); *see also* 12 C.F.R. Part 2 (Sales of Credit Life Insurance). *IBAA v. Heimann*, 613 F.2d 1164 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 823 (1980) (confirming OCC's authority to adopt its credit life insurance regulation at 12 CFR Part 2).

the risks they have underwritten result in greater losses than what was assumed when the risks were accepted.⁶ In particular, prior to January 1, 1999, the OCC had “determined in writing” that national banks and their subsidiaries may provide credit-related reinsurance products as principal in connection with loans made by a financial institution lender or a lender other than the bank itself.⁷ These determinations had not been overturned by any court as of January 1, 1999 (or thereafter). Hence, the reinsurance of credit-related insurance products satisfies section 302’s statutory requirements as an authorized product exception.⁸

III. Conclusion

The authorized product exception of Section 302 of GLBA preserves the ability of national banks and their subsidiaries to provide as principal certain insurance products previously authorized by the OCC. The OCC previously has authorized national banks and their subsidiaries to provide reinsurance products as principal. Therefore, the authorized product exception applies and GLBA does not prohibit the proposed credit-related reinsurance activities.

Based on the facts and analysis herein, and the representations and commitments made by the Bank in connection with this application, the OCC concludes that the Bank’s proposed operating subsidiary may engage in reinsurance activities and we approve the Bank’s application. If you have any questions, please contact Beverly Evans, Senior Licensing Analyst, Bank Organization and Structure, at 202/874-5060, or Suzette H. Greco, Senior Attorney, in the Securities and Corporate Practices Division, at 202/874-5210.

Sincerely,

-signed-

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

⁶ See generally 1 Couch on Insurance § 9.1 *et seq.* (3d ed.).

⁷ See, e.g., Interpretive Letter No. 835 (July 31, 1998); Corp. Decision No. 97-92 (Oct. 17, 1997).

⁸ Reinsurance of any form of insurance may be viewed as a separate authorized category of insurance; however, at the very least, as is the case here, any credit-related reinsurance is an authorized product for purposes of section 302.