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Comptroller of the Currency  
Administrator of National Banks

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Central District Office  
One Financial Place, Suite 2700  
440 South LaSalle Street  
Chicago, Illinois 60605

April 15, 1997

**Corporate Decision #97-24**  
**May 1997**

Mr. W. Granger Souder  
Executive Vice President & General Counsel  
Mid Am Inc.  
222 S. Main Street  
P.O. Box 428  
Bowling Green, Ohio 43402-0428

Re: Notice of First National Bank Northwest Ohio, Bryan, Ohio of its Intent to Acquire  
an Operating Subsidiary to Engage in Insurance Agency Activities

Application Control Number: 97-CE-08-0005

Dear Mr. Souder:

This is in response to your operating subsidiary notification, filed on behalf of First National Bank Northwest Ohio, Bryan, Ohio (the "Bank") dated March 7, 1997. You provided supplemental information regarding this notice on March 18, 1997 and March 26, 1997. The Bank proposes to acquire MFI Holding Company and its subsidiary MFI Insurance Agency, Inc. ("Agency") and to operate Agency as an operating subsidiary (the "Subsidiary") which will engage in general insurance agency activities as permitted under 12 U.S.C. § 92. The Subsidiary will also act as agent for the sale of annuities pursuant to 12 U.S.C. § 24(Seventh).

In the OCC's letter dated November 4, 1996, responding to operating subsidiary notifications filed by First Union Corporation (the "*First Union letter*"), the OCC thoroughly analyzed section 92 and concluded that a national bank insurance agency selling insurance pursuant to the authority of section 92 should be permitted the same marketing range and be able to use the same marketing tools and facilities as generally available for licensed insurance agencies, not affiliated with a bank, in the state(s) in which the bank agency operates. Accordingly, the

OCC stated that the following general principles can be distilled to define the scope of solicitation and sales activities permissible for national banks under 12 U.S.C. 92:<sup>1</sup>

- The agency located in the “place of 5,000” must, of course, be *bona fide*. Agents will be managed through the agency and the “place of 5,000” will be the agency’s business location for licensing purposes. The agency will be responsible for collecting commissions from insurance carriers and paying commissions to its licensed sales staff. The agency also generally will be responsible for processing insurance applications, delivery of insurance policies, and collection of premiums, where consistent with procedures of the relevant insurance carriers. In addition, business records of the agency, including copies of customer application and policy information, and licensing, customer complaint and other compliance records, will be available at the “place of 5,000.”<sup>2</sup>
- The bank agency and its agents may seek the same market range and use the same marketing tools and facilities as generally available for a licensed insurance agency, not affiliated with a bank, that is based in the “place of 5,000.”<sup>3</sup> This will generally allow the following:
- Meetings with customers and solicitations and sales of insurance by agents of the bank agency may take place at locations inside the “place of 5,000” as well as at locations outside that “place,” provided the agents are managed and paid through the bank agency located in the “place of 5,000” and use that location as their place of business for licensing purposes. If an insurance company has adopted other procedures for its nonbank agents, however, the bank agency may follow the same procedures as other insurance agents selling the company’s policies.
- Mailings to advertise and sell insurance may originate from inside or outside of the “place of 5,000,” and brochures, leaflets, and other literature alerting potential customers to the bank’s insurance activities may be distributed from locations both inside and outside of the “place of 5,000,” including other branches of the same

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<sup>1</sup>The OCC recognized in the *First Union letter* that solicitation and sales techniques can vary with the different marketing strategies employed by different banks and still be consistent with the general principles described in the *First Union letter*.

<sup>2</sup>Some of these business records may be maintained and available at the agency in electronic form, with the original hardcopy kept in off-site storage.

<sup>3</sup>The *First Union letter* does not address and is not intended to express any opinion on any state law preemption issues. The application of state law would need to comply with recognized preemption standards. See generally *Barnett Bank of Marion County, N.A. v. Nelson*, 134 L. Ed. 2d 237 (1996), and the cases cited therein.

bank. Personnel of bank branches outside of the “place of 5,000” also may make referrals to the bank’s insurance agency. Likewise, telephone and cybermarketing may be used and the calls and messages need not originate within the “place of 5,000.”

- The bank may contract with third parties to assist the agency’s sales activities. For example, third parties might provide advertising support, direct mail marketing services, telemarketing services, payments processing, or other types of “back office” support.

The analysis and discussion set forth in the *First Union letter* are equally applicable to the notification submitted by the Bank and are hereby incorporated by reference. In its notification, the Bank has represented that it will conduct the Subsidiary’s activities consistent with the principles set forth in the *First Union letter*. Accordingly, the Bank’s notification is approved, provided that the insurance sales activities of the Bank and the Subsidiary shall be conducted in a manner consistent with the interpretation of section 92 and the principles for applying section 92 set forth in the *First Union letter*.

The Subsidiary’s proposed sales, as agent, of fixed and variable annuities are authorized under 12 U.S.C. § 24(Seventh) and, accordingly, are approved.

The Bank and Subsidiary should be mindful of the Interagency Statement on Retail Sales of Nondeposit Investment Products, dated February 15, 1994, which provides guidance to banks and their operating subsidiaries on the sale of retail nondeposit investment products. In addition, the bank and the appropriate subsidiaries should be familiar with the OCC’s Advisory Letter, AL 96-8, dated October 8, 1996. The Advisory Letter provides guidance to national banks on insurance and annuity sales activities. The OCC expects the bank and its operating subsidiaries to comply with the Advisory Letter and Interagency Statement, as well as applicable national banking laws, rules, and regulations.

Sincerely,

/s/

Thomas M. Fitzgerald  
District Administrator