



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #886
April 2000
12 USC 24

March 27, 2000

Re: [**Bank, City & State**]

Dear []:

This letter responds to your request on behalf of the [] (“Bank” or “[]”) dated October 11, 1999, to allow the Bank’s subsidiary to continue underwriting credit life, accident, disability, and health products (“credit-related insurance products”) in connection with consumer and mortgage loans made by the Bank and affiliated and unaffiliated financial institution lenders as part of, or incidental to, the business of banking. You also provided supplemental information in November 1999 addressing the impact of the newly enacted Gramm-Leach-Bliley Act on your request. We have considered your request in light of the Gramm-Leach-Bliley Act (“GLBA”).

While the GLBA generally prohibits insurance underwriting for national banks and their subsidiaries, the authorized product exception in section 302 preserves providing insurance as principal under certain circumstances. Because credit-related insurance is a unique product that the OCC prior to January 1, 1999, authorized national banks and their subsidiaries to underwrite for their own loans and loans originated by other entities, the authorized product exception applies in this case. Accordingly, based on the information provided and the reasons discussed herein, we conclude that the Bank’s subsidiary may continue underwriting the credit-related insurance products.

I. Background

The Bank’s subsidiary [] (“**Sub.**”) currently engages in underwriting credit life, accident, disability and health insurance products in connection with loans made by the Bank, its

affiliates, and unaffiliated financial institutions. As part of acquisitions at the holding company level, the OCC conditionally approved []'s acquiring [**Sub.**] as an operating subsidiary by letter dated October 31, 1997.¹ The OCC approved [**Sub.**]'s continued operations and gave the Bank two years to establish the legal permissibility of certain insurance activities, including underwriting credit-related insurance products for unaffiliated lenders.

[**Sub.**], a licensed life insurance company, is authorized to underwrite credit life and health insurance products in thirteen states and has been providing credit-related insurance products as underwriter to unaffiliated financial institutions for 14 years. [**Sub.**] presently has a relationship with seven financial institution lenders other than [] and its affiliates. Based on premiums written, approximately 75% of [**Sub.**]'s aggregate credit-related insurance business is for [] and its affiliates. For credit-related insurance products on unsecured consumer credit, approximately 27% of the business is written with non-affiliates. For credit-related insurance products on secured mortgage loans, approximately 8% is underwritten with non-affiliates.

II. Discussion

A. GLBA Preserves the Ability of National Banks and their Subsidiaries to Engage in Certain Insurance Underwriting Activities

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 1986.²

¹ See Conditional Approval No. 259 (Oct. 31, 1997).

² Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, § 302(a) and (b) (Nov. 12, 1999).

The GLBA thus preserves the ability of national banks and their subsidiaries to underwrite insurance products previously authorized by the OCC.³ Two questions arise in this context: (1) what is the “product;” and (2) what was previously “authorized” by the OCC under the relevant test.

B. Credit-Related Insurance is a “Product” for Purposes of Section 302

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. Credit-related insurance products often are sold in conjunction with installment loans, automobile loans, credit cards, and residential mortgages. There are various types of credit-related products, including credit life insurance, credit disability insurance (also known as credit accident and health insurance), and mortgage life and disability insurance.⁴ For example, a credit life insurance product on a relatively small decreasing balance installment loan typically will pay off the balance due on the loan if the borrower should die before the loan is repaid. Similarly, if an insured debtor becomes totally disabled or is killed accidentally, a credit accident and health insurance product policy will pay the policy premiums during the period of disability or pay the loan off. The precise terms of credit-related insurance products may vary based on the terms and conditions of a particular loan.⁵

Credit-related insurance products provide benefits for both the borrower and the lender by easing the financial burden on each in the event of unforeseen circumstances, such as death, disability, or unemployment. Credit-related insurance exists as a unique kind of insurance product that is an integral part of certain credit transactions. Hence, underwriting credit-related insurance products serves as a risk management tool linked to the credit function of lending institutions.

Section 302 uses the term “product” to refer to general categories of insurance that serve different purposes. For example, section 302(c)(2) defines “insurance” to include a “product” that insures against loss, and lists as examples life insurance, title insurance, and property and casualty insurance, among others. Each of these general categories describes a product that protects against a different type of risk. Credit risk is such a category of risk. In another section, the GLBA singles out underwriting “credit-related insurance” as a separate product category from life, accident and health,

³ The GLBA also sets new standards for the application of state law to insurance activities of depository institutions, including national banks and their subsidiaries. These standards apply to credit-related insurance underwriting activities by national banks and their subsidiaries.

⁴ See 12 C.F.R. § 2.2(b); see generally G. Fagg, *Credit Life and Disability Insurance* (1986).

⁵ Certain other insurance arrangements could also 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.

and property and casualty insurance.⁶ In this same way, credit-related insurance is a distinct category of insurance that is a “product” for purposes of section 302.

C. OCC Previously Authorized National Banks and their Subsidiaries to Underwrite Credit-Related Insurance 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 has established the authority of national banks and their subsidiaries to sell and underwrite credit-related insurance products as part of, or incidental to, the business of banking through a long line of precedents.⁷ The OCC has concluded national banks and their subsidiaries may underwrite credit-related insurance products in connection with loans by the bank itself and by lenders other than the bank.⁸ These underwriting activities are part of the business of banking because the activity (1) is functionally equivalent to or a logical outgrowth of a recognized banking activity; (2) responds to customer needs or otherwise benefits the bank or its customers; and (3) involves risks similar in nature to those already assumed by banks. National banks and their subsidiaries are familiar with and take into account the risks associated with credit-related insurance products. The risks are similar for all borrowers with the same risk characteristics regardless of the identity of the lender.

Therefore, prior to January 1, 1999, the OCC had “determined in writing” that national banks and their subsidiaries may provide credit-related insurance products as principal in connection with loans made by a financial institution lender other than the bank itself. These determinations had not been overturned by any court as of January 1, 1999 (or thereafter). Hence, the underwriting of credit-related insurance products satisfies section 302’s statutory requirements as an authorized product exception.

⁶ See section 103(k)(4)(I)(ii).

⁷ See, e.g., Corp. Decision No. 98-28 (May 11, 1998) (authorizing underwriting of credit life, disability, and involuntary unemployment insurance products); Corp. Decision No. 97-92 (Oct. 17, 1997) (authorizing underwriting of credit disability and involuntary unemployment insurance products); Interpretive Letter No. 283 (March 16, 1984) (authorizing sales, as agent, of credit-related insurance products including life, disability, involuntary unemployment, and vendors single interest); Interpretive Letter No. 277 (Dec. 13, 1983) (authorizing underwriting of credit life insurance products); 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).

⁸ See, e.g., Corp. Decision No. 97-92 (Oct. 17, 1997).

III. Conclusion

Despite the GLBA's general prohibition on national banks and their subsidiaries underwriting insurance, the authorized product exception of section 302 preserves the ability of national banks and their subsidiaries to provide as principal certain insurance products previously authorized by the OCC. Credit-related insurance is this kind of distinct product. The OCC previously had authorized national banks and their subsidiaries to provide credit-related insurance products as principal as part of the business of banking, or incidental thereto. Thus, national banks and their subsidiaries may offer credit-related insurance products in connection with their own loans and those of affiliated and non-affiliated financial institution lenders. The GLBA preserved this authority for national banks and their operating subsidiaries.

Accordingly, based on the facts and representations made in the materials submitted by the Bank and discussions with counsel, the OCC concludes that the Bank's subsidiary, MIC, may continue to underwrite credit-related insurance products for the Bank, its affiliates, and other unaffiliated lenders.

Sincerely,

- signed -

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel