



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

March 11, 2004

Interpretive Letter #991
June 2004
12 USC 1972

Re: [*ABC Mortgage Co.*]

Dear []:

I am providing this written response to follow-up on the telephone discussion you and I had concerning your inquiry on tying by a national bank subsidiary. Your letter was addressed to Mr. Craig D. Stone, Deputy Ombudsman, Office of the Comptroller of the Currency (“OCC”) and submitted pursuant to the July 2001 Regulatory Cooperation Agreement between our two offices. You enclosed correspondence your office received from the [], which had attached to it a copy of a letter from [*ABC Insurance Co.*], addressed to Ms. [], and noting [*ABC Mortgage Co.*] as the lender (“Insurance letter”) (copy attached). As we discussed, [*ABC Mortgage Co.*] is a subsidiary of a national bank and subject to the OCC’s jurisdiction.

The Insurance letter indicates [*ABC*] customers are eligible for a unique homeowners insurance program offered through [*ABC Insurance Co.*] In particular, the letter states a customer may be eligible for: “up to 10% discount for a new loan.” The letter further provides “[y]ou are under no obligation to call and the insurance company you select will have no effect on your credit with [*ABC*].” You asked whether a lender subject to the OCC’s jurisdiction, such as [*ABC Mortgage Co.*], could vary a loan interest rate conditioned upon a borrower purchasing insurance on collateral through an insurance agency affiliated with the lender. More generally, you raised several questions related to application of the federal tying statute.

The federal tying statute, Section 106 of the Bank Holding Company Act Amendments of 1970, codified at 12 U.S.C. § 1972, provides in part:

A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement--

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

Section 106 generally prohibits a bank or its subsidiary from tying a product or service to another product or service offered by the bank, with certain exceptions. A bank engages in a tie by conditioning the availability of, or offering a discount on, one product or service (the “tying product”) on the condition that a customer purchase another product or service offered by the bank or an affiliate (the “tied product”). Some tying arrangements are permissible under statutory and regulatory exceptions. Congress enacted the anti-tying provisions to keep banks from using bank credit and other services as a means to coerce customers and reduce competition. The Board of Governors of the Federal Reserve System (“Board”) has interpretive authority over section 106 and may permit exceptions to the anti-tying prohibitions.¹

The federal tying statute applies to tying arrangements imposed by a bank and its subsidiaries, but generally not to tying arrangements imposed by a nonbank affiliate of a bank.² With respect to insurance products, the plain language of section 106 would prohibit a bank from requiring a person to purchase insurance from the bank’s insurance affiliate in order to obtain a reduced interest rate on a loan from the bank.³ In that example, it is the bank that is varying the price of a bank product (the loan) based on a requirement that the customer obtain another product (insurance) from an affiliate. However, section 106 would not apply to the insurance agency affiliate offering discounts on insurance premiums to customers who also have a loan from the bank because, in that case, it is the affiliate (and not the bank) that has imposed the condition governing the sale of its products.

As we discussed, the information here indicates the Insurance letter is an offer of homeowners insurance products by an insurance affiliate of a national bank subsidiary. The lender-national bank subsidiary is not offering any products. A call to the toll-free number listed in the letter connects the customer to the “Hazard Insurance Processing Center.” We have verified that the reference in the letter “10% discount for a new loan” refers to a 10% discount on homeowners insurance premiums and not on a loan. In addition, the products offered in the Insurance letter are not stated as a “condition or requirement” of the customer’s [ABC] mortgage loan. In fact, the letter specifically disclaims in several places any effect on the customer’s credit related to the purchase or nonpurchase of the insurance products.

¹ See 12 C.F.R. § 225.7 (exceptions to tying restrictions). For general discussion and background, see, for example, OCC White Paper, *Today’s Credit Markets, Relationship Banking, and Tying* (Sept. 2003); U.S. General Accounting Office, Report #GAO 04-4, *Bank Tying* (Oct. 2003) (copies available on OCC and GAO websites).

² See, e.g., 62 Fed. Reg. 9290, 9312-16 (amendments to the Board’s tying regulation removing earlier Board-imposed tying restrictions on bank holding companies and their nonbank subsidiaries); OCC Comptroller’s Handbook, *Insurance Activities* 17 (June 2002).

³ 12 U.S.C. § 1972. See also 62 Fed. Reg. at 9314 (section 106 continues to prohibit *banks* from using their power over credit to induce customers to purchase insurance products); Letter from J. Virgil Mattingly, General Counsel, Board, to Carl V. Howard, Esq., General Counsel, Citigroup, Inc. (May 16, 2001) (insurance is a non-traditional product).

Accordingly, for this particular situation, based on the Insurance letter, the OCC's review, the language of the statute, and Board precedent, the situation under review is not a prohibited tying arrangement. If you have any questions regarding this letter, please contact me at (202) 874-5210. Again, thank you for submitting this inquiry pursuant to our regulatory information-sharing agreement process.

Sincerely,

/s/

Suzette H. Greco
Special Counsel
Securities & Corporate Practices Division