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Comptroller of the Currency  
Administrator of National Banks

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Washington, D.C. 20219

December 1, 1999

**Interpretive Letter #874**  
**December 1999**  
**12 USC 92**

Kirk P. Flores  
Counsel  
ABN AMRO North America, Inc.  
135 South LaSalle Street  
Chicago, ILL 60674-9135

Re: Insurance Agency Activities in New York Under 12 U.S.C. § 92

Dear Mr. Flores:

This is in response to your letter requesting confirmation that ABN AMRO Insurance Services, Inc. (the "Agency"), a wholly-owned subsidiary of LaSalle Bank National Association, Chicago, Illinois (the "Bank"), may sell insurance through satellite offices of the Agency in the state of New York, in addition to the Agency's "place of 5,000" location, as permitted under New York law. Based on the facts and representations set forth in your letter and on additional information and representations you have provided, as described herein, we conclude that, under 12 U.S.C. § 92, the Agency, appropriately located in a "place of 5,000," may solicit and sell insurance in the manner permissible for insurance agencies generally in the state of New York and as authorized by the Agency's state insurance license.

**I. BACKGROUND.**

For purposes of this request, the factual situation you describe involves a national bank engaged in the banking business in Illinois. After submission of the appropriate operating subsidiary application to the OCC and insurance agent license application to the Illinois Department of Insurance, and approval thereof, the Bank established an insurance agency subsidiary in a "place of 5,000" in which the Bank is located and doing business. The Bank and the Agency operate in conformity with the requirements of section 92. The Agency has applied for and expects to receive a license to sell insurance as agent in New York.

## II. DISCUSSION

### A. Section 92 Authorizes Insurance Sales Activities for National Banks

Under 12 U.S.C. § 92, a national bank located and doing business in a place with a population of 5,000 or fewer may act as an agent for state-authorized insurance companies by soliciting and selling insurance, collecting premiums, and receiving commissions and fees for these services from the insurance company.<sup>1</sup> By its terms, section 92 does not require a bank's insurance solicitation and sales activities to occur within the "place of 5000." Specifically, there is no restriction as to either the location of customers or the methodology of sale.

Congress explicitly vested the OCC in section 92 with the authority to prescribe rules and regulations concerning national banks' insurance sales activities.<sup>2</sup> Since 1963, the OCC has interpreted the reach of section 92 to permit a branch office of a bank to act as agent for insurance companies if the branch is located in a place the population of which does not exceed 5,000 inhabitants, even if the main office of the bank is located elsewhere.<sup>3</sup>

The Supreme Court in *Barnett Bank of Marion County, N.A. v. Nelson* examined the language of section 92 and found that section 92 suggests "a broad, not limited permission" for national banks to act as the agent for insurance sales.<sup>4</sup> Other courts have followed a fundamentally similar approach in establishing that while the bank or branch must be located in a "place of 5,000," section 92 does not place any geographic restrictions on potential or existing customers to whom a bank or branch may sell insurance pursuant to section 92.<sup>5</sup>

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<sup>1</sup> Section 92 states:

In addition to the powers now vested by law in national banking associations...any such association located and doing business in any place the population of which does not exceed five thousand inhabitants...may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent....

12 U.S.C. § 92.

<sup>2</sup> See *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 32; 116 S. Ct. 1103, 1108 (1996); *NBD Bank, N.A. v. Bennett*, 67 F.3d 629 (7<sup>th</sup> Cir. 1995).

<sup>3</sup> 12 C.F.R. § 7.1001 (formerly 12 C.F.R. § 7.7100).

<sup>4</sup> 517 U.S. 25, 32; 116 S.Ct. 1103, 1108 (1996).

<sup>5</sup> See *Shawmut Bank Connecticut, National Association v. Robert Googins*, 965 F. Supp. 304 (D. Connecticut 1997); *NBD Bank, N.A. v. Bennett*, 67 F.3d 629 (7<sup>th</sup> Cir. 1995); *Independent Ins. Agents v. Ludwig*, 997 F.2d 958 (D.C. Cir. 1993).

**B. Prior OCC Precedents Analyze the Scope of Insurance Sales Activities Permissible for a Bank Insurance Agency Under Section 92**

Following this judicial precedent, the OCC has interpreted section 92 to permit national banks to engage in a range of insurance agency activities in conformity with section 92's "place of 5,000" framework. The OCC's *First Union Letter* provides an extensive analysis of the scope of activities permissible under 12 U.S.C. § 92. The OCC's letter considers the plain language of the statute, the legislative history, the contemporaneous practices of banks and insurance agents in 1916 when the law was enacted, the OCC's longstanding interpretive ruling under section 92, and recent judicial opinions construing the scope of section 92.<sup>6</sup>

In applying section 92 in the modern context, the OCC found in the *First Union Letter* that section 92, by its literal terms, consistent with Congressional intent and as construed by relevant case law, does not subject national banks soliciting and selling insurance to unique restrictions or disabilities relative to insurance agents generally in a particular state. Further, given the flexibility with which banks and insurance agents operated in 1916, the OCC found it is entirely consistent with section 92's authority and purpose to allow national bank insurance agencies to employ the same variety of marketing resources and tools as are used today by other insurance agencies.

In the *Louisiana Letter*,<sup>7</sup> the OCC considered whether the principles of section 92 set forth in the *First Union Letter* would permit a bank insurance agency that is located in a "place of 5,000" to establish auxiliary or "satellite" offices in locations outside the "place of 5,000." Louisiana law expressly permitted insurance agencies, including a bank-established agency, to conduct business at locations in addition to the agency's business location shown on its insurance license. The OCC concluded that, for a national bank in Louisiana, the use of the same methods and facilities available to licensed insurance agencies generally, as well as to state bank insurance agencies, includes the ability of the national bank insurance agency to establish auxiliary locations of the agency outside of the place of 5,000 and to engage in insurance sales activities at those locations. In the *Illinois/Michigan Letter*,<sup>8</sup> the OCC applied the principles of section 92 set forth in the *First Union Letter* and the *Illinois/Michigan Letter* and concluded that the insurance agency subsidiary of a national bank located in a "place of 5,000" in Illinois could establish satellite offices in both Illinois and Michigan.

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<sup>6</sup> See *Interpretive Letter No. 753* (November 4, 1996), reprinted in [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-107.

<sup>7</sup> *Interpretive Letter No. 844* (October 20, 1998), reprinted in [Current Binder] Fed. Banking L. Rep. (CCH) ¶ 81-299.

<sup>8</sup> *Interpretive Letter No. 864* (May 19, 1999).

These letters distill several general principles to define the scope of solicitation and sales activities permissible for national banks under 12 U.S.C. § 92.<sup>9</sup>

The [bank insurance] agency located in the “place of 5,000” must be bona fide. Agents will be managed through the agency located in a “place of 5,000,” which will be a business location of the agency for licensing purposes. Each 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>10</sup>

The OCC also has concluded that a bank insurance agency and its agents may seek the same market range and use the same marketing tools and facilities as generally available for licensed insurance agencies in the state in which the bank insurance agency operates. This will generally permit the following:

Meetings with customers and solicitations and sales of insurance by the bank’s agents may generally 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 the agency’s place of business for licensing purposes (if applicable).

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 inside and outside of the “place of 5,000,” including other branches of the same bank.

Personnel at bank branches inside and outside of the “place of 5,000” may make referrals to the bank’s insurance agency.

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<sup>9</sup> The OCC noted in the *First Union Letter* that the principles described are not intended to be exhaustive and recognizes that solicitation and sales techniques may vary with different marketing strategies employed by different banks and still be consistent with the general principles described in the *First Union Letter*.

<sup>10</sup> Some of these business records may be maintained and available at the agency in electronic form, with the original hard copy kept in off-site storage.

Telephone and cybermarketing may be used and the calls and messages need not originate within the “place of 5,000.”

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

The OCC noted in the *First Union letter* that section 92 as enacted in 1916 generally described the ways national bank insurance agencies operated -- by soliciting and selling, by collecting premiums, and by receiving commissions and fees for these services-- but did not delineate or curtail how these activities were to be conducted by bank insurance agencies. The letter further provided that “Congress permitted national banks to operate effectively in the insurance business that existed in 1916, and also did not restrain banks’ ability to modernize their solicitation and sales methods as needed to remain competitive as the insurance business evolved.”<sup>11</sup> Hence, the *First Union letter* concluded that the proposed insurance agency activities occurring both inside and outside of the “place of 5,000” were permissible under section 92.

With respect to the current request, you represent that the Agency’s business location for licensing purposes is in a “place of 5,000”, and that the Bank and the Agency will continue to conduct their activities in accordance with the above principles set forth in the *First Union Letter*, including conformity with Illinois and New York law. Specifically, you indicate that Illinois law permits an insurance agency, including a bank-established agency, to conduct business at locations in addition to the agency’s business location shown in its insurance license. You also represent that New York law permits an Illinois-based insurance agency, including a bank-established agency, to establish satellite offices at locations in New York. You represent that the Agency is a licensed agency in Illinois, its home state, and that it will obtain a license in New York. You represent that the operations of the Agency will be conducted at satellite office locations that would be permissible under Illinois and New York law for nonbank agencies as well as for insurance agencies operated by state banks.

### **C. New York Law Authorizing Insurance Sales Activities**

The New York Insurance Law provides generally that once an insurance agency is established it may then conduct its business from other locations. The Insurance Law provides, in part:

The headquarters location must be supervised by one or more persons licensed to do all the kinds of business for which the licensee is authorized. Any satellite office established by a

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<sup>11</sup> *First Union Letter, supra*, at 33.

licensee must be supervised by one or more persons licensed to do the kinds of business to be transacted in that office.<sup>12</sup>

This provision, which also requires that the NYID be notified in writing of the location of each satellite office and licensees responsible for that office, is applicable to all insurance agencies generally, whether affiliated with a bank or not.

Under New York Banking Law, banks may be licensed to sell insurance as agents. In 1997, the New York legislature adopted legislation “to ensure that banks and trust companies may exercise the same rights and powers and engage in the same activities as national banks, on substantially the same terms and conditions as national banks.”<sup>13</sup> The New York Banking Board adopted regulations to implement the legislation, particularly with respect to insurance agency activities of banks.<sup>14</sup> The regulations acknowledge the authority of national banks to conduct insurance activities directly and provide that state banks and trust companies doing business in a place of 5,000 may exercise the same authority. The New York State Banking Department (“NYSBD”) also issued guidelines for state banks and trust companies establishing or acquiring corporate subsidiaries to engage in insurance sales activities. In these guidelines, the NYSBD acknowledges that bank-established insurance agencies may operate from multiple locations by pointing out that licensed agencies that open offices at locations other than their headquarters must provide notification of the address and staffing of the satellite offices. The NYSBD construes New York banking law to permit an insurance agency of a bank located in another state to establish offices in New York for the purpose of selling insurance as agent.<sup>15</sup> The NYID construes the New York insurance law similarly to permit a non-New York insurance agency to obtain a license in New York and to sell insurance from satellite offices.<sup>16</sup> In sum, both state and national banks are authorized to conduct business as an insurance agent, either directly or through subsidiaries, and insurance agent licenses may be issued directly to banks or to bank subsidiaries. Furthermore, under New York insurance law, a bank-established insurance agency based in another state may be licensed in New York and may establish satellite offices throughout the state.

Given the foregoing, you have asked us not to object if the Agency, which is located in a place of 5,000 in Illinois, solicits and sells insurance through satellite offices in New York, as permitted under New

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<sup>12</sup> N.Y. Ins. Law § 2129 (McKinney Supp. 1999).

<sup>13</sup> N.Y. Banking Law § 14-g (McKinney Supp. 1999).

<sup>14</sup> 3 N.Y.C.C.R.R. § 6.3.

<sup>15</sup> Letter from Kirk P. Flores, Counsel, ABN AMRO North America, Inc., to Robert H. McCormick, Deputy Superintendent of Banks, New York State Banking Department (January 28, 1999) and response dated June 11, 1999, from Rosanne Notaro, Associate Attorney.

<sup>16</sup> The NYID has orally confirmed to counsel for the Bank that the Agency may be licensed as an insurance agency in New York, that its licensing address may be the Agency’s address in the “place of 5,000” in Illinois. The NYID also orally confirmed that licensed insurance agencies, including bank-established agencies, may establish multiple offices in New York.

York law. As described earlier in this letter, section 92 and the *First Union Letter* do not prohibit national banks from conducting their insurance solicitation and sales activities from outside the “place of 5,000.” In fact, the *First Union Letter* recognizes that national bank insurance agencies located in a “place of 5,000” should be permitted the same marketing range and be able to use the same marketing tools and facilities as generally available under state law for licensed nonbank insurance agencies or licensed agents with offices in a “place of 5,000.” Consistent with the principles established in the *First Union Letter*, the *Louisiana Letter* and the *Illinois/Michigan Letter* concluded that, where state law permits insurance agencies to operate from more than one location, the use of the same methods and facilities available to licensed insurance agencies generally, as well as to state bank insurance agencies, includes the ability of the national bank insurance agency to establish locations of the agency outside of the “place of 5,000” and to engage in insurance sales activities at those locations.

The current situation is fundamentally the same as that addressed in the *Louisiana Letter* and the *Illinois/Michigan Letter*. Here, Illinois authorities have determined that the law of Illinois permits an Illinois licensed insurance agency to solicit and sell insurance through satellite offices in other states, and the NYID has determined that the law of New York permits the use of satellite offices in New York by an Illinois insurance agency that is licensed in New York. Thus, the solicitation and sale of insurance by the Agency through satellite offices as described above and in your letter of September 29, 1999 is consistent with the principles of the *First Union Letter*.

### **III. CONCLUSION**

Accordingly, based on the foregoing facts and discussion and on the representations made in your incoming letter, we conclude that under section 92, the Agency, appropriately located in a “place of 5,000,” may solicit and sell insurance in the same manner permissible in New York for New York licensed insurance agencies generally and as authorized by the Agency’s state insurance license. If you should have any questions, please feel free to contact Ellen Broadman or Virginia Rutledge at (202) 874-5210.

Sincerely,

/s/

Julie L. Williams  
First Senior Deputy Comptroller and Chief Counsel