COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

470 Atlantic Avenue • Boston, MA 02210-2223
(617) 521-7794 • FAX (617) 521-7770
TTY/TDD (617) 521-7490
http://www.state.ma.us/doi

ARGEO PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR

DANIEL A. GRABAUSKAS
DIRECTOR, CONSUMER AFFAIRS AND BUSINESS REGULATION

LINDA RUTHARDT
COMMISSIONER OF INSURANCE

BULLETIN 99-01

TO: **Banks, Insurers, Licensed Insurance Agencies and Other Interested Persons**

FROM: **Insurance Commissioner Linda Ruthardt**

DATE: **February 12, 1999**

RE: **Sale of Insurance**

This Bulletin is intended to provide guidelines to banks, agents, brokers, insurers, licensees and other interested persons on certain aspects of the sale of insurance by banks. On September 1, 1998, a new law, Chapter 129 of the Acts of 1998, and new Division of Insurance regulations, 211 Code of Massachusetts Regulations ("CMR") 142.00, et seq., took effect in Massachusetts to govern the sale of insurance by banks.

Implementation of the new law, entitled "An Act Providing Consumer Protection Relative to the Sale of Insurance By Banks," is the joint responsibility of the Massachusetts Division of Banks and the Massachusetts Division of Insurance. The Division of Banks also has promulgated regulations under the new law at 209 CMR 49.00, et seq. The focus of this Bulletin is, however, certain licensing aspects of Chapter 129 and 211 CMR 142.00, which are within the purview of the Division of Insurance. For the purpose of this Bulletin, unless otherwise indicated, terms, including the term, "Bank", shall have the meaning set forth in 211 CMR 142.03.

The new law gives a bank "the power to sell [insurance products], either directly or indirectly through an affiliate or a subsidiary corporation established for the purpose or a third party agreement, and acting either as an agent licensed pursuant to section 163 of chapter 175 or a broker licensed pursuant to section 166 of said chapter 175 . . . ." If a bank applies to have an affiliate or a subsidiary corporation licensed as an insurance agent or broker, then such corporation must be organized as a "single purpose" insurance corporation under § 174 of Chapter 175.

When a third party is properly licensed as an agent or broker by the Massachusetts Division of Insurance, a bank wishing to enter into an agreement with that third party need not be licensed pursuant to Chapter 129 unless the agreement provides for the sharing of commissions with the

licensed third party. This is applicable also when a third party leases space in a bank under agreement with the bank to sell insurance products. § 177 of Chapter 175 prohibits payment of commissions to unlicensed agents and brokers. The Division of Insurance considers payments based on a percentage of premium to be commissions, consistent with Division of Insurance Bulletin B-91-01 and applicable law.

Please Be Advised of the Following: The Division of Insurance has revised its agent and broker license applications and license renewal applications to include questions concerning an agent's or broker's bank sales activities. If an agent or broker is engaged in insurance sales under a third party agreement with a bank, the bank itself or the third party must file a Plan of Operation and comply with the consumer protection provisions contained in Chapter 129.

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Banks which are or wish to be engaged in insurance sales activities are advised of their obligation to comply with all applicable provisions of Chapter 129. The Division of Insurance believes the following cited provisions of Chapter 129 deserve particular emphasis:

"Officers, tellers and other employees of a bank who are not licensed as insurance agents may refer a customer of said bank to a licensed insurance agent of the bank only when such customer initiates an inquiry relative to the availability or acquisition of insurance products. No such officer, teller or other employee shall be further or additionally compensated for making said referrals." §2A(b)(2).

"A bank is hereby prohibited from tying the availability and extension of credit by a bank to the purchase of insurance products from said bank." §2A(b)(4)(I)

"No bank engaged in the direct sales of insurance products shall discriminate against an applicant or allow an affiliate, a subsidiary corporation established for the purpose or a third party acting on its behalf to discriminate against an applicant for any insurance products offered by it based upon race, color, national origin or residence of the applicant, or on such other basis as the commissioner may determine. No bank offering insurance products at its main office or any branch thereof established pursuant to chapter 167C, shall refuse to offer the same at every such branch of the bank." §2A(b)(8)

"Any violations of the provisions contained in this section shall be subject to the applicable provisions of chapter 167, including, but not limited to, sections 2A to 2G, inclusive, and to applicable provisions of chapter 175 and chapter 176D, including, but not limited to, penalties, cease and desist orders, and suspension or loss of license." §2A(c)

To obtain a bank insurance license application or renewal application, please contact Robert Krumscheid at (617) 521-7447.