



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

Leverett Saltonstall Building, Room 2004

100 Cambridge Street

Boston, Massachusetts 02202

ARGEO PAUL CELLUCCI
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

January 28, 1999

Mr. Jerome L. Olin
President and CEO
Commerce Bank
386 Main Street
P. O. Box 15020
Worcester, MA 01615-0020

Dear Mr. Olin:

This letter is in response to your correspondence of November 12, 1998 to the Division of Banks (the "Division") relative to an existing lease arrangement between Commerce Bank & Trust Company (the "Bank") and Branson Insurance Agency, Inc., an affiliate of Prime Vest Financial Services, Inc. ("Branson").

According to your letter, the Bank leases a portion of its space at 390 Main Street, Worcester to Branson for a fixed amount in order for Branson to sell insurance products. Included with your letter was a copy of the Insurance Sales Lease Agreement (the "Lease") between the Bank and Branson. Your letter seeks an opinion from the Division on whether it is necessary for the Bank to seek approval from the Division and/or from the Division of Insurance to act as a landlord to lease a portion of its premises to Branson. Additionally, you inquire as to the need to obtain a license from the Division of Insurance to enter into this lease arrangement with Branson.

According to the Lease, Branson leases space and equipment from the Bank to enable Branson to sell insurance products through Branson's employees on the premises of the Bank. The Bank states that the space is rented for a fixed amount as set out in the submitted Lease. There are no provisions of the Lease which provide for the sharing of commissions between Branson and the Bank. The Lease states that employees of the Bank may not sell insurance products.

The Division notes that the Lease as written contains references to requirements set forth in 211 CMR 53.00 et seq., a regulation governing lease arrangements between financial institutions and insurance agencies. Following the enactment of Chapter 129 of the Acts of 1998, the law governing insurance sales activities in the Commonwealth, and the promulgation of implementing regulations by the Division and the Division of Insurance at 209 CMR 49.00 et seq. and 211 CMR 142.00 et seq., respectively, 211 CMR 53.00 was repealed in its entirety.



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State-chartered banks intending to engage in insurance sales activities are required to comply with the requirements of said Chapter 129 and the Division's regulations at 209 CMR 49.00 et seq. The statute and regulation requires the submission and approval of a plan of operation setting forth a description of proposed activities and evidencing compliance with the consumer protection provisions of the law. In addition, following approval of such a plan, the bank would be required to obtain a license from the Division of Insurance to engage in such activities. It appears from the information submitted in your letter that the lease arrangement does not and will not involve the sharing of commissions between the Bank and Branson. It is the Division's understanding that such a fixed rate lease arrangement that does not include any form of commission sharing would not require the Bank to obtain an agent or broker license from the Division of Insurance. The Division has also confirmed this with the Division of Insurance.

Notwithstanding that the Bank may not be required to obtain a license from the Division of Insurance to continue the lease arrangement with Branson, it is the Division's position that the Bank is required to comply with the substantive consumer protection terms and conditions governing insurance sales activities included in said Chapter 129 and more specifically set forth in 209 CMR 49.06. The Bank is not required to submit a plan of operation for Division approval as contemplated by the statute, however, the Bank is required to submit information to the Division which demonstrates that the arrangement complies with the law's consumer protection provisions. Enclosed is a copy of Chapter 129 and 209 CMR 49.00.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,



Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

cc Division of Insurance

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