



# The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

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THOMAS J. CURRY  
COMMISSIONER

December 9, 1999

Mr. Steven E. Lowell  
Senior Vice President  
Cape Cod Cooperative Bank  
121 Main Street  
Yarmouth Port, MA 02675

Dear Mr. Lowell:

This letter is written in response to your correspondence of November 19, 1999 to the Division of Banks (the "Division") relative to the Cape Cod Cooperative Bank's (the "Bank") arrangement to lease space in one of its branches to a third party in order to sell nondeposit investment and insurance products.

According to your letter, the Bank will lease a portion of its banking premises at 1121 Main Street, West Barnstable to American Express Financial Advisors ("AEFA"). The lease will be for a fixed amount and AEFA will not be sharing commissions with the Bank for any insurance product sales. Properly licensed AEFA employees will conduct sales. Bank employees will not engage in selling insurance products. In addition, other explanatory information and materials on this arrangement were included with your correspondence. These materials consisted of the Bank's Retail Nondeposit Product Sales Program Statement, Financial Planning and Nondeposit Investment Products Program and Lease Agreement, Nondeposit Investment or Insurance Product Acknowledgment of Features and "Making Referrals" Training Brochure. The materials also address how the Bank will comply with the Interagency Statement on Retail Sales of Nondeposit Investment Products of February 15, 1994.

It is the Division's understanding that a fixed rate lease arrangement that does not include any form of commission sharing, as described in your letter, would not require the Bank to obtain an agent or broker license from the Division of Insurance. The Division has confirmed this position with the Division of Insurance. The Division addressed a similar situation in its Opinion #98-247. Accordingly, the Bank would not be required to submit a plan of operation as contemplated by Chapter 129 of the Acts of 1998, codified, in part, as section 2A of Chapter 167F of the General Laws, and the Division's regulations at 209 CMR 49.00 *et seq.* Notwithstanding that the Bank would not be required to obtain a license from the Division of Insurance, it is the position of this Division 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 set forth in the Division's regulations at 209 CMR 49.06. The



Steven E. Lowell  
Page 2  
December 9, 1999

information submitted with your correspondence is sufficient to demonstrate the Bank's knowledge of and intention to comply with applicable state and federal laws and regulations.

Please be advised that the implementation of the Bank's Nondeposit Investment Product Sales Program is subject to review and verification by staff of the Division through the examination procedures of the Financial Institution Supervision Unit.

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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