

(717) 787-1471

June 2, 1999

[redacted]

Re: Brokering Automobile and Mortgage Loans in Pennsylvania

Dear [redacted]:

This is in response to your letter to the Pennsylvania Department of Banking (the "Department") in which you request a confirmation of the licensing and registration requirements for your client, a national insurance company (the "Company"), its employee insurance agents (the "Employees") and its exclusive, non-employee insurance agents (the "Agents") regarding to proposed automobile and mortgage loan brokering activities.

#### The Company's Proposed Activities

The Company works through its Employees and the Agents. You assert that the Agents are exclusive to the Company. The Company permits the Agents to sell only insurance products authorized by the Company. The Agents hold themselves out as providing services solely for the Company as evidenced by the Agents' office signage, letterhead and business cards. The Company assesses the Agents' compliance with the Company's policies and procedures, legal and regulatory requirements and quality control standards.

*Mortgage Loan Activities:* The Company is entering into an arrangement with a national consumer lender (the "Lender"). Under the arrangement, the Agents will advise customers of the availability of mortgage loans through the Lender. If a customer has an interest in obtaining a mortgage loan from the Lender, the Agent will take an application from the customer; educate the customer about the home financing and home buying process and discuss different loan products and the features of each applicable product; obtain documentation and information from the customer and send the application and supporting documentation and information to the Lender; assist the customer during the loan application process; advise the customer when final loan approval has been received and schedule a closing with the customer, at which time the customer's loan will be closed by a closing agent (who will not be an Agent). Agents will presently engage in mortgage business only with one Lender, and not "shop" the customer's loan application to multiple lenders. The Lender will decide whether to make the loan to the customer.

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*Automobile Loan Activities:* In addition, the Agents will advise their insurance customers of the availability of loans from the Lender to finance the purchase of an automobile or refinance an existing automobile loan. If a customer has an interest in obtaining automobile financing from the Lender, the Agent will provide the customer with a loan application, assist the customer in completing it (if necessary), and obtain copies of documentation and other customer information utilized to process the loan. The Agent will send the customer's documents, information and applications to the Lender, which will then decide whether to make a loan to the customer. If the Lender decides to lend to the customer, then the Agent will follow the Lender's closing instructions. As in the case of mortgage loans, Agents will presently engage in automobile loan business with only one Lender and will not "shop" a customer's loan application to multiple lenders.

In both the mortgage and automobile loan scenarios, customers will not be asked to pay an Agent any money for the services that the Agent performs prior to the closing. Any compensation will be paid after closing by the Lender to the Company, which may pay over a portion of that compensation to the Agent for services rendered.

#### Department Position

*Mortgage Loan Activities:* The Mortgage Bankers and Brokers Act ("MBBA"), 63 P.S. § 456.01 *et seq.*, exempts insurance companies and their employees from licensing. 63 P.S. § 456.03(b)(12). Therefore, the Company is not required to be licensed under the MBBA but is subject to sections 8(a)(2)-(11), 9(a)(3), 10 and 14(b) of the MBBA. *See* 63 P.S. § 456.03(b)(12). The Agents are not included in the Company's exemption from licensure and therefore are required to obtain individual first mortgage broker licenses in order to broker first mortgage loans in Pennsylvania, since the Agents are independently owned entities. *See* 63 P.S. § 456.03(a) *and* definition of "mortgage broker" in 63 P.S. § 456.02.

The Secondary Mortgage Loan Act ("SMLA"), 7 P.S. § 6601 *et seq.*, does not exempt insurance companies and their employees from licensing requirements. *See* 7 P.S. § 6603. Therefore, it is the Department's position that the Company must obtain a broker license for each office location at which it will be conducting secondary mortgage loan activities for Pennsylvania consumers consistent with section 20 of the SMLA. *See* 7 P.S. § 6604 and 6620. The Employees are not required to be separately licensed provided that they conduct their business from licensed SMLA office locations of the Company. However, the Agents are required to be individually licensed as secondary mortgage loan brokers in order to broker secondary mortgage loans, since the Agents are independently owned entities. *See* 7 P.S. § 6603(a)(2) *and* definition of "secondary mortgage loan broker" in 7 P.S. § 6602.

*Automobile Loan Activities:* The Credit Services Act ("CSA"), 73 P.S. § 2181 *et seq.*, does not exempt insurance companies from registration as loan brokers. *See* 73 P.S. § 2188 *and* definition of "loan broker" in 73 P.S. § 2182. Therefore, it is the Department's position that, pursuant to the CSA, the

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Company must register as a loan broker each office location at which the Company will be conducting automobile loan brokering activities for Pennsylvania consumers. *See* 73 P.S. § 2188. The Employees are not required to be separately registered provided that they conduct their business from the Company's registered office locations. However, the Agents are required to be individually registered as loan brokers pursuant to the CSA in order to broker automobile loans, since the Agents are independently owned entities. *See* 73 P.S. § 2182.

If an individual Agent is licensed pursuant to the MBBA and/or the SMLA, registration under the CSA is not required pursuant to subsection (2)(i) of the definition of "loan broker" contained in the CSA. *See* 73 P.S. § 2182. Likewise, if an individual Company office location is licensed pursuant to the SMLA, the Company or its Employees (provided that the Employees conduct their business from licensed Company office locations) will not be required to register separately as loan brokers pursuant to the CSA.

Finally, neither the Company nor the Agents are required to be licensed pursuant to the Consumer Discount Company Act ("CDCA"), 7 P.S. § 6201 *et seq.*, provided that neither the Company nor an individual Agent imposes a charge or fee on a customer for referring the customer's business to the Lender. *See* 7 P.S. § 6203.B.

As a general matter, the Lender should carefully review the licensing and/or registration requirements of the MBBA, SMLA, CDCA, CSA, and the Motor Vehicle Sales Finance Act, 69 P.S. § 601 *et seq.*, in order to ensure that the Lender's mortgage and automobile lending activities comply with Pennsylvania law.

The Department's analysis is based upon the facts as stated in this letter. Any change in the facts could result in an amendment or reversal of the Department's position. This letter states the Department's position regarding the issues discussed herein and may not be relied upon or construed as constituting legal advice.

Please contact me if you have any further questions regarding this matter.

Sincerely,

Reginald S. Evans  
Chief Counsel

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