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Re: Title Affiliated Business Process Review (C) Working Group – Market Regulation Handbook Chapter 18 (Title Insurance) – *Comments of American Bankers Insurance Association*

Dear Ms. Gardner:

As counsel to the American Bankers Insurance Association[1] (ABIA), the insurance subsidiary of the American Bankers Association, we provide the following comments concerning the Working Group's review of Chapter 18 of the Model Regulation Handbook, which addresses examinations of title insurance companies and agents. We have the following comments:

Regarding Underwriting and Rating, Standard 3 states the following: "Charges or fees other than premium for providing coverage are in compliance with statutes, rules and regulations." The standard then refers to two documents that are no longer used in real estate closings: the Good Faith Estimate and the HUD-1 settlement document. The documents currently used for real estate closings are the Loan Estimate and the Closing Disclosure, by virtue of the TILA/RESPA Integrated Disclosure ("TRID") protocol set forth in several Consumer Financial Protection Bureau mortgage rules (12 C.F.R. §§ 1026.19(e)-(f), 1026.36, 1026.37). Standard 3 should be modified to incorporate the names for the new documents being used.

Additionally, regarding Marketing and Sales, Standard 1 states the following: "Controlled business is handled in accordance with statutes, rules and regulations." The

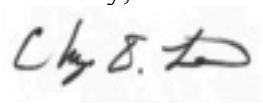
[1] The ABIA's members include depository institution, some of which are affiliated with title insurance agencies.

accompanying commentary to the standard states: "Referrals must be in compliance with the provisions of applicable statutes, rules and regulations as it relates [*sic*] to controlled business." The commentary also refers the examiner to the NAIC's Title Insurance Agent Model Act (No. 230). The second optional subsection D of Section 6 of the model act prohibits a title insurance agent from accepting an order for a title insurance policy if:

> (a) The title insurance agent knows or has reason to believe that the transaction will constitute controlled business; and
>
> (b) When added to other controlled business written by the title insurance agent during the same calendar year, the aggregate controlled premiums written will exceed twenty percent (20%) of the title insurance agent's gross premiums written during the preceding calendar year. However, the twenty percent (20%) limitation shall be eighty percent (80%) in the first year after the effective date of this Act, sixty percent (60%) in the second calendar year after the effective date of this Act and forty percent (40%) in the third calendar year after the effective date of this Act.

State laws governing controlled business have been found to be preempted by the Gramm-Leach-Bliley act to the extent they "significantly interfere with" the activities of a bank-affiliated insurance agency. *See Ass'n of Banks in Ins. v. Duryee*, 270 F.3d 397 (6th Cir. 2001), which found that Ohio's principal purpose test (which is similar to a controlled business statute) was preempted. *Id*. at 410. Accordingly, we suggest adding a note to Chapter 18 to refer to the constraints of the *Duryee* case and revising Model No. 230 to reflect that decision.

Sincerely,



Chrys D. Lemon