

COMMISSIONER OF BANKING
STATE OF WEST VIRGINIA

In the Matter of:

**REQUEST FOR AUTHORIZATION TO
ENGAGE IN SUBSIDIARY BUSINESS BY
A REGULATED CONSUMER LENDER
filed on behalf of
ASSOCIATES FINANCIAL SERVICES CO.
OF WEST VIRGINIA, INC. and
KENTUCKY FINANCE, INC.
(Re: Non-Credit Insurance Referrals/Marketing)**

DECISION ON AUTHORIZATION REQUEST

On January 29, 1997 Associates Corporation of North America on behalf of its licensed Regulated Consumer Lender affiliates, Associates Financial Services Co. of West Virginia, Inc. and Kentucky Finance Co., Inc., by letter, requested of the West Virginia Commissioner of Banking a DECISION ON AUTHORIZATION pursuant to W. Va. Code § 46A-4-110 in regards to the referral and marketing of non-credit personal insurance products for an insurance agency affiliate in the same office, room, or place of business in which the Applicants, acting as regulated consumer lender licensees, conduct the business of making regulated consumer loans.

As proposed, customers of the Applicants would be directed by the employees to marketing brochures displayed in the loan offices, which brochures contain a toll-free number of a fully licensed insurance agency affiliate of the lender offering non-credit personal insurance products (e.g., homeowners, renters, comprehensive auto ins., etc.). This insurance agency affiliate represents multiple independent insurance carriers. The borrower would be offered the opportunity to call the toll free number at the loan offices, and

informed that they may also call from their own home any time thereafter. Under the proposed program the Applicants' insurance agency affiliate will derive a commission from its insurance agency activity.

Upon review of this request, the Commissioner of Banking has determined that such activity would expand the licensees' non-credit insurance activities beyond that presently permitted, and in a manner that would be difficult or impossible to monitor compliance with the restrictions placed upon the marketing of such permitted insurance products (*see* August 20, 1996 Decision of Authorization to Kentucky Finance, Inc.). Further, the proposed activity would, when taken together with other permitted ancillary activities, raise the issue of whether the Applicant's were in fact primarily engaged in the business of making consumer loans or marketing insurance. Lastly, the proposed conduct would result in the Applicants' offices being used as a point of sale for its affiliate's licensed insurance agency operations, despite amendments to the statute and rules intended to abolish dual licensing and restrict dual business operations. The proposed activity would thus facilitate evasions or contradictions of Article 4, Chapter 46A of the West Virginia Code or the rules issued thereunder.

Based upon these determinations and findings the Commissioner of Banking IS OF THE OPINION that a regulated consumer lender licensee may not conduct the business of making regulated consumer loans in the same office, room or place of business in which non-credit insurance products are marketed or sold through referral to an agency/ brokerage affiliate. THEREFORE THE REQUEST FOR AUTHORIZATION IS HEREBY DENIED.

SGB

Sharon G. Bias
Commissioner of Banking

Date: 4/18/97

COMMISSIONER OF BANKING

STATE OF WEST VIRGINIA

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**REQUEST FOR AUTHORIZATION TO
ENGAGE IN SUBSIDIARY BUSINESS BY
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filed on behalf of
ASSOCIATES FINANCIAL SERVICES CO.
OF WEST VIRGINIA, INC. and
KENTUCKY FINANCE, INC.
(Re: Non-Credit Insurance Referrals/Marketing)**

DECISION ON AUTHORIZATION REQUEST

On January 29, 1997 Associates Corporation of North America on behalf of its licensed Regulated Consumer Lender affiliates, Associates Financial Services Co. of WV, Inc. and Kentucky Finance Co., Inc., by letter, requested of the West Virginia Commissioner of Banking a DECISION ON AUTHORIZATION pursuant to W. Va. Code § 46A-4-110 in regards to the referral and marketing of non-credit personal insurance products in the same office, room, or place of business in which the Applicant, acting as a regulated consumer lender licensee, conducts the business of making supervised loans.

As proposed, customers of the Applicants would be directed by their employees to marketing brochures displayed in the loan offices, which brochures contain a toll-free number of a fully licensed insurance agency affiliate of the lender offering non-credit personal insurance products (e.g., homeowners, renters, comprehensive auto ins., etc.). This insurance agency affiliate represents multiple independent insurance carriers. The borrower would be offered the opportunity to call the toll free number at the loan offices, and informed that they may also call from their own home any time thereafter. If upon receiving the quote for a policy the customer elects to purchase the insurance, payment will be

arranged with the insurance carrier through the agency affiliate. The Applicants will not finance the insurance premiums, nor will the Applicants charge or be paid any fee by the consumer in connection with the insurance transaction. Rather, the Applicants' insurance agency affiliate will derive a commission from its insurance brokerage activity.

Upon review of this request, the Commissioner of Banking has determined that such a product is sufficiently related to the business of that of a financial institution transacting regulated consumer loans; that the nature and character of the referrals and marketing of such insurance products will not per se facilitate evasions or contradictions of Article 4, Chapter 46A of the West Virginia Code or the rules issued thereunder; and that the referral and marketing of non-credit personal insurance products will not be detrimental to the consumers of this state-- Provided certain consumer rights are afforded as set forth herein.

The decision to grant this type of authority is tempered with concern for the economic well-being of the consumer and conformity with the restrictions placed on additional charges to consumer loans by W. Va. Code § 46A-3-109. To ensure compliance and prevent economic coercion the following operational guidelines must be adopted and adhered to by each of the regulated consumer lender licensee applicants:

- (1) The purchase of any non-credit insurance may not be required as a condition to the making of any loan or extension of credit by the lender licensee;
- (2) Any claims made under the terms and conditions of a non-credit insurance may not be used to secure any loan made to the consumer by the lender licensee;
- (3) The premium(s) charged for any non-credit insurance policy must be reasonable in relation to the benefit conferred upon the consumer as such may be determined by the West Virginia Commissioner of Insurance, and all licenses required by the Commissioner of Insurance have been properly obtained by the marketer and seller of the insurance;
- (4) The premium(s) for such insurance may not be financed by the Applicants or their affiliates. In addition the Commissioner shall have the authority to examine the records of the Applicants and their insurance agency affiliate to ensure compliance with this restriction;

(5) No fee or charge for the purchase of such insurance may be imposed directly or indirectly by the lender licensee on to its customers;

(6) Any commission received by the insurance agency affiliate of the lender licensee must not vary due to whether the policy premiums are paid in cash or by credit; and in this regard such insurance policies will be available to non-loan customers of the lender licensees on the same terms;

(7) The sale of any non-credit insurance policy must not be tied to the purchase of any other product of or from the Applicant, nor may any discount be given through bundling the insurance with any product or service of the Applicants;

(8) The sale of such non-credit insurance in combination with any other insurance sold by the lender licensee in connection with a loan transaction may not be made unless any overlaps in coverage by the policies are disclosed in writing to the consumer at the time of sale; nor may not be made where such insurance is substantively duplicative of other insurance (e.g. level term life insurance) sold by the lender licensee in connection with that loan transaction; and

(9) The consumer will be advised of their rights set forth in the proceeding paragraphs 1 - 8 on a disclosure statement or form that shall be signed by the consumer. This disclosure statement or form must be submitted to and approved by the Commissioner of Banking prior to its use.

Any deviation from the above-stated guidelines will result in the revocation of this written authorization of a particular regulated consumer lender licensee office of the Applicants to engage in the business of making loans in the same office, room or place of business in which non-credit insurance products were marketed or sold. Subject to the terms and conditions set forth herein: AUTHORIZATION IS HEREBY GRANTED.

Sharon G. Bias
Commissioner of Banking

Date: _____

The provision of non-credit related insurance by financial institutions such as banks has been an area of great controversy. However, recent decisions by the U.S. Supreme Court in support of national banking regulators policies have recognized such insurance as a financial product. (See *Barnett Bank of Marion County, NA v. Nelson*, 116 S. Ct. 1103 (1996) and *NationsBank of N.C. v. Variable Annuity Life Ins., Co.*, 115 S. Ct. 810 (1995). In line with these decisions the West Virginia Board of Banking and Financial Institutions

COMMISSIONER OF BANKING
STATE OF WEST VIRGINIA

In the Matter of:

REQUEST FOR AUTHORIZATION TO
DISTRIBUTE SOLICITATION TO
OBTAIN A SECURED CREDIT CARD
filed on behalf of
ASSOCIATES FINANCIAL SERVICES, INC.
(Re: Secured Visa Card through
Associates National Bank- Delaware)

DECISION ON AUTHORIZATION REQUEST

On February 18, 1995 Associates Financial Services, Inc., by letter of its parent company, Associates Corporation of North America, requested of the West Virginia Commissioner of Banking a DECISION ON AUTHORIZATION pursuant to W. Va. Code § 46A-4-110 in regards to the distribution of secured credit card applications from its affiliate, Associates National Bank (Delaware) in the same office, room, or place of business in which the above-named company and its related supervised lender licensees in West Virginia conduct the business of making supervised loans.

Upon review of this request, the Commissioner of Banking has determined that similar products have previously been provided West Virginia consumers and that nothing prohibits Associates National Bank (Delaware) from mailing such secured credit card applications to West Virginia consumers; that retail businesses in West Virginia currently distribute credit card applications of out-of-state banks; that the nature and character of this activity-- i.e., the distribution of secured credit card applications on behalf of its banking affiliate, without more, will not per se facilitate evasions or contradictions of Article 4, Chapter 46A of the West Virginia Code or the rules issued thereunder; and that the

marketing of secured credit cards from federally insured banking institutions is related to the proper business of lending engaged in by the licensees and is beneficial to the consumers of this state.

Based upon these determinations and findings the Commissioner of Banking IS OF THE OPINION that the applicant's supervised lender licensees in West Virginia may distribute at their offices secured credit card applications, provided the funds securing the card are placed at a federally-insured depository institution and the credit card issued is nationally recognized. This authorization does not permit the licensed lenders from engaging in any conduct other than the secured credit card application forms' distribution. Thus the handling or processing of the application, or its transmission by facsimile machine, electronic mail, or otherwise, to, or on behalf of their banking/credit card issuer affiliate or the financial institution where the funds securing the line of credit are deposited is prohibited. Subject to the terms and conditions set forth herein: **AUTHORIZATION IS HEREBY GRANTED.**

Sharon G. Bias
Commissioner of Banking

Date: _____