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Secretario de Estado

Por: 
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Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE

RULE NO. 74

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Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE
San Juan, Puerto Rico

RULE NO. 74

**RULES REGULATING THE SALE, SOLICITATION, OFFER OR
MARKETING OF INSURANCE PRODUCTS BY DEPOSITORY
INSTITUTIONS OR THEIR AFFILIATES**

ARTICLE 1 - GENERAL PROVISIONS

SECTION 1 - LEGAL BASIS

The Commissioner of Insurance of the Commonwealth of Puerto Rico hereby adopts Rule 74 of the Regulations of Puerto Rico Insurance Code, pursuant to the provisions of Articles 2.040 and 27.131 of Law No. 77 of June 19, 1957, as amended, commonly known as the Puerto Rico Insurance Code; of Section H, Article 2 of the Reorganization Plan No. 3, effective on June 22, 1994; of the federal law known as the "Gramm-Leach-Bliley Financial Services Modernization Act of 1999", PL 106-102 of November 12, 1999, as amended; of Law No. 382 of September 6, 2000; and Law No. 170 of August 12, 1988, commonly known as the Uniform Administrative Procedure Act, as amended. It also takes into consideration the principles of preemption expressed in the case of *Barnett Bank of Marion County v. Nelson*, 517 U.S. 25 (1996), and the protection afforded to National Banks under the Gramm-Leach-Bliley Act regarding insurance related activities in title insurance.

SECTION 2 - PURPOSE

This Rule is adopted for the purpose of governing the methods, acts or practices of depository institutions or their affiliates in the sale, solicitation, offer or marketing of insurance products or annuities, for the protection of the consumer.

SECTION 3 - SCOPE

This Rule shall apply to the sale, solicitation, offer or marketing of insurance products or annuities by any of the following:

- (1) national banks, savings and credit cooperatives (as authorized by Law Num. 6 of January 15, 1990), and by the authorized affiliates of the depository institutions (as defined in this Rule),
- (2) persons that participate in these activities from the facilities of the depository institution, or
- (3) persons that participate in these activities as representatives of the depository institutions and their affiliates.

In all matters pertaining to credit insurance products the scope of this Rule is as follows:

- (1) All the provisions of the Rule, except for those contained in Article 5 regarding Separation of Areas and Personnel, will be applicable to the sale, solicitation, offering and marketing of credit insurance products by the directors or any other person authorized by the Commissioner to act in the name of the subsidiary corporation of the depository institution.
- (2) None of the provisions of the rule, except for those contained in Article 6 regarding Business Documents, Files, Records and Books, and the provisions of Article 7 about Warnings and Disclosures, will be applicable to the sale, solicitation, offering and marketing of credit insurance products by an agent authorized in accordance with the provisions of the Code, but who is neither a director nor any other person authorized by the Commissioner to act in the name of the subsidiary corporation of the depository institution.

None of the provisions of this Rule will be interpreted to preclude or otherwise limit the applicability of any other provision of a law, regulation, circular letter or ruling issued by the Commissioner to regulate credit insurance

products, including but not limited to Chapter 18 of the Code, Circular Letter No. AM-111-9-782-79 of September 21, 1979, Ruling No. N-OE-12-11-87 of December 11, 1987, and Ruling No. N-C-9-98-98 of October 9, 1998.

ARTICLE 2 - DEFINITIONS

The following terms and phrases shall have the meanings set forth bellow:

- (a) "Affiliate" - the term "Affiliate" has the same meaning given to the term "affiliate" in Section 104(g)(1) of the Gramm-Leach-Bliley Act.
- (b) "Agent" - the term "Agent" has the same meaning given to that term under Article 9.010 of the Insurance Code of Puerto Rico, and shall include subsidiary corporations, as that term is defined in this Rule.
- (c) "General Agent" - the term "General Agent" has the same meaning given to that term in Article 3.340 of the Insurance Code of Puerto Rico, and shall include subsidiary corporations, as that term is defined in this Rule.
- (d) "Insurer" - the term "Insurer" has the same meaning given to that term in Article 1.030 of the Insurance Code of Puerto Rico.
- (e) "Code" - means the Insurance Code of Puerto Rico, Law No. 77 of June 19, 1957, as amended, 26 L.P.R.A. et seq.
- (f) "Commissioner" - means the Commissioner of Insurance of the Commonwealth of Puerto Rico.
- (g) "Commission or emolument" - means the fee or compensation earned by a person who is duly licensed to sell insurance products or annuities. This fee or compensation is calculated based on a percentage of the premium generated from the sale of an insurance policy or annuity.
- (h) "Subsidiary Corporation" - means any subsidiary corporation of a depository institution or of a financial holding company

through which the depository institution will carry out the sale, solicitation, offer and marketing of insurance products or annuities.

- (i) "Consumer" - means any person that procures, obtains or has obtained an insurance product or service, or an annuity, from a depository institution or one of its subsidiary corporations.
- (j) "Depository Institution" - the term "Depository Institution" is limited to those institutions covered by the term "depository institution" pursuant to Section 104(g)(3) of the Gramm-Leach-Bliley Act. It is to be understood that it only refers to all banks and savings associations. In addition, for purposes of this Rule, in Puerto Rico the term "depository institution" includes savings and credit cooperative thrifts.
- (k) "Gramm-Leach-Bliley Act" - means the federal law titled "Gramm-Leach-Bliley Financial Services Modernization Act of 1999", Public Law 106-102, 113 Stat 1338 (1999), as amended.
- (l) "Electronic Medium" - means any electronic method of transmitting messages that utilizes a format that allows for a visual inspection of its contents, whether on the monitor of a personal computer or by any other means.
- (m) "Customer Service Representative" - means the employee of a depository institution who has the responsibility of: (1) opening new accounts but, who is not authorized to receive deposits; (2) accepting loan applications but, who is not authorized to approve said applications; and (3) assisting the consumer with any question they may have regarding the products and services being offered by the depository institution and its affiliates.
- (n) "Person" - means any natural or legal person.

(ñ) "Insurance" - the term "insurance" has the same meaning given to the term in Article 1.020 of the Code.

(o) "Solicitor" - the term "solicitor" has the same meaning given to that term in Article 9.030 of the Code.

ARTICLE 3 - CORPORATE STRUCTURE

Any depository institution that wishes to venture into the sale, solicitation, offer or marketing of insurance products or annuities in Puerto Rico, that is not a savings and credit cooperative, must establish or acquire for said purpose a corporation organized under the laws of the Commonwealth of Puerto Rico. The subsidiary corporation shall maintain its principal place of business in Puerto Rico and must be duly authorized by the Commissioner. However, a national bank, authorized according to the relevant sections of the National Bank Act, 12 U.S.C. 92, and other corresponding federal statutes, may venture, by itself or through one of its affiliates or subsidiaries, in said insurance activities within the various states and territories of the United States of America and the Commonwealth of Puerto Rico.

The savings and credit cooperatives thrift of Puerto Rico may act as insurance agents of the cooperative insurers authorized under the Code, as provided under Article 2.04(m) of Law No. 6 of January 15, 1990, as amended, also known as the Cooperative Societies Act, and under of this Rule, without need to comply with the corporate structure requirement included herein.

For a savings and credit cooperative thrift to be able to venture into the sale, solicitation, offer and marketing of insurance products or annuities issued by non-cooperative insurers, it is necessary for "Corporación para la Supervisión y Seguro de Cooperativas de Puerto Rico" (COSSEC) to issue the required authorization to perform said activities as a condition precedent to obtaining the required license. If said authorization is granted, the savings and credit cooperative thrifts, like any other depository institution, shall establish or acquire a corporation organized under the laws of the Commonwealth of Puerto Rico

which in turn must maintain its principal place of business in Puerto Rico, and will have to comply with the requirements set forth in the Code, its Regulations and this Rule.

ARTICLE 4 - LICENSES

SECTION 1 - REQUIRED LICENSE

- (a) The subsidiary corporation of a depository institution (as the term is defined in this Rule) may sell, solicit, offer or market insurance products or annuities only if it holds a license issued pursuant to the provisions of the Code.
- (b) The savings and credit cooperative thrifts, unless a more extensive authorization is granted, may only sell, solicit, offer or market those insurance products or annuities issued by cooperative insurers, authorized for these activities pursuant to the Code and Article 2.04(m) of Law No. 6, supra.
- (c) A subsidiary corporation of a depository institution will only be issued a license to act as an agent or general agent. Said license will be subject to the corresponding provisions of the Code and its Regulations related to agents and general agents.
- (d) The savings and credit cooperative thrifts that wish to sell, solicit, offer or market the insurance products or annuities issued by authorized cooperative insurers will only be issued a license to act as an agent, pursuant to the provisions of the Code and its Regulations.
- (e) The directors of, or any other person that on behalf of, the subsidiary corporation participate in the sale, solicitation, offer or marketing of insurance products or annuities must be issued a license pursuant to the provisions of the Code and this Rule.

- (f) Only those employees of the depository institution that qualify as Customer Service Representatives, as said term is defined under Article 2(m) of this Rule, will be authorized by the Commissioner to act under the license issued to the subsidiary corporation of the depository institution.

SECTION 2 - FINES, SUSPENSION AND REVOCATION OF LICENSE

Pursuant to Articles 9.460, 9.470 and 9.480 of the Code, the Commissioner shall fine, suspend or revoke the agent or general agent license of a subsidiary corporation that allows any of its directors, officers, employees or any other person who is not licensed pursuant to the Code and this Rule, to sell, solicit, offer or market insurance products or annuities from its place of business, from the premises of the depository institution or its branches.

It shall be understood that the sale, solicitation, offer or marketing of insurance products or annuities has been made on behalf of the subsidiary corporation when:

- (1) A person who is not licensed pursuant to the Code and this Rule conducts the sale, solicitation, offer or marketing of insurance products or annuities, and makes representations to the consumer that lead him/her to believe that said acts are performed by, or for the benefit of, the subsidiary corporation.
- (2) A person refers the consumer to a director or to any other person authorized by the Commissioner to act on behalf of the subsidiary corporation.
- (3) The documents that evidence the sale, solicitation, offer or marketing of the insurance products or annuities refer to, or identify, the subsidiary corporation or the depository institution.

ARTICLE 5 - SEPARATION OF AREAS AND PERSONNEL**SECTION 1 - SEPARATION AND IDENTIFICATION OF AREAS**

The subsidiary corporation may sell, solicit, offer or market insurance products or annuities within the premises of the depository institution or its affiliates, provided that said activities are conducted in an area that is physically separated from the area in which deposit-taking activities take place. Said area must be clearly distinguishable from the area in which credit extensions are negotiated. The area destined for the sale, solicitation, offer or marketing of insurance products or annuities must be accessible and clearly identified.

The subsidiary corporation must display signs in the area within the premises of the depository institution destined for insurance activities. The signs must provide the public with notice about the availability of insurance or annuity products. Said signs will identify the area destined for insurance transactions and must display the name of the subsidiary corporation, as it appears in its license, in a prominent, simple, direct and easily understandable manner, in compliance with the provisions of Article 9.351 of the Code.

SECTION 2 - SEPARATION OF PERSONNEL AND DUAL EMPLOYEES

The sale, solicitation, offer or marketing of insurance products or annuities may only be conducted by the directors or any other person authorized by the Commissioner to act on behalf of the subsidiary corporation under the corporate license issued to said subsidiary corporation.

Nevertheless, the directors or any other person authorized by the Commissioner to act on behalf of the subsidiary corporation, who is a customer service representative of the depository institution and who participates in the application, solicitation or closing of a credit transaction, may not solicit or sell insurance products in connection with or pertaining to said credit transaction. Pursuant to the provisions of Article 8 of this Rule, said dual employee shall refer the consumer of said transaction to any other director or any other person

authorized by the Commissioner to act on behalf of the subsidiary corporation who did not participate in the application, solicitation or closing of said credit transaction. The dual employee shall only perform the referral after the extension of credit has been approved, unless approval of the extension of credit is conditioned to the acquisition of insurance.

Dual employees shall not sell, solicit, offer or market insurance products or annuities at the desks designated for the negotiation of credit transactions.

ARTICLE 6 - BUSINESS DOCUMENTS, FILES, RECORDS AND BOOKS

SECTION 1 - DOCUMENTS

The subsidiary corporation must utilize separate documentation for the sale, solicitation, offer or marketing of insurance products or annuities. Said documents shall be maintained at its principal place of business.

When the subsidiary corporation sells, solicits, offers or markets credit or flood insurance, simultaneously or in connection with a credit transaction performed by the depository institution or its affiliates, separate documentation will not be required.

The subsidiary corporation must also comply with the provisions of Chapter 18 of the Code.

SECTION 2 - CONSUMER FILES

The subsidiary corporation must maintain individual files pertaining to the sale, solicitation, offer or marketing of insurance products or annuities. Said files will be maintained at its principal place of business. Whenever the individual files are maintained within the premises of the depository institution or its affiliates, the files must be stored in an archive separate and distinct from the one in which the files regarding the credit transactions are stored. The individual files must contain information from the last five (5) years, as established in Rule XII of the Regulations of the Code.

SECTION 3 - BUSINESS RECORDS AND BOOKS

The subsidiary corporation shall maintain its records, accounting books and archives, including all documents and communications pertaining to consumer complaints, and any other documents pertaining to insurance transactions, separate from the records, accounting books, archives and documents of the depository institution from which premises it operates. The records, accounting books and archives must contain information from the last five (5) years, pursuant to Rule XII of the Regulations of the Code.

SECTION 4 - INSPECTION OF BUSINESS RECORDS AND BOOKS BY THE COMMISSIONER

Pursuant to the provisions of Article 13 of this Rule and Article 2.030(3) of the Code, the Commissioner shall have the power to investigate and inspect any depository institution or its affiliates, as well as its subsidiary corporation. The depository institution, its authorized affiliates or its subsidiary corporation that sells, solicits, offers or markets insurance products or annuities within the premises of the depository institution must make the files, records and books related to the business of insurance, available and accessible for inspection and revision by the Commissioner or his authorized representative, pursuant to the provisions of Article 2.160 of the Code. Also, the depository institution, its affiliates and the subsidiary corporation must comply with the provisions of Rule 1A of the Regulations of the Code.

ARTICLE 7 - WARNINGS AND DISCLOSURES**SECTION 1 - REQUIRED DISCLOSURES**

As a result of its affiliation with a depository institution, when a subsidiary corporation sells, solicits, offers or markets insurance products or annuities to a consumer, or when said sale, solicitation, offer or marketing of insurance products occurs in connection with a credit transaction by said depository institution, the subsidiary corporation must disclose the following:

- (1) Before completing the insurance transaction, it must disclose that:

- (a) The insurance product or annuity does not constitute a deposit or any other obligation of the depository institution and is not guaranteed by it.
 - (b) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or by any other federal agency.
 - (c) In the case of the savings and credit cooperatives thrift, the insurance product is not insured by COSSEC.
 - (d) When applicable, the insurance product or annuity involves investment risk, including the possibility of a reduction in value and the loss of principal.
- (2) In connection with an extension of credit, it must disclose that:
- (a) The depository institution may not condition the extension of credit to the consumer's purchase of insurance products or annuities offered by the subsidiary corporation.
 - (b) The depository institution may not condition the approval of the extension of credit to entering into an agreement whereby the consumer agrees not to obtain insurance products or annuities from other entities that are not affiliated to the depository institution.
 - (c) The depository institution may not reject any insurance presented by the consumer related to his/her extension of credit, if said insurance product meets the requirements or standards for coverage, financial stability and services provided by the insurer, required by the depository institution.
- (3) In the sale, solicitation, offer and marketing of credit insurance, the subsidiary corporation must also offer the disclosures required in Article 18.080(1) of the Code.

SECTION 2 - DISCLOSURE FORM REQUIREMENTS

A subsidiary corporation must provide the disclosures required under Section 1 above, both orally and in writing. These disclosures must appear in a prominent, simple, direct and easily comprehensible format, designed to attract the consumer's attention in terms of their nature and meaning. Those disclosures pertaining to insurance transactions must be provided before said transaction is completed. The disclosures pertaining to the extension of credit must be provided at the time the consumer applies for credit.

SECTION 3 - ADDITIONAL FORM REQUIREMENTS

Notwithstanding the provisions set forth in Section 2 above, the following rules regarding disclosures shall apply in the following cases:

- (1) When the sale of insurance products or annuities is conducted by mail, simultaneous to, or as part of, a credit application submitted by mail, the subsidiary corporation will not have to provide the disclosures required in Section 1 orally.
- (2) When the sale of insurance products or annuities is conducted by telephone, simultaneous to, or as part of, a credit application, the written disclosures required by Section 1(1) must be provided orally. Notwithstanding the above, said disclosures must be provided in writing within three (3) business days from the first business day following the sale, unless the credit is declined, or is rescinded after approval, within the above-mentioned term. Said disclosures must meet the requirements set forth in Section 2 above.
- (3) When the sale of insurance products or annuities, or the acceptance of a request for credit, is made through an electronic medium, subject to the requirements of the Electronic Signatures and National Commerce Act, 12 U.S.C. 7001(c), simultaneous to, or as part of, a credit application submitted through said electronic medium, the subsidiary corporation may provide the written disclosures through the electronic

medium, as long as the consumer consents to said disclosures being provided electronically. The disclosures must be in a format that may be obtained in printed form at a later date.

- (5) In the sale of credit insurance, the subsidiary corporation must also comply with the provisions set forth in Article 18.080(2) of the Code as to the manner in which said disclosures, required in paragraph (1) of said Article, will be made.

SECTION 4 - SHORT FORM WARNINGS OR DISCLOSURES

The warnings and disclosures required by this Rule may be provided in short form, as long as they meet the form requirements established in this Article. An example of the warnings and disclosures that may be provided in short form is as follows:

- **NOT A DEPOSIT**
- **NOT INSURED OR GUARANTEED BY THE FDIC**
- **NO INSURED OR GUARANTEED BY ANY AGENCY OF THE FEDERAL GOVERNMENT**
- **NOT GUARANTEED BY THE BANK**
- **MAY DECREASE IN VALUE**

In the case of a subsidiary corporation of a savings and credit cooperative thrift, the warnings and disclosures must include the following disclosure:

- **NOT GUARANTEED BY COSSEC**

SECTION 5 - CONFIRMATION OF RECEIPT OF THE WARNING OR DISCLOSURE

When the subsidiary corporation of a depository institution sells, solicits, offers or markets insurance products or annuities, as authorized in this Rule, it must obtain a written confirmation from the consumer certifying that he/she received the required warnings and disclosures in the above-mentioned form, at the moment of the initial purchase of the insurance product or annuity.

If the sale, solicitation, offer or marketing was conducted by telephone, the subsidiary corporation must:

- (a) Obtain an oral confirmation of receipt of said warnings or disclosures;
- (b) Maintain sufficient documentation in the consumer's file to providing evidence that the oral confirmation was provided by the consumer; and
- (c) Employ reasonable efforts to obtain the written confirmation from the consumer.

The subsidiary corporation may provide the warnings or disclosures required, as well as the corresponding confirmation, by the use of an electronic medium, as long as the consumer agrees to receive said warnings and disclosures by such electronic medium. The warnings and disclosures provided by electronic media must be provided in a format that the consumer may retain or obtain in printed form.

ARTICLE 8 - CONSUMER REFERRALS

SECTION 1 - GENERAL PROVISIONS

A person, depository institution or affiliate of a depository institution may refer a consumer that has expressed his/her interest in obtaining, or learning about the insurance products or annuities that are available, to an agent or general agent of an insurer that is licensed by the Commissioner pursuant to the Code. A person, depository institution or affiliate of a depository institution may receive, except as set forth in this Article, commissions or emoluments, as the term is defined in this Rule, only if they are licensed as agents pursuant to the Code.

SECTION 2 - REFERRAL BY UNLICENSED PERSONS

A natural person to whom a licensed has not been issued pursuant to the Code and who is employed by the depository institution or its affiliates, may refer a consumer that has expressed his/her interest in obtaining, or learning

about, the insurance products or annuities that are available, to an agent authorized by the Commissioner pursuant to the Code. Said natural person may not discuss the specific terms and conditions of said products with the consumer.

SECTION 3 - INFORMATION THAT MAY BE PROVIDED

When making a referral, the natural person may provide to the consumer the following information only:

- (1) The location of the area destined for the sale of insurance products or annuities;
- (2) The name of a director or any other person authorized by the Commissioner to sell, solicit, offer or market insurance products or annuities on behalf of the subsidiary corporation; and
- (3) His/her name.

All other assistance or information shall be provided only by persons authorized by the Commissioner to sell, solicit, offer or market insurance or annuity products, and exclusively in the areas destined for that purpose within the premises of the depository institution.

SECTION 4 - REMUNERATION (REFERRAL FEE)

Subject to the provisions set forth in Chapters 9 and 27 of the Code, a natural person to whom a license has not been issued pursuant to the Code and who is an employee of the depository institution or its affiliates, may be compensated for the referral of consumers only if said compensation per referral consists of a one time nominal charge that shall not exceed a fixed dollar amount per referral. Said remuneration per referral will not depend on whether the consumer purchases or obtains an insurance product or annuity from the subsidiary corporation, its directors or any other person authorized by the Commissioner to act on its behalf. Furthermore, a natural person to whom a license has not been issued pursuant to the Code and that is an employee of the depository institution or its affiliates with authority to accept deposits from the public in the area where said transactions occur regularly, may receive for each

consumer referred, regardless of whether it is a consumer or a potential consumer, a one time nominal charge that shall not exceed a fixed dollar amount per referral. Payment of said nominal charge may not depend on the result of the insurance transaction.

A natural person to whom a license has been issued pursuant to the Code, or any legal person, depository institution or affiliate of a depository institution shall not be compensated for the referral of consumers that are interested in obtaining or learning about the insurance products or annuities available, to the subsidiary corporation, its directors, or any other person authorized by the Commissioner to act on its behalf.

The referral fee may not exceed the amount of ten dollars (\$10.00) per referral.

ARTICLE 9 - ADVERTISEMENTS

All advertisements must be drafted in compliance with the form requirements for warnings and disclosures established in Article 7 of this Rule, as well as the provisions of Ruling No. N-CA-08-117-2000 of August 25, 2000.

None of the provisions of this Rule shall be interpreted to exempt compliance with the provisions of the Code that regulate the content and format of the advertisements about the sale, solicitation, offer and marketing of insurance products or annuities to the consumer.

ARTICLE 10 - PROHIBITED PRACTICES

SECTION 1 - PAYMENT, RECEIPT AND DIVISION OF COMMISSIONS

- (a) No person shall pay, receive or share commissions or emoluments for the sale of insurance, or in connection therewith, to any subsidiary corporation to whom the Commissioner has not issued a license pursuant to the provisions of the Code.

- (b) A person who is not duly authorized by the Commissioner to sell, solicit, offer or market insurance products or annuities, shall not solicit or receive commissions or emoluments for the sale of insurance, or any other related activity.

SECTION 2- IMPOSITION OF CONDITIONS ON THE EXTENSION OF CREDIT

- (a) No depository institution or its affiliates may require a consumer, as a condition for the approval of credit, that said consumer obtain his/her insurance products or annuities from its subsidiary corporation.
- (b) No depository institution or its affiliates may deny credit to a consumer because he/she obtained an insurance product or annuity from a person that is not related to its subsidiary corporation.
- (c) No depository institution or its affiliates may delay the extension of credit because the required insurance product was not issued or sold by the subsidiary corporation.
- (d) No depository institution or its affiliates may condition the extension of credit to the required insurance product being issued or sold by the subsidiary corporation.
- (e) No depository institution or its affiliates may engage in any act or omission which purpose or effect is to place obstacles to the consumer in obtaining the insurance product through an authorized person that has no relationship with the subsidiary corporation.
- (f) No depository institution or its affiliates may condition the extension of credit to the consumer upon the purchase of credit insurance, or if said insurance is obtained, that the same be provided by the subsidiary corporation.

SECTION 3 - CHARGES AND DISCOUNTS

- (a) No depository institution or its affiliates may require any person or the insurer, its agents or general agents, to pay a separate charge which otherwise will not be required if the insurance product is obtained through the subsidiary corporation.
- (b) No depository institution or its affiliates may include in a credit transaction the cost of any insurance obtained through the subsidiary corporation, without the consumer's consent. This provision shall not apply to credit and flood insurance.
- (c) No depository institution or its affiliates may grant rebates, discounts or incentives related to banking products, accounts or interests to be earned on the same, as an incentive for the consumer to obtain an insurance product or annuity through the subsidiary corporation.
- (d) No depository institution or its affiliates may grant rebates, discounts or incentives related to banking products, accounts or interests to be earned on the same, as an incentive for the consumer to cancel any current policy and to substitute said policy with an insurance product or annuity obtained through its subsidiary corporation.
- (e) Any transfer of business, understood to be a policy replacement, will be subject to the corresponding provisions contained in Article 9.400 of the Code and Rule XLII of the Regulations.
- (f) No subsidiary corporation may grant or obtain rebates or discounts, or share commissions related to insurance products or annuities in the sale of insurance products or annuities, except for the provisions of Article 9.390(2) of the Code, related to the exchange of business and participation in commissions.

SECTION 4 - DISCRIMINATION BASE ON DOMESTIC VIOLENCE

A subsidiary corporation or its affiliates may not use the condition of a consumer or insured as a victim of domestic violence to discriminate in the sale, solicitation, offer or marketing of life or health insurance products as it relates to the underwriting, the cost of the insurance products, the renewal and the determination of the scope of coverage, or as it relates to the payment of claims for said products, except as required or permitted by law.

For purposes of this Section, it will be understood that a consumer or insured is a victim of domestic violence when a relative, household member, intimate partner or guardian incurs in any of the following acts:

- (1) Attempts to cause, causes or threatens to cause physical damage, severe emotional damage or psychological trauma, or incurs in rape or sexual aggression towards the victim.
- (2) Engages in a pattern of conduct or repeatedly commits acts against the victim, including his/her persecution without the proper authorization, under circumstances that may cause the victim to have a founded fear that he/she will suffer physical trauma or damage.
- (3) Restricts the victim's freedom ("False imprisonment").
- (4) Attempts to cause, or does in fact cause, damage to property, with the purpose of intimidating the victim or controlling his/her conduct.

SECTION 5 - FALSE REPRESENTATIONS

A subsidiary corporation or its affiliates may not include in its advertisements or promotional materials false representations that may confuse or lead the consumer to mistakenly conclude that:

- (a) The product sold by the subsidiary corporation is protected by the full faith and credit of the federal government, and insured by the Federal Deposit Insurance Corporation;
- (b) When dealing with savings and credit cooperative thrifts, that the product being sold is insured by COSSEC;

- (c) When dealing with insurance products or annuities that involve an element of investment risk, that said product does not involve said risk or the potential for loss of value or the principal;
- (d) When dealing with a depository institution or its affiliates, that the extension of credit will be subject to the purchase by the consumer of an insurance product or annuity from its subsidiary corporation, and that the consumer is not free to acquire his/her insurance products from any other entities.

ARTICLE 11 - COMPLAINTS AND REQUESTS FOR INVESTIGATION

Any consumer who has grounds to conclude that a depository institution, its affiliates or its subsidiary corporation is acting, or has acted, in violation of the provisions established by this Rule, may request the Commissioner to initiate an investigation of said situation. Said consumer will have to his/her avail all the actions and remedies provided by the Code, its Regulations and any other rules issued by the Commissioner.

ARTICLE 12 - UNFAIR PRACTICES AND FRAUD

The provisions of this Rule shall not be construed to exclude other provisions of Chapter 27 of the Code, as they govern the commercial acts and practices in the business of insurance that constitute unfair methods of competition, or misleading acts or practices.

ARTICLE 13 - POWERS OF THE COMMISSIONER

- (a) The Commissioner will have the faculty and authority, as provided in Article 2.030 of the Code, to examine and investigate all activities of the depository institutions, their affiliates and their corresponding subsidiary corporations, pertaining to the business of insurance which are subject to the provisions of this Rule and the Code, to determine if said entities have participated on any practice prohibited by this

Rule or any other unfair practice, as established in Article 27.131 of the Code.

- (b) The Commissioner will notify the federal banking agencies, the Office of the Commissioner of Financial Institutions of the Commonwealth of Puerto Rico and COSSEC, as deemed necessary, of his intention to examine or investigate any depository institution, its affiliates and/or subsidiary corporation.

ARTICLE 14 - TRANSITION AND SUPPORT COMMITTEE

SECTION 1 - COMPOSITION AND PURPOSE

The Commissioner will appoint a Transition and Support Committee composed of representatives of the consumers, the various agent and general agent groups of the Commonwealth, the insurers, the depository institutions, the Commissioner of Financial Institutions and of COSSEC. The purpose of this Committee is to submit reports to the Commissioner about the progress of the implementation of this Rule.

SECTION 2 - DURATION

The Committee will operate for a term of two (2) years from the date of its convocation. The Commissioner will have the option, as he deems necessary, to extend said term for one (1) additional year.

SECTION 3 - RESPONSIBILITIES

Said Committee shall periodically provide the Commissioner with the following:

- (a) Reports pertaining to the administration of the implementation of the legal and regulatory measures related to this Rule;
- (b) Reports containing its observations related to the practices and methods been used by entities subject to the provisions of this Rule as they pertain to the sale, solicitation, offer and marketing of insurance products or annuities;

- (c) Reports that the Commissioner may deem pertinent and necessary to the exercise his duties as regulator of the insurance industry in Puerto Rico.

ARTICLE 15 - SEPARABILITY

If any word, sentence, paragraph, section, article or part of this Rule is declared null or was voided by a court of competent jurisdiction, the order entered by the same shall not extend to, or invalidate, the remaining provisions of this Rule and its effect shall be limited to that word, sentence, paragraph, section, article or part that has been declared null.

ARTICLE 16 - EFFECTIVENESS

The provisions of this Rule shall become effective thirty (30) days after the Commissioner publishes a notice in a daily newspaper of general distribution in Puerto Rico, once a week, for two (2) consecutive weeks, announcing that the Rule has been approved.


JUAN A. FLORES GALARZA
SECRETARY OF THE TREASURY


FERMÍN M. CONTRERAS GÓMEZ
COMMISSIONER OF INSURANCE

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