



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, DC 20551

January 7, 2019

Mr. John J. Bellini  
Associate General Counsel  
The Auto Club Group  
One Auto Club Drive  
Dearborn, Michigan 48126

Dear Mr. Bellini:

This letter is in response to your request that the Board grant an exception from section 5(q) of the Home Owners' Loan Act of 1933, as amended,<sup>1</sup> to Auto Club Trust, FSB ("Thrift"), Dearborn, Michigan. The exception would allow Thrift to vary the rates it offers on deposits, mortgage loans, home equity loans, auto loans, recreational vehicle loans, and boat loans and to reduce trust service fees (collectively, "promotional products") for Thrift's customers who purchase insurance from Auto Club Insurance Association ("Auto Club Insurance") or pay membership dues to The Auto Club Group ("Auto Club"), both of Dearborn. Auto Club Insurance and Auto Club are affiliates of Thrift.

Section 5(q) generally prohibits a savings association from extending credit, furnishing services, or varying the consideration for the foregoing on the condition that a customer obtain some additional credit, product, or service from the savings association or any of its affiliates. Because Thrift proposes to condition the promotional products on a requirement that a customer also pay dues to, or purchase products from, Thrift's affiliates, the promotional products are prohibited by section 5(q). The tying prohibitions applicable to savings associations in section 5(q) are similar to those applicable to banks in section 106 of the Bank Holding Company Act Amendments of 1970.<sup>2</sup>

The Board is authorized to grant exceptions by regulation or order to the prohibitions of section 5(q) that it "considers will not be contrary to the

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<sup>1</sup> 12 U.S.C. § 1464(q).

<sup>2</sup> 12 U.S.C. § 1972.

purposes of” section 5(q) “and which conform to exceptions granted by the Board pursuant to” section 106.<sup>3</sup> The purpose of section 5(q) is to “prohibit anticompetitive practices which require bank customers to accept or provide some other service or product or refrain from dealing with other parties in order to obtain the bank product or service they desire.”<sup>4</sup> The legislative history of section 106 indicates that, in enacting the statute, Congress was concerned that depository institutions might use their ability to offer bank products and services – particularly extensions of credit – to gain a competitive advantage in markets for non-banking products and services, such as insurance.

In considering whether to grant an exception to the tying prohibitions, the Board has noted that the purpose of the prohibitions is to prevent depository institutions from using their power in the market for banking products to produce anticompetitive effects in the market for non-banking products.<sup>5</sup> The Board has stated that a tying arrangement is less likely to produce anticompetitive effects when a customer can obtain the tied and tying products separately at competitive prices.<sup>6</sup> The Board also has stated that a tying arrangement would not appear to produce anticompetitive effects unless it is likely that the institution’s power in the market for the banking product is high enough to force a customer also to purchase a non-banking product on uncompetitive terms.<sup>7</sup> To analyze whether an institution has such power in the market for a banking product, the

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<sup>3</sup> 12 U.S.C. § 1464(q)(6). Section 369 of the Dodd-Frank Act amended section 5(q) to permit the Board to grant exceptions to section 5(q), in consultation with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

<sup>4</sup> S. Rep. No. 1084, 91st Cong. 2d Sess. 17 (1970). See S. Rep. No. 1084, 91st Cong. 2d Sess. (1970) (“Senate Report”). See also 116 Cong. Rec. H11793 (daily ed. Dec. 16, 1970) (attaching letter from Richard G. Kleindienst, Deputy Attorney General, Department of Justice) (the proposed anti-tying provision “would prevent the use of the considerable economic power that banks enjoy as a result of their control over money and credit as an anticompetitive tool in other markets in which banks and their affiliates may compete”).

<sup>5</sup> See, e.g., Letter from Ms. Margaret McCloskey Shanks to Ms. Kathleen M. Kearney (Feb. 15, 2017) (“Deere Letter”); Norwest Corporation and NCNB Corporation, 76 Federal Reserve Bulletin 702 (1990) (“Norwest Corporation and NCNB Corporation”).

<sup>6</sup> Deere Letter and Norwest Corporation and NCNB Corporation. The U.S. Supreme Court has reached a similar conclusion when analyzing tying arrangements prohibited by the Sherman and Clayton Antitrust Acts. See Northern Pacific R. Co. v. United States, 356 U.S. 1, 6, n.4 (1958) (“[W]here the buyer is free to take either product by itself there is no tying problem even though the seller may offer the two items as a unit at a single price.”).

<sup>7</sup> See e.g., Deere Letter and Norwest Corporation and NCNB Corporation.

Board has considered the geographic scope of the market for the banking product, the number of participants in the market for the banking product, the competitiveness of the market for the banking product, and the institution's share of the market for the banking product.<sup>8</sup>

Granting Thrift an exception to provide promotional products to customers who purchase insurance from Auto Club Insurance or pay dues to Auto Club would not be contrary to the purposes of section 5(q). Thrift's customers can obtain loans, deposit products, and trust services from Thrift on terms comparable to those prevailing in the market without paying dues to Auto Club or purchasing an insurance product from Auto Club Insurance. Similarly, customers can become members of Auto Club or customers of Auto Club Insurance on competitive terms without becoming a customer of Thrift. It also is unlikely that Thrift could leverage market power in the market for the promotional products to lessen competition in the market for the products and services of Auto Club Insurance and Auto Club. The markets for the promotional products are regional or national in scope and Thrift has only a small share of each market.

In granting exceptions to section 106, the Board has considered whether a tying arrangement produces a financial benefit to consumers.<sup>9</sup> This consideration also weighs in favor of granting Thrift's request. Customers who obtain Thrift's promotional products together with membership in Auto Club or insurance from Auto Club Insurance save money when compared to obtaining these products separately.

Accordingly, on this basis and in view of the facts outlined in this letter, and after consultation with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, the Board hereby grants an exception to the restrictions of section 5(q) to allow Thrift to provide promotional products to customers that purchase insurance from Auto Club Insurance or pay membership dues to Auto Club.

This exception is based on the facts and representations you have provided, and any material change in these facts or representations could result in a different conclusion and should be reported to Board staff. The Board may

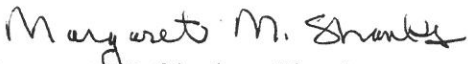
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<sup>8</sup> Deere Letter and Norwest Corporation and NCNB Corporation.

<sup>9</sup> See e.g., Fleet Financial Group, 80 Federal Reserve Bulletin 1134 (1994); First Union Corporation, 80 Federal Reserve Bulletin 166 (1994). See also Letter from J. Virgil Mattingly, Jr. to William S. Eckland, Esq. (December 7, 1999).

revoke the exception if circumstances later indicate that the size or constellation of products offered by Thrift have undue anticompetitive effects or raise safety or soundness concerns.

Sincerely,

  
Margaret McCloskey Shanks  
Deputy Secretary of the Board

cc: Federal Reserve Bank of Chicago  
Office of the Comptroller of the Currency  
Federal Deposit Insurance Corporation