



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

February 15, 2017

Ms. Kathleen M. Kearney
President
John Deere Financial, f.s.b.
8402 Excelsior Drive
P.O. Box 5328
Madison, Wisconsin 53705-0328

Dear Ms. Kearney:

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,¹ to allow John Deere Financial, f.s.b. ("Thrift"), Madison, Wisconsin, to continue to offer promotional financing terms through its private-label, open-end credit card plans to customers who purchase products manufactured by Thrift's affiliates.

Thrift requested an exception from section 5(q) for its promotional financing terms from the Office of Thrift Supervision ("OTS") in 2000. In connection with that request, Thrift sought confirmation from the Board that it would grant Thrift an exception from the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 ("section 106") if Thrift were a bank.² The Board concluded that, if Thrift's proposed promotional financing programs were conducted by a bank, the Board would grant Thrift an exception, thus clarifying that the restrictions of section 106 would not prohibit

¹ 12 U.S.C. § 1464(q).

² At that time, OTS had the authority to grant exceptions under section 5(q) only if the exception conformed to those granted by the Board to banks under section 106. In 2010, the authority to grant exceptions under section 5(q) was given to the Board by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") (Pub. L. 111-203, H.R. 4173).

Thrift's promotional financing terms.³ In reaching its conclusion, the Board placed "special emphasis on the fact that Thrift's sole function [was] to act as the credit department for its parent savings and loan holding company Deere & Company ("John Deere"), Johnston, Iowa, that its funds for this purpose [were] provided entirely by John Deere, and that the facts show[ed] the financing [was] offered as a convenience to customers interested in purchasing certain products."⁴

Since receiving its exception from the OTS in 2000, Thrift submitted a proposal to the Office of the Comptroller of the Currency ("OCC"), Thrift's primary regulator, to become a full-service savings association by accepting retail deposits and brokering certificates of deposit.⁵

Section 5(q) generally prohibits a savings association or savings bank from offering, or varying the consideration charged for, any product or service on the requirement or condition that a customer obtain some additional product or service from the savings bank or any of its affiliates. Because Thrift would condition the promotional financing terms available through its credit cards on a requirement that a customer also purchase products manufactured by affiliates of Thrift, the promotional financing terms are prohibited by section 5(q).⁶

The Board is authorized to grant exceptions by regulation or order to the restrictions of section 5(q) that it "considers will not be contrary to the purposes of" section 5(q) and "which conform to exceptions granted by the Board pursuant to" section 106.⁷ The purpose of section 5(q) is to "prohibit

³ See Letter from J. Virgil Mattingly Jr. to Ira L. Tannenbaum, Esq. (June 2, 2000).

⁴ Id.

⁵ Board staff has consulted with OCC staff regarding this proposed change in business plan.

⁶ In some instances, a customer may obtain the promotional financing terms by purchasing a John Deere product from independently owned authorized John Deere dealers who sell major product lines only manufactured by John Deere. Because these promotions require the purchase of a product manufactured by an affiliate of Thrift, the Board treats these arrangements as prohibited by section 5(q).

⁷ 12 U.S.C. § 1464(q)(6). Section 369 of the Dodd-Frank Act amended section 5(q) to provide that the Board "may, by regulation or order, permit such exceptions to prohibitions of this subsection as the Board, in consultation with the [Office of the] Comptroller [of the Currency] and the [Federal Deposit Insurance] Corporation, considers will not be contrary to the purposes of this subsection and

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.”⁸ 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 through the extension of credit – to gain a competitive advantage in markets for nonbanking products and services, such as insurance.

Granting Thrift an exception to provide certain promotional financing arrangements through its private-label credit cards for purchases of John Deere products would not be contrary to the purposes of section 5(q). Thrift has a small share of the highly competitive, nationwide credit card market, and nothing in the record indicates that Thrift is attempting to use its ability to extend credit to gain an unfair advantage in the markets for products manufactured by Thrift affiliates, such as the markets for farm, construction, or forestry equipment and parts. Thrift has represented that accepting deposits from the general public would have no impact on the terms of the credit cards it offers. Thrift has also represented that it does not plan to require retail depositors or holders of certificates of deposit to use Thrift’s credit cards or to require users of Thrift’s credit cards to have deposit accounts with Thrift. Thrift’s proposal to offer deposits to the general public would not appear to enhance Thrift’s ability to gain an unfair advantage in markets for nonbanking products and services.

In addition, granting an exception for the promotional financing programs would be consistent with Board precedent in granting exceptions pursuant to section 106. In considering previous requests for an exception, the Board has reviewed a number of factors, including whether the tied products are offered separately to customers at market prices and whether the bank could impair the availability of the products or otherwise engage in unfair competition by tying the proposed products.⁹ Thrift offers its credit cards to customers on

which conform to exceptions granted to the Board pursuant to section 106(b) of the Bank Holding Company Act Amendments of 1970.”

⁸ 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”).

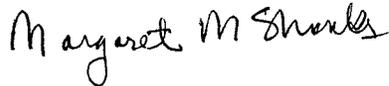
⁹ See, e.g., Board Order approving an exception under section 106 for Norwest Corporation, Minneapolis, Minnesota, and NCNB Corporation, Charlotte,

competitive terms, and Thrift's affiliates offer their products at competitive market prices to customers who do not use Thrift's credit cards. Many of Thrift's competitors offer promotional discounts and other favorable financing terms that compete with those offered by Thrift. In addition, as noted above, Thrift has only a small share of the credit card market. Accordingly, it is unlikely that Thrift could leverage market power in the credit card market to impair competition in the markets for the products manufactured by Thrift's affiliates.

Accordingly, on this basis and in view of the facts outlined in this letter, and after consultation with the OCC and the Federal Deposit Insurance Corporation, the Board hereby grants an exception to the restrictions of section 5(q) by order to allow Thrift to provide promotional financing arrangements through its private-label credit cards for purchases of products manufactured by affiliates of Thrift and for purchases of John Deere and non-John Deere products from affiliates of Thrift.

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.

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

North Carolina (76 Federal Reserve Bulletin 702 (1990)). The Board granted an exemption to Norwest and NCNB to offer a price reduction on credit cards issued to customers of their affiliated banks. In granting this exception, the Board determined that neither Norwest nor NCNB could exercise sufficient market power to impair competition in the tied product market for the traditional banking services, and emphasized that the credit card and traditional banking products offered as part of the arrangement were made available by the bank holding companies separately at competitive prices.