

WARNER NORCROSS & JUDD LLP

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GORDON J. TOERING

900 OLD KENT BUILDING
III LYON STREET, N.W.
GRAND RAPIDS, MICHIGAN 49503 • 2487

TELEPHONE (616) 752 • 2000
FAX (616) 752 • 2500

400 TERRACE PLAZA
P.C. BOX 900
MUSKEGON, MICHIGAN 49443 • 0900

TELEPHONE (616) 727 • 2600
FAX (616) 727 • 2699

300 CURTIS CENTER
170 COLLEGE AVENUE
HOLLAND, MICHIGAN 49423.2920
TELEPHONE (616) 396-9800
FAX (616) 396 • 3656

1000 TOWN CENTER- SUITE 650
SOUTHFIELD, MICHIGAN 48075-1222
TELEPHONE (248) 223-5000
FAX (248) 223-5005

WWW.WNJ.COM

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JOSEPH M. SWEENEY

OF COUNSEL
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ROGER H. GETTING
JERRY O. HANSCUM

DAVID A. WARNER
1883-1966
GEORGE S. NORCROSS
1889-1960
SIEGEL W. JUDD
1895 - 1982

* LICENSED IN MASSACHUSETTS
** LICENSED IN MINNESOTA

Sender's Direct Dial No. (616) 752-2138

Mr. Gary K. Mielock
Chief Deputy Commissioner
Financial Institutions Bureau
333 S. Capitol Avenue, Suite A
P.O. Box 30224
Lansing, MI 48909

Re: **National City Bank - Loans at Dealers**

Dear Gary:

I am writing on behalf of National City Bank. to request a declaratory ruling of the Financial Institutions Bureau regarding the applicability of the Michigan Motor Vehicle Sales Finance Act to a direct installment loan made by a bank at the offices of a motor vehicle seller, who serves as the bank's agent in the transaction. For the reasons set forth in this letter, we do not believe that the loans are subject to the Michigan Motor Vehicle Sales Finance Act.

THE PROGRAM

National City Bank is a national banking association with its principal office in Cleveland, Ohio. National City proposes to make direct loans for the purchase of automobiles to Michigan residents through motor vehicle dealers. Under its proposed program, National City Bank would enter into an agreement with a motor vehicle dealer in Michigan under which the

EXHIBIT

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dealer would serve as National City's limited agent for the purpose of soliciting loans to finance a motor vehicle, taking applications for the motor vehicle loan, preparing the loan documentation, and closing the loan by obtaining the buyer's signature on all required documents.

National City would prescribe the terms of the loan, including the minimum interest rate. The dealer would be given no authority to bind National City regarding the terms of loans, except that the dealer could, within a range established by National City, negotiate a higher interest rate. National City would pay a commission to the dealer on each loan closed, which would include any yield-spread differential.

When we came to you earlier with a similar proposal, you expressed concern that because the bank had limited recourse against the dealer, the dealer would in fact be creditor in the transaction, since the dealer could end up the holder of the loan agreement. Under National City's revised proposal, National City would retain no right of recourse against the dealer other than to sue the dealer for breach of its agency responsibilities.

DISCUSSION

We believe that the installment loans proposed to be made by National City Bank at the offices of dealers would not be subject to the Michigan Motor Vehicle Sales Finance Act ("MVSFA"). The MVSFA applies to an "installment sale contract." A direct loan by a bank to a borrower is not an installment sale contract. The MVSFA defines "installment sale contract," to mean:

[A] contract for the retail sale of a motor vehicle, or which has a similar purpose or effect, under which part or all of the price is payable in 2 or more scheduled payments subsequent to the making of the contract, or as to which the obligor undertakes to make 2 or more scheduled payments or deposits that can be used to pay part or all of the purchase price, whether or not the seller has retained a security interest in the motor vehicle or has taken collateral security for the buyer's obligation, and includes a loan, mortgage, conditional sale contract, purchase-money chattel mortgage, hire-purchase agreement, or contract for the bailment or leasing of a motor vehicle under which the hire-purchaser, the bailee, or the lessee contracts to pay as compensation a sum substantially equivalent to or in excess of the value of the motor vehicle, and any other form of contract that has a similar purpose or effect

M.C.L.A. § 492.102(9) (*emphasis added*).

By definition, an installment sale contract is a contract between a *seller* and a buyer for the *retail sale of* a motor vehicle. "Retail sale," is defined to mean "the sale *of* a motor vehicle for use by the buyer or for the benefit or satisfaction which the buyer may derive from the use *of* the motor vehicle by another." M.C.L.A. § 492.102(8). "Seller" is defined to mean, "a person engaged in the business of selling, offering for sale, hiring, or leasing motor vehicles under installment sale contracts or a legal successor in interest to that person." M.C.L.A. § 492.102(4).

National City Bank would not be a "seller" under the Act. The buyer will purchase the vehicle from the motor vehicle dealer, who would not extend any credit in connection with the transaction. National City would not be engaged in the business of selling motor vehicles on credit. It would never hold title to the vehicle and have no say in the terms of the contract of sale. That retail sale transaction will be solely between the buyer and the dealer. National City will instead loan money to a buyer to permit the buyer to purchase the vehicle from a seller. This direct loan from National City to a consumer would not be an installment sale contract under the Act, because a direct loan is not a "contract for the retail sale of a motor vehicle." M.C.L.A. § 492.102(9).

The Motor Vehicle Sales Finance Act was enacted to limit the rate and terms under which a motor vehicle dealer could sell an automobile and to regulate dealers who extend credit. Prior to the enactment of the statute, under the time-price differential doctrine, a dealer was not subject to any limitation on the rate of time-price differential it could charge on a contract. The Act was enacted to establish such a limit on dealer-financed transactions. It was not intended to affect direct lending by banks. This is clear from section 36 of the statute which provides that, "[t]his act shall not affect or impair a business conducted lawfully under ... [the Michigan Banking Code] Act No. 319 of the Public Acts of 1969, as amended, being section 487.301 to 487.598 of the Michigan Compiled Laws" M.C.L.A. § 492.136.

The Michigan Court of Appeals cited section 36 in concluding that the Motor Vehicle Sales Finance Act did not govern a direct loan by a bank to fund the purchase of an automobile. *Barnes v. Michigan National Bank*, 159 Mich. App. 433, 407 N.W.2d 23 (1987) ("[T]he act is not otherwise intended to apply to financial institutions such as banks, savings and loan associations and credit unions . . ."). The court noted that the loan "was solely between the plaintiffs and the bank and the bank cannot be considered to entering into dealer contracts or a 'holder' of a contract for the installment sale of the vehicle... the bank is not a regulated party **because** this was a direct loan from the bank to the consumer plaintiffs." 159 Mich. App. at 438; 407 N.W.2d at 26.

As in *Barnes*, under National City's proposal, the borrower would negotiate his loan with the bank. The fact that the bank uses an agent to negotiate the loan on its behalf does not make the bank a seller in the transaction. The bank never holds title to the vehicle and never transfers an interest in the vehicle to its borrower. The use of an agent does not change the promissory note between the borrower and National City into a three party installment sale contract. Indeed, the dealer does not extend any credit in the transaction, but instead receives full payment for the vehicle. Finally, the fact that the contract is negotiated away from the premises of the bank does not change the legal relationship between the parties, which is established under the promissory note. As in *Barnes*, the loan will be between the bank and the customer and the Bank will have no recourse against the dealer under the loan.¹ Under *Barnes*, when the loan is "solely between" the borrower and the bank, "the bank cannot be considered to entering into dealer contracts or a 'holder' of a contract for the installment sale of the vehicle." 159 Mich. App. at 43 8; 407 N. W.2d at 26.

National City Bank respectfully requests a declaratory ruling from the Financial Institutions Bureau that the Bureau would take no action against National City Bank or any motor vehicle dealer in Michigan for engaging in the program as we have described it.

Very truly yours,

/ss/

Rodney D. Martin

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¹ In our discussion, the Bureau cited concerns with compliance with Truth in Lending and section 217 of the Michigan Motor Vehicle Code in programs such as that proposed by National City. Truth in Lending; of course, has no bearing on whether or not a direct loan is covered by the MVSA. National City will comply with Truth in Lending in any program it conducts.

Section 217 of the Motor Vehicle Code would not apply to limit the compensation of a dealer in the National City program. Section 217(7) limits the amount that can be paid to a seller to record a lien when the seller "does not prepare the credit information, contract note, and mortgage." MCLA §257.217(7). In the National City program, the dealer would be preparing the credit information, contract note and security agreement.