



# Vermont . . .

Department of Banking, Insurance,  
Securities and Health Care Administration  
April 1, 2002

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Hon. Timothy J. Muris, Chairman  
Federal Trade Commission  
600 Pennsylvania Ave NW  
Washington, DC 20580

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OFFICE OF THE CHAIRMAN

Dear Chairman Muris:

This letter is in response to the February 28, 2002 letter to you from the American Council of Life Insurers, American Insurance Association, National Association of Mutual Insurance Companies, Alliance of American Insurer and National Association of Independent Insurers (collectively "insurance trade groups") concerning the November 21, 2001 petition by this Department for an FTC determination under 15 U.S.C. § 6807. In that letter the insurance trade groups have requested that the Federal Trade Commission defer its consideration of the Vermont petition pending the resolution of litigation that is underway in Vermont by the same groups. We strongly object to any delay to our request. Indeed, the litigation may in fact be grounds for expediting the Vermont petition given the uncertainty it may have generated in the regulated community.

- The Vermont rules took effect November 17, 2001. Under Vermont law, administrative "rules [are] valid and binding on persons they affect, and [ ] have the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise." 3 V.S.A. § 845 In addition, rules are "prima facie evidence of the proper interpretation of the matter they refer to." *Id.* For purposes of the pending litigation by the insurance trade groups, the trade groups have the burden to demonstrate that the adopted rule is not valid. *See* 3 V.S.A. § 842 All financial institutions subject to the rule are required to be in compliance with the rule as of this date. In fact, the insurance trade groups have not requested any immediate relief from the court concerning compliance with the rule.
- The claims raised by the insurance trade groups in the litigation are focused solely on the commissioner's authority under state law to issue the rule, a matter which is for the state courts to decide and not relevant to the issues to be considered by the Commission. Contrary to the impression left in the letter from the insurance trade groups, the *authority for each of the three privacy rules promulgated by the Department* is delineated in the rule itself. For example, the insurance rule provides the following authority for the promulgation of the rule: 8 V.S.A. §§ 10, 15, 3381, 3541 et seq., 3688, 3829, 3858, 4062, 4108, 4113, 4201, 4362, 4373, 4464, 4480, 4481, 4515a, 4587, 4690, Chapter 129, 4812, 4836, 4902, 4990, 5104, 5111, 6015, 8005, 8014, 8053, and 1972, Act No. 72 (Adj. Sess.), §

89 Main Street, Drawer 20, Montpelier, VT 05620-3101

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1. These sources of authority cover not only the stated legislative policy of the state of Vermont with respect to the regulation of the financial services industry, but the commissioner's general rule making authority and her authority over forms filings and disclosures to consumers of insurance.
- The Department's petition covers most financial services providers, including banking, insurance and securities concerns. The litigation commenced by the insurance trade groups, on the other hand, only applies to one segment of the financial services industry, viz. insurance companies. Although the rule is in full force and effect without an FTC determination, it was the judgment of the Department that an FTC determination under § 6807 would provide more certainty to the regulated community. Any delay by the FTC could lead to unnecessary misunderstandings and noncompliance by these regulated industries.
  - The litigation commenced by the insurance trade groups is in its very early stages. We cannot predict when the matter will be ready for hearing or trial. Any decision would be subject to further appeal.
  - The insurance trade groups have provided no support for their request. As noted above, the claims raised by the insurance trade groups in the litigation are focused solely on the commissioner's authority under state law to issue the rule, a matter which is for the state courts to decide and not relevant to the issues to be considered by the Commission. In their letter to you, they claim that the vote of the Legislative committee on administrative rules shows a Legislative lack of support of the rules—as a matter of Vermont law, however, the committee did not make a formal objection to the rules as provided in Vermont law. Therefore, as also noted above, “the rules [are] valid and binding on persons they affect, and [ ] have the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise.” 3 V.S.A. § 845 In addition, the rules are “prima facie evidence of the proper interpretation of the matter they refer to.” *Id.* A deferral by the Commission at this point is simply not justified.
  - The insurance trade groups are obviously able to provide you with any comments now and should be urged to do so. See page 2, final paragraph of their February 28, 2002 letter. The mere fact that there is litigation pending concerning one of the rules fails to provide the insurance trade groups with any special status with respect to the FTC's consideration of the Department's petition.

The Department believes that the members of the Vermont financial services community deserve a prompt determination by the Commission and the certainty such a determination would provide to them.

Please contact me if you have any questions concerning this letter or the Department's petition.

Sincerely,



Jacqueline A. Hughes  
General Counsel

Cc: Patrick Watts, Alliance of American Insurers  
Victoria E. Fimea, Esq., American Council of Life Insurers  
Jerry Zimmerman, National Association of Independent Insurers  
Stephen Zielezienski, American Insurance Association  
Peter A. Bisbecos, National Association of Mutual Insurance Companies  
Robert B. Hemley, Esq.