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Comptroller of the Currency  
Administrator of National Banks

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2003

# ACTIVITIES PERMISSIBLE FOR A NATIONAL BANK



**2003**

**Activities Permissible for a National  
Bank**

**Office of the Comptroller of the Currency**

**March 2004**

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## Activities Permissible for a National Bank

National banks may engage in activities that are part of, or incidental to, the business of banking, or are otherwise authorized for a national bank. The business of banking is an evolving concept and the permissible activities of national banks similarly evolve over time. Accordingly, this list is not exclusive; the OCC may permit national banks to conduct additional activities in the future. Any activity described in this summary as permissible for a national bank is also permissible for an operating subsidiary of a national bank. The reverse is also true: any activity described as permissible for an operating subsidiary is also permissible for the bank to engage in directly.

### *Activities*

#### *General Banking Activities*

##### *Branching*

- *Drop Boxes.* Placement of United Parcel Service drop boxes at nonbranch offices of a bank does not make those offices branches within the meaning of 12 U.S.C. § 36 because the boxes are owned by an independent third party, have no bank identification, and may be used by the general public for nonbanking transactions. Interpretive Letter No. 980 (December 24, 2003).
- *Historic Preservation.* The OCC conditioned the approval of the establishment of a branch of a national bank on the bank's execution of a Memorandum of Agreement with the State, the State Historic Preservation Officer, and the OCC. The Agreement is to facilitate the bank's efforts in preserving the historic significance of the proposed branch building. Conditional Approval No. 601 (July 23, 2003).
- *Loan Approval and Misdirected Payments at LPO.* Loan approval and the occasional receipt of misdirected loan payments from customers may take place at an LPO without causing it to become a branch. Interpretive Letter 902 (November 16, 2000).
- *LPO/DPO/ATM Facilities Not Subject to State Branch Restrictions.* National bank LPO/DPO/ATM facilities are not "branches" subject to 12 U.S.C. 36 and state law incorporated therein. In isolation or in combination, LPOs (loan production offices), DPOs (deposit production offices), and ATMs are not branches and so are not subject to state law restrictions on branching. None of these facilities perform any of the three core functions of banking, *i.e.*, receiving deposits, paying checks, and lending money. *First National Bank of McCook v. Fulkerson*, 98-D-1024 (USDC CO - March 10, 2000).
- *Riegle-Neal Act Interstate Merger.* Affirming the court below, the U.S. Court of Appeals for the Eighth Circuit held that the OCC's determination that the merger of a Missouri bank with a Kansas bank complied with Riegle-Neal's "minimum age" provisions for the merging banks and was entitled to deference. Riegle-Neal allows states to prohibit mergers between in-state and out-of-state banks, which have been in existence for less than five years. Missouri adopted such a law. However, the court agreed with the OCC that the Missouri law

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did not apply because the surviving bank's main office was in Kansas. OCC filed an amicus brief. *TeamBank, N.A. v. McClure*, 279 F.3d 614 (8th Circuit 2002).

- *Retention of Branches of Converted Federal Savings Bank.* Federal savings bank may convert to a national bank, the resulting national bank may retain all the branches of the savings bank in states where the national bank did not have branches, and the national bank may merge into an affiliated national bank and retain all the branches resulting from the previous transaction. Corporate Decision No. 2000-05 (March 28, 2000).
- *Underserved Communities.* A national bank may establish branches for the sole purpose of serving an underserved community, and, may acquire a non-controlling investment a company that specializes in providing these services. Conditional Approval No. 612 (November 21, 2003).
- *Use of Trade Names.* Based on representations as to steps that would be taken to avoid customer confusion, bank's operation of branches at Wal-Mart stores under a trade name was found to be consistent with Interagency Statement on Branch Names. Interpretive Letter No. 977 (October 24, 2003).

### Capital

- *Government Sponsored Entities (GSE) Preferred Stock.* Pursuant to the OCC's risk-based capital guidelines preferred stock issued by a GSE fall within the meaning of the term "security" and qualify for a 20 percent risk weight as a security issued by as GSE. Interpretive Letter, publication pending (March 17, 2003).
- *Merchant Processing Intangibles (MPIs).* OCC determines that MPIs generally fail to satisfy the separability, valuation, and marketability criteria, and therefore, the list of qualifying intangible assets should not be expanded to include MPIs. Consequently, MPIs must be deducted from Tier 1 capital and assets in calculating the bank's risk based capital ratio. Interpretive Letter pending publication (October 17, 2003).
- *Multifamily Residential Mortgage Property Annual Net Operating Income Requirements.* The actual operating income of a multifamily residential property must be used by the bank in order to determine whether the a loan secured by a first mortgage on a multifamily residential property would satisfy the annual net operating income requirements, and therefore, qualify for the 50 percent risk weight under the risk-based capital guidelines. An operating statement prepared by a qualified asset manager (not based on the actual operating income of the property) would not satisfy the annual net operating income requirements. Interpretive Letter publication pending (August 18, 2003).
- *Second Liens in Structured Mortgage Transactions.* Clarifies the joint final rule on the "Capital Treatment of Recourse, Direct Credit Substitutes, and Residual Interests in Asset Securitizations," 66 Fed. Reg. 59621 (November 29, 2001), and concludes that second mortgages liens will not, in most instances, constitute recourse because they generally do not function as credit enhancements. Interpretive Letter pending publication (March 17, 2003).

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- *Synthetic Securitizations of Residential Mortgage Loans.* Determination by the OCC and the Federal Reserve Board staff that the principles established in Joint Agency Guidance on Synthetic Collateralized Loan Obligations (November 15, 1999) and a final rule, “Capital Treatment of Recourse, Direct Credit Substitutes, and Residual Interests in Asset Securitizations,” 66 Fed. Reg. 59621 (November 29, 2001) may be applied to a synthetic securitization. The Agencies modified some of the risk management, measurement, and disclosure requirements established in their 1999 Guidance. Interpretive Letter; publication pending (July 28, 2003).
- *Tax Refund Anticipation Loans.* Tax refund anticipation loans should be risk-weighted at 100%, as they are not directly or indirectly guaranteed by the U.S. Government or its agencies and are, therefore, ineligible to receive a lower risk-weight. Interpretive Letter No. 959 (February 2, 2003).

### *Consulting and Financial Advice*

- *Financial Adviser, In General.* National banks can provide financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940). 12 U.S.C. 24(Seventh). The following are examples of these services:
  - *Adviser for Mortgage or Real Estate Investment Trusts.* National banks may serve as the advisory company for a mortgage or real estate investment trust. 12 CFR 5.34(e)(2)(ii)(I)(1).
  - *Benefits Counseling.* National banks operating subsidiary may provide Medicare and Medicaid counseling to customers and collect and disburse insurance benefit payments. Corporate Decision No. 98-13, 1999 OCC QJ LEXIS 22 (Feb. 9, 1998).
  - *Business Services for the Bank or its Affiliates.* National banks may furnish services for their internal operations or the operations of their affiliates, including: accounting, auditing, appraising, advertising and public relations, data processing and data transmission services, databases, or facilities. Interpretive Letter No. 513, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83-215 (June 18, 1990).
  - *Consumer Financial Counseling.* National banks may provide consumer financial counseling. Interpretive Letter No. 137, *reprinted in* [1981-1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,218 (December 27, 1979); Interpretive Ruling (July 17, 1986); Interpretive Letter No. 367, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,537 (August 19, 1986); 12 CFR 5.34(e)(2)(ii)(I); 12 CFR 9.101.
  - *Credit Card Registration and Notification Services.* A national bank operating subsidiary may engage in credit card registration and notification services. The subsidiary would also provide other services including a price protection service, a referral service for customers to third parties who offer extended warranty programs for various products, a free credit report annually, a newsletter containing consumer credit suggestions, and reimbursement for locksmith services. Conditional Approval No. 535 (June 21, 2002).

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- *Economic Analysis.* National banks may furnish general economic information and advice, economic statistical forecasting services, and industry studies. 12 CFR 5.34(e)(5)(v)(I).
- *Employee Benefit and Payroll Business.* A national bank may hold a non-controlling equity investment in a company that will provide employee benefit and payroll services to small community banks and their small business customers. The investment was incidental to the bank's business because it involved preparing and conveying financial information to the bank's customers and their employees. It would also benefit the bank's small business customers by providing services to them that would not be cost efficient for those customers to provide for themselves. Interpretive Letter No. 909 (May 2, 2001).
- *Employee Benefit, Compensation Advisory and Human Resource Services.* A national bank operating subsidiary may provide employee benefit, compensation advisory and related administrative services, and other human resources services to the bank's business customers and other businesses in the bank's market area. Corporate Decision No. 2002-2 (January 9, 2002)
- *Employee Benefits.* National banks may offer employee benefit consulting services (including health benefit consulting) to corporations wishing to establish qualified benefit plans and relocation consulting for employees of a bank or its affiliates, or customers of the bank. Corporate Decision No. 98-51, 1999 OCC QJ LEXIS 28 (November 30, 1998). National bank's operating subsidiary may also provide Medicare and Medicaid counseling to customers and collect and disburse insurance benefit payments. Corporate Decision No. 98-13, 1999 OCC QJ LEXIS 22 (Feb. 9, 1998).
- *Employee Relocation Benefit Consulting Service.* National banks operating subsidiary may provide employee relocation benefit consulting services to small- and medium sized business customers of the bank and their employees. The service consists of financial planning and counseling, mortgage lending, and acting as a finder, each of which is a permissible banking activity. Corporate Decision No. 99-43 (November 29, 1999).
- *Financial Consulting and Advisory Services.* National banks may engage in financial consulting and advisory services for other financial institutions and the general public, including, among other things, acting as a conduit in conveying loan terms to prospective borrowers or purchasers, supplying financial information regarding a third party, or engaging on behalf of others in research in contemplation of prospective transactions. 12 U.S.C. 24(Seventh), 92a; Interpretive Letter No. 238, *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,402 (February 9, 1982).
- *Financial Planning and Insurance.* National bank may sell a small amount of long-term care and disability insurance and group health, medical, and dental insurance plans in connection with the comprehensive financial planning and employee benefits consulting services offered by the National bank. Letter from Julie L. Williams, Chief Counsel, dated January 19, 1999; Letter from Julie L. Williams, Chief Counsel, dated December 30, 1997.

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- *Fiscal Planning Advice to Municipalities.* National banks may offer fiscal planning advice on such questions as the timing and structure of bond issues to municipalities. Interpretive Letter No., 122, [1981-1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,203 (August 1, 1979). They may also offer financial advice regarding public offerings of debt or equity, private placements, sale-leasebacks, and purchases and sales of companies. Interpretive Letter (July 22, 1974).
- *Human Resources Services.* National bank's operating subsidiary may provide human resources and related services to small business clients, including: acting as co-employer of customers' employees (employee "leasing"); payroll processing; employee benefits consulting and human resources administrative services; compliance administration and safety and risk management; the sale of certain insurance products to employees through an insurance agency subsidiary; and insurance-related administrative services. Conditional Approval No. 384 (April 25, 2000).
- *Investment Advisor May Hold Special Equity Interests.* A national bank operating subsidiary may receive compensation for management and performance fees in the form of a special limited interest profit allocation in the private investment funds for which it serves as investment manager and advisor. Conditional Approval No. 578 (February 27, 2003).
- *Loss Notification and Credit Monitoring Services.* A national bank may provide its customers with credit card loss notification services. This letter also approves, for the first time, providing credit scores, credit reports, and credit monitoring services to customers. It also approves providing customers with access to their Social Security, medical, and motor vehicle records as activities that are incidental to banking. Interpretive Letter No. 944 (August 12, 2002).
- *Part of, or Incidental to, Investment Advisory Services.* National bank's investment management operating subsidiary may hold small interest in certain investment funds, subject to limitations, but only when the holding is necessary to conduct permissible investment advisory activities. Investors in these funds require investment advisors to hold small interests to enhance the alignment of interests between advisors and investors. Certain of the funds may contain bank-ineligible financial instruments, including equity securities. Interpretive Letter No. 897 (October 23, 2000); Letter from Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, dated October 1, 1999.
- *Tax Services.* National banks may provide tax planning and preparation services. 12 U.S.C. 24(Seventh); 12 CFR 7.1008.
- *"Welfare-to-Work" Counseling.* National bank's operating subsidiary may acquire a company engaged in providing government "welfare-to-work" counseling. The acquired company counsels welfare-to-work program beneficiaries on work skills and program benefits, connects them with potential employers, and handles payments from the sponsoring government agency to employers and employees participating in the program. Corporate Decision No. 2000-11 (June 24, 2000).



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- *Transactional Advice, In General.* National banks may provide financial and transactional advice to customers and assist customers in structuring, arranging, and executing various financial transactions. 12 U.S.C. 24(Seventh). The following are examples of these services.
  - *Commercial Real Estate Equity Financing.* National banks may arrange for commercial real estate equity financing. Interpretive Letter No. 387, reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85, 611 (June 22, 1987); Interpretive Letter No. 271, reprinted in [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85, 435 (September 21, 1983)
  - *Economic Research.* National banks may conduct financial feasibility studies. 12 U.S.C. 24(Seventh).
  - *Mergers, Acquisitions, Divestitures, Joint Ventures, Leveraged Buyouts, Recapitalizations, Capital Structurings, and Financial Transactions.* (Including private and public financings and loan syndications). 12 U.S.C. 24(Seventh). National banks may provide financial and transactional advice in connection with the previously mentioned activities. 12 CFR 9.101.

### Corporate Governance

- *Bank Holding Company Formation.* A national bank may undertake reorganization pursuant to 12 U.S.C. § 215a-2 and 12 CFR 7.2000(a), which provide a streamlined process for a national bank to form a bank holding company or for an existing holding company to acquire an unaffiliated national bank through an exchange of the bank's stock for cash or securities of the bank holding company. Corporate Decision No. 2001-21 (July 26, 2001).
- *Bank Ownership by Native American Tribes.* A national bank consolidated with an interim bank to effect the acquisition of the bank by a holding company that is jointly owned by a number of federally recognized Native American tribes. This is the only bank that is owned by a consortium of Indian tribes and tribal corporations. The decision contains an extensive list of special conditions, requirements, and directors' oaths that were tailored specifically for this bank because of its tribal ownership structure. Conditional Approval No. 493 (September 28, 2001)
- *Blank Check Preferred Stock.* Consistent with 12 CFR 7.2000(b), a national bank that had elected in its bylaws to be governed by California law may issue blank check preferred stock. Interpretive Letter No. 921 (December 13, 2001).
- *Capital Reduction with Voluntary Liquidation.* National bank that has discontinued banking operations may reduce its permanent capital provided that the disbursement of capital is made pursuant to a plan of voluntary liquidation. Conditional Approval No. 410 (August 20, 2000).
- *Election of Corporate Governance Provisions of the Model Business Corporation Act.* A national bank may adopt corporate governance provisions of the Model Business Corporation Act (MBCA) and engage in a share exchange to ensure that its newly formed parent holding company will own 100 percent of the bank. MBCA provision allowing share exchanges are

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not inconsistent with applicable federal banking statutes or regulations. A national bank conducting a share exchange under the MBCA must provide adequate dissenters' rights that are substantially similar, although not necessarily identical to those in section 215a. Interpretive Letter No. 891 (April 26, 2000).

- *Election of Virginia Corporate Governance Provisions.* A national bank may elect the corporate governance provisions of Virginia law and complete a share exchange in accordance with those provisions. Virginia state law allowing share exchanges is not inconsistent with applicable federal banking statutes or regulations. A national bank conducting a share exchange must provide adequate dissenters' rights that are substantially similar, although not necessarily identical to those in section 215a. Interpretive Letter No. 879 (November 10, 1999).
- *Merger of Holding Company into Subsidiary National bank.* A national bank owned by a holding company may eliminate its holding company by merging the holding company into the national bank. The merger must be permissible for the holding company under the state law of the state in which the holding company is incorporated. The merger is permissible for national banks under 12 U.S.C. § 215a-3. Corporate Decision No. 2001-33 (November 29, 2001).
- *Merger of Mortgage Banking Companies into Bank under the AHOEO Act.* A national bank's mortgage banking subsidiary and the mortgage banking subsidiary of one of its affiliate banks may merge directly into the national bank, under American Home Ownership and Economic Opportunity Act of 2000 § 1206, 12 U.S.C. § 215a-3, which permits mergers between national banks and non-national bank subsidiaries and affiliates, subject to OCC approval. Corporate Decision No. 2001-22 (July 26, 2001).
- *Reduction of Par Value.* A national bank may reduce the par value of its shares to \$0.01 per share with an offsetting increase to the bank's capital surplus. The reduction in par value may reduce the bank's state franchise taxes. Interpretive Letter No. 963 (April 14, 2003).
- *Restructuring of Credit Card, International, Consumer, and Commercial Finance Businesses.* A banking organization's credit card, international consumer and commercial finance businesses were restructured in a large, complex transaction. The restructuring resulted in one bank being the main issuer of consumer credit cards, and another bank being the issuer of government, corporate, and certain consumer credit cards. As part of this transaction, various ancillary entities that were bank or holding company subsidiaries became subsidiaries of the credit card-issuing banks. Certain activities related to ownership of motor vehicles were approved for the first time, either as finder activities or on an excess capacity basis. Newly-authorized finder activities included assisting vehicle owners in selling their vehicles; assisting them in locating tow trucks and vehicle repair facilities; assisting corporate customers in obtaining employee driving records from the state motor vehicle department; and assisting such customers with driver's license renewals and vehicle registrations. Newly authorized excess capacity activities included management of third-party subrogation claims for accidents involving automobiles not leased from the bank, and assisting owners of vehicle fleets in establishing corporate safety policies. In addition, certain finance company affiliates were transferred to and became subsidiaries of one of the banks. Corporate Decision No. 2001-28 (September 21, 2001)

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- *Reverse Stock Split.* Consistent with 12 CFR 7.2000(b) and 7.2023, a national bank in Mississippi may elect the corporate governance provisions of Mississippi law and complete a reverse stock split with those provisions. Conditional Approval No. 562 (December 9, 2002).
- *Reverse Stock Split.* Consistent with 12 CFR 7.2000(b) and 7.2023, a national bank in Alabama may elect the corporate governance provisions of Alabama law and complete a reverse stock split in accordance with those provisions. Conditional Approval No. 541 (July 30, 2002).
- *Share exchange.* A national bank may effect a share exchange to become a subsidiary of a bank holding company pursuant to 12 U.S.C. 215a-2 and 12 CFR 7.2000, by offering most shareholders holding company stock, but providing cash to out-of-state residents, to avoid costs associated with registering its stock under the Securities Act of 1933. Corporate Decision No. 2002-08 (May 15, 2002).
- *Termination of National Bank Activities.* A national bank may terminate its activities, and cease operations through a series of transactions including those granted under the authority provided under 12 U.S.C. § 215a-3. The bank ceased its deposit-taking activities, caused FDIC to cancel its status as an insured depository institution, and an affiliated bank acquired its remaining assets through a § 215a-3 merger. Corporate Decision No. 2003-12 (November 26, 2003).

### *Correspondent Services*

- *Correspondent Services, In General.* National banks may hold deposits for other banks and perform correspondent services for those banks, such as check clearing. Other examples of correspondent services are:
  - *ATM Sales to Other Banks and ATM Services.* National banks may purchase ATMs for resale to other banks, which will be in the same shared network, convert their own ATMs into a shared network, and provide services for other banks in the network. Interpretive Letter (October 2, 1975); No-Objection Letter No. 87-11, [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 84,040 (November 30, 1987).
  - *Disaster Relief Services.* National banks may market disaster relief services to other banks, including sharing of premises and data processing equipment. Interpretive Letter (June 13, 1990).
  - *Electronic Imaging Services.* National banks may provide electronic imaging services to banks and other financial firms. Interpretive Letter No. 805, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-252 (October 9, 1997).
  - *Financial and Consulting Services.* National banks may offer financial and consulting services, including market research and analysis, strategic planning, advertising and promotion planning, product development, personnel management, employee relations, affirmative action, and salary and benefit plans to banks and commercial customers. Interpretive Letter No. 137, *reprinted in* [1981-1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,218 (December 27, 1979).

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- *Flood Hazard Determinations.* National bank may establish an operating subsidiary that makes flood hazard determinations for the bank, its affiliates, and unaffiliated mortgage lenders. Corporate Decision No. 97-79, 1998 OCC QJ LEXIS 6 (July 11, 1997).
- *Internal Security Consulting Services.* National banks may provide internal security consulting services, including security and guard services at affiliate banks and non-national bank affiliates and may install and maintain vaults, locks, and ATMs for third-party banks. Interpretive Letter No. 398, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,622 (September 28, 1987).
- *Investment Portfolio Management Service.* National bank may establish an operating subsidiary to provide investment portfolio management services and computer networking services for the bank and other financial institutions. Interpretive Letter No. 754, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep (CCH) ¶ 81,118 (November 6, 1996).
- *Loan Collection and Repossession Services.* National banks may offer loan collection and repossession services for other banks and thrifts. Interpretive Letter (December 14, 1983); Interpretive Letter (March 15, 1971).
- *Other Correspondent Services.* National banks may print and market checks, drafts, loan payment coupons, and other banking documents; perform tax planning and tax preparation assistance; and perform financial data processing for correspondent banks. Interpretive Letter (February 11, 1980); Interpretive Letter (October 14, 1975).
- *Payment and Information Processing Services.* National banks may establish an operating subsidiary that engages in payment and information processing services. The subsidiary may own/operate/sell electronic data processing and data interchange facilities, which will be used to communicate billing and payment related information to insurance carriers responsible for paying for medical benefits. The subsidiary may provide computer network services, including necessary hardware to financial institutions. Corporate Decision No. 98-12, 1998 OCC QJ LEXIS 130 (February 9, 1998); Interpretive Letter No. 712, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-027 (February 29, 1996); Interpretive Letter No. 718, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-033 (March 14, 1996). National banks may also provide lockbox services. Interpretive Letter No. 635, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,519 (July 23, 1993). National banks may perform processing of county tax assessments, tax bills, and water and sewer bills. Interpretive Letter (April 15, 1975).
- *Vault Cash.* National bank may establish a correspondent account at an unaffiliated bank in another state to provide vault cash for the bank's customers in the state. Interpretive Letter No. 796, *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,223 (August 18, 1997).

*Finder Activities*

- *Transaction Finders, In General.* National banks may serve as finders for certain goods and services, *i.e.*, they may bring parties together for a transaction that the parties themselves negotiate and consummate. 12 U.S.C. 24(Seventh); 12 CFR 7.1002. National banks may advertise and accept fees for their finder services. Finder activities include, but are not limited to, identifying potential parties, making inquiries as to interest, making introductions or arranging meetings of interested parties and otherwise bringing parties together for a transaction that the parties themselves negotiate and consummate. The following are examples of these services:
  - *Acting as Finder for Automobile Club.* National banks may sell memberships as agent for an automobile club. No Objection Letter No. 89-02, reprinted in [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83, 014 (April 17, 1989)
  - *Acting as Finder for Automobile Sales.* National banks may act as finders for automobile sales and financing through databases, call centers, and Internet services. 12 CFR 7.1002 and 7.1019; Interpretive Letter No. 741, reprinted in [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-105; Corporate Decision No. 97-60 (July 1, 1997).
  - *Acting as Finder for Automotive Roadside Assistance Programs.* A national bank may acquire operating subsidiaries that operate and administer automotive roadside assistance programs and that provide credit card registration and notification services. The bank can administer and operate auto roadside assistance programs for third parties as permissible finder activities; and can administer and operate a separate roadside assistance program, made available to its credit card customers, as an incidental activity that is convenient and useful to the administration and operation of the programs for third parties. Conditional Approval No. 535 (June 21, 2002).
  - *Acting as a Finder for Government Entities.* National banks may provide electronic finder, custodian, record keeping, and financial agent services primarily to government entities. Permissible activities include providing a financial and banking data match program to enable states to match data on delinquent, noncustodial parents; an Internet-based electronic service that provides a catalog of services of state or federal agencies available to the public; and electronic service for state governments to process motor vehicle title applications and related payments via the Internet; and the operation of a backup call center for a federal agency. Conditional Approval No. 361 (March 3, 2000).
  - *Acting as Finder by Hosting Commercial Web Site for Small Retailers.* National banks can host commercially enabled Web sites for small retailers as a form of electronic “finder” activity. Interpretive Letter No. 856, reprinted in, [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-313 (March 5, 1999).
  - *Acting as Finder for Health Care Programs.* National banks may provide medical insurance cost information, benefits counseling, premium collection and disbursement and related activities. OCC Corporate Decision No. 98-13, 1999 OCC QJ LEXIS 22 (Feb. 9, 1998).

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- *Acting as Finder for Insurance.* National banks may provide finder services in connection with insurance products and services. To identify permissible national bank finder arrangements in the insurance context (as an alternative to section 92 authority), the OCC considers; (1) the scope of the proposed activities; (2) the existence or absence of another insurance agent or broker in the arrangement; (3) whether the bank has a contractual relationship with an insurance company for selling its products, and if so, the nature of relationship with an insurance company for selling its products, and if so, the nature of the relationship; and (4) the bank's compensation arrangement for the proposed activities. For example, national banks may participate in sharing arrangements with other banks whereby they combine their efforts to use the services of a group of independent agencies that would solicit and sell insurance services to bank customers on site, sharing pro rata in referred business. Interpretive Letter No. 824, *reprinted in*, [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-273 (February 27, 1998).
- *Acting as Finder for Internet Vendors.* National banks may provide to their customers links to non-banking, third-party vendors' Internet Website. 12 CFR 7.1002; Conditional Approval No. 221 (December 4, 1996); Interpretive Letter No. 611, *reprinted in* [1992-1993 Transfer Binder] Fed. Banking Law Rep. (CCH) ¶ 83, 449 (November 23, 1992).
- *Acting as Finder for Investment Advisory Services.* National banks may act as finder by referring bank customers to investment advisors. Interpretive Letter No. 850 (January 27, 1999), *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,202 (May 18, 1990); Interpretive Letter (January 20, 1988).
- *Acting as Finder for Nonfinancial Products.* Under its authority to act as a finder, a national bank may help arrange for the purchase of nonfinancial products by its credit card customers. The Bank proposed to make each customer who contacts the bank's call center aware that a nonfinancial product is available to the customer and that the bank will, upon the customer's request, transmit certain information to the product's vendor. Interpretive Letter No. 904 (January 18, 2001).
- *Sale and Support of Credit Card Incentive Plans.* A national bank operating subsidiary may sell access to its existing credit card promotional reward points program to unaffiliated third party merchants. The merchants will purchase an inventory of the program's reward points and award them to their own customers, employees or other parties. The points will be redeemed from a merchandise/services catalog administered by the national bank operating subsidiary. Corporate Decision No. 2003-10 (June 27, 2003).

### Leasing

- *Leasing, In General.* National banks may engage in personal property leasing activities under two separate authorities, 12 U.S.C. 24(Seventh) and 12 U.S.C. 24(Tenth).
- *CEBA Leases.* National bank may invest in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture, for the purpose of, or in connection with leasing that property, if the aggregate book value of the property does not exceed 10 percent of the bank's consolidated assets and the related lease is a

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conforming lease. 12 U.S.C. 24(Tenth). Interpretive Letter No. 770, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,134 (February 10, 1997). National banks may also engage in lease financing if the lease is the functional equivalent of a loan under section 24(Seventh). The OCC has interpreted this to mean that section 24(Seventh) leases must be net, full-payout leases. Under this requirement, national banks may rely on the estimated residual value only to a limited extent, *i.e.*, the unguaranteed portion of the estimated residual value relied upon by the bank, plus the estimated cost of financing the property, must not exceed a specified percentage of the original cost of the property to the lessor. 12 CFR 23.

- *Consulting Services Relating to Leasing.* National banks may engage in property leasing activities through a subsidiary, including lease consulting services, finder services, and lease servicing. Interpretive Letter No. 567, *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,337 (October 29, 1991); 12 CFR 5.34(e)(2)(ii)(M).
- *Data Processing Equipment Leasing.* National bank's operating subsidiary may enter into a general partnership with a corporation for the leasing of electronic data processing equipment on a net, full-payout basis. Interpretive Letter No. 369, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,539 (September 25, 1986).
- *DPC Property Leases.* National banks may enter into a lease agreement regarding Debt Previously Contracted (DPC) property, subject to conditions and limitations. Interpretive Letter No. L-5, *reprinted in* [1977-1978 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,022 (September 2, 1977); 12 U.S.C. 29(First).
- *Equipment and Personal Property Leasing.* National banks may invest in tangible personal property, including without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis, provided the aggregate book value of all such property does not exceed 10 percent of the consolidated assets of the bank. 12 U.S.C. 24(Seventh); 12 CFR 23.7; Interpretive Letter No. 567, *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,337 (October 29, 1991); Interpretive Letter No. 556, *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,306 (August 6, 1991).
- *Excess Space.* National banks may lease excess space on bank premises to other businesses, share space with other businesses, or offer its services in space owned or leased to other businesses. 12 CFR 7.3001.
- *Lease Financing, Historic Preservation.* National banks can establish operating subsidiaries to acquire a leasehold interest in historic buildings and thus acquire the tax credits associated with those buildings. This allows the bank to reduce the borrower's costs of financing the rehabilitation and at the same time earn an improved return. The substance of this type of transaction is a financing. Corporate Decision No. 99-07, 1999 OCC QJ LEXIS 97 (March 26, 1999).
- *Lease Interest in Natural Gas.* National bank's operating subsidiary may own an interest in a natural gas lease when ownership interest is equivalent to secured lending. Corporate

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Decision No. 98-17 (March 23, 1998). National banks may acquire an otherwise impermissible property interest in minerals, *e.g.*, oil and gas production payments, when it is acquired in connection with the bank's express power to lend money. Interpretive Letter (October 4, 1994).

- *Lease of Personal Property for Bank's Use.* National banks may be the lessee of personal property for their own use. Interpretive Letter (July 14, 1976).
- *Lease of Public Facilities.* National banks may lease a building to a municipality as long as the lease agreement provides that the municipality will become owner of the building on expiration of the lease. 12 CFR 7.1000(d).
- *Lease of Real Property.* National banks may lease real property that is incidental to a permissible lease of personal property, *e.g.*, land upon which a leased manufacturing facility stands. Interpretive Letter No. 770, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-134 (February 10, 1997); Corporate Decision No. 98-35, 1999 OCC QJ LEXIS 189 (June 10, 1998).
- *Leasing Bank Employees from Third Party.* National banks may lease the services of its employees from a third party as long as the board of directors continues to retain and exercise general supervision over the affairs of bank. Interpretive Letter No. 431, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,655 (November 5, 1987); 12 CFR 7.2010.
- *Leasing Bank Lobby to Securities Brokers, Real Estate Brokers, Insurance Agents, and Travel Agents.* National banks may lease bank premises to unaffiliated entities and the rental payments made to the bank may be based on a percentage of gross commissions received by the tenant. 12 CFR 7.3001(a).
- *Leasing/Selling Excess Capacity.* National bank may lease excess monitoring capacity of its security/fire alarm system or other equipment to other financial institutions. Interpretive Letter (September 17, 1987). National banks may market excess capacity on mail sorting equipment to other companies and may resell excess capacity on their long line telecommunications and data processing equipment to third parties. Interpretive Letter (December 13, 1983); Interpretive Letter (December 20, 1989).
- *Murabaha Financing Transactions.* National bank may enter into net leases or installment sales of real estate to serve the home finance needs of its customers, who are prohibited by religious principles from paying interest and therefore from obtaining traditional mortgages. Interpretive Letter No. 806, *reprinted in* [1997-98 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶81,253 (October 17, 1997); Interpretive Letter No. 867 (June 1, 1999).
- *Noncontrolling Investment in Trust to Purchase, Own, Lease Aircraft.* Non-controlling investment in a trust established to purchase, own, and lease commercial aircraft is permissible, however, because of safety and soundness concerns, the bank must charge off the investment in its entirety. Interpretive Letter No. 887 (April 30, 2000).



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- *Purchase of Off-Lease Equipment.* National bank may purchase from lessors and resell, as principal, off-lease equipment. Alternatively, it may act as agent for such lessors in selling the equipment. The letter finds that these activities are part of the business of banking and authorized under 12 U.S.C. § 24(Seventh), 12 U.S.C. § 24(Tenth), and 12 CFR Part 23. Interpretive Letter No. 953 (December 4, 2002).
- *Real Estate Leasing.* A national bank's financial subsidiary proposed to engage in real estate leasing of the type that the Board of Governors of the Federal Reserve System has determined to be permissible in section 225.28(b)(3) of Regulation Y. The financial subsidiary also proposed to become a general partner of a limited partnership that would also engage in real estate leasing permitted by Regulation Y. Financial Subsidiary Filing (December 6, 2001).

### *Lending*

- *Lending, General.* National bank and its operating subsidiaries may make, purchase, sell, service or warehouse house loans or other extensions of credit for its own or another's account, including consumer loans, credit card loans, commercial loans, residential mortgage loans, commercial mortgage loans, and standby letters of credit. 12 U.S.C. 24(Seventh), 371; 12 CFR 5.34. A national bank's broad authority to lend and extend credit includes, but is not limited to, the following activities:
  - *Adjustable Rate Mortgages (ARMs).* National banks may make, sell, purchase, participate in or otherwise deal in ARM loans without regard to state limitations. 12 CFR. 34.2 1 (a).
  - *Advances Necessary to Preserve Business Acquired to Secure DPC.* National banks can make necessary advances to run a business and thereby preserve its going concern value when the business is acquired to secure or collect debt previously contracted ("DPC"). 12 CFR 34.86; Interpretive Letter No. 576, *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) 83,346 (March 27, 1992); Interpretive Letter No. 12, *reprinted in* [1978-1979 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,087 (December 7, 1977).
  - *Appraisal Services.* National banks may perform real estate appraisals in connection with both their loans and loans made by other financial institutions. Interpretive Letter No. 467, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,646 (January 24, 1989). National bank operating subsidiaries may perform real estate appraisals for general customers, even if no bank loan is involved, pursuant to the excess capacity theory, provided that the activity constitutes no more than 10 percent of the subsidiary's business. National banks may perform appraisals for the occasional customer who requests one even though there is no associated loan transaction. Corporate Decision No. 98-25, 1999 OCC QJ LEXIS 22 (April 1, 1998); 12 CFR 34.45(a).
  - *Balloon Loans.* National banks may make either conventional or repurchase balloon loans secured by personal property and real property. Interpretive Letter No. 364, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,534 (July 9, 1986). National banks may make fixed rate, balloon, demand or non-regularly amortized

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residential mortgage loans without regard to state law to the contrary. Interpretive Letter No. 38-01, 1992 WL 486907 (September 30, 1992).

- *Banker's Acceptances* (i.e., commitments by financial institutions to honor drafts of customer at a future date, usually not in excess of nine months). National banks may issue banker's acceptances. National bank is not limited in the character of acceptances that it may make in financing credit transactions. Accepting bank may create, buy, and sell acceptances created by any bank in a transaction with any party in any denomination, and a nonaccepting bank may purchase an acceptance of any denomination for resale to any party, including fractional interests, provided that the rights conveyed are at least equivalent to those provided in the underlying documents. 12 CFR. 7.1007.
- *Bridge Loans*. National bank's operating subsidiary may form partnerships with the affiliate of an investment bank to make short-term bridge loans and provide advice concerning such bridge loans. Interpretive Letter No. 411, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. 85,635 (January 20, 1988); Interpretive Letter No. 516, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) 83,220 (July 12, 1990).
- *Combination of Church Loans under the Direct Benefit Test Where Controlling Trust Beneficiaries Are Identical*. A national bank with four outstanding loans to four separate local churches proposed to lend additional funds to a fifth church. Because the proceeds of loans made to the local churches are used for transactions which are controlled by trusts having an identical beneficiary (the parent church), and this beneficiary is entitled to the ultimate benefit of those transactions, the loans should be combined and attributed to the beneficiary. Interpretive Letter No. 925 (April 12, 2001).
- *Construction Loans to Unaffiliated Lenders*. A bank may establish a wholly owned operating subsidiary to provide a number of real estate construction loan services to unaffiliated lenders. This was the first approval of banks providing many of these services, which banks provide for themselves, to other parties. Corporate Decision No. 2001-27 (September 13, 2001).
- *Credit Analysis for Third Parties*. National banks may perform credit analysis for third parties. Interpretive Letter (October 11, 1983).
- *Credit Card Banking*. National banks may perform a variety of activities related to credit cards, including issuing credit cards, handling credit applications for other card issuers, operating a card loss notification service, and credit verification services over point of service (POS) terminals. Interpretive Letter (November 14, 1980); Interpretive Letter (January 25, 1979); Interpretive Letter (September 18, 1975); Interpretive Letter (November 14, 1974).
- *Debt Collection*. National banks may collect delinquent loans on behalf of other lenders, may provide billing services for doctors, hospitals, or other service providers and may act as an agent in the warehousing and servicing of other loans. Interpretive Letter (August 27, 1985).

## 2003 Activities Permissible for a National Bank

- *Debt for Equity Swaps.* National banks may enter into swaps of rescheduled foreign government loans through a series of interrelated transactions and hold the equity received to extinguish the debt pursuant to the national bank's DPC authority. Similarly, national banks may exchange nonperforming or rescheduled debt acquired DPC for equity in unaffiliated companies. Letter from Ralph E. Sharpe, Deputy Comptroller Multinational banking, dated September 25, 1996; Letter from Ralph E. Sharpe, Deputy Comptroller Multinational banking, dated February 25, 1997; Letter from Ralph E. Sharpe, Deputy Comptroller Multinational banking, dated March 25, 1997; Interpretive Letter No. 643, *reprinted in* [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) 83,551 (July 1, 1992); Interpretive Letter No. 511, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) (July 20, 1990).
- *Debtor Bank Located in State of its Main Office for UCC Purposes.* As a general matter, under revised Article 9 of the Uniform Commercial Code, the location of the debtor determines which state's law governs perfection of a security interest. Section 9-307 determines the location of debtors for choice of law purposes. For purposes of this section, a debtor national bank is located in the state in which its main office is located. Interpretive Letter No. 913 (August 5, 2001).
- *Disbursing Agent.* National banks may act as disbursing agent for loans made by another bank. Interpretive Letter (October 18, 1974).
- *Economic Development Loans to Native Americans.* National banks may make loans to certain authorized Native American organizations, with at least 20 percent of the loans guaranteed, without being subject to restrictions of other statutes regarding loan to value ratios, maturity, security, priority of lien or percentage of assets that may be invested. 25 U.S.C. 1489.
- *Escrow Services.* National banks may provide escrow services. Interpretive Letter (May 6, 1968).
- *Exportation of Interest Rates.* Twelve U.S.C. § 85, including “most favored lender” provision, applies to operating subsidiaries in the same manner and to the same extent that it applies to the parent national bank. Interpretive Letters No. 968 (February 12, 2003) and 974 (July 21, 2003).
- *Flood Hazard Determinations.* National banks may provide mortgage lenders with flood hazard determination services. Corporate Decision No. 97-79, (July 11, 1997).
- *Investment in a Firm Engaged in Check Cashing and Payday Lending.* National bank may make a non-controlling investment in a firm engaged in check cashing and payday lending activities where the bank would use the firm to educate consumers about traditional banking services, alternatives to payday loans, and the limited proper use of such loans, would cause the firm to provide enhanced disclosures about payday loans, including information about the cost of multiple rollovers, would limit the use of payday loans, such as by imposing annual limits and limits on rollovers, and would assess lower fees for rollover transactions. The firm's check cashing operations also were intended to

## 2003 Activities Permissible for a National Bank

be used as a vehicle to transition customers into more traditional bank products such as savings accounts. Noncontrolling Investment Notification (March 14, 2000).

- *Lending Limit Exception for Marketable Staples.* The lending limit exception for marketable staples secured by warehouse receipts, 12 U.S.C. 84(c)(3) and 12 CFR § 32.3(b)(1)(iv)(B), does not apply if the borrower registers the warehouse receipts with an independent third party but retains control of the staples. The borrower was the owner of the elevator in which the staples were stored. Interpretive Letter No. 895 (June 22, 2000).
- *Lending Limit for Bank Premises.* A national bank may make a loan to an unrelated borrower that exceeds the bank's lending limit when the borrower will use the proceeds to construct a new premises building for the bank. The limitations on loans and investments for bank premises contained in 12 U.S.C. § 371d take precedence over the general lending limits in 12 U.S.C. § 84. Interpretive Letter No. 950 (December 18, 2002).
- *Lending Limit for Loans Guaranteed by the Illinois Farm Development Authority.* Loans guaranteed by the Illinois Farm Development Authority (IFDA) qualify for the lending limit exception contained in 12 CFR 2.3(c)(5) because of an Illinois Attorney General opinion stating that IFDA loan guarantees are backed by the full faith and credit of the State of Illinois. Interpretive Letter No. 889. (May 15, 2000).
- *Lending Limit for Loans to Leasing Companies.* Letter concludes that the leasing exception at 12 CFR 32.3(c)(10) can apply when the proceeds of the loan to the leasing company are not used directly to purchase the assets to be leased but rather are used to reimburse the leasing company for the past purchase of such assets. Interpretive Letter No. 955 (1/31/2003).
- *Lending Limit for Loans to Related Entities.* Letter addresses the application of the various loan combination/attribution rules at 12 CFR 32.5 to loans to several related entities. The letter also addresses the issue of how to treat the gross income from a subchapter S corporation that is reported as part of the shareholder's adjusted gross income on his or her federal tax return in determining substantial financial interdependence for the purpose of 12 CFR 32.5(c)(2). Interpretive Letter No.951 (1/17/2002).
- *Lending Limit Pilot Program.* A loan to finance land development or construction, whether secured by the real property or not, does not qualify for the lending limit pilot program in 12 CFR § 32.7. Interpretive Letter No. 942 (June 11, 2002).
- *Loan Agreements Providing for a Share in Profits, Income, or Earnings or for Stock Warrants.* National banks may make loans and accept from the borrower in lieu of interest, a share of the borrower's profits, equity in the borrower, stock warrants (provided they are not exercised), or stock dividend payments. 12 CFR 7.1006; Interpretive Letter (May 8, 1989).

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- *Loan Attribution to One Entity through Common Enterprise Test.* A national bank proposed to make loans to two entities ("A" & "B") that were related through the common control of a third entity ("X"). A and B each pays more than 50 percent of its gross annual expenditures to the controlling entity X. Accordingly, the proposed loans to A and B would be attributed to X under 12 CFR 32.5(c)(2) and thus combined for purposes of the legal lending limit, even where X does not borrow directly from the national bank. Interpretive Letter No. 938 (January 18, 2001).
- *Loan Origination and Servicing Activities.* National bank's operating subsidiary may engage in loan origination and servicing activities, as well as commercial mortgage loan brokerage services. Interpretive Letter No. 387, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,611 (June 22, 1987). National bank's operating subsidiary may make, purchase, sell, service or warehouse loans, or other extensions of credit for its own or another's account, including consumer loans, credit card loans, commercial loans, residential mortgage loans, and commercial mortgage loans. 12 CFR 5.34(e)(2)(ii)(L), 34.1 (b).
- *Loan Participations.* National banks may purchase participation interests in pooled loans. Interpretive Letter No. 579, *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 183,349 (March 24, 1992).
- *Loan Production Offices.* National banks may establish a loan production office to solicit and originate business outside of its main office and authorized branches. 12 CFR 7.1004, 7.1005; Banking Circular No. 199, *reprinted in* 4 Banking L. Rep. (CCH) ¶ 45-595 (May 23, 1985).
- *Loan Repurchase Agreements.* National banks may agree to repurchase loans or other assets. Interpretive Letter No. 415, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,639 (February 12, 1987); 12 CFR 3 2.2.
- *Loans to an Employee Stock Option Plan (ESOP).* National bank, as a disqualified person who serves as trustee or service provider to an ESOP, may make qualified term loans through its commercial loan division to a company sponsoring an ESOP. Trust Interpretation No. 24 1, *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) 183,082 (November 14, 1989).
- *Margin Loans.* National bank's operating subsidiary may make margin loans. Interpretive Letter No. 326, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,496 (January 17, 1985).
- *Mortgage Document Custodian.* National banks may act as document custodians of residential mortgage loan documents for third parties without obtaining approval to exercise trust powers. 12 U.S.C. 24(Seventh).
- *Offshore Operating Subsidiary.* A national bank may establish an offshore operating subsidiary that will facilitate the funding of the bank's domestic mortgage lending operations. The subsidiary's books and records must be maintained in the United States and be accessible to the OCC. Conditional Approval No. 536 (June 21, 2002).

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- *Overdraft Fees Not Interest.* National bank's flat fee charges to deposit customers for checks written without sufficient funds on deposit do not constitute "interest" limited by 12 U.S.C. 85. The fee is a processing fee, not compensation for an extension of credit. *VideoTrax, Inc. v. NationsBank, N.A.*, 33 F.Supp.2d 1041 (S.D. Fla. 1998), aff'd 205 F.3d 1358 (11<sup>th</sup> Cir. 2000), cert. den. 1212 S. Ct. 66 (October 2, 2000).
- *Purchase of Open Accounts/Factoring.* A national bank may purchase open accounts as a part of the business of banking. A national bank also may purchase open accounts in connection with export transactions; the accounts should be protected by insurance, such as that provided by the Foreign Credit Insurance Association and the Export-Import Bank. 12 CFR 7.1020.
- *Real Estate Tax and Management Services.* National banks can establish operating subsidiaries to hold an interest in a joint venture engaged in real estate tax reporting and management services in connection with certain loans made by the bank or its lending affiliates. Conditional Approval No. 317 (July 19, 1999).
- *Same Source of Repayment.* On the specific facts presented, the same source of repayment test in 12 CFR § 32.5(c)(1) does not result in the combination of loans to members of The Lower Sioux Indian Community with loans to other members or with a loan to the Community, itself. Interpretive Letter No. 979 (December 18, 2003).
- *Share of Profits as Part of Interest.* National bank may: (1) take a share of borrower's profits as part of interest on loans, 12 CFR § 7.1006; (2) negotiate percentage of profits bank will take; and (3) compensate borrower for originating loans by providing borrower with office space and paying borrower's expenses, 12 CFR § 7.1004(a). Interpretive Letter No. 956 (January 31, 2003). *Shared Appreciation Mortgage Loans.* National banks may make shared appreciation mortgage loans to developers for the conversion of residential property into condominium units and receive a fixed amount or percentage of the sales price of each unit sold as a share of the profit, income, and earnings. National banks may also finance the acquisition or improvement of real property on which the borrower will operate its business and receive a percentage of the appreciation of the business's value as interest on the loan. Interpretive Letter No. 244, *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) 185,408 (January 26, 1982); 12 CFR 7.1006.
- *Title Abstracting Services.* National bank and its subsidiaries, may provide title abstracting services for the parent bank, for unaffiliated lenders, and for the occasional customer who requests the service even if no associated loan transaction exists. 12 U.S.C. 24(Seventh); Corporate Decision No. 98-26, 1999 OCC QJ LEXIS 22 (April 21, 1998).

### *Other Activities*

- *Bank-owned Variable Life Insurance Invested in Equity Securities.* In certain circumstances, bank-owned variable life insurance may be invested in equity securities in connection with employee compensation and benefit plans. Such insurance can be used in connection with defined contribution plans but not defined benefit plans. Interpretive Letter No. 926 (September 7, 2001).

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- *Borrow Money and Pledge Assets.* National banks have authority to borrow money and may pledge assets to secure their borrowings. 12 U.S.C. 24(7); Interpretive Letter (August 8, 1965).
- *Certificates of Deposit—Purchase and Sale of Participation.* National bank may offer participation interests in certificates of deposit purchased as agent from third parties on behalf of a number of the bank’s depositors. Interpretive Letter No. 385, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85-609 (June 19, 1987).
- *Coin and Bullion.* National bank may dispose of coins discovered in its vaults at fair market value, pursuant to 12 U.S.C. § 24(Seventh) and OCC Banking Circular 58 (Rev)., even though that may exceed the value of the metallic content or the face value. Since coins were acquired in the course of normal banking operations, disposal at fair market value does not constitute impermissible speculation. Interpretive Letter No. 975 (October 14, 2003).
- *Coins, Buying and Selling.* National banks may buy and sell privately minted commemorative coins, as an extension of their authority to exchange “coin or bullion.” 12 U.S.C. 24(Seventh).
- *Commercial Paper Placement.* National banks, as agents, may privately place third-party commercial paper. Securities Industry Assoc. v. Board of Governors of Federal Reserve System, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 483 U.S. 1005 (1987).
- *Consumer Access/Discount Card Program.* National banks may operate a consumer access/discount card program. Interpretive Letter No. 678, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,626 (July 6, 1995).
- *Courier/Messenger Services.* National bank may establish and operate a messenger service to transport items relevant to the national bank’s transactions with its customers, including courier services between financial institutions. 12 CFR 7.1012. However, national banks must receive approval from the OCC to establish a branch if the messenger service constitutes a branching function within the meaning of 12 U.S.C. 36(j). National bank may use a messenger service established and operated by a third party to pick up from and deliver to its customers items that relate to a branching function without regard to the branching limitations of 12 U.S.C. 36. National banks may also provide limited security guard escort service. Interpretive Letter (October 5, 1983).
- *Debt Cancellation and Debt Suspension Agreements.* National banks may offer debt cancellation agreements providing for discharge of and obligation upon the death or disability of a borrower. 12 CFR 7.1013. Similarly, national banks may offer credit card debt suspension agreements providing for suspension of a borrower’s repayment obligations in the event of the borrower’s disability or unemployment. Interpretive Letter No. 827, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-276 (April 3, 1998).
- *Donation of Fundraising Item.* National bank may donate an item for a community fundraising raffle without violating the lottery prohibition of 12 U.S.C. 25a if the bank was

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identified as the donor of the item in publicity issued by the raffle sponsors, if the publicity was not displayed on bank premises. Interpretive Letter 900 (June 19, 2000).

- *Employee Relocation Services.* Letter provides that an operating subsidiary of a national bank may acquire, for a short period of time and subject to conditions requiring retransfer, title to the relocating employees' residential real estate as incidental to the package of relocation services offered by the subsidiary. Interpretive Letter 966 (May 12, 2003).
- *Foreign Investment Company Owning National bank.* A foreign-based global investment management company, which is not a bank holding company, is not covered by the International banking Act, and is not subject to comprehensive consolidated supervision, may own a national bank, provided: the OCC would have access to all books and records of the bank's parents that concern the bank; through a written binding agreement the parent will provide capital maintenance and liquidity support to the bank; the bank will not engage in covered transactions with foreign affiliates unless the bank notifies the OCC in advance and maintains documentation on the transaction and has available for OCC review financial information on the affiliate; all transactions between the bank and any affiliate will be conducted subject to 12 U.S.C.. 371c, 371c-1 or other applicable Federal law; the bank will adopt and implement policies, procedures and internal controls reasonably designed to encompass anti-money laundering efforts; and the parent must maintain a designated agent in the United States. Conditional Approval No. 425 (November 8, 2000).
- *Indicia of Ownership of Real Property.* National bank operating subsidiary may acquire and hold certain indicia of ownership of real estate when incidental to the package of relocation services offered by that subsidiary. There are several restrictions and conditions: the subsidiary must use a nominee to hold legal title; the subsidiary may not use or enjoy the benefit of the property; the subsidiary may not manage the property; and the subsidiary must dispose of the indicia within 90 days. Interpretive Letter No. 966 (May 12, 2003).
- *Internal Bank Financing Operations Offshore.* National bank may form an operating subsidiary in the Cayman islands to engage in internal bank financial operations, provided the OCC would have access to all books and records, no activities we conducted offshore, and the subsidiary would be subject to OCC examination, supervision, and regulation. Conditional Approval No. 413 (September 22, 2000).
- *Messenger Service.* A national bank may operate a messenger service that will provide pick up and delivery of cash, checks, and other financial items for non-financial institution businesses having no deposit relationship with the bank. Items will be transported between facilities of such businesses, and between such businesses and their financial institutions. Corporate Decision No. 2003-9 (June 25, 2003).
- *"On Us" Check Cashing Fees.* Banks may charge a non-accountholder a convenience fee for using a bank teller to cash an "on us" check. An "on us" check is a check drawn on the bank by one of the Bank's customers. As noted in these letters, this fee is essentially compensating the bank for making cash immediately available to the payee; otherwise, the payee would have to wait for the check to clear through the payment system. These fees are authorized under 12 U.S.C. 24(Seventh) and 12 CFR § 7.4002(a). Interpretive Letters No.932 and 933 (August 17, 2001), Interpretive Letter No. 934 (August 20, 2001).



## 2003 Activities Permissible for a National Bank

- *Order of Check Posting.* A bank's decision concerning the order of posting checks presented for payment is a pricing decision authorized by 12 U.S.C. 24(Seventh) and 12 CFR § 7.4002. This would permit the bank to pay the largest check first from an account in a given 24-hour cycle. Interpretive Letter No. 916 (May 22, 2001).
- *Postal Services.* National banks may maintain, operate, and receive income from postal substations on banking premises, pursuant to U.S. Postal Service regulations. National banks may advertise, develop, and extend the services of the substation to attract customers. The services performed at the substations must be permitted by the U.S. Postal Service and may include meter stamping of letters and packages, and the sale of related insurance. National banks must keep the books and records of the substations, which are subject to inspection by the U.S. Postal Service, separate from those of other banking operations. 12 CFR 7.1010; 39 CFR 241.2. National banks may sell stamp collecting kits and stamps for collection in accordance with Post Office regulations, but need to be full-fledged postal stations to do this. Interpretive Letter (December 1975).
- *Printing Service.* National bank may engage in the printing of checks, drafts, loan payment coupons, and similar documents for use in the national bank's business; engage in printing services that facilitate the general operation of the bank as a business enterprise, such as the printing of internal personnel forms; and provide printing services for affiliated banks. 12 U.S.C. 24(Seventh); Interpretive Letter No. 811, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,259 (December 18, 1997).
- *Purchasing and Selling Transferable State Tax Credits.* A national bank is authorized under 12 U.S.C. § 24(Seventh) to purchase and resell, as principal, transferable state tax credits. This is a financial intermediary activity and therefore part of the business of banking. Interpretive Letter No. 948 (October 23, 2002).
- *"Qualified Intermediary" for Reverse Like-Kind Exchanges.* A national bank's operating subsidiary, through limited liability corporation subsidiaries, may act as a "qualified intermediary" for investors interested in consummating tax-deferred "reverse like-kind exchanges" of real properties. Internal Revenue Code, 26 U.S.C. 1031, permits like-kind exchanges, which allow investors to exchange certain investment property, including real property, for other investment property, subject to certain limitations. In a reverse like-kind exchange, investors identify and acquire replacement properties before disposing of relinquished properties. As a qualified intermediary, the operating subsidiary is an independent party that facilitates the process by acquiring an interest in the replacement real property without acquiring full legal title in the property, and by providing proper documentation to preserve the integrity of the transaction for IRS purposes. Corporate Decision No. 2001-30 (October 10, 2001).
- *Real Estate Construction Services.* A national bank may establish a wholly owned operating subsidiary to furnish administrative, management, and consulting services to unaffiliated real estate construction lenders and investors. The services may include project feasibility, cost, contract, environmental and seismic reviews; appraisals; loan document preparation; collateral and construction phase completion monitoring; syndicated loan lead agent tasks;

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and lender training on construction loan administration. Corporate Decision No. 2001-27 (September 13, 2001).

- *Support Services, In General.* National banks may act as agents for an individual or corporation without obtaining prior approval to exercise trust powers if the duties are nondiscretionary and purely ministerial in nature. The following are examples of these services:
  - *Agent for Deposit Placement.* National bank may place deposits as agent for its customers with other financial institutions pursuant to 12 U.S.C. 24 (Seventh). Investments Securities Letter No. 32, *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,038 (December 2, 1988); Interpretive Letter No. 778, *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,205 (March 20, 1997) (placing deposits at foreign banks on behalf of customers on an agency basis and offering this service over the Internet).
  - *Agent for Purchasing or Selling Government Securities.* National banks may act as agents in the purchase and sale of government securities. 12 CFR 13.
  - *Agent for Purchasing or Selling Real Estate Limited Partnership Interests.* National banks may act as agent in the purchase and sale of financial investment instruments, such as real estate limited partnership interests. Interpretive Letter No. 420, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,644 (March 14, 1988).
  - *Agent of Service of Process.* National banks subsidiary may act as agent for service of process on behalf of bank and/or its affiliates as furnishing of services of this nature for a bank or its affiliates is part of or incidental to the business of banking. Corporate Decision No. 97-14, (March 4, 1997).
  - *Tax Related Services.* National banks may prepare tax returns directly or through subsidiaries for any type of customer but may not act as an expert tax consultant. 12 U.S.C. 24(Seventh); 12 CFR 7.1008.
  - *Travel Services and Foreign Exchange Activities.* National banks may sell traveler's checks and foreign currency, make travel-related loans, issue letters of credit and provide free travel information. National banks also may assist customers in placing orders for tickets with a travel agency and, in general, lease excess office space to a travel agency. Interpretive Letter No. 437, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,611 (July 27, 1988); Interpretive Letter No. 342, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85, 644 (May 22,1985).
  - *Trucking Company, Credit and Other Services.* National banks may offer credit, fleet management and tracking, inventory control, and accounting services to trucking companies. Interpretive Letter (August 15, 1983).

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### *Payment Services*

- *Cash Management.* National banks may provide cash management services. Interpretive Letter No. 756, reprinted in [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) 181-120 (November 5, 1996.)
- *Cash Management Computer Software.* National banks or bank operating subsidiaries may invest in a limited liability company that develops, produces, and distributes or sells cash management software. Interpretive Letter No. 677, reprinted in [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) 183-625 (June 28, 1995); Interpretive Letter No. 756, reprinted in [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) 181-120 (November 5, 1996); Interpretive Letter No. 284, reprinted in [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,448 (March 26, 1984).
- *Cashiers' Checks, Money Orders, Savings Bonds, and Travelers Checks.* National banks may issue, collect, and process cashiers' checks and money orders. National banks may also sell savings bonds and travelers checks. 12 U.S.C. 24(Seventh).
- *Check Cashing and Processing.* National banks may cash and process checks, and provide check and credit card verification services. 12 U.S.C. 24(Seventh).
- *Check Certification.* National banks may certify checks, provided the person, firm, or corporation drawing the check has sufficient funds on deposit to cover it. 12 U.S.C. 501. National banks may guarantee drafts drawn against a bank customer. Interpretive Letter (October 29, 1968).
- *Letters of Credit.* National banks may issue and commit to issue letters of credit and other independent undertakings within the scope of the applicable laws or rules of practice recognized by law. Under such letters of credit and other independent undertakings, the bank's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the account party and the beneficiary. A national bank may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

### *Fiduciary Activities*

- *Fiduciary Activity, In General.* National banks with fiduciary powers (which may be granted at the time of chartering or subsequently on application to the OCC) are subject to federal rules that define fiduciary standards and authorize national banks to operate in the same capacities as fiduciaries are permitted to operate in the states where the bank conducts its trust activities. 12 U.S.C. 92a and 12 CFR 9. National banks also may operate as limited purpose trust banks and need not engage in all banking functions. Fiduciary activities include:
- *Collective Investment Funds.* A national bank's model-driven funds, established pursuant to 12 CFR § 9.18, may allocate costs to individual participants being admitted to or

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withdrawing from such funds in the same manner and to the same extent as section 9.18 index funds. Interpretive Letter No. 919 (Nov. 9, 2001)

- *Collective Investment Trust Admissions and Withdrawals.* Annual admissions and withdrawals are permitted where circumstances warrant under section 9.18, and therefore an exemption from section 9.18 is not required. Interpretive Letter No. 920 (December 6, 2001).
- *Collective Investment Trust Withdrawals.* A national bank, as trustee, may allow participant withdrawals from a collective investment fund solely at the bank's discretion, or when a participant becomes ineligible to continue as a participant in the fund. 12 CFR 9.18 does not mandate the frequency of admissions and withdrawals from collective investment funds. OCC Interpretive Letter No. 936 (May 22, 2002).
- *Collective Investment Funds (CIFs)/Common Trust Funds.* National banks may invest fiduciary assets in collective investment funds. 12 CFR 9.18. National banks may charge a different management fee to CIF participants, commensurate with the amount and types of services they provide to participants. Interpretive Letter No. 829, *reprinted in* [1997-98 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,278 (April 9, 1998).
- *Investment of Employees Benefit Account Assets.* National bank may invest assets of tax-exempt employee benefit accounts held by the bank in any capacity (including agent), in part 9 collective investment funds, provided the fund itself is exempt from federal taxation. Interpretive letter No. 884 (January 13, 2000).
- *Nationwide Trust Services.* National banks with fiduciary powers may serve trust customers nationwide, including at trust representatives offices where the bank performs services for trust customers, but does not conduct any core activities that would deem it to be a branch—receive deposits, pay checks, or lend money—without regard to state requirements that restrict entry, offices, marketing, or otherwise attempt to limit the exercise of lawful national bank fiduciary business, including licensing requirements. Interpretive Letter No. 866, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,360; (October 8, 1999); Interpretive Letter No. 872, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,366 (October 28, 1999).
- *Real Estate Brokerage and Related Activities as a Fiduciary.* National bank with fiduciary powers may engage in certain real estate brokerage and related activities as a fiduciary (*e.g.*, management of real property as agent or trustee for its customers. Interpretive Letter No. 355 (December 12, 1985). National banks are not subject to state laws that require this business to be performed in a particular structure.
- *Self-deposit in Short-term Investment Fund.* A national bank may pool individual fiduciary accounts awaiting investment or distribution and self-deposit them in a short-term investment fund. Assuming applicable law in states in which the bank does business and plans to self-deposit does not prohibit such deposits, 12 CFR § 9.10(b) provides the applicable authority required by 12 CFR § 9.12 for the bank to self-deposit such funds or to deposit them with affiliates. Interpretive Letter No. 969 (April 28, 2003).

### ***Insurance and Annuities Activities***

- *Insurance Consumer Protections.* Responses to questions relating to retail sales practices, solicitations, advertising or offers of insurance products and annuities by depository institutions. Interagency Guidance on Consumer Protections for Depository Institution Sales of Insurance, OCC Bulletin 2001-43 (August 17, 2001).
- *Insurance Information Sharing Agreements.* The OCC entered into insurance information sharing agreements with insurance regulators of nine additional states in 2003. As of the end of 2003, only two states (Massachusetts and Rhode Island) and Puerto Rico do not have such agreements with the OCC.

### ***Insurance Underwriting and Reinsurance***

- *Captive Insurance Company/Underwriting Insurance Coverage on the Operating Risks of the Parent Bank and Its Affiliates.* National bank may establish and operating subsidiary to serve as a captive insurance company to underwrite insurance coverages on the operating risks of the parent bank and its affiliates. Corporate Decision 99-03, 1999 OCC QJ LEXIS 97 (June 1999); Interpretive Letter No. 845, reprinted in [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81, 300 (October 20, 1998).
- *Credit Life Insurance.* In addition to acting as agent, national banks may provide credit life and disability insurance to loan customers. National banks may also underwrite credit life, accident, health, disability and involuntary unemployment insurance; mortgage life and disability insurance; and mortgage bond insurance. National banks may reinsure credit life, accident, health, disability and involuntary unemployment insurance; mortgage life, mortgage accidental death, and mortgage disability insurance; and mortgage insurance. 12 U.S.C. 24 (Seventh); Conditional Approval No. 334, 1999 OCC QJ LEXIS 75 (October 30, 1999); Corporate Decisions 98-31 (May 26, 1998), 98-28 (May 11, 1998), 97-92 (October 17, 1997), 1998 OCC QJ LEXIS 189 (September 1998); Conditional Approval No. 259 (October 31, 1997).
- *Disclosure for Renewals of Insurance Policies.* Section 305 of the Gramm-Leach-Bliley Act and implementing regulations do not mandate that banks provide disclosures for renewals of insurance policies sold prior to October 1, 2001. Interpretive Letter No. 960 (February 28, 2003).
- *Grandfathered Insurance Products Sales.* National banks and their subsidiaries may continue to underwrite any “insurance” products being provided by national banks as of 1/1/99 or that were authorized in writing by the Comptroller as of that date. 15 U.S.C. 6712 (as added by section 302 of GLBA).
- *Insurance Consumer Protections.* Responses to questions relating to retail sales practices, solicitations, advertising or offers of insurance products and annuities by depository institutions. Interagency Guidance on Consumer Protections for Depository Institution Sales of Insurance, OCC Bulletin 2001-43 (August 17, 2001).

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- *National Trust Companies/Sale of Insurance.* National trust companies may sell insurance from a trust office located in a place of 5,000 if the office performs core fiduciary functions, including accepting fiduciary appointments, executing trust documents, and making decisions regarding the investment and distribution of fiduciary assets. Interpretive Letter No. 877, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,371 (December 13, 1999).
- *Place of 5000.* National bank may sell insurance directly or through and “operating subsidiary” if the national bank is located and doing business in a place of 5,000 or less in population and its agency is also located in that place. 12 U.S.C. 92.
- *“Place” for Purposes of “5000 or Less in Population.”* Any area designated by the Census Bureau as a “place” is a “place” for purposes of section 92. Interpretive Letter No. 823, *reprinted in* [1997-98 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,272 (February 27, 1998).
- *Risk Management Activities.* Risk management activities are part of an insurance agency’s activities. A national bank is not required to file a new financial subsidiary notice with the OCC if the bank’s existing insurance agency financial subsidiaries provide risk management services as part of their insurance agency activities. Interpretive Letter No. 967 (June 6, 2003).
- *Safe Deposit Box Liability Insurance.* National bank may underwrite safe deposit box liability insurance for the safe deposit boxes of the bank and its affiliates. Corporate Decision No. 97-92 (October 17, 1997), 1998 OCC QJ LEXIS 189).
- *Sale of Annuities.* National banks may sell annuities without regard to the place of 5,000 restriction in 12 U.S.C. 92 on sale of insurance products. NationsBank v. Variable Annuity Life Insurance Co., 513 US 251 (1995).
- *Satellite Offices.* National banks and their subsidiaries with insurance agencies may rely on OCC opinions to establish satellite offices outside the place of 5,000 (including satellite offices in states outside the state where the insurance business is located) to solicit and sell insurance in the same manner generally permissible for state insurance agencies. Interpretive Letter No. 882 (February 22, 2000) (to be published); Interpretive Letter No. 864, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,358 (May 19, 1999); Interpretive Letter No. 873, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,360 (December 1, 1999); Interpretive Letter No. 844, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,367 (October 20, 1998).
- *Scope of Market.* National bank generally may sell insurance pursuant to section 92 in the same nationwide market as is generally available to licensed insurance agencies in the state where the bank agency operates. Interpretive Letter No. 753, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,107 (November 4, 1996).
- *Scope of Sales/Domicile of Customers.* National bank may sell insurance to customers wherever the customers are located. See NBD Bank, N.A. v. Bennett, 67 F.3d 629 (7<sup>th</sup> Cir.

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1995); Independent Insurance Agent of America, Inc. v. Ludwig, 997 F.2d 958 (D.C. Cir. 1993); Shawmut Bank Connecticut v. Googins, 965 F. Supp. 304 (D. Conn. 1997).

- *Title Insurance—Sales Pursuant to 15 U.S.C. 6713 (GLBA section 303)*. National banks may sell title insurance as agent in the same manner and to the same extent in a given state as state banks are authorized to sell title insurance in that state. A grandfather provision permits a national bank and its subsidiary to continue to conduct title insurance activities that they were actively and lawfully conducting before November 12, 1999.
- *Underwriting Credit-Related insurance post-GLBA*. National bank's operating subsidiary may continue underwriting credit-related insurance products in connection with loans made by the bank and affiliated and unaffiliated financial institution lenders under the "authorized product" exception of section 302 of the Gramm-Leach-Bliley Act. Interpretive Letter No. 886 (March 27, 2000).

### Reinsurance

- *Mortgage Reinsurance*. National bank may reinsure mortgage insurance on loans originated, purchased, or serviced by the bank, its subsidiaries, or its affiliates. 12 CFR 5.34, Corporate Decision No. 99-02 (December 11, 1998). A national bank's captive mortgage reinsurance subsidiary may enter a mortgage reinsurance agreement with a Cayman Island segregated portfolio company to reinsure private mortgage insurance on loans originated or purchased by the bank or one of its affiliates. Interpretive Letter No. 862, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,356 (June 7, 1999).
- *Mortgage Reinsurance Exchange*. National banks may participate in a mortgage reinsurance exchange where the exchange will provide for the reinsurance of private mortgage insurance on loans originated or purchased by participating lenders. Interpretive Letter No. 828, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,277 (April 6, 1998).
- *Municipal Bond Insurance*. National banks may underwrite municipal bond insurance. Interpretive Letter No. 338, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,508 (May 2, 1985); American Insurance Association v. Clarke, 656 F. Supp. 404 (D.D.C. 1987), *aff'd*, 865 F.2d 278 (D.C. Cir. 1989).
- *Reinsurance Activities of Credit-Related Insurance for Unaffiliated Lenders*. A national bank operating subsidiary may provide reinsurance of credit life, health and disability insurance written in connection with loans extended by a bank and affiliated and unaffiliated lenders under the "authorized product" exception of section 302 of the Gramm-Leach-Bliley Act. Corporate Decision No. 2001-10 (April 23, 2001).
- *Reinsurance (and Underwriting) of Credit Life Insurance, Credit Disability, and/or Involuntary Unemployment Insurance*. National banks may reinsure (and underwrite) credit life insurance, credit disability, credit accident, credit health, and/or involuntary unemployment insurance sold to customers that borrow from the bank and/or its

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lending affiliates and/or subsidiaries. Corporate Decision Nos. 98-31, (1998), 98-28 (May 11, 1998).

- *Reinsurance of Credit Life and Other Insurance Post-GLBA.* National bank may establish an operating subsidiary to reinsure credit life, accident, disability, and health insurance in connection with loans made by the bank and its affiliates, because the reinsurance of credit-related insurance products satisfies the "authorized product" exception of section 302 of the Gramm-Leach-Bliley Act. Corporate Decision No. 2000-16 (August 29, 2000).

### *Title Insurance*

- *Title Insurance, General.* Unless a state law in effect before November 12, 1999 prohibits all persons in a state from selling or underwriting title insurance:
- *Grandfathered Title Insurance Activities.* A national bank and its subsidiaries may continue to conduct title insurance activities, including underwriting, in which the national bank or subsidiary were lawfully engaged before November 12, 1999, subject to some exceptions if affiliates are providing insurance as principal. 15 U.S.C. 6713 (as added by section 303 of GLBA).
- *Sales as Agent.* National banks and their subsidiaries may sell title insurance as agents in a state to the same extent as permitted for state banks. 15 U.S.C. 6713 (as added by section 303 of GLBA).
- *State Parity for Title Insurance Sales through an Operating Subsidiary.* National bank's operating subsidiary could sell title insurance in Pennsylvania, without being subject to the place of 5000 requirement, because state law permits title insurance sales without geographic limitations. Conditional Approval No. 371 (March 20, 2000).
- *Title Insurance Sales through a Financial Subsidiary.* Financial subsidiary of a national bank may offer title insurance in the State of New Jersey, even though New Jersey law generally prohibits banks from selling title insurance. Corporate Decision No. 2000-14 (August 16, 2000).

### *Securities Activities*

- *Asset Securitization.* National banks may purchase and sell, as principal or agent, asset-backed obligations. 12 CFR 1.2(l), (m). National banks may securitize and sell assets they hold, including mortgage and nonmortgage loans that are originated by the bank or purchased from others. National banks may buy and sell as principal asset backed obligations. 12 CFR 1.3(g).
- *Broker-Dealer Activities.* National banks directly, and without registering with the SEC, may engage in many types of securities broker-dealer activities, including transactions for trust customers, private placements, issuance and sales of certain asset-backed securities, transactions for certain stock purchase plans, and transactions in "identified banking products" (including generally deposit instruments, banker's acceptances, loan participations



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(subject to certain sales restrictions), and derivatives). 15 U.S.C. 78c(a)(4), (5) (as amended by sections 201 and 202 of GLBA).

- *Clearing and Execution Services.* National banks may execute and clear securities transactions. Interpretive Letter No. 494, *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,038 (December 20, 1989).
- *Closed End Mutual Funds.* National banks may organize a closed end investment company (which does not continuously offer, shares for purchase). OCC Conditional Approval No. 164 (Dec. 9, 1994).
- *Deposit Notes Do Not Constitute "Securities."* Sales of a national bank's Deposit Notes through its affiliated retail securities broker-dealer network do not constitute the sale of "securities" as defined in OCC securities offering regulations at 12 CFR 16. Interpretive Letter No. 922 (December 13, 2001). *Derivatives Activities.* National banks may offer investment advice and engage in a variety of derivative activities (including swaps, futures, forwards, and options) as a financial intermediary or to manage or reduce risks.
- *Investment Advisory Activities with Limited Interest in Advised Funds.* National bank may acquire a non-controlling investment in a SEC registered investment advisory company when the investment advisory company owns limited equity interests in investment funds to which it provides investment advisory and related services if the limited interests are necessary for the company to engage in bank permissible investment advisory activities due to investor demands, industry practices, and competitive factors. Interpretive Letter No. 897 (October 23, 2000).
- *Investment Vehicle for Bank Clients.* National bank's operating subsidiary, a limited liability company (LLC), may serve as a sole general partner of a limited partnership that is used as an investment vehicle for bank clients. Corporate Decision No. 2000-07 (May 10, 2000).
- *Lobby Leasing and Employee Sharing Arrangements.* National banks may engage in various lobby leasing and employee sharing arrangements that provide full service brokerage and investment advice to customers through use of third-party providers. 12 CFR 7.3001; Interpretive Letter (June 4, 1985); Interpretive Letter No. 407, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,631 (August 4, 1987). 15 U.S.C. 78(c)(a)(4)(B)(i) (as amended by section 201 of GLBA).
- *Municipal Securities.* National banks may underwrite, deal in, and act as agent in the purchase and sale of general obligation bonds. They may also underwrite, deal in, and act as agent in the purchase and sale of revenue bonds if they are well capitalized. 12 U.S.C. 24(7th).
- *Mutual Fund Activities.* National banks and their operating subsidiaries may offer a broad range of administrative and investment advisory services, serve as custodian and transfer agent, and broker investment company shares. Interpretive Letter No. 648, *reprinted in* [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,557 (May 4, 1994).

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- *Networking Arrangements.* National banks may enter into networking arrangements, whereby securities brokerage services are made available to bank customers by a broker dealer using leased space on bank premises. Interpretive Letters Nos. 406-408, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) 55,630 to 85,632 (August 4, 1987).
- *On-Line Securities Trading.* National bank may acquire an indirect non-controlling interest in an entity that will provide online securities trading and related services. In general, the bank should indicate that it does not provide, endorse, or guarantee any of the products or services available through the third party Web pages. For links to pages that provide nondeposit investment products, the disclosures also should alert customers to risks associated with these products, for example, by stating that the products are not insured by the FDIC, are not a deposit, and may lose value. Banks also have responsibility for the appropriate placement of disclosures via electronic means on their Web page(s). Interpretive Letter No. 889 (April 24, 2000).
- *Options on Futures Contracts.* National bank may purchase options on futures contracts on commodities to hedge the credit risk in its agricultural loan portfolio. Interpretive Letter No. 896 (August 21, 2000).
- *Parent Bank's Investment Securities Portfolio.* A national bank operating subsidiary may own, hold, and manage all or part of the parent bank's investment securities portfolio. 12 CFR 5.34(ii)(N).
- *Performance-Linked Compensation.* National banks may offer products and services and may accept as sole or partial compensation a share of the customer's profit, income, or earnings. Such performance-linked compensation can be in the form of stock warrants or contractual arrangements between the bank and its customer, whereby a share of the customer's profits, income, or earnings would be paid to the bank. 12 CFR 7.1006; Corporate Decision No. 2000-02 (February 25, 2000).
- *Private Placement of Securities.* National banks may privately place securities. Securities Industry Association v. Board of Governors, Federal Reserve, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 483 U.S. 1005 (1987) ("Bankers Trust II").
- *Private Placement Services.* National bank's operating subsidiary may assist customers in the issuance of debt and equity securities by providing private placement services as agent, and financial and transactional advice to customers in structuring, arranging and executing various financial transactions, as agent, in connection with its private placement activities. While performance-linked compensation, including warrants, may be accepted as the compensation for such services, neither the bank nor the subsidiary may exercise any warrants. Corporate Decision No. 2000-02 (February 25, 2000).
- *Repurchase Obligations.* National banks may purchase securities subject to repurchase agreements. Interpretive Letter No. 629, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,512 (July 2, 1993).

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- *Riskless Principal.* National banks may act as riskless principal in securities transactions. Interpretive Letter No. 626, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) 83, 508 (July 7, 1993).
- *Securities Brokerage.* National banks may provide full service securities brokerage (investment advisory services and brokerage services) or act as a futures commission merchant, and provide credit and other related services. 12 U.S.C. 24(Seventh).
- *Securities Brokerage in Primary Markets.* National bank's broker-dealer subsidiary may act as a broker for securities underwritten by a section 20 affiliate. A federal branch may act as a broker for 144A securities initially purchased by its foreign parent. Interpretive Letter No. 876 (December 8, 1999), *reprinted in* [1999-2000 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 881-370; Letter from Julie L. Williams, Chief Counsel, dated January 26, 1999; Letter from Julie L. Williams, Chief Counsel, dated February 25, 1998.
- *Securities Exchanges.* National bank's operating subsidiary may join domestic exchanges and clearinghouses, provided that the bank and its subsidiaries do not guarantee or otherwise become liable for trades executed and/or cleared, the national bank does not guarantee or assume liability for the operating subsidiary, and the national bank complies with certain conditions. Interpretive Letter Nos. 624, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,506 (June 30, 1993); 629, *reprinted-in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,512 (July 2, 1993); 494, *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 58,707 (December 20, 1990); 293, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 58,707 (May 21, 1986).
- *Securities Lending.* National banks may lend securities from their own investment or trading accounts or from safekeeping, trust, or pension accounts of their customers. Banking Circular No. 196 (May 7, 1985).
- *Sweeps.* National banks may sweep funds from a corporate demand deposit account to a proprietary money market account. Interpretive Letter Nos. 760, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,124 (November 14, 1996), 688, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,003 (May 31, 1995).
- *Transfer Agent.* National banks may act as a transfer or fiscal agent and may guarantee the signature of an endorser or transferor of securities. 15 U.S.C. 78q-1, 12 CFR 9.20; Interpretive Letter (December 5, 1985).
- *Underwriting and Dealing.* National banks directly, and through operating subsidiaries, may underwrite, deal in, and act as agent in the purchase and sale of various types of securities, including U.S. government securities, municipal general obligation and revenue bonds, and asset-backed securities. 12 U.S.C. 24(Seventh); 12 CFR 12; 12 CFR 1.

### Derivatives

- *Derivatives Generally.* National banks and their operating subsidiaries may advise, structure, arrange, and execute transactions, as agent or principal, in connection with interest rate, basis

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rate, currency, currency coupon, and cash-settled commodity, commodity price index, equity and equity index swaps, and other related derivative products, such as caps, collars, floors, swaptions, forward rate agreements, and other similar products commonly known as derivatives. National banks may originate, trade, and make markets in these products. National banks may arrange matched swaps or enter into unmatched swaps on an individual or portfolio basis and may offset unmatched positions with exchange traded futures and options contracts or over-the-counter cash-settled options. National banks may provide financial advice and counseling for these activities as permissible incidental activities under 12 U.S.C. 24(Seventh). Interpretive Letter No. 725, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,040 (May 10, 1996).

- *Cash-Settled Options and Forwards on Equity securities.* A national bank may engage in cash-settled options and forwards on equity securities if part of the bank's customer-driven, non-proprietary financial intermediation business and if the bank has in place an appropriate risk management and measurement process for its derivative and hedging activities. OCC Interpretive Letter No. 949 (September 19, 2002).
- *Electricity Derivatives.* A national bank may expand its financial intermediation business to include customer-driven, electricity derivative transactions that involve transitory title transfers as an activity incidental to banking, provided the bank has established, to the satisfaction of the OCC, an appropriate risk measurement and management process. Interpretive Letter No. 962 (April 21, 2003).
- *Electricity Derivative and Hedging Activities.* A national bank may conduct customer-driven, cash-settled derivatives business based on electricity prices, and related hedging activities, as an extension of its existing energy-related commodities derivatives business, if the OCC is satisfied that it has an appropriate risk management process for its electricity derivative and hedging activities. OCC Interpretive Letter No. 937 (June 27, 2002).
- *Edge Corporation's Holding of Equity Securities for Hedging.* OCC's limit on a national bank's holding of equity securities for hedging purposes, to 5 percent of a class of stock of any one issuer, does not include securities held by the bank's Edge corporation subsidiary. OCC Interpretive Letter No. 924 (January 2, 2002).
- *Equity Derivative Transactions.* National banks may engage in equity derivative transactions. National banks may offer time deposit accounts, certificates of deposit, or contracts that pay interest at a rate based on the gain in designated equity indices, including the S&P 500 Index. National banks may engage in swap activities tied to equities and equity indices. A bank may take positions in equities to hedge bank permissible equity derivatives originated by customers for their independent and valid business purposes, if the bank: (1) provides the OCC information about its derivative business and proposed hedging activities, including their effectiveness and efficiency in reducing risks, (2) establishes that the bank has an appropriate risk management process in place, and (3) obtains supervisory approval from the OCC. *Decision of the Office of the Comptroller of the Currency on the Request by Chase Manhattan Bank, N.A. to Offer the Chase Market Index Investment Deposit Account* (1988); *Investment Company*

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*Institute v. Ludwig*, 884 F. Supp. 4 (D.D.C. 1995); Letter from Ellen Broadman, Director, Securities and Corporate Practices Division, OCC, to Barbara Monheit, Regional Counsel, FDIC (October 29, 1998); Interpretive Letter No. 652 (September 13, 1994), reprinted in [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,600; Interpretive Letter No. 892 (September 13, 2000), reprinted in [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-4.11.

- *Foreign Branch Membership in the London Clearinghouse.* A national bank, via its London branch, may join the London Clearinghouse as a SwapClear Member to clear interest derivative contracts. OCC Interpretive Letter No. 929 (February 11, 2002).
- *Hedging Credit Risk.* National banks may enter into credit derivative transactions. A national bank may use debt securities that are not investment grade debt securities or the credit equivalents thereof, to hedge bank permissible derivative, including credit derivative, transactions. Banking Bulletin 96-43 (August 12, 1996); Memorandum from Donald N. Lamson, Assistant Director, and Tena M. Alexander, Senior Attorney, Securities and Corporate Practices Division, dated July 26, 2000. A national bank may purchase cash-settled options on futures contracts on bank impermissible commodities to hedge the credit risk in its agricultural loan portfolio. Before a national bank may engage in the activity, the OCC must affirm that the bank has an effective risk management process in place. An effective risk management process includes Board supervision, managerial and staff expertise, comprehensive policies and operating procedures, risk identification, measurement and management information systems, as well as effective risk control functions that oversee and ensure the continuing appropriateness of the risk management process. Letter from Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, dated August 21, 2000.
- *Hedging Risks from Bank Permissible, Customer-Driven Derivative Transactions.* A national bank with an OCC-approved hedging program may execute cash- and physically-settled equity derivative transactions, and use below investment grade bonds to hedge risks arising from permissible derivative transactions done in accordance with the program. A national bank may hedge risks arising from a hedge that remain when a counterparty terminates the underlying hedged transaction. In limited circumstances a national bank may cross-hedge its equity derivatives (i.e., use one security or a basket of securities to hedge the risk arising from a transaction with another, different security, with similar characteristics). OCC Interpretive Letter No. 935 (May 14, 2002).
- *Holding Securities to Hedge Equity Derivatives Transactions.* Subject to supervisory clearance, national banks may take positions in equity securities solely to hedge bank permissible equity derivative transactions originated by customers for their independent business purposes, subject to certain qualifications and quantitative limits. The bank may not hold the securities for speculative purposes. Interpretive Letter No. 892 (September 8, 2000).

### *Tying*

- *Underwriting Services Conditioned on Bank's Letter of Credit.* A national bank may condition the offering of its securities underwriting services on the use of the bank's letter of

credit to secure the bond issue. The traditional bank product exception of 12 U.S.C. § 1972(1) permits a bank to tie any product or service to a loan, discount, deposit or trust service offered by that bank. The direct advance of funds to a borrower through a letter of credit is well recognized in the industry as a traditional bank product. Interpretive Letter No. 982 (September 29, 2003).

### ***Technology and Electronic Activities***

#### *Digital Certification*

- *Digital Certification.* National bank may act as a certification authority to enable subscribers to generate digital signatures that verify the identity of a sender of an electronic message. Conditional Approval No. 267, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,256 (January 12, 1998).
- *Multiple Bank Certification Authority Network System.* National banks may invest in a multibank venture to establish an entity that will support a multiple-bank certification authority network system. The central entity will act as the root CA for the sub-CA banks and will establish business rules, so that customers of any sub-CAs can quickly and easily obtain verification of a certificate issued by any other CA bank in the system. Conditional Approval No. 339 (November 16, 1999).

#### *Electronic Bill Payments*

##### **Dispensing Prepaid Alternate Media from ATMs**

- *Dispensing Prepaid Alternate Media.* National banks may dispense "alternate media" supplied by merchants, *i.e.*, public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, promotional and advertising materials, EBT script, and credit and debit cards, from ATM machines. Interpretive Letter No. 718, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,033 (March 14, 1996).

##### **Electronic Bill Presentment**

- *Electronic Bill Payment.* National banks may invest in an Internet electronic payment system as a complement to existing Internet bill presentment services. The system would also permit customers to make payments not linked to a presented bill. Conditional Approval No. 389, (May 19, 2000).
- *Electronic Bill Payment and Presentment Services through the Internet.* National banks may have a minority investment in limited liability companies that offer electronic bill payment and presentment services through the Internet. Conditional Approval No. 304 (March 5, 1999).
- *Electronic Interbank Switch.* National banks may invest in an electronic interbank switch to support electronic bill presentment services over the Internet. Conditional Approval No. 332 (October 18, 1999).

### **Electronic Data Interchange (EDI) Services**

- *Minority Interest in EDI Services.* National banks may acquire and hold a minority interest in companies that offer EDI services that allow businesses to send and receive payments, invoices, and orders worldwide. Interpretive Letter No. 732, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,049 (May 10, 1996).

### **Electronic Toll Collection**

- *Operation of an Electronic Toll Collection System.* National banks may enter a contract with a public authority to operate, on behalf of the public authority, an electronic toll collection system, because the activities involved are part of the business of banking (the collection and remittance of funds and payments) and thus permissible under 12 U.S.C. 24(Seventh). Interpretive Letter No. 731, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,048 (July 1, 1996).

### **Merchant Processing of Credit Cards Via Internet**

- *Access to Third-Party Vendors of Services for the Merchant Processing Industry.* National banks may provide, via Internet links, their merchant-processing customers with information and access to third-party vendors of services for the merchant processing industry. Corporate Decision No. 99-35 (October 20, 1999).
- *Electronic Transmission of Sales Information Relating to Merchant Processing.* National banks may permit its merchant customers to transmit their sales information over the Internet rather than physically submitting paper sales drafts or electronically transmitting their sales information by a dial terminal. Interpretive Letter (June 27, 1996).

### **Stored Value**

- *Closed Stored Value Card (SVC) Systems.* National banks may invest in LLC that will design, install, and support closed SVC systems at universities and other institutions. Interpretive Letter No 737, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,101 (August 19, 1996).
- *Creation, Sale, and Redemption of Stored Value Cards.* National banks may acquire membership interests in LLCs that operate an "open" stored value card system. This is permissible because the creation, sale, and redemption of electronic stored value in exchange for dollars are part of the business of banking. Interpretive Letter No. 220 (December 2, 1996); Interpretive Letter No. 855, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,312 (March 1, 1999).
- *Participation in a Stored Value Payment System.* A national bank operating subsidiary may invest in a joint venture that will develop and market a stored value system and pursue future opportunities involving stored value. The stored value program will initially focus on payroll distribution for employees without bank accounts, however, the joint venture will also develop and market stored value programs for merchants and others. Conditional Approval No. 568 (December 31, 2002)

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- *Sponsoring of a Stored Value System.* National bank financial subsidiaries may engage in a Stored Value Payment System. The national bank may sponsor the stored value systems and associated PIN Cards with certain ATM/POS financial networks. The transactions allow for cross border ATM transactions and purchases through deposits in an aggregate account to the benefit of the un-banked public. Conditional Approval No. 568. (December 31, 2002).

### *Electronic Commerce*

- *Advisory Services Regarding Electronic Transactional Services.* A national bank operating subsidiary may provide advisory and consulting services to customers who use the bank's electronic retail or wholesale transactional services; the advice would cover hardware, software, and other technologies necessary to use those services. The subsidiary may also provide advisory and consulting services to business customers on the hardware, software, and other technology necessary to enable those customers to process for themselves banking, economic, and financial information. Corporate Decision No. 2002-11 (June 28, 2002)
- *Collection of Corporate Card Use Data.* A national bank may establish an operating subsidiary that will purchase and then sell or license data processing software that automatically collects information on corporate card use and then merge the data, generate invoices, and approve and make payments. The Software also can be licensed to large corporate credit card users. Corporate Decision No. 2003-6 (March 17, 2003).
- *Commercial Web Site Hosting Services.* National banks can host commercially enabled Web sites for small retailers. This service will enable a retailer to operate a Web site that can receive and process credit card orders for its merchandise over the Internet. Interpretive Letter No. 856, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) 181, 313 (March 5, 1999).
- *Computer and Telecommunication Equipment Leasing.* A national bank operating subsidiary may conduct computer and telecommunication equipment leasing activities, including ancillary activities. The ancillary activities include the acquisition of equipment for lease, delivery and installation of leased equipment, sales of off-lease equipment, other occasional sales of equipment, arranging for maintenance contracts, and certain website development services. Corporate Decision No. 2002-13 (July 31, 2002).
- *Electronic Marketplace for NonFinancial Products over the Internet.* National banks may operate a Web site providing consumers and dealers with detailed information on used cars for sale that meet purchaser preferences. Site may also conduct electronic auctions for dealers. In connection with resulting sales and referrals, the bank will also offer a range of financial products related to vehicle purchases, such as loan and lease arrangements. Corporate Decision No. 97-60 (July 1, 1997).
- *Facilitation of Electronic Commerce Among "Member" Businesses.* National bank operating subsidiary may support and facilitate electronic commerce by and among a group of "member" businesses by using the Internet to assist member businesses: in transacting



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business with each other; to refer members to third party vendors that make products and services available at preferred rates; to enable members to exchange information with each other concerning possible joint activities; to host or support Web sites for members to facilitate their distribution of products and services; to develop and deploy a Web-based payment system for members; and, to deploy systems to track and store financial and transactional information. Incidental to those functions, the Internet site may also provide access to a limited amount of non-financial information that is necessary to attract persons to a virtual small site. Conditional Approval No. 369 (February 25, 2000).

- *Hyperlinks Between Bank Web Sites and Third-Party Sites.* National banks, in the exercise of their finder authority, may establish hyperlinks between their home pages and the Internet pages of third-party providers so that bank customers will be able to access those Web sites from the bank site. Conditional Approval No. 221 (December 3, 1996); Conditional Approval No. 347 (January 29, 2000) (National banks, under their finder authority, can obtain commitments in Web linking agreements with third parties to provide preferential pricing or other terms to bank customers referred to the third party through the bank site).
- *Provision of Electronic Payment Initiation Products.* A national bank may expand the activities of a company in which it holds a non-controlling interest so that the bank could use the company's certification authority network system to provide electronic payment initiation products to commercial buyers and sellers. These electronic payment initiation products will allow trading parties with no previous trading relationship to complete on-line purchases or trades and simultaneously arrange for payments through their existing banking relationships. The proposed system is a business-to-bank payment initiation service, not an interbank payment system. Corporate Decision No. 2002-4 (February 18, 2002).
- *Services to Internet Merchants.* A national bank may enable small business merchants to acquire a package of electronic services that allows the merchants to create Web stores and process electronic payments for purchases made over the Internet. The national bank, under its authority to act as a finder, can refer the merchants to another unaffiliated company that provides Website building software and Web hosting services. The bank can provide authorization and processing services necessary for the merchants to accept on-line credit and debit card payments in a secure environment. The bank can also provide the merchants with reports on the activity of their Web stores and answers to "frequently asked questions" on the use of the Web design software based upon answers prepared and supplied by the software company. Finally, the bank also may help other financial institutions to market as finders this package of electronic commerce services to their own merchant customers. Corporate Decision No. 2001-18 (July 3, 2001). See also Corporate Decision No. 2000-08 (June 1, 2000).
- *Trade Finance Facilitation.* A national bank may make a non-controlling investment in a company that, through its Internet site, facilitates trade financing between exporters and importers by arranging financing, obtaining credit insurance, and acting as escrow and paying agent. Conditional Approval No. 436 (December 19, 2000).
- *Virtual Malls.* National banks may operate a "virtual mall," i.e., a bank-hosted set of Web pages with a collection of links to third-party Web sites organized by product type and

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available to bank customers, so that they can shop for a range of financial and non-financial products and services via links to sites of third-party vendors and merchants can electronically confirm payment authorization before shipping goods. Interpretive Letter No. 875, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,369 (October 31, 1999).

- *Web Design and Development Services.* National banks, incidental to offering commercially engaged Web site hosting, may provide Web design and development services to their merchant customers. Interpretive Letter No. 875 (October 31, 1999).

### *Electronic Correspondent Services*

- *Electronic Correspondent Services.* National bank's operating subsidiary may sell computer network services and related hardware to other financial institutions as a correspondent banking service and, thus, part of the business of banking. A subsidiary's sale of full function hardware as part of a package of network services is "incidental" to those correspondent services. Interpretive Letter No. 754, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) 81,118 (November 6, 1996).

### *Electronic Storage and Safekeeping*

- *Electronic Storage and Safekeeping.* As a modern version of national banks' traditional safekeeping function, a national bank may provide an integrated, on-line information service for secure Web-based document storage and retrieval of documents and files containing personal information or valuable confidential trade or business information. Data can be stored on systems controlled by the bank and will be accessible by customers through the Internet or a dedicated line. Except for storage, access, and retrieval, the bank will not process or manipulate the information stored. The bank may also offer its customers the ability to grant third parties controlled access to the stored documents and files so as to enable the use of document collaboration tools. Conditional Approval No. 479 (July 27, 2001).
- *Excess Capacity.* National bank may use legitimate excess capacity to provide electronic storage and retrieval for external customers (i.e., non-national bank customers). Interpretive Letter No. 888 (March 14, 2000).

### *Internet Access Service*

- *Internet Access Service.* National bank's operating subsidiary may acquire and hold a minority interest in a limited liability company that supplies a network for home banking systems. Conditional Approval Letter No. 221 (December 4, 1996).
- *Internet Access and Sale of Excess Capacity.* National banks may provide full Internet access service in connection with their Internet banking services and, incidental to that, may sell good faith excess capacity in access service to persons who are not Internet banking customers. Interpretive Letter No. 742, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,106 (August 19, 1996).

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- *Provision of Internet Access to Bank Customers.* National bank operating subsidiary may provide Internet access to customers in its service area, as an incidental activity to the bank's provision of Internet banking services. Conditional Approval No. 409 (August 10, 2000).

### *Internet and PC Banking*

- *Affinity Marketing via the Internet.* A national bank may solicit "affinity" relationships with other groups and commercial entities to establish a private-label banking clientele. Exercising its authority to use multiple trade names, the bank can offer its products and services to customers or members of the affinity group under a private label through the Internet and establish individual divisions to provide products and services specific to the needs expressed by affinity groups. The bank must comply with OCC guidance with respect to co-brands and private labels. Conditional Approval No. 462 (April 4, 2001).
- *Internet Banking Powers.* National banks can offer Internet banking services and, in connection with those activities, provide full Internet access service. Interpretive Letter No. 742, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,106 (August 19, 1996).
- *Internet Banks.* National banks can deliver products and services to customers primarily through electronic means through a limited-purpose bank. Such banks can operate without any traditional banking offices. In addition to using the mail, customers can conduct their banking transactions by personal computer or by telephoning the automated voice response system or customer service line. Conditional Approval No. 253 (August 20, 1997).
- *Internet Bank, Small Business Focus.* National banks may establish Internet banks that focus on small businesses. Conditional Approval No. 347 (January 29, 2000).
- *Internet Credit Card Banks.* National banks can operate limited-purpose Internet credit card banks. Key features of one such bank include an entirely online credit application and approval process and an Internet direct marketing approach. Conditional Approval No. 312 (May 8, 1999).
- *Internet Full Service Banks.* National banks may be full service Internet banks. Internet-based national bank will not have any traditional banking offices, but will deliver products and services through a variety of electronic delivery channels. Customers will conduct transactions through ATMs, Internet via a transactional Web site, and via a toll free customer service line. These delivery channels are available at kiosks located on the premises of retail stores for which the bank has a joint marketing arrangement. The bank will operate under a brand name associated with the retail store partner. Conditional Approval No. 313 (July 9, 1999).
- *Mortgage Lending On-Line.* A national bank may deliver mortgage-lending products on-line to its retail customers through a variety of electronic delivery channels including the Internet, automated teller machines, and/or remote service units. Conditional Approval No. 462 (April 4, 2001).

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- *Provision of Internet-Based Services to Government Agencies.* National bank may acquire a non-controlling interest in a LLC that enters into contracts with federal, state, and local government agencies to provide a package of Internet-based services, including development of Web sites, hosting of Web sites, and providing related merchant processing services. Interpretive Letter No. 883 (March 3, 2000).

### *Software Development, Production and Licensing*

- *Investment in Companies that Develop, Distribute, and Support Software.* National banks may invest and take warrants in companies that develop, distribute, and support software that enables secure payments over the Internet. Interpretive Letter No. 868, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,362 (August 16, 1999).
- *Sale of Web Site Software and other Web Site Hosting Services.* National bank operating subsidiary may engage in the sale of Web site editing software as part of a bundle of Internet-based Web site hosting services for bank customers. The bank will also use the operating subsidiary to develop new software products to be used by the bank in conjunction with its transaction processing services and in developing its own Internet-based services. Corporate Decision No. 2000-01 (January 29, 2000).
- *Software Development and Production.* National bank may engage in joint ventures to develop and distribute home banking and financial management software to be distributed through the bank and through retail outlets. Interpretive Letter No. 677, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625 (June 28, 1995). *Sale or License of Corporate Credit Card Data Processing Software.* A national bank operating subsidiary may purchase for subsequent sale or license to unaffiliated companies that operate large corporate credit card programs, data processing software designed to monitor corporate credit card usage, merge usage data, generate invoices, and approve/make payments. Corporate Decision No. 2003-6 (March 17, 2003).

### ***Compliance***

- *Abusive Lending Practices.* Two advisory letters address the avoidance of abusive lending both in a bank's loan originations and in loans acquired through loan brokers or in loan purchase transactions. Guidance outlines the credit, legal, and other risks inherent in predatory lending, and provides detailed recommendations for banks to incorporate in their policies, procedures, and practices in order to minimize those risks. AL 2003-02, "Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices"; AL 2003-3, "Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans."
- *Agency Summary Judgment Motion Granted Regarding Challenge to Jointly Issued Consumer Privacy Regulations.* The U.S. District Court for the District of Columbia granted the summary judgment motion filed by the FTC, OCC, Federal Reserve Board, OTS, FDIC, and NCUA. The plaintiffs, who are in the business of selling consumer information, challenged the agencies' joint issuance of bank customer privacy regulations under the Gramm-Leach-Bliley Act as beyond the authority provided for under the Act and in violation

of plaintiffs' constitutional right to commercial free speech. Specifically at issue was whether the plaintiffs' sale of "credit header" information was subject to the regulations' restrictions and disclosure and reuse. Only one of the plaintiffs, TransUnion, has pursued an appeal before the D.C. Circuit. *Individual Reference Services Group, et al. v. FTC, OCC, et al* (D.D.C.) (April 30, 2001)

- *Community Reinvestment Act.* A national bank's contribution to the Louisiana National Guard's Job Challenge Program may be a qualified investment for Community Reinvestment Act (CRA) purposes. The contribution would sponsor a low- or moderate-income local student's participation in the Program, a skill-training program that selected students may enter after successful completion of the National Guard's Youth Challenge Program. Such a contribution would have a primary purpose of community development under the CRA rules because it supports a community service targeted to low- and moderate-income individuals, and would benefit the bank's assessment area. OCC Letter (September 11, 2002).
- *Disclosure of Customer Account Number to Insurance Marketer.* Under Gramm-Leach-Bliley Act (GLBA) privacy rules, financial institutions may not disclose customer account numbers to a marketer of insurance products, even if the customer has consented to such disclosure. As a general rule, GLBA prohibits the disclosure of account numbers to nonaffiliated third parties for use in marketing. This prohibition remains effective after the customer has accepted the offer to buy the product being sold. OCC Interpretive Letter No. 910 (May 25, 2001).
- *Obtaining Credit Reports in Business Loan Transactions.* Under the Fair Credit Reporting Act (FCRA), lenders need not obtain a consumer's consent before obtaining the consumer's credit report in connection with a business credit transaction where the individual is or will be personally liable on the loan, such as in the case of an individual proprietor, co-signer, or guarantor. The FCRA permits the furnishing of consumer reports to persons who intend to use them in connection with extensions of credit to the consumer, and this criterion is satisfied where the consumer may be liable on the loan. Interagency Letter (May 31, 2001). *See also* OCC Advisory Letter 2001-6 (July 6, 2001).
- *Overdraft Programs.* Certain overdraft programs, offered by third-party vendors and designed primarily to increase banks' fee income, raise legal, supervisory, and policy concerns. Supervisory concerns arise from the potential credit risk created by the overdraft loans and the bank's arrangements with the third-party vendor providing the product. Policy concerns arise because the programs may encourage customers to write "not sufficient funds" checks, thus promoting poor fiscal responsibility on the part of some consumers. These programs also may raise potential issues under the Truth in Lending Act, Truth in Savings Act, Electronic Fund Transfer Act, Equal Credit Opportunity Act, Federal Trade Commission Act, and Regulation O. OCC Interpretive Letter 914 (August 3, 2001).
- *Placing Loan Account Numbers on Mortgage-Related Documents.* Under the GLBA privacy rules, lenders may place the borrower's loan account number on mortgages, deeds of trust, and assignments and releases of mortgages that are then recorded in public records. This practice is not prohibited by GLBA's provisions on disclosing account numbers, which, as a general rule, ban the disclosure of account numbers to nonaffiliated third parties for use in

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marketing. In addition, this practice falls within the exception to GLBA's opt-out requirements for disclosures of information that are "necessary to effect, administer, or enforce the transaction" as that term is defined in GLBA. OCC Interpretive Letters Nos. 917 and 918 (September 4, 2001).

- *Unfair or Deceptive Acts or Practices.* In evaluating whether a national bank or its operating subsidiary has engaged in unfair or deceptive acts or practices, the OCC will utilize the legal standards that have been developed under the Federal Trade Commission Act. Potentially unfair or deceptive acts or practices also may raise issues under the Truth in Lending Act, the Equal Credit Opportunity Act, and other laws. National banks and their operating subsidiaries should take affirmative steps to avoid the legal and reputation risks that would ensue from engaging in unfair or deceptive acts or practices. OCC Advisory Letter 2002-3 (March 22, 2002).

### ***Investments<sup>1</sup>***

- *Acquisition of Preferred Stock of an Unaffiliated Company.* A national bank has authority to acquire and hold the preferred stock of an unaffiliated company, pursuant to its authority to discount and negotiate evidences of debt, where the preferred stock is in substance a debt obligation of the issuer. The bank acquired the preferred stock as partial consideration for the disposition of a loan portfolio to the company. The bank's existing holdings represent less than 5 percent of the bank's capital and surplus and are within applicable prudential standards and regulatory limits. OCC Interpretive Letter No. 941 (June 11, 2002).
- *Agricultural Cooperative.* Under Part 24, a national bank may purchase common stock in an agricultural cooperative, where the bank's liability was limited to the amount of its equity investment. The cooperative was initiated by a local economic development authority and local farmers and businesses as a way to promote the economic development of the area, and had received financial support from both the economic development authority and the Federal government. The cooperative also benefited low- and moderate-income individuals by creating permanent jobs for those individuals. Approval Letter (September 4, 2001), National bank Community Development Investments 2001 Directory.
- *Agricultural Credit Corporations.* National banks may purchase stock of a corporation organized to make loans to farmers and ranchers for agricultural purposes. An investment in such an agricultural credit corporation may not exceed 20 percent of a national bank's capital and surplus, unless the national bank owns at least 80 percent. 12 U.S.C. 24(Seventh).
- *Asset-Backed Securities.* National banks may invest up to 25 percent of capital and surplus in marketable investment grade securities that are fully secured by interests in a pool of loans to numerous obligors and in which a national bank may invest directly. 12 CFR 1.2(m), 1.3(f).

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<sup>1</sup> For investments in partnerships, note that subsidiaries of national banks may become general partners, but national banks may not.

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- *Banker's Acceptances.* National banks may invest in banker's acceptances created by other nonaffiliated banks without limit, if they are created in accordance with 12 U.S.C. 372, and are thus "eligible" for discount with a Federal Reserve bank. But section 372(b), (c) and (d) restrict investment in the aggregate amount of banker's acceptances created by any one bank. Holdings of "ineligible" banker's acceptances must be included in the purchasing bank's lending limit to the accepting bank. 12 U.S.C. 84; 12 CFR. 32.
- *Bankers' Banks.* National banks may invest in banker's banks, or their holding companies, in an amount up to 10 percent of the national bank's capital stock and unimpaired surplus. In addition, national banks may not hold more than 5 percent of the voting securities of a bankers' bank or holding company. 12 U.S.C. 24(Seventh). A bankers' bank may be organized as a national bank, and the OCC may waive requirements that are applicable to national banks in general if they are inappropriate for a bankers' bank and would impede the provision of its services. 12 U.S.C. 27(b); 12 CFR 5.20.
- *Bank Premises.* National banks may invest in bank premises without OCC approval, if (1) the aggregate amount of the investment is less than or equal to the national bank's *capital stock*; or (2) the aggregate amount of the investment is less than or equal to 150 percent of the national bank's *capital and surplus*, and the national bank is well-capitalized and has a CAMEL rating of 1 or 2, provided that the bank provides the OCC notice 30 days after this investment. Prior OCC approval is required for investments in bank premises that do not meet the above criteria, but the application may be deemed approved after 30 days, unless the OCC notifies the bank otherwise. 12 U.S.C. 29, 371d; 12 CFR 5.37, 7.1000; Conditional Approval No. 298 (December 15, 1998).
- *Bank Service Companies.* National banks may invest in bank service companies if the amount invested does not exceed 10 percent of the bank's capital and surplus and all investments in bank service companies do not exceed 5 percent of the national bank's assets. 12 U.S.C. 1862; 12 CFR 5.35.
- *Bank's Own Stock.* National banks may purchase treasury stock to fulfill a legitimate corporate purpose, including in connection with an employee stock purchase plan, directors qualifying shares, or a reverse stock split. 12 U.S.C. 83; Interpretive Letter No. 825, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,274 (March 16, 1998); Interpretive Letter No. 786, *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,213 (June 9, 1997); Interpretive Letter No. 660, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,608 (December 19, 1994). National banks may make loans on the security of their own shares pursuant to 12 U.S.C. 83 and 12 CFR 7.2019.
- *Business Trusts.* National banks may acquire certificates of participation in business trusts created to hold and manage a substantial portion of the bank's investment securities portfolio. Interpretive Letter No. 745, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,110 (August 27, 1996).
- *CD Investments up to 10% Investment Limit.* In connection with a request for prior approval of an affordable housing investment, the OCC approved a national bank's request to self-

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certify future affordable housing investments that would exceed 5 percent of its capital and surplus, up to a maximum of 10% of capital and surplus. The requirements of 12 CFR 24 relating to self-certification and all other requirements of the regulation will apply to the additional investments. Approval Letter (August 1, 2001), National bank Community Development Investments 2001 Directory.

- *Closed-End Mutual Fund.* National bank may purchase an equity interest in a closed-end mutual fund that finances affordable housing primarily for low- and moderate-income individuals. The fund is structured as a Business Development Company under the Investment Company Act of 1940. The fund purchases securities backed by loans to homebuyers with incomes below 80 percent of median income as well as loans to sponsors of multifamily housing units that use federal low-income housing tax credits or financing provided by HUD. The fund also invests in HUD-guaranteed securities that support community development in low-income areas. Approval of Bank's Self-Certification (April 20, 2001), National bank Community Development Investments 2001 Directory.
- *Collateralized Bond Obligations.* National banks may purchase marketable, investment grade collateralized bond obligations as Type III investments, even though certain of the underlying assets are not investment grade. Letter from Tena Alexander, Senior Attorney, dated August 3, 1999.
- *Collateralized Mortgage Obligations (CMOs).* National banks may purchase CMOs, which may be classified as Type 1, IV or V securities under 12 CFR 1.
- *Commercial Mortgage-Related Securities.* National banks may invest in certain commercial mortgage-backed securities. 12 U.S.C. 24(Seventh); 12 CFR 1.2(l).
- *Commercial Paper (i.e., Short-Term, Unsecured Promissory Notes Usually Issued by Companies to Meet Their Immediate Cash Needs).* National banks may hold commercial paper as loans, subject to the lending limits and loan underwriting safety and soundness standards. 12 U.S.C. 24(Seventh) and 84; 12 CFR 1 and 32. National banks may issue commercial paper. Interpretive Letter (May 4, 1973).
- *Community Reinvestment Act; Employment Fund.* National bank's proposed investment in a fund with the purpose of providing employment for low- and moderate-income individuals would be a qualified investment under the Community Reinvestment Act regulations. The fund's sole purpose is to invest in a limited liability company that will employ individuals the majority of whom will be low- and moderate-income, and who will be expected to qualify for various federal employment tax credits. The bank's investment will finance the hiring of employees who will perform various types of work, including clerical, retail, security, and building maintenance. The bank's investment will also help to finance the provision of ancillary services to facilitate employees' continued employment, such as job training, medical insurance, and employee assistance programs. Interpretive Letter No. 983 (October 24, 2003).
- *Community Reinvestment Act; New Market Tax Credits.* National bank's investment in connection with the New Markets Tax Credit program in a "Community Development Entity" (CDE), or a loan by a bank's CDE to a "Qualified Active Low-Income Community



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Business" or to another CDE, would receive consideration as a qualified investment or a community development loan, respectively, under the Community Reinvestment Act regulations. Interpretive Letter No. 984 (December 17, 2003).

- *Crime Prevention Programs in Nursing Homes.* A national bank may purchase preferred stock in a foundation that operates crime prevention programs in nursing homes. The foundation uses the bank's funds to purchase government and agency securities. Interest earned on these securities is used to fund crime prevention activities in nursing homes located in low- and moderate-income areas or occupied by low- and moderate-income residents. Notices dated November 17, 2003 and December 10, 2003; publication pending.
- *Connecticut Housing Finance Authority Bonds.* A national bank may purchase Connecticut Housing Finance Authority Bonds as Type I securities. They are subject to a 20 percent risk-weight under the OCC's risk-based capital regulation. Interpretive Letter No. 907 (February 1, 2001).
- *Consolidation of Public Welfare Investments into CDC.* National bank may consolidate its public welfare investment activities in an existing community development corporation ("CDC"). The CDC would manage its portfolio so that the majority of its investments qualify as public welfare investment under 12 CFR 24. Thus, the CDC would be primarily engaged in making public welfare investment, and the bank's investments in the CDC would be designed primarily to promote the public welfare, as required by 12 U.S.C. 24(Eleventh). Approval Letter (February 14, 2000).
- *Convertible Bonds.* A federal branch's purchases of bonds convertible into equity are permissible investments under Part 1 if the bonds are the credit equivalent of investment grade and marketable. A national bank may purchase bonds convertible into equity where it does not exercise the conversion feature. OCC Interpretive Letter No 930 (March 11, 2002)
- *Convertible Securities.* National banks may purchase securities convertible into stock, provided that convertibility is not at the option of the issuer. 12 CFR 1.6.
- *Corporate Debt Securities.* National banks may invest in any corporate debt security, provided the securities are marketable debt obligations that are not predominantly speculative in nature and total investments in any one issuer do not exceed 10 percent of the national bank's capital and surplus. 12 U.S.C. 24(Seventh); 12 CFR 1.
- *Corporations that Sell or Lease Check Cashing Machines.* National banks can hold a minority investment in a corporation that sells and leases check-cashing machines to third parties. Conditional Approval No. 307 (March 19, 1999).
- *Debt Rating Requirement for Establishing Financial Subsidiaries.* A national bank may rely on the rating assigned to the uninsured portion of the bank's certificates of deposit to satisfy the debt rating requirement necessary to establish a financial subsidiary under Section 121 of the Gramm-Leach-Bliley Act. The certificates of deposit qualify as "eligible debt" for purposes of the requirement under Section 121 that any of the 50 largest insured banks must have at least one investment grade rated issue of debt outstanding in order for the bank to establish a financial subsidiary. Interpretive Letter No. 981 (August 14, 2003).

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- *Delinquent Real Estate Tax Liens.* National banks may invest in delinquent real estate tax liens, where state law does not consider such liens to represent interests in real property. Interpretive Letter No. 717, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,032 (March 22, 1996).
- *Deposit Accounts.* National banks also may make deposits in other depository institutions, provided that total deposits in any nonmember bank do not exceed 10 percent of the national bank's capital and surplus. 12 U.S.C. 463. National banks may purchase notes issued by another bank, affiliate, or bank holding company. Interpretive Letter (October 12, 1970).
- *DPC Stock.* National banks may hold securities acquired through foreclosure or otherwise in the ordinary course of collecting a debt previously contracted (DPC). Such securities may be held 5 years, unless the OCC extends the holding period for up to another 5 years. 12 U.S.C. 24(Seventh) (incidental powers clause); Interpretive Letter No. 643, *reprinted in* Fed. Banking L. Rep. (CCH) ¶ 83, 551 (July 1, 1992); Interpretive Letter No. 511, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,213 (June 20, 1990).
- *Environmental Redevelopment Fund.* National bank may purchase member shares in a limited liability company (LLC) that primarily benefits low- and moderate-income areas. The LLC provides financing to private and public sector borrowers for environmental analysis and remediation of properties with environmental contamination issues for reuse to attract new and growing businesses, create jobs, provide affordable housing, and support other community development efforts. In addition to the LLC structure, the fund would also seek to protect investors by obtaining third-party insurance for projects that have residual risk, as well as pooled insurance for its portfolio. Approval of Bank's Self-Certification (July 18, 2001), National bank Community Development Investments 2001 Directory.
- *Fannie Mae and Freddie Mac Perpetual Preferred Stock.* A national bank may invest in perpetual preferred stock issued by Fannie Mae and Freddie Mac without limit, subject to safety and soundness considerations. OCC Interpretive Letter No. 931 (March 15, 2002)
- *Federal Employment Tax Credits.* A national bank may purchase an equity interest in a limited liability company (LLC) whose primary purpose is to invest in an operating company that employs individuals, which employment is expected to qualify the operating for federal employment tax credits, including the Work Opportunity Credit, the Welfare to Work Credit, and the Renewal Community Employment Credit. The bank represented that most of the individuals will be low- and moderate-income individuals, and some may reside in low- and moderate-income areas and/or in areas that have been targeted for redevelopment by the federal government as Renewal Communities. The LLC will assign the individuals to provide labor hours with companies, many of which operate in low- and moderate-income areas or in areas that have been targeted for redevelopment by a government agency. In addition, the LLC will provide job training, medical insurance, and employee assistance programs for its employees. Letter dated September 26, 2003; publication pending.
- *Financial Services Company Generating an Enhanced Yield Based on Foreign Tax Benefits.* A national bank operating subsidiary may invest in the preferred shares of a foreign domiciled company. A foreign domiciled bank will be the only other co-investor in the

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company. The foreign company will invest in long term assets of the national bank and extend long term credit to the foreign bank co-investor. The structure of the transactions achieves certain foreign tax benefits for the company, which ultimately accrue to its investors. Conditional Approval No. 595 (June 5, 2003).

- *Foreign Government Securities.* National banks may deal in, underwrite, or invest in securities of Canada and political subdivisions of Canada. 12 U.S.C. 24(Seventh); 12 CFR 1.2(i). National banks may also invest in the securities of other foreign governments, provided that the securities are marketable debt obligations that are not predominantly speculative in nature and no more than 10 percent of a national bank's capital and surplus is invested in the securities of any one foreign government. 12 CFR 1.2(e), (j).
- *Foundation.* A national bank may make an investment in a foundation that will use the funds to help capitalize a loan pool that makes loans that support affordable housing, community services, or permanent jobs for low- and moderate-income individuals, financing for small businesses; area revitalization or stabilization; or other activities, services or facilities that primarily promote the public welfare. The foundation is a community development financial institution certified by the U.S. Department of Treasury. Notice dated April 6, 2003; publication pending.
- *Fund to Acquire Limited Partnership Interests in Native American Affordable Housing.* National bank may made an investment in a fund created to acquire limited partnership interests in affordable rental housing properties that are located on, or near Native American reservations in Arizona, Wisconsin, Minnesota, Montana, North Dakota, South Dakota, and Wyoming. The fund's projects qualify for federal low-income housing tax credits and historic rehabilitation tax credits and primarily target low- and moderate-income persons and families. Each project is sponsored by an Indian Tribe, an affiliated Tribal Housing Association, Indian Housing Authority, Indian Tribally-Designated Housing Entity, Indian nonprofit housing corporation, or similar tribal entity. Approval Letter (April 10, 2000).
- *Hedging DPC Stock.* A national bank may purchase and hold options on the shares of stock of a company when the bank has acquired shares of that company in satisfaction of debts previously contracted. The bank would hold the options to hedge the market risk associated with changes in the value of the DPC shares. Interpretive Letter No. 961 (March 17, 2003).
- *Historic Tax Credit Investment.* National bank may invest in Historic Tax Credit investment in the Central Vermont Arts Center Limited Partnership. The Partnership will finance the renovation of a vacant historic property located in an economic revitalization area in Barre City, Vermont. The general partner and project sponsor is a nonprofit corporation that will also lease space for artists and operate an art gallery and teaching facility. The facility will support the establishment of small businesses by providing artists and artisans with studio space and an opportunity to market their work. The proposal was consistent with 12 CFR Part 24 because the project was intended to serve as the cornerstone for renewed small business investment and area revitalization, and the property was located in an area that the local government had targeted for revitalization. Approval Letter (October 19, 2000).
- *Housing Investments.* National banks may invest in various HUD-insured loans and obligations issued by government housing projects. National banks may also invest in state

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housing corporations, subject to a limit of five percent of the national bank's capital stock paid and unimpaired plus five percent of its unimpaired surplus fund. 12 U.S.C. 24(Seventh).

- *Insurance Company Products and Investment Funds, Hedging.* National bank subsidiaries may hold various insurance company products and investment funds containing bank-ineligible securities to hedge, on a dollar-for-dollar basis, the subsidiary's obligations to make payments to employees under certain deferred compensation plans. Interpretive Letter No. 878, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-375 (December 22, 1999).
- *Insurance, Investment in Company that Provides Marketing and Consulting Services to Insurance Agencies.* National bank's insurance agency subsidiaries may acquire a minority interest in a company that provides marketing and consulting services to insurance agencies. Conditional Approval No. 302 (January 21, 1999).
- *Insurance, Investment in Title Agency.* National bank's insurance subsidiary may acquire and hold a minority, noncontrolling interest in a title agency. The title agency can offer both lending and owner title insurance policies as agent, in connection with residential and commercial mortgage loans made by the bank, its affiliates, and by third parties and in cases where no loan is involved. The agency can also provide closing and escrow services and commercial and residential title abstracting services in connection with loans made by the bank, other lenders, and occasionally when no loan is involved. Conditional Approval No. 308 (April 8, 1999). [*Editor's Note: Subsequent changes in the law have affected a national bank's authority to engage in title insurance activities. See 15 U.S.C. §6713.*]
- *Insurance, Investment in Title Agency and Other Real-Estate Related Activities.* National bank's operating subsidiary may hold a minority investment in a company that engages in title insurance agency, real estate appraisal, loan closing, and other real estate loan-related and finder activities. Conditional Approval No. 332 (July 30, 1999).
- *Investment in Bank Holding Company as Consideration for Sale.* Where a group of financial institutions that jointly owned an EFT network was selling the network to a bank holding company, several national bank members of the group may acquire small equity interests in the bank holding company as consideration for their interests in the network. Interpretive Letter No. 890 (May 15, 2000).
- *Investments in Partnership with Native American Nations -* National bank's community development corporation (CDC) subsidiary may provide financial support and financial services to assist economic development efforts of Native American Nations directed toward low- and moderate-income communities. Specific proposed activities of the CDC include: (1) providing financial literacy services; (2) buying, selling, and leasing real estate, for example, in partnership with local housing authorities; and (3) providing, servicing, and maintaining ATMs and ATM and debit cards. Approval of Bank's Self-Certification (December 20, 2002), National bank Community Development Investments 2002 Directory.
- *Limited Interests in Private Investment Funds.* A national bank may acquire for limited periods of time, limited interests in private investment funds for which it serves as

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investment manager, as a way to structure its compensation. Because the bank's ownership of limited equity interests in the funds it advises is restricted to a context where the holding is integral to facilitating a recognized bank-permissible activity, such holdings are permissible as an incident to the bank-permissible investment management activities. OCC Interpretive Letter No. 940 (May 24, 2002)

- *Limited Purpose Bank.* A national bank may, pursuant to 12 U.S.C. § 24(7) and the four-part test for non-controlling equity investments by national banks, acquire and hold a non-controlling equity interest in a limited purpose, state-chartered bank that will limit its activities to those permissible for a bankers' bank, *i.e.*, the proposed bank will (1) take deposits from depository institutions; (2) buy and sell loan participations; (3) engage in lending transactions permissible for a banker's bank; and (4) provide correspondent services to depository institutions. Interpretive Letter No. 970 (June 25, 2003).
- *Merchant Processing.* Application by a national bank to establish an operating subsidiary to engage in merchant processing activities through a limited partnership. The subsidiary will serve as the General Partner and hold a 1% ownership interest in the limited partnership. A second affiliated national bank will be a limited partner and hold a 99% non-controlling ownership interest in the limited partnership. The limited partnership will engage in proprietary merchant services in which applications are handled on-line through a software application that enables the sales force to review the application in real time. Corporate Decisions Nos. 582 and 583 (March 12, 2003).
- *Money Market Preferred Stock.* National banks may invest in money market preferred stock as Type III investment securities, provided the investment is marketable and not predominantly speculative in nature. Interpretive Letter No. 781, *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,208 (April 9, 1997).
- *Mutual Fund Containing General Obligation and Municipal Revenue Bonds.* A national bank may invest in a mutual fund containing general obligation and municipal revenue bonds under 12 CFR 1.3(h)(2). The investment has a risk-weight dependent on the composition of the fund's assets, but in no event will the minimum risk-weight be less than 20%, and can be accounted for as either a "trading" or "available-for-sale" asset. Interpretive Letter No. 912 (July 3, 2001).
- *Mutual Fund Shares.* National banks may purchase for their own accounts shares of any "investment company," with certain limitations. Shares of investment companies whose portfolios contain investments subject to the limits of 12 U.S.C. 24 may only be held in an account not in excess of either: (1) the amount equal to the appropriate investment limit for each security in the investment company or applied to the aggregate amount of the bank's *pro rata* holdings of that security in the investment company and the national bank's direct holding of that security; or (2) the most stringent investment limitation that would apply to any of the securities in the investment company's portfolio if those securities were purchased directly by the national bank. 12 CFR 1.4(e).
- *Municipal Revenue Bonds.* Under 12 U.S.C. 24 (Seventh), as amended by the Gramm-Leach-Bliley Act, a well-capitalized national bank may underwrite and deal in municipal

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revenue bonds issued by or on behalf of Puerto Rico. Interpretive Letter No. 915 (August 15, 2001).

- *Noncontrolling Minority Interests (including limited liability companies)*. National banks may acquire noncontrolling minority investments in business entities if the entities: (1) engage in activities that are limited to those that are part of or incidental to the business of banking (or otherwise authorized for a national bank), (2) the national bank can prevent the company from engaging in activities that are not part of, or incidental to, the business of banking or be able to withdraw its investment, (3) the national bank's loss exposure is limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligation of the enterprise; and (4) the investment is convenient or useful to the bank in carrying out its business and is not a mere passive investment unrelated to that national bank's banking business. Conditional Approval No. 371 (March 20, 2000). The following are examples of these investments:
  - *Investment in LLC (Automobile Loans)*. National banks can acquire a noncontrolling investment, through an operating subsidiary, in an LLC that provides automobile loans. Loan customers are people, who purchase cars over the Internet from other, non-national bank investors in the LLC. Conditional Approval No. 321 (July 28, 1999).
  - *Investment in LLC (Cash Management, Electronic Payment, Information Reporting, and Data Processing Services)*. National bank's operating subsidiary can assume noncontrolling investments in limited liability companies that conduct cash management, electronic payment, information reporting, and data processing services. Conditional Approval Nos. 324 (August 17, 1999); 333 (Oct. 19, 1999).
  - *Investment in LLC (Credit Reporting Services)*. National bank's operating subsidiary can hold a minority interest in a limited partnership to provide credit reporting services to the bank, its subsidiaries, affiliates, and eventually to non-affiliated creditors. Conditional Approval No. 336 (November 2, 1999).
  - *Investment in LLC (Electronic Commerce)*. National banks may acquire minority, noncontrolling interests in LLCs that provide electronic commerce services and financial application software and related products. Interpretive Letter No. 289 (May 15, 1989).
  - *Investment in LLC (Loans to and Investments in Medium and Small-Sized Businesses)*. National banks can acquire noncontrolling ownership interests in LLCs that make loans to and qualifying investments in small- and medium-sized businesses and invest in a small business investment company ("SBIC"), which, in turn, will make loans and invest in securities permissible under the SBIC Act. Conditional Approval No. 305 (March 15, 1999).
    - A SBIC is a privately organized and managed venture capital firm that is licensed and regulated by the SBA. A SBIC provides equity capital, long-term loans, debt-equity investments, and management assistance to qualifying small businesses, subject to significant regulatory restrictions. A SBIC is subject to limitations on the size and type of small businesses in which it may invest. Companies eligible for SBIC investments must have a net worth of under \$18 million and under \$6 million in net

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income at the time the investment is made. A national bank's aggregate SBIC investments are statutorily limited to 5 percent of the bank's capital and surplus.

- Generally, a SBIC may invest in a variety of types of companies not limited to those that are financial in nature, but a SBIC may not invest in: other SBICS, finance and investment companies or leasing companies, unimproved real estate, companies with less than one-half of their assets and operations in the United States, passive or casual businesses (those not engaged in regular and continuous business operation), or companies that will use SBIC proceeds to invest in farmland.
- A SBIC may not have a controlling interest or own more than 50 percent of the voting equity of a company, in which it invests unless the SBIC has a plan of divestiture. In the latter case, the SBIC may have a controlling interest for up to seven years.
- A SBIC also must have experienced and qualified management, and to maintain diversification between a SBIC's investors and its management. In addition, a SBIC must conduct frequent investment valuations, file annual financial reports with the SBA, and submit to biennial compliance examinations by the SBA.
- *Investment in LLC (Origination of Residential Loans)*. National banks may make a direct, non-controlling investment in an LLC with an unaffiliated mortgage company as the other investor. The LLC can engage in the origination of residential mortgage loans with resale to investors in the secondary market. Interpretive Letter No. 853, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,310 (February 16, 1999).
- *Investment in LLC (Title Insurance)*. National banks can acquire a noncontrolling interest in an LLC that engages in title insurance agency activity, loan closing, and other activities in connection with consumer and commercial loans made by the bank or the bank's lending affiliate. Interpretive Letter No. 842, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,297 (September 28, 1998). [*Editor's Note: Subsequent changes in the law have affected a national bank's authority to engage in title insurance activities. See 15 U.S.C. §6713.*]
- *Other Issuers*. If an issuer does not fall within specified criteria for other categories of investment securities, a national bank may treat a debt security as an investment security for purposes of Part 1, if the national bank concludes, on the basis of estimates that the bank reasonably believes reliable, that the obligor will be able to satisfy its obligations under that security, and the national bank believes that the security may be sold with reasonable promptness at a price that corresponds reasonably to its fair value. The aggregate par value of these securities may not exceed 5 percent of the national bank's capital and surplus. 12 CFR 1.4(i), Interpretive Letter No. 779, *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,206 (April 3, 1997).
- *Performance Note Loans (PNLs)*. National banks may purchase PNLs, issued by affiliates of private mortgage insurers, as loans. A PNL is a debt security bearing a variable interest rate linked to the performance of the mortgage loans that the lender originated and the mortgage insurer insured. Interpretive Letter Nos. 833, *reprinted in* [1998-1999 Transfer Binder] Fed.

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Banking L. Rep. (CCH) ¶ 81,287 (September 4, 1998), 834, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,288 (July 8, 1998).

- *Private Investment Fund.* National banks may acquire for their own account beneficial interests in a privately offered investment fund that would invest in loans, cash and cash equivalents, and an offshore fund that invests solely in loans. National banks may hold interests in the Fund either as securities under the reliable estimates standard of Part 1 or as loan participations. Interpretive Letter No. 911 (June 4, 2001).
- *Public Welfare Investments.* National banks have express authority to invest, directly or indirectly (such as through community development corporations), in investments designed primarily to promote the public welfare. These investments are limited to 5 percent of the national bank's unimpaired capital stock (actually paid in) and surplus fund. However, the OCC may approve investments up to a total of 10 percent of unimpaired capital and surplus for national banks that are at least adequately capitalized, if the OCC determines that an investment over the five percent limit will pose no significant risk to the deposit insurance fund. In no case may a public welfare investment expose a national bank to unlimited liability. 12 U.S.C. 24(Eleventh).
- *Public Welfare Purpose.* By regulation, public welfare investments must primarily benefit low- and moderate-income individuals, low- and moderate income areas, or other areas targeted for redevelopment by local, state, tribal or Federal government (including Federal enterprise communities and Federal empowerment zones). 12 CFR 24.3(a). A majority of the activities of an investment must benefit the targeted beneficiaries in order for the activity to be designed primarily to promote the public welfare, but the remainder of the activities need not. Interpretive Letter No. 837, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,291 (September 4, 1998).
- *Public Welfare Activities.* The types of activities that are considered to be public welfare investments include, but may not be limited to, those that provide or support affordable housing, community services, or permanent jobs for low- or moderate-income individuals; equity or debt financing for small businesses; and area revitalization or stabilization. 12 CFR 24.3(a). For example, national banks may invest in limited partnerships investing in affordable housing projects approved for low-income housing tax credits. e.g., letter from Janice A. Booker, Director, Community Development Division to Yasumasa Gomi, Chairman of the Board, President and CEO, The Bank of California (December 22, 1992). A national bank also may make an equity investment in a real estate investment trust that focuses primarily on community development activities, such as making investments in and purchasing loans that will benefit low- and moderate-income individuals and areas. Letter from Janice A. Booker, Director, Community Development Division, to Michael E. Bleier, General Counsel, Mellon Bank (February 25, 1999). National banks may also invest in and form community partnerships with community development financial institutions. Letter from Janice A. Booker, Director, Community Development Division, to Larry Hawkins, President, Unity National bank (November 16, 1998).



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- *Purchase of Bonds and Other Tax Exempt Instruments Issued by Government Agencies.* A national bank may purchase preferred shares in a trust that acquires and owns tax-exempt participating and nonparticipating first mortgage bonds and other tax-exempt instruments that are issued by various state or local government, agencies or authorities. The proceeds from the bonds are used for financing affordable housing development and rehabilitation, and most of those properties also benefit from the use of federal low-income housing tax credits. Notices dated March 24, 2003 and September 30, 2003; publication pending.
- *Purchase of Shares in CDC Subsidiary of Affiliated National Bank.* Four affiliated national banks may each purchase shares in an existing community development corporation (CDC) subsidiary that previously had been formed and capitalized by a fifth affiliated national bank. As a result of the new investments, the CDC subsidiary expanded its products and services to the states that the new shareholders served. Approval of Banks' Self-Certifications (January 30, 2002; January 31, 2002; May 9, 2002; and May 9, 2002), National Bank Community Development Investments 2002 Directory.
- *Real Estate (Non-Thrift/Bank Premises).* Aside from property necessary for the transaction of its business, the authority of national banks to purchase and lease real estate has been limited to special circumstances, including purchasing and leasing real estate for municipal purposes (including purchasing vacant land for this purpose) and purchasing residences of bank employees who have been transferred. In addition, national banks may purchase, hold, and convey real estate as mortgaged to them or conveyed as security for or in satisfaction of debts previously contracted, and as purchased at sales under judgments, decrees, or mortgages held by a bank or to secure debts due to it. National bank may not hold real estate conveyed to it to satisfy debts previously contracted for longer than 5 years, unless a period of up to an additional 5 years is approved by the OCC. 12 U.S.C. 29; 12 CFR 7. 1000; 12 CFR 34; Interpretive Letter No. 847, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,302 (October 28, 1998).
- *Reinsurance Company.* Insurance agency operating subsidiary of a national bank may make a minority equity investment in a Bermuda reinsurance company that is necessary for the subsidiary to obtain liability insurance for itself. Interpretive Letter No. 965 (February 24, 2003).
- *Reinsurer, Holding Noncontrolling Interests.* National banks may hold a noncontrolling interest in an insurance company that reinsures mortgage life, mortgage accidental death, and mortgage disability insurance on loans originated by the lenders with an ownership interest in the insurance company. Interpretive Letter No. 835 *reprinted in* [1998-99 Transfer Binder] Fed. Banking L. Rep. (CCH) 81-289 (July 31, 1998).
- *Residential Mortgage-Related Securities.* National banks may invest in certain investment grade residential mortgage-related securities. 12 CFR 1.3(e).
- *Retention of Stock Holdings Resulting from Conversion.* Bank may retain shares of stock that it received as a result of being a policyholder of a mutual life insurance company that converted to stock form. The stock is not an impermissible purchase of stock, but a byproduct of the permissible activity of purchasing life insurance for the bank's needs.

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Divestiture of the stock will be required only if safety and soundness concerns arise in the future. This is an issue that many banks will face, as increasing numbers of life insurance companies “demutualize.” Interpretive Letter No. 905, January 29, 2001

- *Small Business Investments.* National banks may invest in investment grade small business-related securities that are fully secured by interests in a pool of loans to numerous obligors. National bank investments in securities of any one issuer rated investment grade in the third or fourth highest categories may not exceed 25 percent of the national bank's capital and surplus. In addition, national banks may invest in small business investment companies (SBICS) in an aggregate amount of up to 5 percent of the national bank's capital and surplus. 12 U.S.C. 24(Seventh); 12 CFR 1.3(a); Interpretive Letter No. 373, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,543 (November 13, 1986).
- *Streamlined Approval for CDC Investments in Connection with Thrift Conversion into National Bank.* Federal thrift may retain its existing CDC investments provided that they qualify as public welfare investments under 12 CFR 24 without a separate filing under 12 CFR 24. The OCC will review the CDC investments in connection with the conversion application and will determine whether the investment is approved in connection with the conversion decision. Letter (June 15, 2001). *Publish*
- *Trust Bank Stock.* National banks may establish operating subsidiaries to serve as a general partner in a partnership that will own a trust company. National banks may acquire a minority interest in a limited purpose trust bank. Interpretive Letter Nos. 697 *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,012 (November 15, 1995), 83 1, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,285 (June 8, 1998).
- *Trust Preferred Securities Purchased As Investment Securities.* National banks may invest in trust preferred securities that meet applicable rating and marketability requirements as Type III investment securities under 12 CFR I. Interpretive Letter No. 777, *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,204 (April 8, 1997).
- *Trust Preferred Securities Purchased Under Lending Authority.* A national bank may purchase under its lending authority, trust preferred securities that are not marketable and thus do not qualify as investment securities under Part I, subject to the lending limits of 12 U.S.C. 84 and the requirements of Banking Circular 181 (REV), Interpretive Letter No. 908 (April 23, 2001).
- *Stock in Life Insurance Underwriter.* National bank may accept and retain stock in a life insurance underwriter that it received as a result of being a policyholder of the company, which was converting from mutual to stock form ("demutualization"). Interpretive Letter 901 (June 29, 2000).
- *U.S. Government-Sponsored Corporation Securities.* National banks may invest, without limitation, in obligations of Fannie Mae, Ginnie Mae, Freddie Mac, Sallie Mae, FHLBanks, Federal Finance Bank, and Farmer Mac. 12 U.S.C. 24(Seventh). National banks may purchase preferred stock of Freddie Mac and Sallie Mae. Interpretive Letter (December 3, 1992); Interpretive Letter No. 577, *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L.

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Rep. (CCH) ¶ 83,347 (April 6, 1992). National banks may invest in the stock of FHLB, in excess of minimum membership requirements. Interpretive Letter No. 755, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,119 (October 3, 1996). National banks may purchase stock of Fannie Mae, Interpretive Letter No. 427 *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,651 (May 7, 1988), and Fannie Mae, 12 U.S.C. 1718(f). In addition, national banks may invest in obligations of the TVA, Postal Service, and various international development banks, provided investments in any one of these latter entities do not exceed 10 percent of capital and surplus. 12 U.S.C. 24 (Seventh); 12 CFR 1.20). National bank may hold up to 5 percent of its capital and surplus in stock of State Housing Corporations. 12 U.S.C. 24(Seventh).

- *U.S., State, and Local Government Securities.* National banks may invest in securities issued or guaranteed by the U.S. or any agency of the U.S., as well as general obligations of any state or political subdivision thereof and the Washington Metropolitan Area Transit Authority. 12 U.S.C. 24(Seventh); 12 CFR 1.
- *Use of New Markets Tax Credits.* National bank may invest in wholly owned subsidiary that, in turn, makes an investment in a fund that is certified by the U.S. Department of Treasury as a “community development entity.” The fund will provide debt and equity financing for retail, office, commercial, distribution, industrial mixed-use, and community facility projects in targeted low- and moderate-income areas. The fund is anticipated to earn Federal new markets tax credits that will be usable by the bank and other investors. Approval of Bank’s Self-Certification (August 28, 2002), National Bank Community Development Investments 2002 Directory.
- *Various Activities of CDC Subsidiary.* A national bank’s community development corporation (CDC) subsidiary may conduct various community and economic development activities that primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment by local, state, Federal, or tribal governments. The approved activities of the CDC include: (1) providing financing to a corporation that owns and operates a charter school, funded by the state, that educates “at-risk” students, who are primarily low- and moderate-income and have exhibited behavioral or drug problems in other schools; (2) providing financing at reduced rates to low- and moderate-income families that received subsidies under state and Federal government programs for the purchase of their first homes; (3) investing in an entity that renovated a commercial building leased to a state government agency that provides training to unemployed low- and moderate-income individuals and assists them in finding employment; (4) financing the education of a medical student who had committed to work after graduation for a facility that provides medical services to low-income families; (5) providing working capital for a convenience and hardware store in a low- and moderate-income community; and (6) investing in a fund that provides financing for developing and operating affordable housing and is anticipated to earn Federal low-income housing tax credits that will be usable by the bank. Approval of Bank’s Prior Approval Requests and Self-Certifications (April 16, 2002; May 3, 2002; May 3, 2002; July 18, 2002; September 23, 2002; and September 23, 2002), National Bank Community Development Investments 2002 Directory.

- *Warrants for Common Stock.* National banks may establish operating subsidiaries to acquire warrants for common stock. Conditional Approval No. 319 (July 26, 1999).

### ***Preemption***

- *In General.* Federal preemption of state law restrictions applies to activities of national banks whether conducted at branches or non-branch facilities (loan production offices (LPOs), deposit production offices (DPOs), automated teller machines (ATMs), remote service units (RSUs)) or through operations over the Internet.
  - *ATM Fees.* Local laws in California purporting to bar national banks from "surcharging" ATM users who are not bank account holders are preempted by the National bank Act, which authorizes national banks to provide ATM services and to charge for the services they provide. *Bank of America, N.A., et al. V. City and County of San Francisco, CA, et al.*, 215 F 3d 1132 (9<sup>th</sup> Cir., March 31, 2000), aff'g CC-99-4817-VRW (N.D. Ca. November 11, 1999).
  - *ATM Fees.* Two national banks and a savings and loan association brought suit challenging municipal ordinances prohibiting banks from charging ATM fees to non-depositors. After obtaining preliminary injunctive relief from the regulations, the banks obtained permanent injunctive relief from the district court. A panel of the U.S. Court of Appeals for the Ninth Circuit affirmed, holding that, as for national banks, the National bank Act and the OCC's regulations preempted the ordinances. A rehearing petition filed by the City and County of San Francisco was denied. OCC filed an amicus brief with the Ninth Circuit. *Bank of America, et al. v. City and County of San Francisco*, 309 F. 3d 551 (9<sup>th</sup> Cir. 2002).
  - *ATM Operations.* State laws in Massachusetts and that purport to restrict the ability of a national bank located elsewhere to establish and operate automated teller machines in those states are preempted. The Massachusetts law imposes a reciprocity requirement; Florida requires banks to be authorized to do business in Florida, which the Florida Banking interprets to mean, in the context of an out-of-state bank, a bank that has established a branch in Florida pursuant to Florida's branching laws. Interpretive Letter No. 939 (October 15, 2001).
  - *ATM Restrictions: Colorado.* Portions of the Colorado Electronic Funds Transfer Act prohibiting national banks from placing their names on ATMs and giving the state regulatory authority over national bank ATMs are preempted. Interpretive Letter No. 789, *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,216 (June 27, 1997).
  - *Affiliation.* States generally may not prevent or restrict national banks or their affiliates from affiliating with any entity, including a securities or insurance firm, as authorized by GLBA or any other federal law. 15 U.S.C. 6701 (as added by section 104 of GLBA).
  - *Annual Reports, Fees for Extension of Consumer Credit: Idaho.* Provisions of Idaho Consumer Credit Code Requiring annual reports and payment of fees as a condition to

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being permitted to extend consumer credit are preempted by federal law. Interpretive Letter (May 6, 1993).

- *Annuities: Connecticut.* A Connecticut statute that requires all sellers of variable annuities to be licensed by the State is preempted. Interpretive Letter No. 623, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,512 (May 10, 1993).
- *Annuities: Florida.* The anti-affiliation provisions of the Florida Insurance Code, and provisions requiring national banks to give notice and obtain authorization to engage in the sale of annuities, as well as implementing regulations, conflict with the authority of national banks to sell annuities as agent and are therefore preempted. Interpretive Letter (July 13, 1993).
- *Annuities: Texas.* Texas insurance licensing laws that prevent or significantly interfere with a national bank's authority to sell annuities as agent are preempted, but other state laws are not preempted; applicable federal securities laws apply to the sale of these products. Interpretive Letter No. 749, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,114 (September 13, 1996).
- *Applicability of Doctrine of Complete Preemption to Usury Suits Brought in State Court.* Reversing the 11<sup>th</sup> Circuit, the Supreme Court, in a 7-2 decision, held that a usury case brought against a national bank in state court could be removed to federal court under the doctrine of complete preemption. Complete preemption is a corollary to the well-pleaded complaint rule that a claim that falls within an exclusively federal cause of action necessarily presents a federal question warranting removal. *Beneficial National Bank v. Anderson*, 537 U.S. 1169 (2003).
- *Applicability of State Laws That Restrict Information Sharing with Affiliates.* A U.S. District Court held that provisions of the Fair Credit Reporting Act preempt local ordinances that impose restrictions on the sharing of confidential consumer information between financial institutions and their affiliates. As to the sharing of information with affiliates, the court decided that it need not address whether an express provision of the Gramm- Leach-Bliley Act also preempted the ordinances. However, as for the sharing of confidential consumer information with third parties, the court found that neither GLBA nor the National Bank Act preempts the ordinances. The OCC filed an amicus brief jointly with groups of bank amici and insurer amici. Upon appeal before the U.S. Court of Appeals for the Ninth Circuit, the defendant municipalities notified the Ninth Circuit that they had repealed the ordinances in dispute in the litigation and asked the court to dismiss the banks' appeal as moot and vacate the district court's decision in its entirety. The banks responded, agreeing that the appeal was moot, but that only that portion of the district court decision on appeal, the decision that section 104 of the GLBA did not preempt the municipal ordinances, should be vacated. *Bank of America v. Daly City*, 279 F.Supp. 2d 1118 (N.D. Cal. 2003).
- *Applicability of State Laws to National bank Operating Subsidiaries.* The OCC has issued a number of letters addressing the applicability of State laws with respect to activities conducted in national bank operating subsidiaries. These letters confirm that a particular subsidiary of a national bank is subject to the OCC's examination and

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supervision pursuant to 12 CFR § 5.34(e)(3); explain that, under 12 CFR § 7.4006, state laws apply to national bank operating subsidiaries to the same extent that those laws apply to the national bank itself; and conclude that State restrictions or conditions, including licensing requirements, do not apply to the national bank operating subsidiary. Letters were issued to appropriate State regulatory authorities (or to the bank or its counsel) with respect to laws in 8 States and 1 city including: Pennsylvania, Michigan, New Hampshire, Connecticut, Rhode Island, Iowa, Louisiana, Maine, and the City of Las Vegas, Nevada.

- *Auction of Certificates of Deposit Over the Internet.* Pennsylvania laws that purport to regulate the auction of certificates of deposit over the Internet, by requiring auctioneers to be licensed by the Pennsylvania Board of Auctioneer Examiners, pay a licensing fee, and keep records of sales of property at auction, are preempted because they conflict with federal law authorizing national banks to conduct the permissible activities of deposit-taking and marketing and OCC regulations authorizing national banks to use the Internet to do so. The state laws at issue also would violate the OCC's exclusive visitorial powers over national banks. Preemption determination (March 7, 2000). *Federal Register*, 65 Fed. Reg. 15037 (March 20, 2000).
- *Checking Accounts: New Jersey.* The New Jersey Consumer Checking Act is preempted. Interpretive Letter No. 572, reprinted in [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,342 (January 15, 1992).
- *Consumer Credit, Examination Fees: Idaho.* Provisions of the Idaho Consumer Credit Code that impose licensing requirements as a condition to extending consumer credit, recordkeeping and reporting requirements, and assessments of fees to defray the costs of supervision and examination are preempted. Interpretive Letter (February 9, 1995).
- *Contacts from State Officials.* Applicability of state laws to national banks and their operating subsidiaries — and the authority to enforce those laws — raise complex issues of both federal preemption and the statutory authority of the OCC as the supervisor and regulator of national banks. Because of the complexity of these issues, national banks should consult with the OCC if they are contacted by state officials seeking information that may constitute an attempt to exercise visitorial or enforcement powers over the bank. State officials are also encouraged to contact the OCC if they have information indicating that a national bank may be violating federal or applicable state law or if they seek information from a national bank. OCC Advisory Letter 2002-9 (November 25, 2002).
- *Credit Card Operations, Licensing, Visitation, and Fees: Iowa.* Provisions of the Iowa Lender Credit Card Act regarding state licensing, supervision, and permissible rates and fees for credit card lenders are preempted for national banks. Interpretive Letter (February 4, 1992).
- *Credit Cards Finance Charges: Massachusetts.* A Massachusetts law that requires the reporting of credit card finance charges and fees to the state is preempted. Interpretive Letter No. 616, reprinted in [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,456 (February 26, 1993).

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- *Debt Cancellation Contracts: Texas.* A Texas administrative interpretation that the Texas Credit Code prohibits national banks from offering debt cancellation contracts is preempted. Interpretive Letter (November 2, 1992).
- *Debt Cancellation Contracts and Debt Suspension Agreements (12 CFR Part 37).* The OCC published a final rule that addresses debt cancellation contracts and debt suspension agreements. The purposes of the customer protections are to facilitate customers' informed choice about whether to purchase debt cancellation contracts and debt suspension agreements, based on an understanding of the costs, benefits, and limitations of the products and to discourage inappropriate or abusive sales practices. The final rule also promotes safety and soundness by requiring national banks that provide these products to maintain adequate loss reserves. The final rule was published at 67 Fed. Reg. 58962 (Sept. 19, 2002). The OCC subsequently delayed, pending further action, the date for mandatory compliance with certain provisions of the rule for national banks offering debt cancellation or debt suspension products through a non-exclusive agent in connection with closed-end consumer credit. See 68 Fed. Reg. 35283 (June 13, 2003).
- *Determination and Order Preempting the Georgia Fair Lending Act (GFLA).* The OCC issued a Determination and Order in response to a request from National City Bank, National City Bank of Indiana, and their operating subsidiaries, National City Mortgage Company and First Franklin Financial Company. The request asked the OCC to determine whether the GFLA applied to the banks and their operating subsidiaries, and to issue an appropriate order. The OCC concluded that the provisions of the GFLA affecting national banks' real estate lending are preempted by Federal law and, accordingly, that the GFLA does not apply to National City or to any other national bank or national bank operating subsidiary that engages in real estate lending activities in Georgia. The Determination and Order was published in the Federal Register at 68 Fed. Reg. 46264 (Aug. 5, 2003).
- *Exportation of Interest Rates by National bank Operating Subsidiaries.* The OCC issued a letter confirming that a national bank operating subsidiary may export interest rates pursuant to 12 U.S.C. § 85 under the same terms and conditions applicable to its parent national bank. Letter from Julie L. Williams to Costas Avrakatos, Esq., Kirkpatrick & Lockhart. OCC Interpretive Letter 954 (December 16, 2002).
- *Exportation of Rates.* National banks located in more than one state may export interest rates (including any fees in connection with credit extension or availability) from one state to customers in another state. This "most-favored-lender" status allows national bank to export these rates from its main office state to customers in any state with no restrictions, and from a branch office state if certain conditions are met. 12 U.S.C. 85; 12 CFR 7.4001; Smiley v. Citibank, 517 US 735 (1996); Interpretive Letter No. 803, reprinted in [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,250 (October 7, 1997); Interpretive Letter No. 782, reprinted in 1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,209 (May 21, 1997).
- *Federal Branches: Illinois.* Illinois restrictions on the establishment of Federal branches do not limit the authority of the Comptroller to license federal branches of foreign banks

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in Illinois. Interpretive Letter No. 590, *reprinted in* [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,415 (June 18, 1992).

- *Fees and Charges.* National banks may establish noninterest charges and fees, including deposit account service charges and fees for other banking services, notwithstanding efforts by states or municipalities to restrict or limit national bank's fees and charges. 12 CFR 7.4002; Bank of America, N.A. v. San Francisco, No. C 99 4817 VRW (N.D. Ca.) (preliminary injunction granted Nov. 15, 1999).
- *Insurance.* As a general rule, states may not prevent or restrict national banks or their affiliates from engaging in any activities authorized or permitted under GLBA. Specifically in the area of insurance sales, solicitations, or cross-marketing activities, any state laws outside 13 specific safe harbors may be struck down, if they are not consistent with the traditional preemption principles set forth by the U.S. Supreme Court in Barnett Bank of Marion County, N.A. v. Nelson 517 U.S. 25 (1996). 15 U.S.C. 6701 (as added by section 104 of GLBA); Valley National bank v. Lavecchia, 59 F. Supp. 2d 432 (D. N.J. 1999); New York Bankers Association, Inc. v. Levin, 999 F. Supp. 716 (W.D. N.Y. 1998); Texas Bankers Association v. Bomer, 1997 U.S. Dist. LEXIS 13422 (W.D. Tex. Aug. 7, 1997).
- *Insurance Law Under the Gramm-Leach-Bliley Act, Massachusetts.* The OCC published its opinion that certain provisions of the Massachusetts Consumer Protection Act Relative to the Sale of Insurance by Banks are preempted under insurance preemption standards established by section 104 of the Gramm-Leach-Bliley Act. Specifically, Federal law preempts the provisions of Massachusetts law that purport to prohibit: (1) non-licensed bank personnel from referring a prospective customer to a licensed insurance agent or broker except upon an inquiry initiated by the customer; (2) a bank from compensating an employee for such a referral; and (3) a bank from telling a loan applicant that insurance products are available through the bank until the application is approved and, in the case of a loan secured by a mortgage on real property, until after the customer has accepted the bank's written commitment to extend credit. Preemption Determination, *Federal Register*, 67 Fed. Reg. 13405 (March 22, 2002). The Massachusetts Insurance Commissioner filed a petition in the First Circuit seeking review of that OCC preemption letter. The Court dismissed the petition, holding that the dispute between the OCC and the Commissioner was insufficient to create a justiciable case or controversy and should be deemed to fall outside the scope of the statutory provisions for judicial review. Bowler v. Hawke, 320 F.3d 59 (1<sup>st</sup> Cir. 2003).
- *Insurance law under the Gramm-Leach-Bliley Act, West Virginia.* The State of West Virginia and the State Insurance Commissioner filed a petition with the U.S. Court of Appeals for the Fourth Circuit seeking a review of an OCC Preemption Determination opining that certain provisions of the West Virginia Insurance Sales Consumer Protection Act are preempted by the National bank Act. In an unpublished opinion, a majority of the panel held that the petitioners had standing to bring the suit, that the OCC had implicit authority under the Gramm-Leach-Bliley Act to issue its preemption opinion, and that the statutes were preempted by the National bank Act. One of the judges dissented on the ground that the petition presented no justiciable case or controversy.



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Petitioners filed a petition for rehearing, which the OCC was ordered to answer, and which was ultimately denied. *Cline v. Hawke*, 51 Fed. Appx. 392 (4<sup>th</sup> Cir. 2002).

- *Limits on Sales of Reclaimed Leased Vehicles.* Certain provisions of Ohio law that purport to limit the ability of national banks to engage in the business of leasing automobiles are preempted. As interpreted by the Ohio Bureau of Motor Vehicles, Ohio law prohibits the public sale of reclaimed leased vehicles. Direct sales to the public are permitted in the case of repossessed vehicles, but vehicles reclaimed from a lessor for non-payment are not considered "repossessed" under Ohio law. As a result, national banks would be required to sell reclaimed leased vehicles at wholesale to persons licensed as dealers under state law. These requirements frustrate the ability of national banks to operate efficiently and in a manner consistent with safe and sound banking practices, and therefore would be preempted. Preemption Determination, *Federal Register*, 66 FR 23977 (May 10, 2001).
- *Loan Production Offices: Texas.* A Texas regulation requiring licensing of loan production offices as a condition for operation, and regulating the types of activities that can be conducted at such offices, is preempted. Interpretive Letter (May 15, 1995).
- *Mandatory Disclosures to Credit Card Holders.* A U.S. District Court held that the National bank Act preempts California laws requiring compliance with certain combinations of warnings to credit card holders regarding the possible consequences of paying only the minimum amount each month. OCC filed an amicus brief. *American Bankers Association v. Lockyer*, 239 F. Supp.2d 1000, 2002 WL 31941511 (E.D. Cal. 2002).
- *Mortgage Loan Restrictions: Pennsylvania.* Residential mortgage loan terms prescribed by the Pennsylvania Banking Code do not apply to national banks (applying former 12 CFR 34.2), and Pennsylvania state-chartered banks can choose to follow OCC regulations instead of state law (applying 12 U.S.C. 3803). Interpretive Letter (September 30, 1992).
- *Motor Vehicle Sales Finance Laws.* A Michigan statute, as interpreted by the Michigan Financial Institutions Bureau, that would limit the ability of national banks to use agents to make loans to finance motor vehicle sales is preempted. The state law would have had the effect of prohibiting national banks from charging interest at a rate permitted by their home state as authorized by 12 U.S.C. 85, and would have imposed a licensing requirement on national banks as a precondition to exercising permissible federal powers. Preemption Determination, *Federal Register*, 66 FR 28593 (May 23, 2001).
- *Multistate Fiduciary Operations.* The OCC issued a letter to a national bank that concluded that (i) a national bank's trust powers are governed by federal law and derive from 12 U.S.C. § 92a and Part 9 of the OCC's regulations; (ii) a national bank looks to the law of the state in which it acts in a fiduciary capacity in order to determine which capacities are permissible for the bank to act in for customers in that state as well as other states; and (iii) a state's authority to regulate instrumentalities of its own government (for example, by enacting state laws restricting the types of trustees, or other fiduciaries, those state government instrumentalities may appoint) does not affect the fiduciary authorities

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granted to national banks as a matter of federal law. Interpretive Letter No. 973 (August 12, 2003).

- *Naming and Advertising of Branch Facilities: Texas.* A Texas regulation concerning the "naming and advertising of branch facilities" is not preempted for national banks. Interpretive Letter No. 674, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,622 (June 9, 1995).
- *National, Non-National Branch Operations.* National banks may establish nationwide loan production offices (LPOs), deposit production offices (DPOs), ATMs, remote service units (RSUs), and other non-branch facilities, notwithstanding any state laws that attempt to regulate the location or operation of, or to impose licensing requirements on, those facilities. ATMs are excluded from the definition of a branch by statute. 12 U.S.C. 36(j), 1813(o). LPOs, DPOs, RSUs, and other non-branch offices do not constitute branches under OCC interpretations and/or court decisions. Bank One, Utah v. Guttau, 190 F.3d 844 (8th Cir. 1999); 12 CFR 7.4003-4005.
- *Not Sufficient Funds (NSF) Fees.* A national bank has authority, pursuant to 12 U.S.C. § 24(Seventh) and 12 CFR § 7.4002, to charge NSF fees where the fee resulted, in part, from the bank's policy of posting checks in order from the highest to the lowest amount. Letter from Julie L. Williams to John D. Wright, Vice President and Assistant General Counsel, Wells Fargo Bank (April 15, 2002).
- *Ohio Insurance Law.* A unanimous panel of the U.S. Court of Appeals for the Sixth Circuit, affirming the court below, held that 12 U.S.C. 92 preempts provisions of Ohio law that interfered with a national bank's power to sell insurance as agent in Ohio. The specific Ohio law provisions at issue were the Ohio "principal purpose test" and corporate organizational requirements that have the effect of significantly hindering a national bank's sale of insurance in Ohio. The case was remanded to the district court to address the issue of what effect, if any, the preemption provisions in the Gramm-Leach-Bliley Act have on the preemption analysis. The OCC filed amicus briefs with both the district and appellate courts. *Association of Banks in Insurance v. Duryee*, No. 99-3917 (6<sup>th</sup> Cir.) (November 1, 2001).
- *"On us" Check Cashing Fees.* National banks may charge a non-accountholder a convenience fee for using a bank teller to cash an "on us" check. An "on us" check is a check drawn on the bank by one of the bank's customers. The fee is essentially compensating the bank for making cash immediately available to the payee; otherwise the payee would have to wait for the check to clear through the payment system. The U.S. Court of Appeals for the Fifth Circuit, affirming a decision below, held that the National Bank Act, specifically, 12 U.S.C. § 24 (Seventh), preempts state law prohibiting the charging of fees for cashing on-us checks. *Wells Fargo v. James*, 321 F.3d 488 (5<sup>th</sup> Cir. 2003). The OCC participated as amicus in the litigation.
- *"On Us" Check Cashing Fees.* A national bank has authority, pursuant to 12 U.S.C. § 24(Seventh) and 12 CFR § 7.4002, to charge fees for the service of cashing checks drawn the bank and payable to non-accountholders of the bank. Letter from Julie L. Williams to John H. Huffstutler, Esq., Associate General Counsel, Bank of America

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Legal Department (October 8, 2002); and Letter from Julie L. Williams to J. Thomas Cardwell, Esquire, Akerman, Senterfitt & Eidson, P.A. (April 4, 2002).

- *“On Us” Check Cashing Fees.* National banks may charge a non-accountholder a convenience fee for using a bank teller to cash an “on us” check. An “on us” check is a check drawn on the bank by one of the bank’s customers. The fee is essentially compensating the bank for making cash immediately available to the payee; otherwise the payee would have to wait for the check to clear through the payment system. A U.S. District Court, with which the OCC filed an amicus brief, held that the National bank Act, specifically, 12 U.S.C. § 24 (Seventh), preempts state law prohibiting the charging of fees for cashing on-us checks. *Bank of America v. Sorrell*, Case No. 1:02 CV 1518 (GET)(N.D. Ga.). Earlier, another U.S. District Court issued a similar ruling as to a Texas state law prohibition on these fees. *Wells Fargo v. James*, Case No. 01-CA-538-JRN (W.D. Tex.), aff’d 321 F.3d 488, 5th Cir. No. 01-51298 (2003). The OCC participated as amicus in that litigation as well.
- *“On Us” Check Cashing Fees.* The federal district court for the western district of Texas granted a permanent injunction restraining the effectiveness of a new Texas statute purporting to prohibit banks from charging a teller's fee for cashing a check drawn on an account with that bank (i.e., an "on us" check cashing fee). The case was brought by several banks against the Texas banking commissioner. The OCC filed a brief amicus curie in favor of the plaintiff’s position. *Wells Fargo Bank Texas v. Randall James*, No. 01-CA-538-JRN (U.S.D.C., W.D. Tex.) (December 3, 2001).
- *Out-of-State Banks (Restrictions on Branching): Idaho.* An Idaho statute prohibiting out-of-state national banks from branching in Idaho, as permitted by federal law, is preempted. Corporate Decision 95-59 (November 20, 1995).
- *Out-of-State Banks (Restrictions on Branching): Kansas.* A Kansas statute prohibiting out-of-state national banks from branching in Kansas, as permitted by Federal law, is preempted. Corporate Decision 95-05, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 90,474 (February 16, 1995).
- *Out-of-State Banks (Restrictions on Branching): Maryland.* A Maryland statute prohibiting out-of-state national banks from branching in Maryland, as permitted by Federal law, is preempted. Corporate Decision 95-10 (March 8, 1995).
- *Out-of-State Banks (Restrictions on Branching): Texas.* Texas statutes that purport to prohibit an out-of-state national bank from having branches in Texas acquired pursuant to federal law are preempted. Corporate Decision 98-07, 99 OCC QJ LEXIS 22 (January 15, 1998).
- *Out-of-State Banks (Restrictions on Fiduciary Activities): Missouri.* Missouri statutes that prohibit an out-of-state national bank from exercising fiduciary powers in Missouri are preempted. Corporate Decision 98-16, 99 OCC QJ LEXIS 22 (March 4, 1998).

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- *Out-of-State Banks (Restrictions on Fiduciary Activity): Wisconsin.* A Wisconsin statute that prohibits an out-of-state national bank from acting as fiduciary is preempted. Corporate Decision 97-33, 98 OCC QJ LEXIS 6 (June 1, 1997).
- *Out-of-State Banks (Restrictions on Interstate Mergers, Transacting Business): Texas.* A Texas statute that purports to prohibit interstate mergers under the Riegle-Neal Act is preempted as to a merger authorized under other federal law (e.g., merger of an out-of-state national bank with branches in Texas and an in-state national bank pursuant to 12 U.S.C. 215a). In addition, a Texas constitutional provision that appears to prohibit out-of-state national banks from conducting business in Texas and a statute that prohibits out-of-state national banks from conducting fiduciary activities in Texas are preempted. Corporate Decision 98-19 (April 2, 1998).
- *Out-of-State Banks (Restrictions on Relocation): Kansas.* A Kansas statute prohibiting out-of-state national banks owned by bank holding companies from relocating into Kansas, as permitted by federal law, is preempted. Corporate Decision 95-28 (April 4, 1995).
- *Out-of-State Banks (Restrictions on Transacting Business): Kentucky.* A Kentucky statute prohibiting out-of-state national banks from transacting business in Kentucky is preempted. Corporate Decision 95-13 (March 14, 1995).
- *Out-of-State Banks (Restrictions on Transacting Business): West Virginia.* A West Virginia statute prohibiting out-of-state national banks from transacting business in West Virginia is preempted. Corporate Decision 95-24 (June 9, 1995).
- *Out-of-State Banks (Restrictions on Transacting Business): West Virginia.* A West Virginia statute prohibiting out-of-state national banks from transacting business in West Virginia is preempted. Corporate Decision 95-46 (September 11, 1995).
- *Out-of-State Banks (Restrictions on Transacting Business): West Virginia.* A West Virginia statute prohibiting out-of-state national banks from transacting business in West Virginia is preempted. Corporate Decision 96-06 (January 29, 1996).
- *Out-of-State Banks (Restrictions on Transacting Business, Branching): Connecticut.* Connecticut statutes prohibiting out-of-state national banks from transacting business in Connecticut, unless permitted under state law, requiring state approval for the merger of an out-of-state national bank with a Connecticut bank, and requiring state approval for branching in Connecticut by an out-of-state national bank, as permitted by federal law, are preempted. Corporate Decision 96-17 (March 27, 1996).
- *Out-of-State Banks (Restrictions on Transacting Business, Branching): West Virginia, Ohio.* A West Virginia statute prohibiting out-of-state national banks from transacting business in West Virginia is preempted and an Ohio law prohibiting out-of-state national banks from branching in Ohio, as permitted by Federal law, is preempted. Corporate Decision 95-50 (October 5, 1995).
- *Out-of-State Banks (Restrictions on Transacting Business, Mergers, and Branching): Connecticut.* Connecticut statutes prohibiting out-of-state national banks from

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transacting business in Connecticut, unless permitted under state law, requiring state approval for the merger of an out-of-state national bank with a Connecticut bank, and requiring state approval for branching in Connecticut by an out-of-state national bank, as permitted by federal law, are preempted. Corporate Decision 95-34 (July 26, 1995).

- *Real Estate Loans; ARMs.* National banks may make real estate loans under 12 U.S.C. 371 and 12 CFR 34.3 without regard to state law limitations concerning: (a) the amount of a loan in relation to the appraised value of the real estate, (b) the loan repayment schedule, (c) the term to maturity of the loan, (d) the amount of funds that may be loaned upon the security of the real estate, and (e) the covenants and restrictions that are required to qualify the leasehold as acceptable security for a real estate loan (12 CFR 34.4). In addition, national banks and their subsidiaries may make, sell, purchase, participate in, or otherwise deal in ARM loans and interests therein without regard to any state law limitations on those activities. 12 CFR 34.21.
- *Registrations, Fee Requirements, Mortgage Broker or Lender: Georgia.* Provisions of the Georgia Residential Mortgage Act that impose registration and fee requirements as a condition to transacting business directly or indirectly as mortgage brokers or mortgage lenders are preempted. Interpretive Letter No. 644, *reprinted in* [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,593 (March 24, 1994).
- *Registrations, Investment Advisor: Texas.* A Texas statute that requires a national bank to register with the state as an investment adviser before providing investment advisory services to its trust customers is preempted. Interpretive Letter No. 628, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,511 (July 19, 1993).
- *State Insurance Sales Law Under the Gramm-Leach-Bliley Act.* The Commonwealth of Massachusetts and its Commissioners of Insurance and Banks filed a petition with the U.S. Court of Appeals for the First Circuit seeking review of an OCC Preemption Determination opining that provisions of a state consumer protection statute regulating insurance sales, solicitations, and cross-marketing activities of banks in Massachusetts were preempted by the Gramm-Leach-Bliley Act. The panel held that the OCC's opinion letter did not give rise to a regulatory conflict between state and federal regulators meeting the "case and controversy" requirement for judicial review. *Bowler v. Hawke*, 320 F. 3d 59 (1<sup>st</sup> Cir. 2003). In an earlier opinion, the majority of a Fourth Circuit panel, facing essentially the same scenario, held that the State of West Virginia and the State Insurance Commissioner had standing to bring the suit, that the OCC had implicit authority under the GLBA to preempt state statutes, and that the statutes were preempted. One of the judges dissented and found lack of standing. *Cline v. Hawke*, 51 Fed. Appx. 392 (4<sup>th</sup> Cir. 2002), *cert. denied, Independent Ins. Agents and Brokers of America v. Hawke*, 124 S.Ct. 63 (2003).
- *State Insurance Sales Law under the Gramm-Leach-Bliley Act.* Certain provisions of West Virginia's Insurance Sales Consumer Protection Act are preempted under insurance preemption standards established by section 104 of the Gramm-Leach-Bliley Act. Federal law preempts some, but not all, of the provisions of the West Virginia Act. In particular, Federal law *does not preempt* the following provisions of the West Virginia Act with respect to national banks:

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- The prohibition against requiring or implying that the purchase of an insurance product from a bank is required as a condition of a loan;
- The prohibition against a bank offering an insurance product in combination with other products unless all of the products are available separately; and
- The requirement that, where insurance is required as a condition of obtaining a loan, the insurance and credit transactions be completed independently and through separate documents.
- The following provisions of the Act are preempted only in part:
  - The provisions prescribing the content of the disclosures that a bank is required to make in connection with the solicitation of an insurance product and the requirement that a bank that sells insurance obtain a written acknowledgment, in a separate document, from its insurance customer that certain disclosures were provided are *not* preempted.
  - However, the provisions regarding the manner and timing of certain required disclosures are preempted.

And the following provisions are preempted:

- The requirement that banks use separate employees for insurance solicitations;
- The restrictions on the timing of bank employees' referral or solicitation of insurance business from customers who have loan applications pending with the bank;
- The restrictions on sharing with bank affiliates information acquired by a financial institution in the course of a loan transaction to solicit or offer insurance; and
- The requirement that banks segregate the place of solicitation or sale of insurance so that it is readily distinguishable as separate and distinct from the deposit taking and lending areas.

Preemption Determination, *Federal Register*, 66 FR 51502 (October 9, 2001).

- *Sunday Operation: Alabama.* Alabama law prohibiting Sunday operations is preempted. Interpretive Letter No. 706, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,021 (January 18, 1996).
- *Trust operations.* State laws that prohibit or restrict national banks from soliciting, conducting, or operating a trust business through non-branch trust offices are preempted. This enables national banks to conduct a nationwide trust business notwithstanding branching requirements or state law prohibitions, restrictions, or licensing requirements in states in which the activities are being conducted through non-branch offices. 12 U.S.C. 92a; Interpretive Letter Nos. 872, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep.

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(CCH) ¶ 81,366 (October 28, 1999), 866, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,360 (October 8, 1999).

- *Usury: Arkansas.* A usury provision in the Arkansas constitution applies to national banks in the same manner as it applies to state banks, and therefore is not preempted. Letter (June 10, 1992).
- *Visitation, Generally.* In general, only the OCC may exercise visitatorial powers with respect to a national bank, such as conducting examinations, inspecting or requiring the production of books or records, or prosecuting enforcement actions. For that reason, except in the limited circumstances in which federal law grants express special authority to a state or other federal official, national banks have only one regulator, the OCC. 12 CFR 7.4000; National State Bank, Elizabeth, New Jersey v. Long, 630 F.2d 981 (3d Cir. 1980); First Union National bank v. Burke, 48 F. Supp. 2d 132 (D. Conn. 1999). The following are examples of preemption in connection with visitation:
  - *Visitation, Insurance Agency: New York.* New York law permitting State inspection of books and records of a national bank's insurance agency to determine compliance with applicable state law is not preempted. Letter (July 7, 1997).
  - *Visitation, Licensing, Brokerage: Iowa.* Provisions of the Iowa Uniform Securities Act requiring national banks performing discount brokerage activities to register with the state, and providing for state examination, are preempted. Letter (December 7, 1992).
  - *Visitation, Licensing, Credit Card Operations: Idaho, Wisconsin, and Wyoming.* Portions of the Idaho Credit Code (requiring credit card issuers, including national banks, to obtain licenses to issue credit cards to Idaho residents, and to be subject to visitation or enforcement by state officials), the Wisconsin Consumer Act (requiring national banks making certain consumer credit transactions to comply with notification requirements and to submit to visitation and enforcement by state officials), and the Wyoming Uniform Consumer Credit Code (containing similar visitation and enforcement provisions) are preempted. Interpretive Letter No. 614 (January 15, 1993).
  - *Visitation, Registration, Securities Brokerage: Nebraska.* Portions of the Nebraska Securities Act requiring national banks performing securities brokerage activities to register, and providing for state examination, are preempted. Interpretive Letter (February 1, 1993).
  - *Visitation, Subpoena: Texas.* A subpoena issued by the Texas House of Representatives seeking national bank books and records represents an attempted exercise of visitatorial powers by state authorities and is therefore preempted. Interpretive Letter (June 3, 1993).
  - *Visitorial Powers Over National Bank Operating Subsidiaries.* An interpretive letter explains OCC supervision of operating subsidiaries of national bank and the applicability of state law to operating subsidiaries. Interpretive Letter No. 971 (January 16, 2003). In two separate decisions, a U.S. District Court held that only the OCC may exercise visitatorial authority over the operating subsidiary of a national bank, and that the Depository Institutions Deregulatory and Monetary Control Act (DIDMCA) preempts state law that prohibits a home mortgage lender from receiving interest for more than one day prior to the

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date that the mortgage is recorded. *Wells Fargo, N.A. v. Boutris*, 252 F.Supp.2d 1065 (E.D. Cal. 2003); *National City Bank of Indiana v. Boutris*, 2003 WL 21536818 (E.D. Cal. July 2, 2003).

- *Visitorial Powers; State Licensing.* An operating subsidiary of a national bank is not required to be licensed under California law in order to engage in mortgage lending in the state. Interpretive Letter No. 957 (January 27, 2003).



*For More Information Please Contact*

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