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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

**Conditional Approval #303**  
**March 1999**

February 16, 1999

Mr. Michael J. Lamping  
President  
Champaign National Bank and Trust  
601 Scioto Street, P.O. Box 190  
Urbana, Ohio 43078-2134

Re: Application by Champaign National Bank and Trust, Urbana, Ohio, to establish a Wholly-owned Operating Subsidiary to acquire and hold a 50 percent Non-controlling Interest in a Limited Liability Company  
Application Control Number: 98-CE-08-0036

Dear Mr. Lamping:

This is in response to your letter to the Office of the Comptroller of the Currency (“OCC”), dated December 3, 1998, requesting approval for Champaign National Bank and Trust, Urbana, Ohio (“Bank”), through a wholly-owned subsidiary CNB Ventures, Inc. (“Subsidiary”), to acquire and hold a 50 percent non-controlling interest in Risk Management Financial Solutions of Ohio, Ltd. (“LLC”), an Ohio limited liability company.

The LLC will act as agent for various insurance companies in soliciting, procuring, receiving and forwarding applications for all kinds of insurance. In addition to acting as a general insurance agent, the LLC will also sell annuities and act as an agent in sale of securities. It will also provide insurance and planning services. For the reasons set forth below, the Bank’s operating subsidiary application is approved, subject to the conditions set forth below.

**PROPOSAL**

The Bank is forming a wholly-owned subsidiary, Subsidiary, to purchase and hold a 50 percent non-controlling interest in an existing company, LLC. The Bank will purchase the interest from its sole member, who will be the “managing member” of the LLC. The Bank’s investment in the LLC will be \$150,000. The LLC will act as agent in the sale of insurance, securities, and

annuities and will provide related advice. The LLC will comply with 12 U.S.C. §§ 24(Seventh) and 92, OCC Interpretive Letter No. 753, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,107 (November 4, 1996) (the “*First Union Letter*”), and Advisory Letter 96-8 (Guidance to National Banks on Insurance and Annuity Sales Activities, October, 8,1996).

The Subsidiary will be located at the Bank’s main office on 601 Scioto Street, Urbana, Ohio. For a period not to exceed six months, the LLC will be located at 6037 Frantz Road, #101, Dublin, Ohio. Within six months, in order to prepare suitable space and to provide an orderly transition for the agency’s existing customers, the LLC will be moved to an existing Bank branch location in the village of Shawnee Hills, 6151 Glick Road, Powell, Ohio.<sup>1</sup> As of the last decennial census, the village of Shawnee Hills had a population of 423 individuals.<sup>2</sup>

## **ANALYSIS**

The OCC has traditionally recognized the authority of national banks to organize and perform any of their lawful activities in a reasonable and convenient manner not prohibited by law. A national bank may engage in activities that are part of or incidental to the business of banking by means of an operating subsidiary. *See* 12 C.F.R. § 5.34(d)(1). Further, the OCC has permitted national banks to own, either directly or indirectly through an operating subsidiary, a non-controlling interest in an enterprise. The enterprise might be a limited partnership, a corporation, or a limited liability company.<sup>3</sup> In recent interpretive letters, the OCC has concluded that national banks are legally permitted to make a non-controlling investment in a limited liability company provided four criteria or standards are met.<sup>4</sup> These standards, which have been distilled from our previous decisions in the area of permissible non-controlling investments for national banks and their subsidiaries, are:

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<sup>1</sup> The LLC will be located in the village of Shawnee Hills, Ohio. Although the legal address of the property is in the village of Shawnee Hills, the postal address is in Powell, Ohio.

<sup>2</sup> As of the last decennial census, the village of Powell had a population of 2,154.

<sup>3</sup> *See also* 12 C.F.R. § 5.36(b). National banks are permitted to make various types of equity investments pursuant to 12 U.S.C. § 24(Seventh) and other statutes.

<sup>4</sup> *See* Interpretive Letter No. 692, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,007 (November 1, 1995), and No. 694, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,009 (December 13, 1995). In other recent letters, the OCC has permitted national banks to make a non-controlling investment in an enterprise other than an LLC, provided the investment satisfies these four standards. *See, e.g.*, Interpretive Letter No. 697, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,012 (November 15, 1995); Interpretive Letter No. 705, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,020 (October 25, 1995).

- (1) the activities of the entity or enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking;
- (2) the bank must be able to prevent the enterprise or entity from engaging in activities that do not meet the foregoing standard or be able to withdraw its investment;
- (3) the bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise; and
- (4) the investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.

Based upon the facts presented, the Bank's proposal satisfies these four standards.

1. *The activities of the entity or enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking.*

Our precedents on non-controlling ownership have recognized that the enterprise in which the bank holds an interest must confine its activities to those that are part of, or incidental to, the conduct of the banking business.<sup>5</sup>

The LLC will act as agent in the sale of insurance, securities, and annuities and will provide related advice. Twelve U.S.C. § 92 authorizes a national bank located and doing business in a place having a population of less than 5,000 to act as the agent for fire, life, or any other insurance company. The LLC's permanent office will be located in place of less than 5,000.<sup>6</sup> The Bank has represented that the insurance activities will be conducted in accordance with 12 U.S.C. § 92 and the *First Union Letter*. Further, the sale of securities as agent and providing related advice is also a permissible activity for a national bank under 12 U.S.C. § 24(Seventh). *See also*, 12 C.F.R. § 5.34(e)(3)(ii)(A)(activities eligible for expedited review). Finally, the sale of annuities is a permissible activity for a national bank under 12 U.S.C. § 24(Seventh). *See NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co.*, 513 U.S. 251 (1995). The Bank has represented that the Bank and the agency will comply with the *Interagency*

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<sup>5</sup> *See, e.g.*, Interpretive Letter No. 380, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,604 n.8 (December 29, 1986) (since a national bank can provide options clearing services to customers it can purchase stock in a corporation providing options clearing services); Letter from Robert B. Serino, Deputy Chief Counsel (November 9, 1992) (since the operation of an ATM network is "a fundamental part of the basic business of banking," an equity investment in a corporation operating such a network is permissible).

<sup>6</sup> The Bank has committed to relocate the LLC to an existing branch location in a place of less than 5,000 within six months. The OCC has previously permitted a bank to restructure and bring into compliance with national banking law an insurance subsidiary within two years. *See* Conditional Approval No. 288 (October 1998)(Application to merge Magna Bank, National Association, St. Louis, Missouri with and into Union Planters Bank, National Association, Memphis, Tennessee, under the charter of the latter: Application No. 98-SE-02-0059).

*Statement on Retail Sales of Nondeposit Products* (February 15, 1994)(which provides guidance to banks and their operating subsidiaries on the sale of nondeposit investment products) and *OCC Advisory Letter 96-8* (October 8, 1996)(which provides guidance to national banks on insurance and annuity sales activities). Thus, we conclude that the activities to be conducted by the LLC are part of, or incidental to, the business of banking. Therefore, the first standard is met.

2. *The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment.*

The activities of the enterprise in which a national bank may invest must be part of, or incidental to, the business of banking not only at the time the bank first acquires its ownership, but for as long as the bank has an ownership interest. This standard may be met if the Bank is able to exercise a veto power over the activities of the enterprise, or is able to dispose of its interest.<sup>7</sup>

Pursuant to the LLC Operating Agreement, the LLC may only engage in activities that are “part of, or incidental to, the business of banking,” as such phrase is interpreted by the OCC. Furthermore, the LLC Operating Agreement authorizes the Bank to dissolve the LLC or divest itself of its investment in the LLC in the event that the OCC makes a determination that the LLC’s activities are not part of, or incidental to, the business of banking. Therefore, the second standard is satisfied.

3. *The bank’s loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise.*

- a. *Loss exposure from a legal standpoint*

A primary concern of the OCC is that national banks should not be subjected to undue risk. Where an investing bank will not control the operations of the entity in which the bank holds an interest, it is important that the national bank’s investment not expose it to unlimited liability.

As a legal matter, investors in an Ohio limited liability company will not incur liability with respect to the liabilities or obligations of the limited liability company solely by reason of being a member or manager of the limited liability company.<sup>8</sup> The LLC Operating Agreement will not contain any clauses making the Bank liable for any obligations of the LLC, nor will the Bank guarantee or otherwise assume any liabilities of the LLC. Additionally, the operating subsidiary structure itself inherently provides some limitations on liability. In this instance, all of the Bank’s investment will

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<sup>7</sup> See, e.g., Interpretive Letter No. 711, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-026 (February 3, 1996); Interpretive Letter No. 625, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,507 (July 1, 1993).

<sup>8</sup> See Ohio Rev. Code § 1705.48.

be made through the Subsidiary. Thus, the Bank's loss exposure for the liabilities of the LLC will be limited solely to its capital contribution.

*b. Loss exposure from an accounting standpoint*

In assessing a bank's loss exposure as an accounting matter, the OCC has previously noted that the appropriate accounting treatment for a bank's 20-50 percent ownership share of investment in a limited liability company is to report it on an unconsolidated basis. Under the equity method of accounting, unless the bank has extended a loan to the entity, guaranteed any of its liabilities or has other financial obligations to the entity, losses are generally limited to the amount of the investment shown on the investor's books.<sup>9</sup>

The Bank will account for its investment in the LLC under the equity method of accounting. Thus, the Bank's loss from an accounting perspective would be limited to the amount invested in the LLC, and the Bank will not have any open-ended exposure to the liabilities of the LLC.

Therefore, for both legal and accounting purposes, the Bank's potential loss exposure relative to the LLC should be limited to the amount of its investment. Thus, the third standard is satisfied.

4. *The investment must be convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.*

A national bank's investment in an enterprise or entity that is not an operating subsidiary of the bank must also satisfy the requirement that the investment have a beneficial connection to the bank's business, *i.e.*, be convenient or useful to the investing bank's business activities, and not constitute a mere passive investment unrelated to that bank's banking business. Twelve U.S.C. § 24(Seventh) gives national banks incidental powers that are "necessary" to carry on the business of banking. "Necessary" has been judicially construed to mean "convenient or useful."<sup>10</sup> Our precedents on bank non-controlling investments have indicated that the investment must be convenient or useful to the bank in conducting *that bank's* business. The investment must benefit or facilitate that business and cannot be a mere passive or speculative investment.<sup>11</sup>

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<sup>9</sup> See generally, Accounting Principles Board, Op. 18 § 19 (1971) (equity method of accounting for investments in common stock). Interpretive Letter No. 692, *supra*.

<sup>10</sup> See *Arnold Tours, Inc. v. Camp*, 472 F.2d 427, 432 (1st Cir. 1972).

<sup>11</sup> See, e.g., Interpretive Letter No. 697, *supra*; Interpretive Letter No. 543, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,255 (February 13, 1991); Interpretive Letter No. 427, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,651 (May 9, 1988); Interpretive Letter No. 421, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,645 (March 14, 1988); Interpretive Letter No. 380, *supra*.

By entering the general insurance business, the Bank will be able to provide expanded services to its customers. The Bank believes that it will gain experience and expertise through its joint ownership in the LLC and will be able to leverage that experience and expertise for its own benefit and that of its customers. This arrangement also provides for access to a greater number of underwriters and limits the Bank's risk in entering the business. Finally, by entering the business, the Bank will realize immediate cost savings through decreases in commissions paid for its own insurance policies. For these reasons, the investment is convenient and useful to the Bank in carrying out its business and is not a mere passive investment. Thus, the fourth standard is satisfied.

### **Conclusion**

Based upon the information and representations you have provided, and for the reasons discussed above, we conclude that the Bank may establish the Subsidiary to acquire and hold a non-controlling minority interest in the LLC in the manner and as described herein, subject to the following conditions:

1. the LLC will engage only in activities that are part of, or incidental to, the business of banking;
2. the Bank will have veto power over any activities and major decisions of the LLC that are inconsistent with condition number one, or will withdraw from the LLC in the event they engage in an activity that is inconsistent with condition number one;
3. the Bank will account for its investment in the LLC under the equity method of accounting; and
4. the LLC will be subject to OCC supervision, regulation, and examination.

Please be advised that the conditions of this approval are deemed to be "conditions imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 U.S.C. § 1818 and, as such, may be enforced in proceedings under applicable law.

This approval is granted based on a thorough review of all information available, including the representations and commitments made in the application and by Bank representatives.

If you have any further questions, you may contact Christina N. Trojan-Masnyk, Senior Attorney, at (312) 360-8805 or Carolina Ledesma, Licensing Analyst, at (312) 360-8867.

Sincerely,

/s/

Julie L. Williams  
Chief Counsel