



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #98-13
March 1998

February 9, 1998

Mr. William W. Templeton
Counsel
Legal Department
Fleet Financial Group
50 Kennedy Plaza
Providence, R.I. 02903

Re: Fleet National Bank, Providence, Rhode Island/Operating Subsidiary Notice

Dear Mr. Templeton:

This is in response to your December 5, 1997 letter to Richard Erb, Licensing Manager, requesting OCC approval of the proposal by Fleet National Bank, Providence, Rhode Island ("Fleet" or "Bank") to acquire and hold as an operating subsidiary Benova, Inc. ("Benova"), a company engaged in providing medical insurance cost information, benefits counseling, premium collection and disbursement, and related activities. Based on the information and representations you provided and the reasons discussed below, the Bank's request is approved.

FACTS

Benova is a closely held company based in Portland, Oregon. Fleet has entered into an agreement to acquire Benova, subject to OCC approval of this application. Under the terms of the agreement, Benova will be held as a wholly-owned subsidiary of an existing operating subsidiary, AFSA Data Corporation ("AFSA"). AFSA, in turn, is a wholly-owned subsidiary of Fleet which engages in student loan servicing and related activities.

As a benefits counselor, Benova contracts with the federal government through the Health Care Financial Administration ("HCFA") and with state governments to provide Medicare and Medicaid enrollment counseling to program beneficiaries. Benova works with the contracting agencies to identify individuals eligible to participate in these programs, and provides counseling to new participants by explaining the programs and the health plan choices available to them. Counseling, provided through the use of a toll-free number, includes explaining the differences between managed care and fee-for-service plans, identifying the specific plans available to the beneficiary and enrolling callers in the plans they select. These activities

require staff possessing both a detailed knowledge of health insurance programs, including Medicare and Medicaid, and well-developed communications skills.

Recent changes in social security legislation have prompted plans to have Benova expand its activities to add premium collection and disbursement activities to the services it currently offers. In August 1997, Title XXI of the Social Security Act (added to existing law by the Balanced Budget Act of 1997, P.L. No. 105-33, sec. 4901, 111 Stat. 552 (1997)) expanded health insurance coverage for previously uninsured children. Unlike the Medicaid program, this new program for children contemplates cost sharing by the beneficiary. Therefore, the various state welfare agencies will probably design and implement programs under Title XXI that require beneficiaries to pay, on a sliding scale, a portion of the premium charged by health maintenance organizations. It is anticipated that the need for contractors who can provide assistance in handling these insurance premiums will grow as this new children's health insurance program is implemented nationwide. Benova plans to take advantage of this opportunity and expand its services to include the handling of premiums and disbursements on behalf of state government agencies.

The Bank also anticipates that the acquisition of Benova will facilitate the expansion of AFSA's technological capability. Although Benova and AFSA will continue to operate separately, Benova will be responsible for certain common automated systems. Chief among these is a personal computer-based system called Smart Telephone Agent Referral and Response System ("STARRS"), which will allow both AFSA and Benova to track telephone call topics, callers, and responses. Benova employees will be responsible for maintaining the information content and call center procedures for the STARRS system for both Benova and AFSA.¹

DISCUSSION

The services proposed to be provided by Benova following the planned acquisition are all aspects of well-recognized banking activities previously approved by the OCC: (1) financial planning and counseling; (2) billing and claims processing; and (3) acting as a finder. National banks may engage in activities that are part of or incidental to the business of banking by means of an operating subsidiary. 12 C.F.R. § 5.34(d).

¹As provided by OCC Interpretive Ruling No. 7.1019, "Furnishing of products and services by electronic means," a national bank may use electronic technology to perform any otherwise permissible banking activity. Therefore, to the extent that Benova's activities are otherwise permissible for national banks and their operating subsidiaries, the use of the STARRS system in furtherance of these activities is also permissible.

Financial Planning and Counseling

It is well established that national banks have the power to provide financial advice and counseling to their customers as part of or incidental to the business of banking pursuant to 12 U.S.C. § 24(Seventh). See, e.g., Interpretive Letter No. 137, reprinted in [1981-1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,218 (Dec. 27, 1979); Letter from Judy Walter, Senior Deputy Comptroller for National Operations (July 17, 1986) (unpublished). In reliance on this authority, the OCC has also stated that it is permissible for national banks to offer employee benefit consulting services to corporations wishing to establish qualified benefit plans. Letter from William B. Glidden, Assistant Director, Legal Advisory Services Division (Oct. 6, 1987) (unpublished).

Benova is a health benefits counselor. As discussed above, Benova provides its callers with a variety of information about Medicare and Medicaid benefits and related programs. It provides specific information and advice that callers may use to assess their health care needs and related expenses. It answers questions regarding federal and state health insurance regulations. Some of the questions addressed, such as the eligibility requirements for entitlement programs and the different costs, benefits, copayments, and deductibles of managed care versus fee for service plans, can bear directly on a caller's budget and financial plans. Benova's expertise in Medicare and Medicaid benefits and enrollment requirements enables it to assist its clients in their own financial and retirement planning. Benova does not charge callers for answering these questions; it is compensated under a contract with the state or federal agencies that administer the programs.

Benova's activities in the area of health benefits counseling are aspects of the financial planning and employee benefit consulting services that have been previously deemed permissible for national banks and their subsidiaries. Since health care coverage and expenses are a significant and necessary component of an individual's financial and retirement planning, individuals planning their financial future will accordingly seek information regarding available health coverage options. Similarly, it is reasonable that national banks should wish to meet customer demand for comprehensive financial planning services by being in a position to answer customers' questions about a category of expenses common to nearly every individual's budget.

Payments and Claims Processing

It is well established that national banks may provide billing, collection and claims-processing services as an activity incidental to the express authority to process payment instruments for customers. Interpretive Letter No. 712, reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-027 (Feb. 29, 1996); Interpretive Letter No. 718, reprinted in [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,033 (March 14, 1996). The OCC has stated that it is permissible for national banks to fill out and submit insurance claim

forms because such an activity is substantially similar to providing billing services. For example, a 1993 letter stated:

The Bank's physician customers look to the insurance companies as potential third-party payors for the services provided to the patients. To obtain payment, the physicians submit claim forms identifying the patient, date of service, the patient's insurance identification number, the services rendered, and the amount charged for those services. This is substantially the same information that national banks would deal with in providing billing services to physicians. Moreover, the process of filling out claim forms according to the physicians' instructions is similar to preparing bills. Therefore, I believe that preparing the insurance forms is simply a variation of previously approved billing services and a permissible activity for national banks. Letter from Horace Sneed, Senior Attorney (Dec. 6, 1993) (unpublished).

This precedent makes clear that the proposed Benova activities in collecting premiums or copayments from participants in Medicare, Medicaid, and similar government health insurance plans are recognized as incidental to banking and within the scope of permissible national bank activities. Collecting premiums from Medicaid users, for example, and remitting the funds to the appropriate governmental agency, is substantially similar to providing billing services on behalf of the private clients referred to in Interpretive Letter No. 712 and the precedents cited therein. The OCC's December 6, 1993 letter, quoted above, further made clear that the permissibility of such activities extends to the filling out and submission of insurance claim forms.

Finder Activity

As described above, Benova provides a toll-free telephone number for use by individuals who seek information about or wish to enroll in Medicare, Medicaid, or some other federal- or state-sponsored health insurance program. Benefit counselors respond to these telephone inquiries by providing a variety of information. If a caller wishes to enroll in a particular program, the counselor can provide instruction and assistance with the enrollment process, including help with the appropriate enrollment forms. The Benova counselors do not represent or act as agent for either the caller or the particular program. The caller does not pay for such services. Further, since Benova's contract with the relevant governmental agencies provides for compensation either as a fixed sum or on a per-caller basis, there is no incentive to enroll callers in any particular plan.

Benova's role in bringing callers together with providers of health care programs is properly characterized as a finder activity. The permissibility of a national bank acting as a finder to bring together buyers and sellers of various types of products and services is specifically set forth in Interpretive Ruling 7.1002, 12 C.F.R. § 7.1002. The OCC has confirmed the permissibility of national banks acting as finders in several interpretive letters. For example,

in Interpretive Letter No. 653, reprinted in [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (Dec. 22, 1994), the OCC stated that a national bank, acting through an operating subsidiary, might act as finder with respect to certain insurance services. The OCC noted that it has “historically permitted national banks to make inquiries as to interest, arrange a meeting of the interested parties, and provide information pertinent to the meeting of the buyer and seller.”² The OCC has approved national banks or their subsidiaries acting as finders in several other contexts. See, e.g., Interpretive Letter No. 567, reprinted in [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,337 (Oct. 29, 1991) (finder services for personal property leasing); Interpretive Letter No. 566, reprinted in [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,320 (Dec. 2, 1991) (finder services for insurance coverage); Interpretive Letter No. 437, reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) at ¶ 85,661 (Jul. 27, 1988) (selling tax auditing representation services to customers).

CONCLUSION

Based upon the facts as described, I conclude that the activities proposed to be conducted by Benova following its acquisition by Fleet are permissible activities for a national bank and its operating subsidiaries. Accordingly, the Bank’s application is approved.

Sincerely,

/s/

Julie L. Williams
Chief Counsel

ACN# 97 ML 08 0033

²See also Interpretive Letter No. 472, reprinted in [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,008 (Mar. 2, 1989); Letter from James Kane, District Counsel, Central District Office (Oct. 24, 1985) (unpublished).