



**Comptroller of the Currency
Administrator of National Banks**

Washington, DC 20219

January 21, 1999

**Conditional Approval #302
February 1999**

Bill H. Abney, Esq.
Union Planters Bank, N.A.
Legal Division
P.O. Box 387
Memphis, TN 38147

Re: Application of Union Planters Bank, N.A., Memphis, TN (Bank) to Acquire a Noncontrolling Interest in a Corporation Through an Existing Operating Subsidiary
Application Control No. 1998-SE-08-0050

Dear Mr. Abney:

This letter responds to the application filed by Union Planters Bank, N.A. ("Bank") for the Bank's operating subsidiary, Union Planters Insurance Agency ("Agency"), to acquire and hold a 22 percent interest in MarTech, Inc. ("Company"). The Company provides marketing and consulting services to insurance agencies. For the reasons set forth below, the application is approved subject to the conditions set forth herein.

I. *Background*

The Agency is an operating subsidiary of the Bank that conducts activities pursuant to 12 U.S.C. § 92. The Agency proposes to acquire and hold a 22 percent interest in the Company,¹ a privately held corporation.² The Company currently offers marketing systems and consulting

¹ After the Agency acquires its interest, the three individuals who currently own the Company would each own 26 percent of the Company.

² The three individuals recently incorporated the Company in Ohio; however, the individuals have been operating the business through a Mississippi corporation. The Mississippi corporation will enter into a licensing agreement with the Company so that the Company may market the products and services described herein.

services to insurance agencies, primarily independent general agents.³ Specifically, the Company offers two turnkey marketing products to insurance agencies:

- One marketing system, called Commercial Lines Marketing AutoPilot Sales System, is designed to aid the agent in selling commercial insurance products. It currently generates about eighty percent of the Company's revenues. The Company provides marketing materials and computer software for use by the independent insurance agent. The computer software identifies potential customers on the basis of selected criteria (such as a particular industry or a specified business size) and assists in systematically tracking prospects and reviewing existing customer insurance.
- The second system, called Personal Lines Marketing AutoPilot Sales System, helps the agent sell personal insurance products. The Company provides marketing materials that the agent could distribute in connection with personal insurance products, and computer software. The computer software facilitates direct mail marketing and assists in systematically tracking prospects and reviewing existing customer insurance.

Both systems are designed to make automated marketing techniques simple and affordable to the independent insurance agent. Systems are licensed to the agent and are coupled with ongoing support from the Company.

In addition to these turnkey products, the Company provides consulting services to insurance agencies in connection with recruiting, hiring, and training insurance sales professionals. The Company has developed and markets a number of educational videotapes for insurance sales professionals, and provides printed educational materials, sales and skills assessment, and other materials useful in the management of insurance personnel. In addition to continuing these activities, the Bank intends to use the Company's services for the Bank's own insurance agencies, in connection with recruiting and training insurance agents and developing marketing plans and strategies.

II. Discussion

The Agency's purchase of a 22% interest in the Company raises the issue of the authority of a national bank to hold a minority, noncontrolling interest in an enterprise. In a variety of circumstances the OCC has permitted national banks to own, either directly, or indirectly

³ The Bank represents that the Bank, the Company, and the Company's employees are not licensed, and would not be required to be licensed, as insurance agents based on the Company's activities. The Bank has also represented that the Bank, the Agency, and the Company will comply with any applicable state laws.

through an operating subsidiary, a minority interest in an entity. The entity may take different forms, including a limited partnership, a corporation, or a limited liability company.⁴

The OCC has determined that minority, noncontrolling investments are legally permitted provided that four criteria or standards are met. These standards, which have been distilled from our previous decisions in the area of permissible minority investments for national banks and their subsidiaries, are: (1) the activities of the enterprise in which the bank invests 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 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. Each of these standards is discussed below and applied to the proposed investment by Agency.

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 minority stock ownership have recognized that the enterprise in which the bank takes an equity interest must confine its activities to those that are part of, or incidental to, the business of banking.⁵ In the present case, the interest in the Company will be held through an existing general insurance agency owned by the Bank pursuant to 12 U.S.C. § 92.⁶ Section 92 specifically 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 by "soliciting and selling insurance" and "collecting premiums."

⁴ See Interpretive Letters No. 819, reprinted in [1997-98] Fed. Banking L. Rep. (CCH) ¶ 81-268 (Jan. 20, 1998); No. 815, reprinted in [1997-98] Fed. Banking L. Rep. (CCH) ¶ 81-263 (Dec. 2, 1997); No. 737, reprinted in [1996-97 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-101 (Aug. 19, 1996); No. 732, reprinted in [1995-96 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-049 (May 10, 1996); No. 694, reprinted in [1995-96 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-009 (Dec. 13, 1995); No. 697, reprinted in [1995-96 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-012 (Nov. 15, 1995); and No. 692, reprinted in [1995-96 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-007 (Nov. 1, 1995).

⁵ See, e.g., Letter from Robert B. Serino, Deputy Chief Counsel (Nov. 9, 1992) (since the operation of an ATM network is "a fundamental part of the basic business of banking," an equity investment in such a network is permissible); Interpretive Letter No. 380, reprinted in [1988-89 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,604 n.8 (Dec. 29, 1986) (since a national bank can provide options clearing services to customers, it can purchase stock in a corporation providing options clearing services).

⁶ Ownership of a noncontrolling interest in an entity by an operating subsidiary is permissible. See Interpretive Letter 697, *supra*.

A bank agency established under section 92 “may seek the same market range and use the same marketing tools and facilities as generally available for a licensed insurance agency.”⁷ The Bank represents that the Company’s activities involve traditional forms of marketing and administrative activities for insurance agencies.⁸ Many of the activities of the Company are currently performed by the Agency. For example, the Agency has a systematic method of tracking and reviewing existing customer insurance and methods of expanding customer relationships. The Agency also engages in training sales personnel with respect to various insurance products marketed by the Agency. Finally, the Bank also represents that other insurance providers in the United States conduct the same activities as are performed by the Company.⁹ These factors all clearly support a finding that the proposed activities are part of the insurance agency business, and therefore are permissible pursuant to section 92. Thus, we conclude that the activities to be conducted by the Company are activities that are part of, or incidental to, the business of banking.

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.¹⁰ This ensures that the bank will not become involved in impermissible activities.

⁷ OCC Interpretive Letter No. 753, *reprinted in* [1996-97 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-107 (November 4, 1996).

⁸ See Edward E. Graves and Lynn Hayes, eds., MCGILL’S LIFE INSURANCE, 627-28 (The American College, 1994)(noting that new agents are required to follow a training program that is supervised by agency management and that “technical support is given to producers in the form of computer-generated policy illustrations, computer analysis of client finances, computer controlled sales and performance measuring, and word-processed mailings. In more computer literate operations, computers are also used for maintaining client information databases, prospecting among existing policyholders, and policy creation. Advanced sales support is provided to help producers sell a product . . . which they are not familiar or that requires special knowledge.”).

⁹ For example, the Bank has identified a large agency which has an in-house “university” that provides consulting services similar to the Company and which also has a software product similar to the Company’s product that tracks insurance prospects. The Bank has also identified a consulting firm similar to the Company that provides management systems and special automation products for insurance agents. This firm is owned by several insurance providers. Finally, the Bank has identified another consulting firm offering products similar to the Company , which uses the services of professional agents.

¹⁰ See, e.g., Interpretive Letter No. 711, *reprinted in* [1995-96 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-026 (February 3, 1996); Interpretive Letter No. 625, *reprinted in* [1993-94 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,507 (July 1, 1993).

The Bank has provided the Subscription Agreement and the Close Corporation and Stock Buy/Sell Agreement (“Buy/Sell Agreement”) which set forth the understandings among the parties.¹¹ Both agreements contain provisions that so long as the Agency is a shareholder, the Company will engage only in activities that are part of or incidental to the business of banking. The Company’s Code of Regulations will affirmatively reflect this restriction. Furthermore, the Buy/Sell Agreement calls for the Bank to dispose of its interest in the Company if the Company engages in any activities that are not part of, or incidental to, the business of banking and obligates the individual shareholders and the Company (or at least one of them) to buy those shares.¹² 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, stockholders of a corporation in Ohio do not incur liability for either the obligations or liabilities of the corporation solely through their stock ownership. Ohio Rev. Code Ann. § 1701 *et seq.* Thus, the Agency’s, and hence the Bank’s, loss exposure for the liabilities of the Company will be limited by statute.

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 minority investment is to report it as an unconsolidated entity under the equity method of accounting. Under this method, losses are generally limited to the amount of the investment shown on the investor’s books.¹³

As proposed, the Agency will have a 22 percent ownership interest in the Company. The Agency will account for its investment in the Company under the equity method of accounting.

¹¹ The Buy/Sell Agreement is subject to the provisions of Section 1701.591 of the Ohio Revised Code, Ohio Rev. Code Ann § 1701.591 (Anderson 1998), which governs closely held corporations.

¹² Section 6.06 of the Buy/Sell Agreement requires the individual shareholders to purchase the shares in the event the Company is unable to do so.

¹³ See generally, Accounting Principles Board, Op. 18, §19 (1971) (equity method of accounting for investments in common stock); Interpretive Letter No. 692, *supra*. In accordance with Accounting Principles Board, Op. 18, the bank’s equity interest in the minority investment’s losses are not recognized beyond the amount invested (including any advances or loans) unless the bank has guaranteed obligations of the minority investment or is otherwise committed to provide further financial support.

Thus, the Agency's loss from an accounting perspective would be limited to the amount invested in the Company and neither the Agency nor the Bank will have any open-ended liability for the obligations of the Company.

Therefore, for both legal and accounting purposes, the Bank's potential loss exposure relative to the Company should be limited to the amount of its Agency's investment in Company. Since that exposure will be quantifiable and controllable, the third standard is satisfied.

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.*

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.” See *Arnold Tours, Inc. v. Camp*, 472 F.2d 427, 432 (1st Cir. 1972). 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.¹⁴

The Bank engages in insurance activities through certain subsidiaries. In connection with these activities, the Bank or its subsidiaries are required to recruit and train their insurance professionals, develop marketing programs and strategies, and continually work with their sales staff to assess and improve their skills. The Bank believes that it will gain considerable beneficial expertise through using Company services within the Bank’s own insurance business. Selling these services to third parties will also benefit the Agency and the Bank by generating fee income. For these reasons, the Agency’s investment in the Company 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.

III. Conclusion

Based upon the information and representations you have provided, and for the reasons discussed above, the OCC finds that the Bank may acquire and hold a noncontrolling interest in the Company in the manner and as described herein. Accordingly, the OCC approves the Bank’s application, subject to the following conditions:

1. the Company 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 Company that are inconsistent with condition number one, or will withdraw from the Company in the event it engages in an activity that is inconsistent with condition number one;
3. the Bank will account for its investment in the Company under the equity method of accounting; and

¹⁴ See, e.g., Interpretive Letter No. 697, *supra*; Interpretive Letter No. 543, reprinted in [1990-91 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,255 (February 13, 1991); Interpretive Letter No. 427, reprinted in [1988-89 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,651 (May 9, 1988); Interpretive Letter No. 421, reprinted in [1988-89 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,645 (March 14, 1988); Interpretive Letter No. 380, *supra*.

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

If you have any questions, please contact Nancy Worth, Senior Attorney, Securities and Corporate Practices at 202-874-5210; Linda Gottfried, Senior Attorney, Bank Activities and Structure, at 202-874-5300; or Robert Sihler, Licensing Expert, at 202-874-5060.

Sincerely,

/s/

Julie L. Williams
Chief Counsel