



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Conditional Approval #319
August 1999

July 26, 1999

Mr. Thomas E. Reiss
Senior Counsel
Michigan National Corporation
P.O. Box 9065
Farmington Hills, Michigan 48333-9065

Re: Request by Michigan National Bank to Acquire Ownership Interests in CheckFree Corporation from Integrion Financial Network, L.L.C.
Application Control Nos. 99-WO-08-0013

Dear Mr. Reiss:

This is in response to the operating subsidiary application ("Application") by Michigan National Bank, Farmington, Michigan, ("Bank"). Bank currently owns a membership interest in Integrion Financial Network, L.L.C. ("Integrion") indirectly through its wholly-owned operating subsidiary MNB Interactive Services, Inc. ("Operating Subsidiary"). Integrion has entered into a series of agreements with CheckFree Holdings Corporation¹ ("CheckFree") pursuant to which Integrion holds warrants to acquire shares of CheckFree common stock ("CheckFree Warrants").²

¹ CheckFree Holdings Corporation was formerly known as CheckFree Corporation.

² The OCC previously granted the Bank, as well as several other national banks, approval to invest in Integrion through operating subsidiaries. OCC Conditional Approval No. 221 (December 4, 1996) ("Integrion Decision"). More recently, the OCC has granted approval to various national banking associations, including Bank, to retain their ownership interests in Integrion following Integrion's acquisition of the CheckFree Warrants. OCC Conditional Approval No. 289 (October 2, 1998) ("CheckFree Decision"). The CheckFree Decision contained the representation from the Integrion owner banks that they would seek OCC approval before acquiring interests in Check Free either through their respective operating subsidiaries or directly. Because this proposal would result in the indirect acquisition of interests in CheckFree, the present Application has been filed. This acquisition is part of a restructuring of membership interests in Integrion. The restructuring would result in Bank no longer holding an ownership interest in Integrion. For a detailed description of the organization and activities of Integrion and CheckFree, please refer to the Integrion and CheckFree Decisions.

Bank currently receives Internet transactional services from Integrion. Integrion's services rely on the provision of services by CheckFree to Integrion. Bank intends to divest its indirect ownership interest in Integrion. As part of its divestiture of interests in Integrion, Bank is entitled to withdraw the Bank's share of the CheckFree warrants held by Integrion. In order for Bank to withdraw these warrants, Bank is applying to the OCC to permit Bank to hold the CheckFree stock in Bank's Operating Subsidiary until it may dispose of the stock.³ Bank will continue to have a service agreement with Integrion, whereby Integrion continues to provide the Bank with Internet transactional services until June 30, 2000.

This request is submitted pursuant to 12 C.F.R. § 5.34. For the reasons discussed below, the Application is approved, subject to the conditions set forth herein. Please note that our response is solely directed to Bank's indirect investment in CheckFree and not to any other agreement and activities that Bank may contemplate with Integrion or CheckFree.

B. Analysis

A national bank 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. In a variety of circumstances, the OCC has permitted national banks to own, either directly, or indirectly through an operating subsidiary, a minority interest in an enterprise.⁴ The OCC has concluded that national banks are legally permitted to make a minority investment in a company provided the following four criteria or standards are met:⁵

- (1) The activities of the 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 from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment.

³ Pursuant to the CheckFree Decision, the OCC has treated the acquisition of the CheckFree warrants as if the warrants were fully exercised so that there is no need to seek further approval if the warrants are exercised. In this Application, Bank has represented that it intends to exercise these warrants upon receipt. Under its agreements with CheckFree, Integrion has the right to distribute to its owners the warrants it may acquire, or the shares of CheckFree common stock it may acquire upon exercise of the warrants. Therefore, Bank need not obtain the further approval of the OCC for Integrion to exercise the warrants or to distribute the shares of CheckFree common stock. This Application is to permit Bank to hold shares of CheckFree stock through Bank's Operating Subsidiary; an activity not previously granted to Bank in the CheckFree Decision. See CheckFree Decision page 2, fn. 3.

⁴ See, e.g., OCC Conditional Approval Letter No. 219 (July, 15, 1996).

⁵ See Interpretive Letter No. 692, reprinted in [1995 - 1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,007 (November 1, 1995), and OCC Interpretive Letter No. 694, reprinted in [1995 - 1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,009 (December 13, 1995).

(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.

(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.

As noted, the OCC previously approved under these four standards both the investment by Bank in Integrion, as well as the investment by Integrion in CheckFree.⁶ We conclude, as discussed below, that Bank's proposed restructuring of its ownership interest in CheckFree satisfies these four criteria.

1. *The activities of the 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 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.⁷ CheckFree is a Delaware corporation that provides electronic commerce services, financial application software and related products. CheckFree provides home banking, bill payment and related services under contracts with financial institutions in two distinct business segments, the electronic commerce segment and the financial application software segment. The electronic commerce segment includes electronic home banking, electronic bill payment, automatic accounts receivable collection, electronic accounts payable processing, investment portfolio management services and investment trading and reporting services. These services are primarily directed to the financial services industry and their customers. The financial application software segment includes reconciliation, wire transfer, mortgage loan origination and servicing, lease accounting and debt recovery software. These products and services are primarily directed to financial institutions and large corporations.

As previously discussed in the CheckFree Decision, we find that CheckFree's activities are part of, or incidental to, the business of banking.⁸

Thus, the first standard is satisfied.

⁶ See Integrion Decision and CheckFree Decision.

⁷ See e.g., Interpretive Letter No. 380 (December 29, 1986), reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,604 n.8 (since a national bank can provide options clearing services to customers, it can purchase stock in a corporation providing options clearing services).

⁸ See CheckFree Decision and supporting citations.

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*

This is an obvious corollary to the first standard. It is not sufficient that the entity's activities are permissible at the time a bank initially acquires its interest; they must also remain permissible for as long as the bank retains an ownership interest.

Based on the analysis and reasons stated in the CheckFree Decision, Bank can divest, and in fact intends to divest, its shares of CheckFree stock subject to the CheckFree's Stock Restriction Agreement ("Stock Restriction Agreement"). Under the Stock Restriction Agreement, it may take between one and two years for Bank to dispose of the entire interest. Bank states that under the most adverse circumstances Bank would be able to dispose of its ownership interest in CheckFree within two years, and under most circumstances within one year. These circumstances are substantially identical to those found by the OCC to be adequate in the CheckFree Decision. For the reasons stated in the CheckFree Decision, we believe that the ability to divest the shares within two years is sufficient to protect Bank and satisfy the policy concerns of the OCC in the event CheckFree commences impermissible activities and is in accord with the OCC policy in other non-conforming holdings by national banks.⁹

Thus, 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 a bank's investment not expose it to unlimited liability. Typically, this is not a concern when a national bank invests in a corporation, for

⁹ OCC policy allows a reasonable time period for a bank to bring newly acquired business into conformance by divesting nonconforming assets. See e.g. OCC Conditional Approval No. 259 (October 31, 1997). Similarly, the OCC generally requires a national bank to divest or conform nonconforming assets, or discontinue nonconforming activities, within a reasonable period of time following a business combination. See 12 C.F.R. § 5.33(e)(5); OCC Corporate Manual (Business Combinations). See also Corporate Decision 97-14 (March 4, 1997) "The OCC permits a reasonable divestiture period in these instances so that converting banks may be able to resolve nonconforming subsidiaries without hardship."; See also OCC Corporate Decision 97-41 (June 1, 1997). All conditions imposed in the CheckFree Decision, however, regarding notice to the OCC will remain in effect.

shareholders are not liable for the debts of the corporations, provided proper corporate separateness is maintained.¹⁰ This is the case here.

The corporate structure contemplated insulates the Bank from liability or loss associated with its ownership interest in CheckFree. Not only does the arrangement have the protection of the corporate insulation, there is an actual remoteness between the Bank and CheckFree. While Bank will no longer hold its interest in CheckFree through Integrion, Bank will hold its interest in CheckFree through a corporate operating subsidiary, which in turn will hold and own the shares of CheckFree. This arrangement should adequately protect the Bank from any liability for the obligations of the enterprise.

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 less than 20 percent ownership share or investment in a corporate entity is to report it as an unconsolidated entity under the equity or cost method of accounting. Under these methods, unless the investor has extended a loan to the entity, guaranteed any of its liabilities, or has other financial obligations, the investor's losses are generally limited to the amount of the investment shown on the investor's books. Currently, the investment of Integrion in CheckFree is reported under the equity or cost method of accounting.¹¹ Similarly, Bank's proposed minority ownership interest in CheckFree will be reported under the equity or cost method of accounting.

Accordingly, 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.

A national bank's investment in an enterprise or entity that is not an operating subsidiary of the bank also must 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 be a mere passive investment unrelated to that bank's business activities. "Necessary" has been judicially construed to mean "convenient or useful." See Arnold Tours, 472 F.2d at 432. Section 24(Seventh) does not authorize national banks to engage

¹⁰ 1 W. Fletcher, Cyclopedia of the Law of Private Corporations, § 25 (rev. perm. ed. 1990).

¹¹ See Integrion Decision at p.15.

in speculative, banking activities with respect to stock.¹² Therefore, a consistent thread running through our precedents concerning stock ownership is that it must be convenient or useful to the bank in conducting that bank's banking business. The investment must benefit or facilitate that business and cannot be a mere passive or speculative investment.

In this instance, the proposed share ownership is not merely evidence of a passive relationship, but is rather the result of restructuring the strategic business relationship created among Bank, Integrion, and CheckFree. Integrion will continue to cooperate with CheckFree in creating a mutually agreeable bill payment system in which Bank will continue to participate. The ownership interests to be held by Bank provide a method of involving Bank in the continued provision of the bill payment and related services contemplated by the strategic alliance of CheckFree and Integrion.

Accordingly, the fourth standard is satisfied.

C. Conclusion

Based upon the information and representations you have provided, and for the reasons discussed above, we conclude that Bank may hold through Operating Subsidiary the shares of CheckFree stock received from converting the CheckFree warrants currently held by Integrion. The application is approved subject to the conditions:¹³

1. CheckFree may engage only in activities that are part of, or incidental to, the business of banking;
2. In the event that CheckFree engages in an activity that is inconsistent with condition number one, the Bank will divest its interest in CheckFree in accord with Section B.2. of the CheckFree Decision;¹⁴
3. The Bank will account for its investment in CheckFree under the equity or cost method of accounting; and
4. CheckFree will remain subject to OCC examination.¹⁵

¹² See OCC Interpretive Letter No. 697, reprinted in [1995 - 1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-102 (November 15, 1995).

¹³ The conditions imposed in the Integrion Decision and the CheckFree Decision still apply and are not modified by this letter.

¹⁴ As noted, Bank has requested up to two years to divest of its interest in CheckFree. Based on the representations and commitments you have provided, the OCC is willing to accept this divestiture period.

¹⁵ This examination authority will be in addition to the authority vested in OCC by the Bank Service Company Act over CheckFree. 12 U.S.C. § 1867(c).

Please be advised that all conditions of this approval are “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.

If you have any questions regarding this decision, please contact John W. Graetz, Licensing Expert (Financial Analyst), in Bank Organization and Structure at (202) 874-5060, or John Soboeiro, Senior Attorney, Bank Activities and Structure at (202) 874-5300.

Sincerely,

/s/

Julie L. Williams
Chief Counsel