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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

**Corporate Decision #99-35**  
**November 1999**

October 20, 1999

JoEllen Keating  
Corporate Secretary's Office  
First National Bank of Omaha  
One First National Center  
1620 Dodge Street  
Omaha, Nebraska 68102-1596

Re: Request of First National Bank of Omaha, Omaha, Nebraska, for Approval to  
Expand the Activities of an Existing Operating Subsidiary  
Application Control No. 1999-MW-08-0022

Dear Ms. Keating:

This is in response to the application filed by the First National Bank of Omaha, Omaha, Nebraska (“Bank”), pursuant to 12 C.F.R. § 5.34, to expand the activities of SPC Inc. (“SPC”), an existing operating subsidiary. As discussed below, we approve the expansion of the subsidiary’s activities to include adding links to merchant processing-related third party vendors on its Internet site.

*I. Background*

Based on your application, the facts are as follows. SPC Inc. (“SPC”) is a wholly-owned subsidiary of the Bank engaged in the business of providing merchant and data processing services to the Bank and unaffiliated merchant customers. The OCC has previously approved the following activities for SPC: (1) merchant and data processing; (2) marketing of merchant and data processing services; (3) providing its customers with equipment incidental to merchant and data processing; (4) providing its customers with information about products and services offered by the Bank and its affiliates; (5) providing customers with information about products and services offered by unaffiliated businesses (*i.e.*, acting as a finder); (6) paying finders fees to others for referring potential customers to SPC; and (7) operating an Internet site that can be accessed by, and provide information to, current and potential customers of SPC.

SPC proposes to provide its merchant customers and others who access its Internet site with information and access to various third party vendors related to the merchant processing industry (for

example, Visa, MasterCard, and CyberCash) by adding links to its Internet site. The links would generally be reciprocal in nature so that the third party vendors would provide links to SPC's web site from their web sites. It is not anticipated that there would be referral fees paid to SPC or the third party vendors in connection with the links. In addition to providing access through links, SPC would also provide information about the third party vendors through traditional marketing means, i.e., mailings, brochures, personal visits, and telephone calls.

## *II. Analysis*

Acting as a "finder" is a part of the business of banking and therefore a permissible activity for national banks. *See* 12 C.F.R. § 7.1002(a); Interpretive Letter No. 856, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,313 (March 5, 1999) ("Letter No. 856"); OCC Corporate Decision No. 97-60 (July 1, 1997) ("Decision No. 97-60"); and OCC Conditional Approval Letter No. 221 (December 4, 1996) ("Approval No. 221"). A significant finder function is to bring together buyers and sellers. Letter No. 856.

The OCC has found that establishing links with third party vendors on a bank's Internet site is an electronic form of bringing together buyers and sellers. *See* Approval No. 221 ("By providing links to third party vendors' web sites, the [LLC] merely introduces two parties who then engage in a transaction."). Thus, establishing Internet links is permissible because the bank in so doing is acting as a finder.

Independent of the preceding analysis, establishing Internet links to third party vendors' web sites is incidental to the business of banking because it is a permissible use of the Bank's excess capacity established in good faith. Approval No. 221. It is well established that a national bank, under its incidental authority, may market and sell excess electronic capacities acquired or developed by the bank in good faith for banking purposes. 12 C.F.R. § 7.1019. *See also* Interpretive Letter No. 742, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-106 (August 19, 1996) (Internet access service); Interpretive Letter No. 677, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625 (June 28, 1995) (Internet home banking services); Approval No. 221 (Internet links).

We expect the Bank and SPC to comply with OCC guidance regarding banks that enable their customers to access, via Internet links, third party services or products. Such guidance provides that banks should consider the need for disclosure to make clear when non-banking services are being offered by third party vendors and not by the bank and that the bank is not responsible for such services or products. *See* OCC Bulletin 98-38 (August 24, 1998). This guidance applies without regard to whether a bank anticipates that its site will primarily be used by wholesale (as in the Bank's case) or retail customers. Banks are also urged to analyze the risks presented by these arrangements,

particularly compliance and reputation risks. *Id.* We also expect the Bank to exercise appropriate controls on potential liability including web linking agreements and disclaimers. We would anticipate that web linking agreements would define the obligations of the parties and ensure that the arrangements do not result in the creation of a partnership or obligate the Bank to engage in activities that are inconsistent with our regulation concerning finders.<sup>1</sup>

### *III. Conclusion*

Based upon the information and representations you have provided, and for the reasons discussed above, we conclude that the Bank may expand the activities of SPC, as proposed herein.

If you have any questions, please do not hesitate to contact Jill K. Kennard, Senior Corporate Analyst, at (816) 556-1860.

Sincerely,

/s/

Julie L. Williams  
First Senior Deputy Comptroller and Chief Counsel

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<sup>1</sup> See 12 C.F.R. § 7.1002, which restricts national banks from engaging, when acting as a finder, in activities that would cause it to be characterized as a broker under applicable Federal law.