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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

**Corporate Decision #99-38**  
**November 1999**

October 29, 1999

Joseph P. Daly, Esq.  
Muldoon, Murphy & Faucette, LLP  
5101 Wisconsin Avenue, NW  
Washington, DC 20016

Re: Application by Broadway National Bank, Chelsea, MA (“Bank”) To Acquire an Insurance Agency as an Operating Subsidiary.  
Application Control Number: 99-NE-08-0045

Dear Mr. Daly:

This responds to the application filed by Broadway National Bank, Chelsea, MA (the “Bank”), to acquire Ellsmere Insurance Agency, Inc. (“Subsidiary”) as an operating subsidiary. The Subsidiary will limit its activities to those of a finder, as described below, pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 7.1002. Based upon the representations made by the Bank, we have approved the Bank’s application to acquire the Subsidiary.

**Background**

The Subsidiary seeks to engage in finder activities in connection with loans made by an affiliated finance company. The affiliated finance company makes loans to borrowers for the purpose of purchasing manufactured homes, boats, or recreational vehicles. The Subsidiary will make the borrowers aware of, and refer them to, a third party insurance company for casualty insurance on manufactured homes, boats, or recreational vehicles being financed by the affiliated finance company. At the request of the customer, the Subsidiary will submit a referral sheet to a third party insurance company. After receiving the referral sheet, an agent from the third party insurance company will contact the borrower, negotiate the terms of the insurance contract, and send the application to the Subsidiary for execution by the borrower at closing.

The Subsidiary will transmit the first year’s premium to the third party insurance company. If the borrower chooses to finance the initial premium, the Subsidiary will forward the initial premium out of the loan proceeds. Alternatively, the borrower may pay the premium by check at the closing on the loan and the Subsidiary will send the check to the insurance company. The Subsidiary is not involved in

any subsequent dealings between the third party insurance company and the borrower. The Subsidiary does not service the insurance policy. Future premium payments are sent directly by the borrower to the insurance company. The Subsidiary receives a percentage of the commission as a fee for its referrals.

## Analysis

The Subsidiary's activities are permissible pursuant to a long line of OCC precedents and an OCC interpretive ruling authorizing national banks under 12 U.S.C. § 24(Seventh) to act as a "finder," including bringing together a potential purchaser of insurance and the seller of the insurance.<sup>1</sup> Interpretive Ruling 7.1002 provides:

(a) *General.* A national bank may act as a finder in bringing together a buyer and seller.

(b) *Qualification.* Acting as a finder includes, without limitation, identifying potential parties, making inquiries as to interest, introducing or arranging meetings of interested parties, and otherwise bringing parties together for a transaction that the parties themselves negotiate and consummate. Acting as a finder does not include activities that would characterize the bank as a broker under applicable Federal law.

(c) *Advertisement and fee.* Unless otherwise prohibited, a national bank may advertise the availability of, and accept a fee for, the services provided pursuant to this section.

12 C.F.R. § 7.1002. This finder function is an activity authorized for national banks under 12 U.S.C. § 24(Seventh) as part of the business of banking. Hence, a national bank may engage in permissible insurance-related finder activities and receive a fee for these activities based on section 24(Seventh).<sup>2</sup>

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<sup>1</sup> See e.g., 12 C.F.R. § 7.1002 (formerly 12 C.F.R. § 7.7200); Interpretive Letter No. 824 (Feb. 27, 1998), *reprinted in* [1997-98 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-273; Interpretive Letter No. 653 (Dec. 22, 1994), *reprinted in* [1994-95 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601; Interpretive Letter No. 566 (Dec. 2, 1991), *reprinted in* [1991-92 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,320; Interpretive Letter No. 472 (Mar. 2, 1989), *reprinted in* [1989-90 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,008.

<sup>2</sup> Insurance-related finder activities, if they occur in a place of 5,000 or fewer inhabitants, may also be authorized under 12 U.S.C. § 92. The OCC does not interpret 12 U.S.C. § 92 as having any effect upon the meaning of 12 U.S.C. § 24(Seventh). Section 92 grants authorities to national banks "in addition to the powers now vested by law in national banking associations."

Some state laws may treat finder activities as activities that constitute acting as an insurance agent under state law. Such a state law characterization does not alter the characteristics of what are permissible finder activities under federal law. But, where a state law characterizes finder activities as activities of an insurance agent, national banks should comply with the applicable state insurance licensing and other requirements.

In determining whether a national bank is acting as a "finder" under 12 C.F.R. § 7.1002 in the insurance context, the OCC may examine: (1) the scope of the proposed activities; (2) the existence or absence of another insurance agent or broker in the arrangement; (3) whether the bank has a contractual relationship with an insurance company for selling its products, and, if so, the nature of the relationship; and (4) the bank's compensation arrangement for the proposed activities.<sup>3</sup> This analysis reviews the extent of the bank's activities, including the precise nature of the bank's relationships with insurance companies and the payment the bank receives for its services. However, none of these factors alone are determinative of whether the bank's activities are those of a finder. Generally we would apply all of the factors to each set of facts and consider the entire situation.

With respect to the first factor, the scope of activities, we note that the proposed activities for the Subsidiary are limited to the referral of customers and the transmittal of the first year's premium and various forms to a third party insurance company. The OCC has long approved referrals of customers as permissible finder activities.<sup>4</sup> The OCC has also found that banks acting as finders may provide extensive billing services<sup>5</sup> and process insurance forms.<sup>6</sup>

The second factor is whether an insurance agent is part of the proposed arrangements. In your situation, an independent corporation with its own insurance agents will solicit and sell the insurance policies. Thus, there is another party or entity involved in the arrangement that is acting as an insurance agent or broker and conducting the insurance sales transactions.<sup>7</sup>

The third factor is whether the bank has a contractual arrangement with an insurance company similar to arrangements entered into with insurance agents to solicit and sell insurance companies' insurance products. The Subsidiary will not enter into such contractual arrangements with insurance companies.<sup>8</sup>

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<sup>3</sup> Interpretive Letter No. 824, *supra*.

<sup>4</sup> *See, e.g.*, Interpretive Letter No. 824, *supra*; Interpretive Letter No. 653, *supra*; Interpretive Letter No. 566, *supra*; Letter from Elizabeth H. Corey, Attorney, Southwest District (May 18, 1989).

<sup>5</sup> *See* Interpretive Letter No. 566, *supra* (bank provides ongoing billing services); Interpretive Letter No. 472, *supra* (bank facilitates master billing by insurer).

<sup>6</sup> Interpretive Letter No. 472, *supra* (bank verifies the accuracy of the evidences of insurance and provides related services).

<sup>7</sup> *See, e.g.*, Interpretive Letter No. 824, *supra*; Letter from Asa L. Chamberlayne, Senior Attorney, Securities and Corporate Practices Division (Mar. 6, 1995); Interpretive Letter No. 472, *supra*; Letter from William B. Glidden, Ass't Director, Legal Advisory Services Division (May 8, 1986).

<sup>8</sup> *See, e.g.*, Interpretive Letter No. 824, *supra*; Interpretive Letter No. 472, *supra*; Letter from Elizabeth H. Corey, Attorney, Southwest District (May 18, 1989); Letter from James M. Kane, District Counsel, Central District (Jan. 30, 1987).

The fourth factor is the fee arrangements. In your situation, the Subsidiary's compensation will be based on a percentage of the insurance premiums, which is permissible for national bank finders.<sup>9</sup>

Under the above analysis, we conclude that the Bank's proposal involves permissible finder activities and the Bank's acquisition of the subsidiary is therefore approved.

If you have any questions regarding this decision, please contact Licensing Expert/Financial Analyst John W. Graetz in Bank Organization in Structure at (202) 874-5060, or Nina Lipscomb in our Northeastern District Office at (212) 790-4055.

Sincerely,

/s/

Julie L. Williams  
First Senior Deputy Comptroller and Chief Counsel

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<sup>9</sup> See, e.g., Interpretive Letter No. 824, *supra*; Letter from Elizabeth H. Corey, Attorney, Southwest District (May 18, 1989); Letter from William B. Glidden, Ass't Director, Legal Advisory Services Division (May 8, 1986).