



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

April 25, 2000

Conditional Approval #384
May 2000

Bill H. Abney
Staff Attorney
Union Planters Bank, N.A.
Memphis, Tennessee 38147

Subject: Application of Union Planters Bank, N.A., Memphis, Tennessee, to Acquire an Operating Subsidiary to Provide Employee Outsourcing and Other Human Resources Services – Application Control No. 2000-SE-08-0011

Dear Mr. Abney:

This is in response to the application filed by Union Planters Bank, N.A., Memphis, Tennessee (“the Bank”), pursuant to 12 C.F.R. § 5.34, to acquire an operating subsidiary known as Strategic Outsourcing, Inc. (“SOI”). The principal activity of SOI is contracting with small and medium-sized businesses to manage their human resource functions such as employee outsourcing, payroll processing, employee benefits administration, workers’ compensation cost management, tax reporting, and regulatory compliance. SOI also sells supplemental insurance products, including supplemental life, disability, cancer coverage, accident, and hospitalization coverage, as agent; and performs administrative services including claims management and processing in connection with workers compensation insurance and group insurance coverage that it provides for its customers. The acquisition of SOI will enable the Bank to expand the services that it can provide to small business customers. For the reasons given below, we conclude that the activities of the proposed operating subsidiary are permissible, and approve the Bank’s application.

I. BACKGROUND

SOI is a Delaware corporation with its principal place of business in Charlotte, North Carolina. It conducts its activities through 23 first- or second-tier subsidiary corporations. Each of the subsidiaries uses the Charlotte, North Carolina address of SOI as its principal place of business.¹ In addition to its headquarters, SOI operates 15 regional sales offices, primarily in the southeastern United States. In the proposed transaction, the Bank will acquire all of the issued and outstanding common and preferred stock of SOI in exchange for cash and options on the

¹ The number of subsidiaries has been dictated primarily by state tax considerations that make it advantageous to have a separate subsidiary in each state. Many of them are currently inactive.

common stock of the Bank's parent holding company. SOI will be held as a wholly-owned subsidiary of the Bank.

SOI is a professional employer organization providing human resource and employment-related administrative services to some 640 small and medium-sized businesses located in 33 states, but concentrated in Georgia, Florida, North Carolina, Arkansas, and Tennessee. SOI allows a small business owner to outsource many of the administrative functions surrounding employment by providing services in the following areas: payroll processing, benefits management, human resource administration, workers' compensation management, compliance administration and safety/risk management and training. This enables the customers to focus on their core business operations while SOI handles administrative issues and regulatory requirements.

II. ANALYSIS

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). SOI will engage in well-recognized banking and insurance activities and provide services related thereto, including payroll processing; employee benefits consulting; financial counseling; and billing, claims processing and administrative services.

1. Employee Leasing

SOI provides its services by acting as the co-employer of its customers' workers.² By pooling together the personnel from a number of companies, SOI is able to obtain better rates on employee benefits such as workers' compensation, health coverage, and retirement plans. This enables a customer to offer its workers valuable benefits that generally are only available to much larger companies. This is the primary reason why SOI becomes the co-employer of its customers' personnel in delivering the services. The small business customers of SOI would not be able to achieve this cost advantage without the co-employer relationship.

This relationship subjects SOI to certain risks. For instance, clients must pay SOI fees sufficient to cover the wages, benefits, and payroll taxes of employees working at that client's work site. If a client were to default on a payment or suddenly go out of business SOI, as the legal employer, would still be obligated to make these payments. Although SOI's contract with its clients requires clients to be responsible for workplace safety and other labor law requirements, as the legal employer, SOI could be exposed to liability for these matters.

SOI has engaged in employee leasing since 1993 and takes a number of measures to mitigate these risks. It carefully investigates potential clients, including performing a credit check and investigating any past history of EEO claims or labor law violations. It may require personal financial guarantees from business owners. SOI does not extend credit to its clients. It requires

² SOI is the employer of record for federal income tax purposes. However, the relationship is often referred to as "co-employment" because the client has the right to supervise employees' work at the client's work site, may request the hiring, firing, or discipline of employees, and is responsible for such things as workplace equipment and safety.

payment from clients prior to the release of payroll checks to employees, and those with poor credit ratings are required to pay with confirmed funds, such as a cashier's check. SOI requires clients to indemnify it for any employment practices violations at client work sites, and maintains its own employment practices liability insurance to cover any potential liability in this area, as well. It also requires clients to maintain their own liability insurance. You have represented that SOI has experienced very low levels of bad debt and has never had to pay any judgments for workplace labor practice violations.

Under 12 U.S.C. § 24(Seventh), national banks have the authority to enter into dual or shared employment relationships that facilitate their permissible activities, and the OCC has approved such arrangements with both banking and nonbanking entities on many occasions. *See, e.g.*, 12 C.F.R. § 7.3001; Corporate Decision No. 96-37, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-100 (July 18, 1996); Conditional Approval No. 208 (June 28, 1996); Interpretive Letter No. 406, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,630 (August 4, 1987). In fact, the Bank has previously received approval to acquire an operating subsidiary that utilizes shared employees in its operations. Conditional Approval No. 233 (February 26, 1997) (acquisition of PFIC Corporation). As discussed below, all of SOI's activities are legally permissible for national banks. Accordingly, the co-employment aspect of SOI's operations is also legally permissible.

2. Payroll Processing

The payroll administrative and processing services provided by SOI include payroll, check printing, tax deposits and reports, W-2s, W-4s, and related record keeping. The OCC has long recognized that providing payroll services to customers is incidental to the business of banking. Twelve C.F.R. § 7.1011 (national bank acting as payroll issuer) permits national banks to disburse to an employee of a bank customer payroll funds deposited with the bank by that customer. Twelve C.F.R. § 7.1019 authorizes a national bank to "perform, provide, or deliver through electronic means and facilities any activity, function, product or service that it is otherwise authorized to perform, provide, or deliver." The OCC has approved the offering of electronically based services, such as payroll services, as a permissible activity for national banks within their ability to offer electronic data processing services. Interpretive Letter No. 653, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (December 22, 1994) (informational and payments interface).

A national bank may also provide billing services and accounts receivable services for itself and others, including providing the same through automated means. Interpretive Letter No. 419 *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,640 (February 16, 1988). Finally, national banks have long been authorized to engage in data processing services which are related to funds transfer and cash management. *Id.* (funds transfer); Interpretive Letter No. 611, *reprinted in* [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,449 (November 23, 1992) (cash management funds transfer).

3. Employee Benefits Consulting and Management and Human Resources Administrative Services

SOI assists its clients in designing employee benefit plans; handles all employee communications; and provides the administrative services necessary to these plans including record keeping, policy and procedures manuals, and any services necessary to enable the customer's employees to understand and utilize the benefit plans.

National banks have long been authorized to provide financial advice and counseling to their customers as activities that are a part of, or incidental to, the business of banking. These services may be conducted outside of a fiduciary relationship between the bank and its customer. *See* Interpretive Letter No. 353, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,523 (July 30, 1985) and Interpretive Letter No. 769, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,133 (January 28, 1997). The OCC has determined that national banks may offer employee benefit consulting services to companies wishing to establish qualified benefit plans, including plan design, plan implementation and administrative and employee communication services, as well as human resources consulting services. *See* OCC Corporate Decision No. 98-51 (November 30, 1998).

The OCC has also determined that national banks may offer benefits counseling to individuals, including health benefits counseling, concluding that these, too, are a form of financial planning services permissible for national banks and their subsidiaries. *See* Corporate Decision No. 98-13 (February 9, 1998). This decision noted that health care coverage and expenses are a significant and necessary component of an individual's financial and retirement planning.

The human resource administrative services provided by SOI are incidental to and a part of the payroll processing and record keeping services, discussed earlier, and the employee benefits services also provided by SOI. These services are permissible for a national bank operating subsidiary when provided to customers in connection with, and as a part of, other permissible employee benefit related services. *See* Corporate Decision No. 98-51, *supra*.

4. Compliance Administration and Safety and Risk Management

SOI is responsible for all employee compliance issues, including ERISA, Section 125 requirements, COBRA administrative requirements with respect to health benefit plans, and Internal Revenue Service requirements with respect to payrolls and withholding. The earlier discussion of the permissibility of human resource administrative and record keeping services is equally applicable to the compliance services provided by SOI. Compliance with applicable federal regulations is an inherent part of any payroll processing or employee benefits consulting service. *See* Corporate Decision No. 98-13, *supra*; and Corporate Decision No. 98-51, *supra*.

5. Supplemental Insurance

As a part of its package of services, SOI sells to its employees, as agent, supplemental insurance products, including supplemental life, disability, cancer coverage, accident, and hospitalization coverage. These insurance products are sold by SOI's subsidiary, North Hills Financial Services, Inc. ("North Hills"). North Hills is a licensed insurance agent presently located in Charlotte, North Carolina.

Twelve U.S.C. § 92 authorizes a national bank located and doing business in a place having a population of 5,000 or fewer persons to act as the agent for fire, life, or any other insurance company. You represent that, within 30 days of the Bank's acquisition of SOI, the Bank will merge North Hills into an existing Bank insurance agency subsidiary that presently conducts, and will continue to conduct, its insurance agency activities in accordance with 12 U.S.C. § 92 and the principles enunciated in Interpretive Letter No. 753, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-107 (November 4, 1996) (the "First Union Letter"). Accordingly, within 30 days of the Bank's acquisition of SOI, North Hills' insurance activities will be consistent with 12 U.S.C. § 92 and the First Union Letter.

6. Insurance-Related Administrative Services

In addition to its employee benefits consulting services, SOI provides workers' compensation insurance and group health insurance coverage for its customers.³ In connection with these insurance coverages, SOI performs administrative services including claims management and processing. The OCC has determined that a wide range of insurance-related administrative services are authorized for a national bank or its operating subsidiary. It is well established that national banks may provide billing, collection and claims-processing services as an activity incidental to the express authority to engage in processing payment instruments. *See* Interpretive Letter No. 712, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-027 (February 29, 1996); Interpretive Letter No. 718, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-033 (March 14, 1996). Billing, collection and claims-processing services may include collecting and processing insurance premiums and processing insurance claims. *See* Corporate Decision No. 98-13, *supra*. Handling medical and insurance data in connection with these activities is also authorized. *See* Conditional Approval No. 282 (July 31, 1998).

³ You have represented that SOI does not sell employees workers compensation insurance and group health insurance coverage, as agent. Rather, SOI is the policyholder for these insurance products. Since SOI is the employer of record, it is purchasing insurance on its own employees, and it is well-established that national banks and their operating subsidiaries may purchase insurance for their business needs. *See* OCC Bulletin 96-51, September 20, 1996.

III. CONCLUSION

Based on the foregoing, the Bank's application to acquire SOI to provide the services described above is approved, subject to the condition that SOI at all times will have in force employment practices liability insurance to cover potential liability for workplace safety, employment law, and other liability in connection with the co-employees. Please be advised that the above condition of this approval shall be deemed to be a "condition 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(b)(1).

If you have any questions, please contact NBE/Licensing Expert Greg Parvin in the Washington-Directed Licensing Division at (202) 874-5060, or Senior Attorney Christopher Manthey in the Bank Activities and Structure Division at (202) 874-5300.

Sincerely,

-signed-

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel