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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

**Corporate Decision #2001-18**  
**August 2001**

July 3, 2001

Mr. Eloy U. Ortega  
President and Chief Executive Officer  
Business First National Bank  
800 N. Milpas Street, Suite A  
Santa Barbara, California 93103

Re: Request for Approval for Business First National Bank, Santa Barbara, California,  
to Establish an Operating Subsidiary to Acquire E-Commerce Financial Services  
Application Control Number: 2001-MW-08-011

Dear Mr. Ortega:

This responds to the application submitted by Business First National Bank, Santa Barbara, California (“Bank”), pursuant to 12 C.F.R. § 5.34(e)(5), to establish an operating subsidiary that would acquire one hundred percent of the outstanding stock of E-Commerce Financial Services (“E-Commerce”). E-Commerce enables small business merchants to obtain a package of electronic services that allows the merchants to create Web stores and process electronic payments for purchases made over the Internet. Based upon the information and representations provided, the Bank’s establishment of the operating subsidiary is approved.

**I. Background**

E-Commerce enables its merchant customers to obtain traditional credit card banking services with access to the dedicated software, dedicated hardware, and support services that permit these merchants to create turnkey Web stores.

In order to become eligible to purchase the E-Commerce package of services, merchants must become Bank customers and must qualify to be credit card merchants. E-Commerce then refers the merchants to another company that provides the Web site building software and Web hosting services that allow the merchants to create and operate their own Web stores. The merchants choose which payment options they desire to accept from their on-line customers, and E-Commerce provides the authorization and processing services necessary for the merchants to

accept on-line credit and debit card payments in a secure environment.<sup>1</sup> E-Commerce deposits the proceeds of all on-line transactions into the merchants' checking accounts at the Bank. E-Commerce also provides the merchants with monthly reports on the activity in their Web stores such as site "hits" and transaction volumes as well as answers to "frequently asked questions" ("FAQ") on the merchants' use of the Web design software based upon answers prepared and supplied by the software company.

The Web stores would not be hosted by E-Commerce or the Bank and would not be connected to the Bank's server. Rather, E-Commerce has entered into a licensing and marketing arrangement with an unaffiliated, third party ("Company") that provides the Web site design software to, and hosts the Web stores for, the participating merchants. The merchants enter into agreements with the Company to host the Web stores, and neither the Bank nor its subsidiary would be a party to these agreements. The Bank represents that the Company has responsibility and liability for protecting the integrity and availability of the merchants' Web store information.

The various merchants that purchase E-Commerce packages each have unique Web site addresses that are registered with several major search engines. The Company also hosts and maintains a virtual mall Web site with links to all of the E-Commerce merchants' Web stores.

For the E-Commerce package of services, the merchants each pay a one-time set up fee of approximately \$200 and monthly fees of approximately \$50. E-Commerce transmits the Web design and hosting fees to the Company on a quarterly basis, and E-Commerce retains a portion of these fees for arranging the introduction between the merchants and the Company. In addition, E-Commerce receives a certain percentage for each on-line transaction as a credit card processing fee.

E-Commerce markets this package of electronic services on a retail basis to small businesses located in the Bank's market area and also plans to offer the E-Commerce package on a wholesale basis to other financial institutions. For the wholesale marketing, E-Commerce would enter into agreements with other financial institutions that would allow them to market the Company's software. E-Commerce would also provide the other financial institutions with training and support related to the sale of the E-Commerce package of services.

## **II. Analysis**

### **A. Providing the E-Commerce Package of Service to Merchants**

The E-Commerce package offers merchants three main components: a referral source to a Web store designer and host; empirical data about the activity in the Web stores; and retail payment processing and business checking account services. Because all of these components are part of the business of banking, the E-Commerce package is part of the business of banking and, thus, a permissible activity for national banks pursuant to 12 U.S.C. § 24(Seventh).

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<sup>1</sup> The Bank represents that the merchant settlement for E-Commerce would be performed through an unaffiliated, third party that would assume liability on all transactions.

E-Commerce refers interested merchants to the Company that provides the Web design software and hosts the Web stores. The OCC has long recognized the finder function as a permissible banking activity that includes “without limitation, identifying potential parties, making inquiries as to interest, introducing or arranging meetings of interested parties, and otherwise bringing parties together for transactions that the parties themselves negotiate and consummate.” 12 C.F.R. § 7.1002(b) (2001).<sup>2</sup> The function of finder involves the “conveying of information about available products or services to potential markets for them.”<sup>3</sup> Thus, when E-Commerce brings merchants and the Company together for a transaction of Web design and hosting services that the parties themselves negotiate and consummate, it is engaged in a permissible finder activity.<sup>4</sup>

The processing of payments resulting from orders received through a merchant's Web site is also clearly part of the business of banking.<sup>5</sup> As discussed above, E-Commerce would process

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<sup>2</sup> See OCC Interpretive Letter No. 856 [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,313 (Mar. 5, 1999); OCC Corporate Decision No. 97-60 (July 1, 1997); OCC Conditional Approval Letter No. 221 (Dec. 4, 1996).

<sup>3</sup> OCC Interpretive Letter No. 741 [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-105 (Aug. 19, 1996). See also OCC Interpretive Letter No. 824 [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-273 (Feb. 27, 1998) (banks participating in a finder program would provide brochures, leaflets, and other literature informing customers on the availability of products and services from the potential seller); OCC Corporate Decision No. 98-13 (Feb. 9, 1998) (national bank finder, as a benefits counselor, could provide potential buyers with information on benefits programs available); Letter from Julie L. Williams, Chief Counsel, Oct. 2, 1996 (unpublished) (national bank as part of finder function could provide marketing materials and information about third party service providers to potential buyers); OCC Interpretive Letter No. 630 [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,513 (May 11, 1993) (finder banks may distribute informational brochures); and OCC Interpretive Letter No. 593 [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,418 (July 1, 1992) (finder banks providing information on third party brokerage services).

<sup>4</sup> In connection with its role as a finder, E-Commerce would respond to FAQs concerning the merchants' use of the Web design software by reading from scripts and materials supplied by the Company. The OCC has permitted national banks to perform activities that are directly related, or incidental to, their role as finder, including answering customer questions and conveying information about products and services. OCC Interpretive Letter No. 653 [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (Dec. 22, 1994) (national bank finder may answer questions and convey information about available products and services). See also OCC Interpretive Letter No. 607 [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,445 (Aug. 24, 1992) (national bank finder may perform customer-related activities that are clerical or administrative in nature, such as distribution of informational materials, transmittal of documents, and record keeping); OCC No Objection Letter No. 89-02 [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,104 (Apr. 17, 1989) (in its role as finder, national bank may distribute applications and assist customers in filling them out); OCC Interpretive Letter No. 472 [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,008 (Mar. 2, 1989) (national bank as finder may provide various referral and clerical services).

<sup>5</sup> OCC Corporate Decision No. 99-50 (Dec. 23, 1999) (national bank may refer merchants to a Web site developer and may process purchases made over the Internet); OCC Interpretive Letter No. 856, *supra*. See also OCC Conditional Approval Letter No. 289 (Oct. 2, 1998) (national banks may acquire a minority interest in a firm that, among other things, provides accounts receivable processing and accounts payable processing); OCC Conditional Approval Letter No. 282 (July 7, 1998) (national bank may acquire an interest in a firm that would, among other things, engage in payments processing for the health care firms); OCC Conditional Approval Letter No. 248 (June 27, 1998) (national bank operating subsidiary may acquire a minority interest in an entity that provides merchant credit and debit card processing services); and OCC Interpretive Letter No. 731 [1995-1996 Transfer Binder] Fed.

purchases made over the Internet with credit and debit cards. Merchant credit and debit card processing services generally involve verifying credit card authorizations at the time of purchase, processing card transactions, settlement of card transactions, and depositing funds into merchants' accounts. E-Commerce may also process electronic checks and other means by which a purchaser electronically authorizes payment for the purchase of goods or services. This payment processing activity would include verifying authorizations, processing transactions, settlement of transactions, and depositing funds in merchants' accounts. The fact that the credit and debit card and other electronic payment transactions would involve purchases of goods or services over the Internet does not change the nature of the service that would be provided. Thus, E-Commerce's proposed payment processing activities are part of the business of banking.

Finally, as discussed above, the OCC has previously addressed the provision of Internet services and related order and payment processing services and found that they are part of, or incidental to, the business of banking, and therefore, authorized for national banks pursuant to 12 U.S.C. § 24 (Seventh).<sup>6</sup> As part of the provision of Internet ordering and payment processing services, national banks may furnish merchants with reports on transactions, Web site "hits," and sales data.<sup>7</sup> Therefore, E-Commerce may provide its merchants with reports on the Web store transactions.

## **B. Providing the E-Commerce Package of Services to Other Financial Institutions**

E-Commerce would enable other financial institutions to market as finders the package of E-Commerce services to their own merchant customers. E-Commerce would also train and support these financial institutions in their selling of the E-Commerce package of services. The OCC has long permitted national banks to offer a wide variety of correspondent services as part of the business of banking.<sup>8</sup> More specifically, the OCC has allowed national banks to wholesale a package of merchant credit and debit card services so that other financial institutions may offer

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Banking L. Rep. (CCH) ¶ 81,048 (July 1, 1996) (national banks as part of the banking business may collect and process accounts relating to an electronic toll collection system).

<sup>6</sup> National banks may provide a "package" of Internet-based services to retail merchants including: hosting Web sites on the bank's own server; registering merchants with search engines and obtaining Universal Resource Locators; providing an electronic communication pathway for product ordering and payment; maintaining merchants' data associated with the Web sites on its server (e.g., price information, product descriptions, and images); providing merchants with software to create Web sites; providing reports on transactions, Web site "hits," and sales data; and processing credit card transactions. OCC Interpretive Letter No. 856, *supra* (providing or maintaining an Internet Web site for merchants is one device that national banks may use as finders to provide information to the merchants' customers). However, for E-Commerce's proposal, the Company and not the Bank or its subsidiary would provide the Web design software and hosting services.

<sup>7</sup> See OCC Interpretive Letter No. 856, *supra*.

<sup>8</sup> See e.g., OCC Interpretive Letter No. 811 [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) & 81-259 (Dec. 18, 1997) (permitting a national bank to offer print services to other financial institutions as correspondent service); Corporate Decision No. 97-79 (July 11, 1997) (allowing a national bank to offer federal flood hazard determinations to other financial institutions).

similar packages to their merchant customers and provide training and support to other financial institutions on computer and technology related activities.<sup>9</sup>

Therefore, E-Commerce's proposal to allow other financial institutions to market the E-Commerce package of Web design and hosting services and to facilitate this finder marketing effort by providing training and support are valid correspondent banking activities and part of the business of banking.

### **III. Conclusion**

Based upon the facts as described, E-Commerce's proposed activities are permissible for a national bank and its operating subsidiaries. Accordingly, the Bank's application is approved.<sup>10</sup>

This approval is granted based on a thorough review of all information available, including the representations and commitments made in the application and by Bank representatives. If you have any questions, please do not hesitate to contact Jill Kennard, Senior Corporate Analyst, at (816) 556-1860 or Madelynn Orr, Senior Attorney, at (816) 556-1870.

Sincerely,

-signed-

Julie L. Williams  
First Senior Deputy Comptroller and Chief Counsel

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<sup>9</sup> See OCC Interpretive Letter No. 875 [1999-2000 Transfer Binder] Fed. Banking L. Rep. (CCH) & 81-369 (Oct. 31, 1999) (providing Internet merchant hosting packages to other financial institutions is a valid correspondent banking service and part of the business of banking); OCC Interpretive Letter No. 754 [1996 -1997 Transfer Binder] Fed. Banking L. Rep. (CCH) & 81-118 (Nov. 6, 1996) (national banks may provide correspondents with comprehensive computer networking packages including technical consulting and support services such as employee training); OCC Interpretive Letter No. 516 [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) & 83,220 (July 12, 1990) (authorizing a national bank to provide other financial institutions with electronic "gateways" to communicate and receive financial information and to conduct transactions); OCC Interpretive Letter No. 346 [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) & 85,516 (July 31, 1985) (bank operating subsidiary may provide electronic information and transaction services and linkage for financial settlement services).

<sup>10</sup> The approval, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express, or implied, or any other obligation binding upon the OCC, the U. S., any agency or entity of the U. S., or an officer or employee of the U. S., and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U. S..