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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

**Corporate Decision #2002-4**  
**March 2002**

February 18, 2002

Mr. John H. Huffstutler  
Associate General Counsel  
Legal Department  
Bank of America, National Association  
NC1-002-29-01  
101 South Tryon Street  
Charlotte, North Carolina 28255

**Subject:** Operating Subsidiary Applications by Bank of America, N.A., Citibank, N.A. and Wells Fargo Bank, N.A. to expand the activities of Identrus, LLC, Application Control Numbers: 2001-ML-08-0010, 0011, and 0012

Dear Mr. Huffstutler:

Bank of America, National Association, Charlotte, North Carolina (“Bank of America”), Citibank National Association, New York, New York (“Citibank”), and Wells Fargo Bank, N.A., San Francisco, California (collectively, the “Applicant Banks”) have applied to the Office of the Comptroller of the Currency (“OCC”) to expand the activities of Identrus, LLC, a Delaware limited liability company (“Identrus” or the “LLC”) and, thereby, along with the LLC’s other founding organizations, to provide support for electronic payment initiation products and services to commercial buyers and sellers.<sup>1</sup> For the reasons below and based upon the statements in the Applicants’ letters of July 31, 2001, and November 20, 2001, and other communications with OCC staff, the applications are approved.

**Background**

Under the proposed new activities of Identrus, the Identrus certification authority network system would be used by banks (including the Applicant Banks) to provide electronic payment initiation products to commercial buyers and sellers.<sup>2</sup> These electronic payment initiation products will

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<sup>1</sup> The OCC previously approved the application of Bank of America, N.A. and Citibank, N.A. to expand the activities of Identrus to establish and operate the Identrus certification authority network system. OCC Conditional Approval Letter No. 339, dated November 16, 1999 (the “Approval”). The OCC approved the investment of Wells Fargo Bank, N.A. in Identrus by letter dated July 21, 2000.

<sup>2</sup> The core issue in this application is whether the Applicant Banks may continue, through operating subsidiaries, their minority investments in the LLC despite its expanded activities. Thus, in deciding this application, OCC need

allow trading parties with no previous trading relationship to complete on-line purchases or trades and simultaneously arrange for payments through their existing banking relationships. The proposed system (hereinafter the "Payments Initiative")<sup>3</sup> is a business-to-bank payment initiation service; it is not an interbank payment system. Under the Payments Initiative, payments will be effected through existing payment systems such as SWIFT, FedWire and the Automated Clearing House. Parties will use Identrus certificates to digitally sign initiating payment instructions, thereby promoting the authentication, message integrity, non-repudiation and confidentiality of the payment instructions.

The banks participating in the Payments Initiative may offer a range of payment initiation products and services tailored to meet the different credit and risk management needs of business to business e-commerce transactions. At its more complex implementation, the Payments Initiative can be used as a cooperative payment initiation method involving a payer, a payee, and their respective banks. In this example, the payer signs a payment authorization to the payee, which presents it to its bank, that in turn sends it to the payer's bank for approval. The payer's bank either declines the payment request, providing a reason, or confirms it to the payee's bank, which in turn sends the confirmation to the payee.

However, in all cases, the role of Identrus will be limited to two functions. First, Identrus will use its public key infrastructure ("PKI") and digital certificates infrastructure to verify the digital signatures of the participating financial institutions ("Participating Banks") for their Payments Initiative messages. This role is the same Identrus undertakes in supporting other commercial activities of the Participating Banks. Stated another way, Identrus will act as a root for digital certificates for the Payments Initiative in a way that will not differ in any material respect from its actions regarding nonpayment activities by the Participant Banks.

Second, Identrus will manage the development and maintenance of the operating rules for the Payments Initiative. Beyond this, Identrus will not take on any additional operational responsibilities for the Initiative; its operating rules will be limited in scope. Specifically, Identrus will provide technical rules and standards for the initiating messages including file exchange, record format, and data acceptance specifications, minimum description standards, and rules regarding notification of changes in entries and entries that merely acknowledge other entries. Identrus will also develop and maintain some limited rules defining the obligations of participants with respect to the timing and replies to messages attempting to initiate payments under the Initiative.

In the Approval, the OCC granted the Identrus founding institutions permission to expand the activities of Identrus subject to five conditions, as follows:

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not and does not express any opinion on the direct activities of the participating banks in the LLC system or the new payments initiative discussed in this letter. The OCC will address the particular activities of participating national banks through its normal supervisory processes as it has done in other similar technological joint ventures. *See, e.g.*, Conditional Approval No. 221 (Dec. 4, 1996) and Interpretive Letter No. 737, *reprinted in* [1997-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-101 (August 19, 1996) at n. 3.

<sup>3</sup> The Applicant Banks have referred publicly to the Payments Initiative as "Project Eleanor."

1. Identrus may engage only in activities that are part of, or incidental to, the business of banking;
2. The Applicant Banks, through their respective operating subsidiaries, will have veto power over any activities of Identrus that are inconsistent with Condition 1, or will withdraw from Identrus in the event it engages in an activity inconsistent with Condition 1;
3. The Applicant Banks will account for their investments in Identrus under equity or cost method of accounting;
4. Identrus will be subject to OCC supervision, regulation, and examination; and
5. Identrus will notify all potential service providers in writing of the OCC's examination and regulatory authority under 12 U.S.C. § 1867(c) and that all provider contracts shall stipulate that the performance of the services provided to Identrus is subject to the OCC's examination and regulatory authority.

The Applicant Banks have committed that these conditions will continue to be satisfied with respect to the proposed expanded activities. Specifically, Identrus will continue in the future to engage only in activities that would be permissible if conducted directly by its Participant Banks. The Applicant Banks will continue to have veto power over all activities of Identrus. The Applicant Banks will continue to account for their investments in Identrus under the equity or cost method of accounting. Identrus will continue to be subject to OCC supervision, regulation, and examination. Identrus will continue to notify all potential service providers in writing of the OCC's examination and regulatory authority under 12 U.S.C. § 1867(c) and require that all provider contracts stipulate that the performance of the services provided to Identrus is subject to the OCC's examination and regulatory authority.

## **Discussion**

In a variety of circumstances, the OCC has permitted national banks to own, either directly or indirectly through an operating subsidiary, a non-controlling interest in an enterprise.<sup>4</sup> The OCC has concluded that national banks are legally permitted to make a non-controlling investment in a company provided four criteria or standards are met.<sup>5</sup> These standards, which have been distilled from our previous decisions in the area of permissible non-controlling investments for national banks and their subsidiaries, are:

(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 (or otherwise authorized for a national bank).

(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.

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<sup>4</sup> See, e.g., Conditional Approval Letter No. 219 (July, 15, 1996).

<sup>5</sup> See Interpretive Letter No. 692 (November 1, 1995); Interpretive Letter No. 694 (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.

We conclude, as discussed below, that even after the Identrus activities are expanded as described, the Applicant Banks' investment in Identrus will continue to satisfy these four criteria.

The activities of Identrus will remain limited to activities that are part of, or incidental to, the business of banking (or otherwise authorized for a national bank). As described above, Identrus will use its PKI and digital certificates infrastructure to verify the digital signatures of the Participating Banks for their Payments Initiative messages. These activities to be performed by Identrus under the Payments Initiative fall within OCC precedent regarding digital certification authorities. OCC Conditional Approval No. 267 (January 12, 1998) and OCC Conditional Approval Letter No. 339 (November 16, 1999).

Additionally, Identrus will manage the development and maintenance of the limited operating rules for the Payments Initiative, as described above. This is likewise permissible for national banks. OCC has long held that national banks may invest in joint ventures that provide essential infrastructure for multiple bank financial services systems. These systems have included digital certificate authority systems,<sup>6</sup> ATM/EFT networks<sup>7</sup>; stored value systems<sup>8</sup>; multi-bank merchant credit card processing systems;<sup>9</sup> and multi-bank clearinghouse operations.<sup>10</sup> These infrastructure

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<sup>6</sup> OCC Conditional Approval Letter No. 339 (November 16, 1999).

<sup>7</sup> Interpretive Letter No. 854, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-311 (February 25, 1999)(EFT network); Conditional Approval No. 221, *supra* (Network to provide home banking an electronic financial services); Interpretive letter No. 732, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-049 (May 10, 1996) (EFT and EDI network); Interpretive Letter No. 705, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-020 (October 25, 1995)(ATM and POS switch network); Unpublished Letter from Robert Serino (September 9, 1992)(EFT system); Interpretive Letter No. 419, *reprinted in* [1987-1988 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,643 (February 16, 1988)(Joint venture to facilitate settlement and payment of health insurance claims through use of shared EFT system); Interpretive Letter No. 382, *reprinted in* [1988-1989 Transfer Binder] Fed Banking L. Rep. (CCH) ¶ 85,606 (May 5, 1987) (Switch network); Interpretive Letter No. 289, *reprinted in* [1982-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,453 (May 15, 1984)(ATM Network); and Interpretive Letter No.160, *reprinted in* [1979-1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,241 (August 18, 1980)(ATM Switch).

<sup>8</sup> Conditional Approval No. 220, *supra* (Investment in two LLCs that provide the infrastructure for a stored value system by, among other things, managing system collateral assets, performing a system risk management functions that included elements to help the participating banks monitor and control their own risk exposures, handle system marketing functions, perform record keeping, data analysis and other support services for the system.)

<sup>9</sup> Interpretive Letter No. 720, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-035 (January 26, 1996)(Investment in system that provides the infrastructure to allow participants to verify credit card accounts on a real-time basis, and settle claims among customers of participating banks, system auditing functions, system security services, and marketing functions). *See also*, Unpublished letter from Acting Comptroller William B. Camp (November 18, 1966) and Unpublished letter from Comptroller James J. Saxon (October 12, 1966).

joint ventures have performed the same types of supportive functions proposed for the LLC with respect to the Payments Initiative.

Finally, in light of the commitment of the Applicant Banks that the conditions imposed in the Approval will continue to be satisfied with respect to the proposed expanded activities, we find that the remaining three standards for a permissible minority investment will continue to be satisfied with respect to Identrus.<sup>11</sup>

Accordingly, based on the foregoing, the Banks' applications to expand the activities of Identrus are approved.<sup>12</sup> In the event of questions, please contact Abel Reyna, Jr., Senior Licensing Analyst, at (202) 874-5060.

Sincerely,

/s/

Julie L. Williams,  
First Senior Deputy Comptroller and Chief Counsel

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<sup>10</sup> Unpublished letter from Peter Liebesman dated January 26, 1981. *Cf.*, Unpublished letter from James J. Saxon dated January 28, 1964; Unpublished letter from Robert B. Serino dated July 26, 1989; and OCC Interpretive Letter No. 692, *supra*. Case authority also holds that this is a permissible activity for national banks. Philler v. Patterson, 168 Pa. 468, 32 A. 26 (1895); Crane v. The Fourth National Bank, 173 Pa. 556, 34 A. 296 (1896). *Cf.*, Andrew v. Farmers & Merchants Savings Bank, 245 N.W. 226, 229 (Iowa 1932).

<sup>11</sup> Following this approval, the conditions in the Approval continue to be “conditions imposed in writing by the agency in connection with the granting of any application or other request” within the meaning of 12 USC § 1818.

<sup>12</sup> This 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.