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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

January 9, 2002

**Corporate Decision #2002-2  
February 2002**

Nicholas Bybel, Jr., Esq.  
Shumaker & Williams, P.C.  
P.O. Box 88  
Harrisburg, Pennsylvania 17108

Re: Application by Bank of Lancaster County, N.A., Strasburg, Pennsylvania to establish an operating subsidiary to provide employee benefit, compensation advisory and related administrative services and other human resources services  
Application Control No. 2001-NE-08-0039

Dear Mr. Bybel:

This is in response to the application filed on behalf of Bank of Lancaster County, N.A., Strasburg, Pennsylvania ("Bank"), pursuant to 12 C.F.R. ' 5.34, to establish a wholly owned operating subsidiary ("Subsidiary") to provide employee benefit, compensation advisory and related administrative services, and other human resources services to the Bank's business customers and other businesses in the Bank's market area. 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

The Bank currently employs individuals who design and implement employee benefit and compensation programs and who also provide human resources related services for the Bank. The Bank believes that there is a substantial need for such employment related services in its primary market area and, through the proposed Subsidiary, would like to provide these services to its business customers and other businesses in the area on a fee-for-service basis.

In addition to designing and implementing employee benefit plans, which would include developing benefit plans related to compensation, health, pension and related items, the Subsidiary also intends to provide related administrative and employee support services including: advising businesses on record-keeping systems; helping businesses create and implement manuals on relevant policies and procedures; assisting businesses in developing and implementing wage and salary programs; and assisting businesses with job descriptions and performance review standards. The proposed communicative services would enable employees to understand and to take advantage of their employer's benefit plans, policies and procedures.

The related human resources services which the Subsidiary proposes to offer include: providing or advising clients on payroll services; advising clients on compliance related issues; assessing and assisting with clients' training and human resource development needs, including advising clients on career planning; and reviewing and developing the client's organizational structure, policies, procedures and planning initiatives related to the employee benefit and human resource services being provided. This last activity encompasses assisting and advising clients on how best to implement the employee benefit and human resource initiatives undertaken. This would include, for example, advising clients on operating budgets and finances for the programs developed.

The Subsidiary's proposed activities are functionally and operationally the same as those currently provided in-house at the Bank. In addition, the Bank intends to employ as the Subsidiary's principal, the individual who has previously had responsibility for overseeing these activities at the Bank as well as use other Bank employees that currently perform the proposed activities in-house. Further, the Subsidiary intends to obtain insurance to protect it against any claims that may arise through the offering of these services. In combination, these factors should limit the Bank's exposure to any unnecessary risks.

## 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). The Bank's proposed Subsidiary will engage in well-recognized banking activities and provide services related thereto, including employee benefits consulting; payroll processing; financial counseling; and related administrative and human resources services.

### A. Employee Benefit and Compensation Advisory and Administrative Services

As indicated above, the Subsidiary intends to assist clients in designing and implementing employee benefit plans and provide 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 and implementation, and has also determined that national banks may provide administrative and employee communication services and human resource consulting services as part of that process. *See* OCC Corporate Decision No. 98-51 (November 30, 1998).

The OCC has determined that national banks may offer benefits counseling, including health benefits counseling to individuals, as well, concluding that these are also 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 Subsidiary's proposed administrative services are incidental to and a part of the employee benefit services the Subsidiary will provide. A national bank may provide such administrative services in connection with, and as part of, other permissible employee benefit related services. *See* OCC Corporate Decision No. 98-51, *supra*; OCC Conditional Approval #384 (April 25, 2000); and OCC Conditional Approval #435 (December 18, 2000). Accordingly, the Subsidiary's proposed activities in this regard are permissible.

#### B. Human Resources Services

As previously noted, the Subsidiary also intends to offer certain services to which it refers collectively as "human resources services". These include providing or advising clients on payroll services; advising client's on compliance related issues; assisting with clients' training and human resource development needs, including advising clients on career planning; and reviewing and developing the client's organizational structure, policies, procedures and planning initiatives related to the employee benefit and human resource services being provided.

The OCC has long recognized that providing payroll services to customers is a permissible activity for national banks. 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). Moreover, OCC has found that where a national bank would be permitted to provide a service to an entity, the bank is also permitted as part of the business of banking to provide advice to that entity on how the entity can perform that service for itself. *See*, Letter to F. John Podvin from Julie L. Williams (December 24, 2001) (to be published). Thus advising clients on payroll services is permissible.

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). Further, 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).

The OCC has also determined that advising clients on, or maintaining responsibility for, compliance issues and requirements affecting employee benefit plans and payroll processing are an inherent part of providing these services. Therefore, such compliance administration activities are permissible. *See* OCC Conditional Approval #384, *supra*; and OCC Conditional Approval #435, *supra*.

The remaining human resources consulting and advisory services which the Subsidiary proposes to offer are also permissible. The OCC has previously approved a national bank providing human resources consulting and advisory services, including assessing clients' training and development needs and providing career counseling, when those services are provided in connection with the bank's offering of permissible employee benefit and compensation advisory services. *See* OCC Corporate Decision No. 98-51, *supra*. This decision, in approving the proposed activities, noted the applicability of the excess capacity doctrine<sup>1</sup> to the bank's proposal. More specifically, in that case, under-utilized bank employees were providing to the bank the same human resources consulting and advisory services that the subsidiary proposed to offer to bank customers. The bank's subsidiary was permitted to offer those services to bank customers in conjunction with its offering of permissible employee benefit and compensation advisory services and was, thus, able to use its excess capacity and maximize the use of its personnel resources and expertise.

In the present case, the same holds true. The Bank's employees currently provide the proposed human resources consulting and advisory services for the Bank, but are not fully utilized for these in-house services. The Subsidiary will not hire additional individuals, but will utilize only current employees to provide those services, i.e., assessing training and development needs and providing career counseling, for the Bank's customers. Further, the Subsidiary will offer these services in conjunction with its offering of the permissible employee benefit and compensatory services discussed above.

Finally, the Subsidiary may review and assist clients in developing their organizational structure, policies, procedures and planning initiatives related to the employee benefit and human resources services being provided. As noted above, this activity encompasses advising clients on operating budgets and finances for the programs developed and is merely a component of the implementation process for the employee benefit and human resources programs developed. The development of policies and procedures, as discussed earlier, is incidental to the other permissible services provided.

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<sup>1</sup> The excess capacity doctrine is based on the premise that national banks may use all of their resources and competencies to operate efficiently and to avoid economic waste. The basic requirement is that the Bank's excess capacity is acquired legitimately for its banking business. *See* Brown v. Schlier, 118 F. 981 (8th Cir. 1902), *aff'd*, 194 U.S. 18 (1904). The doctrine has been applied in a number of cases where banks have legitimately acquired excess-capacity in services, equipment or personnel. *See, e.g.,* Interpretive Letter No. 811 *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-259 (December 18, 1997) (excess capacity in printing company); Interpretive Letter No. 742, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) 81-106 (Aug. 19, 1996) (excess capacity in Internet access); Interpretive Letter No. 677, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625 (June 28, 1995) (excess capacity in software production and distribution); Unpublished letter from William Glidden dated July 11, 1989 (excess capacity in messenger services).

### III. CONCLUSION

Based on the facts and the analysis herein, and the representations and commitments made in the application and by the Bank's representatives, the application to establish a wholly owned operating subsidiary to provide the services described above is approved.<sup>2</sup> If you have any questions, please contact Robert Sihler, Senior Licensing Analyst in the Licensing Operations Division at 202-874-5060, or Jane A. Principe, Counsel in the Northeastern District Office at 212-790-4010.

Sincerely,

/s/

Steven J. Weiss  
Deputy Comptroller for Licensing

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<sup>2</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.