



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Conditional Approval #568
January 2003

December 31, 2002

C. Bruce Crum, Esq.
McAfee and Taft
10th floor, 2 Leadership Square
211 No. Robinson
Oklahoma City, Oklahoma 73102-7103

Re: Operating Subsidiary applications to engage in a Stored Value Payment System.
CAIS Control Numbers: 2002-SW-08-0015 and 2002-WO-08-0007

Dear Mr. Crum:

On August 22, 2002 and November 5, 2002, you submitted applications pursuant to 12 CFR Section 5.34(e)(5)(i)(A) on behalf of Central National Bank and Trust Co. of Enid (the Bank) for the purpose of converting into operating subsidiaries the Bank's two financial subsidiaries, CNB Systems Co., an Oklahoma limited liability company (CNB Systems), and CNB e-lysium Systems Co., a Delaware limited liability company. For the reasons discussed below, these applications are conditionally approved.¹

The Bank has entered into a complex series of agreements with My Lana Card, Inc. (the Card Company) and another unrelated company with respect to developing a stored value system. The Bank has directly entered into a sponsorship agreement with the Card Company.² The Bank also has entered into a network service agreement with e-lysium Transaction Systems Inc. (Transactions Systems), a Delaware corporation.³ Transaction Systems developed a software program designed to support stored value

¹ Initially the Bank will own, through CNB Systems, more than fifty percent of the membership interests in CNB e-lysium Systems Co. However, as will be discussed, the percentage of ownership in CNB e-lysium is expected to decline below 50% over time. For this reason, the Bank has requested that the OCC also grant approval to retain a non-controlling interest in the company. OCC grants this approval subject to certain conditions that become effective when the Bank no longer has a controlling interest.

² Under this agreement, the Bank will sponsor the stored value systems and associated PIN Cards with certain specified ATM/POS financial networks.

³ The core issue in these applications is whether the Bank may retain as operating subsidiaries both CNB Systems and a joint venture, CNB e-lysium Systems Co., that will perform certain functions with respect to the My Lana stored value system. Thus, in deciding this application, OCC need not and does not express any opinion on the direct activities of the Bank regarding its participation in that system. The OCC will address the particular activities of the Bank through its normal supervisory processes as it has done in other similar technological joint ventures. *See, e.g.*, OCC Corporate

systems and has entered into an agreement with its parent, the Card Company, for the purpose of developing and marketing stored value systems based upon that program. This agreement is called the La Mision Master Services Agreement (MSA).

To facilitate its participation in this stored value project, the Bank organized CNB Systems, a direct 100% subsidiary of the Bank. The Bank will contribute cash to CNB Systems in an initial amount not to exceed \$2 million. CNB Systems will acquire a 90% interest in a joint venture with Transactions Systems. This joint venture is named CNB e-lysium Systems Company (the Joint Venture). CNB Systems will fund overhead expenses of the Joint Venture. The aggregate investment of CNB Systems in the Joint Venture is not expected to exceed \$2 million. CNB Systems has sole control of the Joint Venture overhead expenses.

CNB Systems also will manage the Joint Venture and will have all management, decision-making, and supervisory authority, except for certain extraordinary events set out in the Joint Venture's limited liability company agreement that require a super majority vote.⁴ CNB Systems' investment in the Joint Venture (and its percentage of ownership interest) will decline as it recovers its capital investment. CNB Systems will eventually own 10% of the Joint Venture. Transaction Systems will initially own 10% of the Joint Venture, but eventually will own 90%.

Transaction Systems has agreed to assign its contracts relating to the stored value system (including the La Mision MSA), software licenses, fixtures, equipment, and computers to the Joint Venture. Additionally, it will provide technical employees to the Joint Venture through an outsourcing arrangement.

The Joint Venture will assume certain obligations of Transaction Systems to the Card Company under the La Mision MSA. The Joint Venture will develop and market a stored value system and pursue future opportunities involving stored value. More specifically, the Joint Venture will develop and market the Card Company's stored value program that will initially focus on payroll distribution for employees without bank accounts. However, the Joint Venture will also develop and market stored value programs for merchants and others.

Under the Card Company system, participating employers will deposit the payrolls for participating employees in a specially designated pooled agency demand deposit account at the Bank (Cardholder Account). The Cardholder Account will be non-interest bearing. The Card Company will enter into agreements with the participating employees (Cardholders). Under these agreements, the Card Company will be appointed as the agent of the Cardholder and, in that capacity, will be authorized to arrange the deposit of a Cardholder's funds into the Cardholder Account at the Bank and to execute

Decision No. 2002-4 (February 18, 2002); 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.

⁴ These acts include assignment for the benefit of creditors, confession of judgment, sale or merger of the company, dissolution or liquidation of the company, changes to the form of agreement to be used in establishing specific stored value programs that would impose obligations or liabilities on the Joint Venture materially inconsistent with the La Mision MSA, and other acts that would make it impossible to carry out the business of the company.

transfer instructions issued by the Cardholder.⁵

The Card Company, with Bank sponsorship, will issue PIN-based cards (PIN Cards) to participating employee Cardholders that will provide access to their stored value funds in the pooled account through the ATM/POS financial networks in which the Bank has sponsored the My Lana system. The PIN Cards can be used by the Cardholders to make purchases and to withdraw cash by drawing against their prepaid value balance that has been deposited in the pooled aggregate Cardholder Account. The PIN Cards will be honored at ATM machines and at merchants that are connected to the specified ATM/POS financial networks. The Bank will clear and settle these transactions using funds from the My Lana Cardholder Account. However, the Joint Venture will maintain the value balance record of individual Cardholders. Using that balance record, the Joint Venture will authorize or decline specific transactions before the Bank accepts the transactions for settlement. The Joint Venture will also provide information services related to the stored value program to Cardholders through interactive voice response units (IVR) and through the Internet.⁶ Finally, the Joint Venture will handle requests by Cardholders to make funds allocations from their My Lana funds balances to predetermined recipients and remittance locations; the Joint Venture will process the funds allocations to the recipients.

Bank has represented that the stored value program and associated PIN Cards will not have any attached loan feature or service. There are no proposed or future planned credit features involving this card program.⁷

Discussion

A national bank 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. For the reasons discussed below, the proposed activities of both Joint Venture and CNB Systems are permissible for a national bank and, hence, for

⁵ The Cardholder Account will hold all funds representing value paid in by or on behalf of the Cardholders. The Bank will agree with the Card Company that the Bank will act as administrative trustee for the Card Company to assist it in administering the funds deposited in the Cardholder Account. Under the terms of the trust agreement (“My Lana Administrative Trust Agreement” or “Trust Agreement”), the Account will be styled “Central National Bank, as Administrative Trustee for My Lana Card, Inc., in its capacity as agent for the My Lana Agency Pooled Account.” Under the Trust Agreement, the Card Company and the Bank acknowledge and agree that the funds in the Cardholder Account shall be the property of the Cardholders and that the funds will be held by the Bank for the sole benefit of, and on behalf of, individual Cardholders and that the Cardholders are the sole beneficial owners of all funds in that account. Under the Trust Agreement, in the event that a voluntary or involuntary petition for bankruptcy is filed by or against the Card Company, the Card Company has agreed with the Bank that the Company (and the Bank as administrative trustee) will make no claim (and expressly waives its right to make a claim) that the funds in the account are part of the Card Company’s bankruptcy estate. The Bank and the Company also provide in the Trust Agreement that neither the Card Company nor the Bank shall have any right to direct the use or disposition of the funds in the Account except as needed to effect transfer instructions by Cardholders or upon designation of a successor administrative trustee or termination of the Trust Agreement.

⁶ The Joint Venture will not issue or redeem the stored value held by Cardholders or their transferees.

⁷ CNB Systems will engage in some lending activity unrelated to the stored value systems. CNB Systems will make loans to customers of the Bank or will purchase loans originated by the Bank.

an operating subsidiary. Further, subject to certain conditions, the Bank may continue its investment in the Joint Venture when, at some point in the future, the Bank's interest in the Joint Venture becomes noncontrolling and, thus, will change from an operating subsidiary into a minority investment. Because a principal activity of CNB Systems is its investment in the Joint Venture, we will first discuss the permissibility of that investment.

A. Joint Venture

The OCC has concluded that it is lawful for a national bank to hold a noncontrolling investment in an entity or enterprise, such as a limited liability company, provided four criteria or standards are met.⁸ These standards, which have been distilled from our previous decisions in the area of permissible noncontrolling investments for national banks and their subsidiaries, are:

- (1) the activities of the entity or enterprise must be limited to activities that are part of, or incidental to, the business of banking;
- (2) the bank must be able to prevent the enterprise from engaging in activities that are impermissible for national banks or be able to withdraw its investment;
- (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; and
- (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.

Based upon the facts presented, the Bank's proposed investment in the Joint Venture satisfies these four standards.

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.

Our precedents on noncontrolling stock ownership have recognized that the enterprise in which the bank takes an equity interest must confine its activities to those that are part of or incidental to the conduct of the banking business.⁹ The activities of the Joint Venture meet this standard.

The Joint Venture will develop and market an electronic stored value system, including the My Lana system described above. The electronic payments system that is the subject of these applications is

⁸ See e.g., Interpretive Letter No. 855, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-312 (Mar. 1, 1999).

⁹ See, e.g., Interpretive Letter No. 380, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,604 n.8 (Dec. 29, 1986) (since a national bank can provide options clearing services to customers, it can purchase stock in a corporation providing options clearing services); Letter from Robert B. Serino (unpublished) (Nov. 9, 1992) (since the operation of an ATM network is "a fundamental part of the basic business of banking," an equity investment in a corporation operating such a network is permissible).

different from the “stored value card systems” discussed in OCC Bulletin 96-48 (“Stored Value Card Systems”), September 10, 1996. That OCC bulletin focused on electronic stored value systems that maintained the balance record of pre-paid value on the cardholder’s card or token. A similar stored value model was the focus of OCC Conditional Approval 220 (December 2, 1996), which held that national banks, through operating subsidiaries, could participate in the Mondex stored value system. These card-based systems operated off-line; since the value balance record was maintained on the card, participating merchants did not need to communicate with a central value record before accepting a payments transaction. As discussed above, the proposed Card Company payment system does not use a card-based value record model; instead, the value record for participating cardholders is maintained in a central database. Nevertheless, like the stored value systems discussed in OCC 96-48 and OCC Conditional Approval 220, the proposed Card Company system involves an electronic payments system that enables individual cardholders to store pre-paid value outside of a conventional consumer demand deposit bank account relationship. Thus, for purposes of analyzing whether the proposed activities in these applications are part of the business of banking, we will view the Card Company system as a “stored value” system even though it uses the PIN Card arrangements to access the individual cardholders’ stored value balances.¹⁰

OCC has held that it is part of the business of banking for a national bank to develop, market, support, and operate electronic stored value systems. Under 12 CFR 7.5002(a), a national bank may 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, subject to applicable OCC guidance. This specially includes “[o]ffering electronic stored value systems.” 12 CFR 7.5002(a)(3). *See also*, Conditional Approval No. 220 (December 2, 1996)(development and operations of the Mondex stored value system); OCC Interpretive Letter No. 737, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-101 (August 19, 1996)(a national bank can develop, market, deliver, and maintain sorted value systems for various profit and non-profit organizations). This authority encompasses the various specific functions the Joint Venture will perform including: maintaining the value balance record of participating cardholders; evaluating proposed transactions in light of the value record; providing information services to cardholders related to their stored value accounts and relationships; and handling and processing specific transfer or allocation requests by cardholders with respect to their stored value. *Id.*

Thus, the first standard for a minority investment is satisfied. In addition, since the activities of the Joint Venture or permissible for a national bank, the Bank may hold the Joint venture as an operating subsidiary under 12 CFR 5.34.

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.

¹⁰ This proposed stored value project raises a number of operational and compliance issues with respect to prepaid stored value systems involving national banks and non-banks. For example, Regulation E (12 CFR 205) may apply to this system. The OCC will address these issues in the context of its ongoing supervision of the Bank. However, as part of this application, the Bank has committed that it will comply with all existing and future OCC guidance, laws and regulations, including those relating to stored value, that are determined to be applicable to the project and its operations.

This is an obvious corollary to the first standard. It is not sufficient that the enterprise's activities are permissible at the time of the Bank's initial investment. They must also remain permissible for as long as the Bank retains a membership interest in the enterprise.

One way to assure continuing compliance with the first standard is for the investing bank to commit to divest its interest in the minority investment should it engage any business activity not permissible for a national banking association. OCC Interpretive Letter No. 943, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-468 (July 24, 2002). The Bank has committed that it will terminate its investment in the Joint Venture in the event that the Joint Venture engages in activities that are not permissible for national banks. Therefore, the second standard is satisfied.

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.

a. Loss exposure from a legal standpoint

A primary concern of the OCC is that national banks not be subjected to undue risk. Where an investing bank will not control the operations of the entity in which the bank holds an interest, it is important that a national bank's investment not expose it to unlimited liability. As a legal matter, investors in a Delaware limited liability company will not incur liability with respect to the liabilities or obligations of the limited liability company solely by reason of being a member or manager of the limited liability company. Del. Code Ann. Tit. 6 § 18-303 (1993). Thus, the Bank's loss exposure for the liabilities of the Joint Venture will be limited by statute.

b. Loss exposure from an accounting standpoint

In assessing a bank's loss exposure as an accounting matter, the OCC has previously noted that the appropriate accounting treatment for a bank's 20-50 percent ownership share of investment in a limited liability company is to report it as an unconsolidated entity under the equity method of accounting. Under this method, unless the bank has guaranteed any of the liabilities of the entity or has other financial obligations to the entity, losses are generally limited to the amount of the investment, including loans and other advances shown on the investor's books.¹¹

In time, the Bank through CNB Systems may have a 50 percent or less interest in the Joint Venture. In such cases, if the Bank's interest in the Joint Venture becomes non-controlling, the Bank has stated its intention to report its investment in the Joint Venture as an investment in an unconsolidated entity under the equity method of accounting. Thus the Bank's loss from an accounting perspective would be limited to the amount invested in the Joint Venture, and the Bank will not have any open-ended liability for the obligations of the Joint Venture.

Therefore, the third standard is satisfied.

¹¹ See generally Accounting Principles Board, Op. 18 § 19 (1971) (equity method of accounting for investments in common stock).

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.

A national bank's investment in an enterprise or entity that is not an operating subsidiary of the bank must also satisfy the requirement that the investment have a beneficial connection to that bank's business, *i.e.*, it must be convenient or useful to the investing bank's business activities and not constitute a mere passive investment unrelated to the bank's banking business. Twelve U.S.C. § 24 gives national banks incidental powers that are "necessary" to carry on the business of banking. "Necessary" has been judicially construed to mean "convenient or useful."¹² Therefore, a consistent thread running through our precedents concerning stock ownership is that it must be convenient or useful to the bank in conducting that bank's banking business. The investment must benefit or facilitate that business and cannot be a mere passive or speculative investment.

This requirement is met in this case. The Joint Venture will develop and market a stored value system in which the Bank intends to play an important role as the repository of the prepaid value balances and the sponsor of the system's participation in several financial networks. Thus the Joint Venture will generate traditional banking business for the Bank, including deposit and payment functions.

Accordingly, the investment in the Joint Venture is convenient and useful to the Bank in carrying out its business and is not a mere passive investment unrelated to the Bank's banking business. The fourth standard is met.

B. CNB Systems

At all times, the bank will maintain sole control over CNB Systems, thus, it need only be analyzed as an operating subsidiary. As discussed above, the holding of the investment in the Joint Venture, which is the CNB principal activity of CNB Systems, is permissible for a national bank. CNB's role as manager of the Joint Venture is also permissible because it relates to activities that are part of the business of banking and being conducted by a second tier subsidiary of the Bank.

Conclusion

Based on the facts as described, the proposed activities are permissible activities for a national bank and its operating subsidiaries. In addition, the OCC finds that the proposal is not inconsistent with safe and sound banking practices or OCC policies and does not endanger the safety and soundness of the Bank. Accordingly, the applications are approved subject to the following conditions.

- (1) Irrespective of the application of Regulation DD to the Bank's stored value system, the Bank will provide appropriate disclosures to potential Cardholders that fully and fairly convey information about the fees and costs imposed by all of the parties to the arrangement,

¹² *Arnold Tours Inc. v. Camp*, 472 F. 2d 427, 432 (1st Cir. 1972). *See also, Bank of America v. City of Santa Monica*, No. CV-99-04817-VRW, slip op. at 18-19 (9th Cir. Dec. 20, 2002).

as well as the legal relationships involved, and that explain the applicability of federal deposit insurance insofar as it is relevant to the arrangement.

In addition, because the Bank expects its interest in the Joint Venture to become a noncontrolling investment in the future, CNB Systems may retain that interest in the manner and as described herein, subject to the following additional conditions:¹³

- (2) The Joint Venture will engage only in activities that are part of, or incidental to, the business of banking;
- (3) The Bank will commit to withdraw from the Joint Venture if the Joint Venture activities are impermissible for national banks;
- (4) The Bank will account for the investments in the Joint Venture under the equity method of accounting; and,
- (5) The Joint Venture will be subject to OCC supervision, regulation, and examination.

Please be advised that the conditions of this approval are deemed 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 U.S.C. § 1818.¹⁴

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 contact Senior Licensing Analyst Abel Reyna at 202-874-5060 or Assistant Chief Counsel James Gillespie at 202-874-5200.

Sincerely,

/s/ Steven J. Weiss

Steven J. Weiss
Deputy Comptroller for Licensing

Enclosure: Survey Letter

¹³ By operation of law, the first, second, and fourth conditions are applicable to operating subsidiaries. See 12 C.F.R. part 5.34.

¹⁴ 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 any 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.