



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

**Corporate Decision #2003-6
April 2003**

March 17, 2003

Charles F. Andrews, Esq.
Bank One Corporation, OH-101-0152
1111 Polaris Parkway
Columbus, Ohio 43271-0152

Subject: Operating Subsidiary Application by Bank One, N.A., Chicago, IL, Application
Control Number: 2003-ML-08-0007

Dear Mr. Andrews:

Bank One, National Association (“Bank”), Chicago, Illinois, has filed an application under 12 CFR § 5.34(e)(5) to establish an operating subsidiary that will purchase and then sell or license data processing software that performs functions regarding the charges and payments on a corporate credit card. Specifically, the software (“Software”) enables corporate credit card customers to automatically collect information on corporate card use and then to merge the data, to generate invoices, and to approve and make payments. The Software will be sold or licensed to large corporate credit card users. Based upon the commitments and representations in the Bank’s application, this application is approved.

Background

With two other investors that will own minority interests, Bank proposes to organize SPS Newco, LLC (the “Company”) as a limited liability company under the laws of Illinois or, possibly, Georgia. With OCC approval, the Bank will acquire approximately 53.3% (but in any event more than 50%) of the voting shares and equity of the Company.¹ As the holder of 50% or more of its voting securities, the Bank will be able to ensure that the Company engages only in activities authorized for a national bank and operates in a safe and sound manner.

The Company will sell or license the Software to the Bank’s Corporate MasterCard customers. In the future, Company will expand the capabilities of the Software so that it will function with VISA credit cards as well as MasterCards and allow the Company to sell or license the Software to Bank One’s Corporate VISA customers. Finally, the Company anticipates that it may license the Software to non-customer corporate credit card users on a fee basis.

¹ Two other companies involved in the development of the Software will acquire minority interests of approximately 33.3% and 13.3%.

The Software was designed for use by large companies (“users”) to work with their enterprise resource planning software package software.² The Software will integrate with a corporation’s ERP software to simplify and enhance the corporation’s use of corporate cards and to eliminate steps in the traditional corporate credit card use and payment process. More specifically, the Software, when used with a compatible ERP software, will automate most corporate card purchasing steps and back-end processes and will integrate systems and functions. The Software will also allow a corporate user to integrate its ERP and accounting system with those of its trading partners. Additionally, the Software will enable a corporate user to automatically collect purchasing data, approve transactions, generate invoices, merge data with its general ledger, make split payments, download individual transaction information, create an invoice, auto-reconcile and effect payment of its monthly statement to its corporate credit card provider.

Discussion

OCC has permitted national banks to produce and market software both as part of the business of banking and as incidental to the business of banking. The distinction between these two bases of authority is significant because the software that is part of the business of banking can be sold without regard to any other banking product or services, whereas software that is incidental must be shown to be in some way to be convenient or useful to another activity that is authorized for national banks. Compare 12 CFR 7.5001(c) with 7.5001(d). Here, we find that the Software at issue may be sold as part of the business of banking.

As part of the business of banking, OCC has long held that the production and sale of financial services software is permissible where the software essentially performs a function or service that banks have traditionally performed through electronic or non-electronic means for their customers.³ Likewise, as part of the business of banking, national banks may sell software to other financial institutions as a form of correspondent service if the software performs bank-related data processing functions.⁴

² Enterprise resource planning (“ERP”) software seeks to integrate all departments and functions (including financial functions) across a company onto a single computer system that can serve all those different departments’ particular needs. ERP software can include integrated applications, interfaces, and business planning resources; it frequently involves a single shared database.

³ This would include software with banking, tax estimation, financial planning, and investment analysis components, and ancillary services related thereto. *See, e.g.*, Interpretive Letter No. 677, [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83625 (June 28, 1995) (national bank can engage in a joint venture to develop and distribute home banking and financial management software and data processing services to be distributed both through the bank and through retail outlets). *See also*, Interpretive Letter No. 756, [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-120 (Nov. 5, 1996) (cash management software), and Interpretive Letter No. 868 [1999-2000 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-362 (Aug. 16, 1999) (national bank may invest in a company that develops and produces software that enables Internet-based payment transactions through cash equivalents, credit or debit card transactions).

⁴ Interpretive Letter No. 449, [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85673 (Aug. 29, 1988) (a national bank may provide software applications and systems for bank back office operations to secure funds

Incidental to the business of banking, OCC has permitted a national bank to sell software that will enable bank customers to use or receive electronic banking services from the bank such as a specialized payment service or informational services. As an incidental product, the software is necessary to use or fully enjoy the permissible service and, thus, is either part of the service (if limited function) or incidental thereto (if full function).⁵

The Software the Company will sell and license is part of the business of banking and not merely incidental. The OCC recently adopted a final regulation on electronic banking activities of national banks. Among other things, this regulation codified the existing OCC position on a national bank's authority to engage in data processing activities. The new regulation states in relevant part:

It is a part of the business of banking under 12 U.S.C. 24 (Seventh) for a national bank to provide data processing and data transmission services, facilities (including equipment, technology, and personnel), data bases, advice and access to such services, facilities, data bases and advice, for itself and for others, where the data is banking, financial, or economic data, and other types of data if the derivative or resultant product is banking, financial, or economic data. For this purpose, economic data includes anything of value in banking and financial decisions.

12 CFR § 7.5006(a). Accordingly, software that processes predominantly banking, financial or economic data may be sold or licensed as part of the business of banking.

Here, the Company proposes to license and sell software that has applications with respect to charges on and payments made on a corporate credit card, facilitating payment of outstanding credit card balances. Thus, the Software processes predominantly data that is banking, financial, and economic in nature and its sale would be part of the business of banking.

transfers, sort and process transactions, research and retrieve customers account information, prepare forms, and engage in record keeping).

⁵ See OCC Conditional Approval No. 221 (Dec. 4, 1996) (providing full-function web browser software is a permissible incidental activity when a national bank is offering a home banking system based on web server technology using "Internet compatible" browser software). See also Interpretive Letter No. 516, [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83220 (July 12, 1990) (national bank that is providing customers with a permissible database service of information relating to financial instruments can also provide software that enables the customers to download and analyze the information); Interpretive Letter No. 419, [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85643 (Feb. 16, 1988) (national bank that is providing customers with a permissible electronic transactional and information service can provide software that enables customers to participate in the system); Interpretive Letter No. 875, [1999-2000 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-369 (Oct. 31, 1999) (incidental to hosting commercially enabled web sites, a national bank could provide software that enabled the hosted merchant to design and update their web sites); and Conditional Approval No. 267 (Jan. 12, 1998) (national bank providing digital certificate services could also provide and sell software that generates the public-private key pairs for subscribers and other software that enabled subscribers to create or receive messages with digital signatures, verify digital signatures using public keys, and confirm that messages were properly signed by the sender).

Since the distribution of the Software is part of the business of banking, the Company is not limited to selling or licensing the Software only to Bank customers for use with their existing corporate credit card accounts with the Bank. Rather, the Company may also license and sell the Software to non-Bank customers, including those that do not hold corporate credit accounts with the Bank.

Conclusion

Accordingly, based upon the foregoing, the Bank's application to establish the Company as an operating subsidiary is approved.⁶

Sincerely,

Julie L. Williams

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

⁶ 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.