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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

February 24, 2003

**Interpretive Letter #986**  
**April 2004**  
**12 USC 24(7)**

Richard E. Brophy, Jr.  
Naman, Howell, Smith & Lee  
P.O. Box 1470  
Waco, TX 76703

**Subject:** Operating Subsidiary Application by Extraco Banks, N.A., Waco, TX to  
Expand Activities of Extraco Institutional Services Corp., Application Control  
Number: 2002-WO-08-0002

Dear Mr. Brophy:

By letter dated June 28, 2002, OCC Corporate Decision No. 2002-11 (the "Approval Letter"), the OCC approved an application by Extraco Banks, N.A., (the "Bank"), Waco, TX under 12 CFR § 5.34 to expand the scope of activities performed by an operating subsidiary of the Bank, Extraco Institutional Services Corporation (the "Company"). Based on the commitments and representations in the Bank's application and other materials, OCC approved the Company's proposal to provide advisory and consulting services to Bank customers who use the Bank's electronic retail or wholesale transactional services; the advice would cover the hardware, software, and other technologies necessary to use those services. Likewise, based upon these commitments and representations, OCC approved the Company's proposal to provide advisory and consulting services to business customers on the hardware, software, and other technology necessary to enable those customers to process for themselves banking, economic, and financial information. The Bank now seeks clarification from the OCC on whether the Company can provide the second category of advisory activities to persons or entities not currently "bank customers." For the reasons below, the Company may do so under the Approval Letter.<sup>1</sup>

As you note, in the Approval Letter, the OCC approved essentially two categories of advisory activities. Under the first category, the Company would provide advisory and consulting services to Bank retail and business customers with regard to the installation of necessary hardware, software, telephone lines, modems and other devices in order to operate the Bank's Internet-based banking products.

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<sup>1</sup> Since the proposed activities fall within the intent and scope of the Approval Letter, I conclude that the proposed activities are not "new" activities for purposes of 12 CFR 5.34e)(5(i) and, thus, that no additional application under that section is required.

Under the second category, the Company would provide advice and consulting services to business customers on the processing of banking, financial, and economic data for themselves, including the hardware and software needed to enable customers to process such data. With regard to the second category, the Bank represented that such banking, financial, and economic data would include accounts receivable, accounts payable, revenues, expenses, and similar financial data and that the advisory and consulting services would be limited to the type of banking, financial, and economic data that the Bank would be permitted to process on behalf of its customers.

The Approval Letter concluded that both categories of advisory activities came within the provision of the OCC's final regulation on electronic activities of national banks that codified the existing OCC position on a national bank's authority to engage in data processing activities. The new regulation provides in relevant part:

It is 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) (emphasis added.)

The Approval Letter stated:

Here, ... the proposed advisory services entail providing advice on the processing of banking, financial, or economic data. The Company proposes to advise retail and wholesale Bank customers, who use the Bank's electronic transactional services, on the hardware, software, and other technologies necessary to use those services. Such advice is clearly focused on the processing of banking data. The Company also proposes to provide advisory and consulting services to business customers on the hardware, software, and other technology necessary to enable Bank customers to process banking, economic, and financial information for themselves. This would include processing of information on the customer's accounts receivable, accounts payable, revenues, expenses, and similar financial data. The Bank has committed that it will limit its advisory and consulting services to the type of banking, financial, and economic data that the Bank would be permitted to process on behalf of its customers.

(Footnote omitted.)

The first category of approved advisory activities was intended to be limited to persons or entities that had an existing business relationship with the Bank. The advisory activities approved were those that related to the technology needed to support that banking relationship. Limiting the advice to the customer's underlying Bank service relationship assures that the first

category of advisory services will pertain only to “banking” data and, thus, will fall within 7.5006(a).

However, the second category was not intended to be so limited. With respect to the second category, the Bank expressly committed that the advisory and consulting services would be “limited to the type of banking, financial, and economic data that the Bank would be permitted to process on behalf of its customers.” This commitment is sufficient to assure that the second category will be within 7.5006(a) irrespective of whether the specific business customer of the Company also has a banking relationship with the Bank.

As you point out, what matters under 7.5006(a) is the nature of the data being processed, not whether the entity receiving the processing also receives other banking services from the bank. As demonstrated in the first category of approved services, one way to assure that data being processed is “banking” data is to require that the data be connected to the consumption of banking services. However, this is not the only way to satisfy 7.5006(a). An express commitment that processing will be limited to financial data permitted for national banks, which the Bank provided and which formed the basis for the approval of the second category, is equally effective.

Thus, the Approval Letter’s reference to “bank customers” in the second category was intended only to reflect the Bank’s commitment that the Company would be limited to the type of advice the Bank would be permitted to provide to “bank customers.” However, there was no intent to limit the Company to providing the second category of advice only to customers of the Bank.

This letter merely interprets the scope of the Approval Letter and is not itself a new or additional approval. For this reason, the proposed activities discussed in this letter remain subject to all the commitments and representations referenced in the Approval Letter. We expect that the Company will conduct all its advisory activities in conformance with OCC Corporate Decision No. 2002-11.

Sincerely,

*/s/ Julie L. Williams*

Julie L. Williams  
First Senior Deputy Comptroller and Chief Counsel