



Comptroller of the Currency
Administrator of National Banks
Washington, DC 20219

Interpretive Letter #737
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12 U.S.C. 24(7)

August 19, 1996

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1233 20th Street, N.W.
Washington, DC 20036-2395

Re: Huntington National Bank, Columbus, Ohio -- Acquisition of Minority Interest in a Limited Liability Company Providing Stored Value Systems

Dear Mr. Finkel:

This responds to your letter of June 14, 1996, requesting confirmation that The Huntington National Bank, Columbus, Ohio ("Bank") may lawfully acquire and hold a minority interest in a joint venture to be formed as a for-profit Delaware limited liability company (the "LLC") with Battelle Memorial Institute, Columbus, Ohio ("Battelle") and the Student Loan Marketing Association, Washington, D.C. ("Sallie Mae").¹ The LLC will develop, market, deliver and maintain stored value and information systems for universities, hospitals, business centers, theme parks, military installations, and other self-contained geographic locations (hereinafter: "System Customers"). The LLC's systems will use a smart card technology.² Based on the information and representations provided and for the reasons set forth below, I conclude that the proposed investment is permissible for a national bank.

¹ Initial membership interests will be 33-1/3 percent for each of the members. []

² A "smart card" is a plastic card with an embedded integrated circuit that looks like a credit card. A smart card is essentially a mini-computer that can store both data and programs. Depending on the capacity of the integrated circuit, the smart card may hold only limited information, or may have the capability of performing more complex computing functions. For stored value smart cards, an electronic device is used to load (add) or deduct value stored on the computer chip.

A. *The Proposal*

The systems to be developed and supported by the LLC will serve two functions. The first function is a stored value system enabling cardholders to make cashless payments to System Customers and participating merchants. The second function is an information system for retrieving and exchanging data on the smart card; System Customers will use the cards with their data and systems for such institutional purposes as security access to buildings and computer systems, student meal plans, health care plan monitoring, and customer loyalty tracking in retail stores and supermarkets. The LLC proposes to test a prototype system in a pilot program that will be conducted with Ohio Dominican College ("ODC") this Fall. The specific role of the LLC in these two functions is described below.

1. *Role of LLC in Stored Value Functions*

The primary function of the LLC in the stored value systems will be to provide collection, processing and record keeping services for stored value transactions. The LLC will not itself hold the stored value funds nor be the stored value obligor. Instead, the funds from the sale of stored value will be held by and in the name of a bank or other entity agreed upon by the LLC and the System Customer, and that entity will be financially responsible for the stored value (hereinafter: the "issuer"). In the ODC pilot, the Bank will be the holder of funds and the obligor on the stored value.³ The LLC will not in the ODC pilot or in any other future system act as the issuer of the stored value and, thus, that value will in no way depend upon the financial soundness of the LLC.⁴

The LLC will arrange to have the cards produced and properly programmed for the System Customer.⁵ The LLC will sell the cards to the System Customer (and, perhaps, the issuer)

³ The Bank's request pertains only to the permissibility of its investment in the LLC. Thus, this letter does not address the permissibility of the activities of the Bank in the ODC pilot program. At this time, the precise role of the Bank in stored value systems is undetermined and many points of structure and process are still under development. Moreover, it is likely that the Bank will make changes in its role and functions based upon its experience with the ODC pilot. Thus, at this stage, the Bank's activities in stored value systems are not yet ripe for a formal opinion by the OCC and no such opinion has been requested. However, the OCC will review and monitor the Bank's activities in developing and operating the pilot program.

⁴ The Bank states that the maximum level of stored value that can be loaded on its System cards at any one time will initially be set at \$50 and that no plans exist for a higher level. Under the proposed amendment to Regulation E, 12 C.F.R. § 205, stored value cards (like those proposed by Bank) with a maximum load of \$100 or less will be exempt from the requirements of the Regulation, including initial disclosures. 61 Fed. Reg. 19696 (May 2, 1996). However, as will be discussed, the LLC will ensure that certain disclosures are made to cardholders. The Bank has not yet determined whether the stored value in the ODC pilot will be covered by Federal deposit insurance. See Federal Deposit Insurance Corporation General Counsel Opinion No. 8, 61 Fed. Reg. 40494 (August 2, 1996).

⁵ The cards will be produced by an outside card fulfillment company that currently produces various types of cards for banks. Additionally, some card production will be done locally to replace lost, stolen or

who will distribute the cards to cardholders.⁶ In the ODC pilot, two parties will enter agreements with cardholders regarding the cards: ODC for college-provided functions and Bank for Bank-provided functions. This will probably also be true with other future Service Customers. The LLC itself will have no direct contractual relationship with the cardholder; the LLC's contractual relations will be with the System Customer and the Bank or other stored value issuer. The names of the System Customer and the Bank (or other issuer) will appear on the cards.

The LLC will also have functions regarding the loading of stored value on the cards. All load transactions will be done at on-line cash revalue stations or kiosks that will be secure devices to protect any cash they receive as a result of cash-to-card load transactions. Two types of cards will be offered initially: (i) a card that can be loaded only by cash inserted in a "cash revalue station" ("CRS"); and (ii) a card that can be loaded either by cash inserted in a CRS or by an electronic funds transfer from an account with the Bank using a "kiosk."⁷ The LLC will own and maintain the CRS and the kiosks. Both types of devices will be on-line to the LLC so the LLC can authenticate the card at the time of any load transaction and upgrade it with any new functionality.⁸ The LLC will continuously monitor all on-line CRS and kiosks to determine the status of the device.

damaged cards. The production, transit, storage and utilization of card stock will be in accordance with established security procedures. For cards with ATM or point of sale ("POS") functionality, the required information will be provided by Bank.

⁶ The System Customer will provide cardholders written disclosures complying with applicable laws and regulations either as part of the cardholder agreement given when the card is issued or on the card itself. Even if applicable law requires no disclosures, the LLC will generally require the System Customer to disclose fundamental contract terms to the cardholder, such as the identity of the stored value issuer, cardholder liability for unauthorized use or lost or stolen cards, phone numbers or addresses to use for problems with the card, expiration dates for the card, and other basic terms.

⁷ With the second type of card, the cardholder would also be required to open a bank account at the Bank. The LLC will not be involved in opening bank accounts. Regulation E will apply to transactions where a cardholder transfers funds from a bank account to load stored value on a card.

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The cards will be protected by available encryption technology. The system will have multiple levels of security which reduce the risk of counterfeiting. [

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When value is loaded by a CRS, the LLC will be responsible for collecting the cash from the machines and forwarding the appropriate amount of funds to the Bank (or other value issuer) with the related information so the issuer can adjust its records.⁹ When value is loaded from a Bank account using a kiosk, the transaction will be handled by the LLC's platform [

]. The LLC's platform receives data from the kiosk, authenticates the transaction, then electronically forwards the transaction to an outside third party POS processor. The third party processor then electronically forwards the transaction through the settlement network to the Bank (or other issuer).

Finally, the LLC will provide support services for merchants accepting the cards for stored value purchase transactions.¹⁰ In the payment function, the LLC will contract directly with merchants who agree to honor the card as participants in the stored value system. The LLC will provide processing and settlement services to merchants participating in the stored value function of the card.¹¹ [

]. The Bank expects that it (or another issuer) will also be a party to the merchant contracts as the funding bank, since the LLC will not hold the stored value pooled account or be liable for payments to merchants.

The LLC will provide the following specific products and services to participating merchants in order to facilitate the processing and settlement of transactions: (1) smart card readers to be used when the stored value cards are presented by cardholders for purchase transactions with the merchant; [Hardware and software taht enable Merchants to store transaction data and transmit it to the LLC.]

Once the LLC's platform receives the merchant transaction data, the LLC will issue automated clearing house transactions that will debit the stored value pooled account at the

⁹ The Bank anticipates that in the ODC pilot it will, as stored value issuer, deposit funds representing the proceeds from sale of stored value into an interest-free general liability pooled account. However, the precise details of this aspect of the program are still being developed.

¹⁰ It is contemplated that where the cardholder maintains a deposit account with the Bank, the smart cards may also function as an ATM/POS card for that account. [

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¹¹ Cards that are also Bank ATM/POS cards could also be used to make purchases using the POS function instead of the stored value function, and the POS function would settle through the existing POS arrangements with Bank.

Bank (or other issuer) and credit the merchant's account at the merchant's bank with the amount of the transactions being processed.

Finally, the LLC will provide certain auditing and record keeping functions relating to the stored value transactions. The system's transactions will be auditable and the LLC will keep records of transactions. The LLC will provide the Bank (or other issuer) with periodic reports so the issuer can reconcile the total balance in the stored value pool account [

]. The LLC will also maintain information that can be used to audit individual card transactions.¹² [The LLC will archive all records of all stored value transactions and has no immediate plans to dispose of the archives.

2. *Role of the LLC in Information Related Functions*

The LLC will have a very limited role with respect to the information related functions that will mostly be provided and supported by the Service Customer. In the ODC pilot, the smart card will serve as an identification card, building access control, library card, ODC computer network access, and meal plan control. These functions will *not* involve any manipulation or processing of data by or through the LLC platform. The LLC's role with respect to these functions will be limited to two general activities: First, the LLC will replace the card readers of ODC's existing systems with card readers that will, upon insertion of a smart card, emulate the magnetic stripe access signals required for activation of ODC's existing systems. Second, the LLC will see that the smart cards are programed so that the new card readers can read and use them with ODC's existing data systems. ODC's data processing system will do all data processing on the information related functions. The LLC will play a similar limited role with respect to information related functions in any future systems it develops for other System Customers.

B. Legal Analysis

Your letter raises the issue of the authority of a national bank to make a non-controlling investment in a limited liability company. In a variety of circumstances the OCC has permitted national banks to own, either directly, or indirectly through an operating subsidiary, a minority interest in an enterprise. The enterprise might be a limited partnership, a corporation, or in more recent examples, a limited liability company. In two

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recent interpretive letters, the OCC concluded that national banks are legally permitted to make a minority investment in an LLC provided four criteria or standards are met. See Interpretive Letters No. 692 (Nov. 1, 1995), reprinted in [Current] Fed. Banking L. Rep. (CCH) ¶ 81,007, and No. 694 (Dec. 13, 1995), reprinted in [Current] Fed. Banking L. Rep. (CCH) ¶ 81,009.

These standards, which have been distilled from our previous decisions in the area of permissible minority investments for national banks and their subsidiaries, are: (1) the activities of the enterprise in which the bank invests 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 do not meet the foregoing standard, 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. For the reasons discussed, I conclude that the proposed investment by Bank in the LLC satisfies these four criteria.

1. *The activities of the LLC must be limited to activities that are part of or incidental to the business of banking.*

The National Bank Act, in relevant part, provides that national banks shall have the power:

[t]o exercise ... all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes ...

12 U.S.C. § 24(Seventh).

The Supreme Court has held that the powers clause of 12 U.S.C. § 24(Seventh) is a broad grant of power to engage in the business of banking, including but not limited to the enumerated powers and the business of banking as a whole. See NationsBank of North Carolina, N.A. v. Variable Life Annuity Co., 115 S.Ct. 810 (1995) ("VALIC"). Judicial cases reflect three general principles used to determine whether an activity is within the scope of the "business of banking": (1) is the activity functionally equivalent to or a logical outgrowth of a recognized banking activity; (2) would the activity respond to customer needs or otherwise benefit the bank or its customers; and (3) does the activity involve risks similar in nature to those already assumed by banks. See, e.g., Merchants' Bank v. State Bank, 77 U.S. 604, 648 (1871) (certification of checks has grown out of the business needs of the country and involves no greater risk than a bank giving a certificate of deposit); M&M Leasing Corp. v. Seattle First Nat. Bank, 563 F.2d 1377, 1382-83 (9th Cir. 1977), cert. denied, 436 U.S. 987 (1978) (personal property lease financing is "functionally

interchangeable" with the express power to loan money on personal property); American Insurance Association v. Clarke, 865 F.2d 278, 282 (D.C. Cir. 1988) (standby credits to insure municipal bonds is "functionally equivalent" to the issuance of a standby letter of credit). Further, as established by the Supreme Court in VALIC, national banks are authorized to engage in an activity if it is incidental to the performance of the five enumerated powers in section 24(Seventh) or if it is incidental to the performance of an activity that is part of the business of banking.

It is well established that a national bank may use electronic or data processing technology to perform services expressly or incidentally authorized to national banks. See OCC Interpretive Letter No. 677 reprinted in [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625. As noted in the recently revised OCC Interpretive Ruling recognizing this authority, 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." See 12 C.F.R. § 7.1019 (1996). The functions of the LLC in the proposed smart card systems are part of or incidental to the business of banking.

a. Functions Relating to Stored Value

The primary function of the LLC relating to stored value will be to provide for the collection, processing, and settlement of payments in the stored value system. Clearly, these activities are part of the business of banking.

When acting for merchants in the collection and settlement of stored value transactions, the LLC will be performing a recognized banking activity. The Supreme Court has established that 12 U.S.C. § 24(Seventh) permits a national bank to "do those acts and occupy those relations which are usual or necessary in making collections of commercial paper and other evidences of debt" for its customers. Miller v. King, 223 U.S. 505, 510 (1912) (finding that a national bank may collect a judgment for its customer, and may also sue the bank's attorney in order to recover misused proceeds of the judgment). See also, OCC Interpretive Letter No. 731 (July 1, 1996) (national banks may enter into a contract with a public authority to operate on behalf of the authority an electronic toll collection system); OCC Interpretive Letter No. 732 (May 10, 1996) (national banks may provide electronic data interchange services that, among other things, provide for payments by EFT); and OCC Interpretive Letter No. 419, reprinted in [1988-1989 Transfer Binder] Fed. Banking Law. Rep. (CCH) ¶ 85,643 (national bank may provide a service that facilitates settlement and payment of health claims using EFT technology).

Similarly, when the LLC dispenses stored value to cardholders on behalf of the issuer, it will be performing the established banking functions of bill payment and dispensing of third party payment instruments. See OCC Interpretive Letter No. 718 (March 14, 1996) (national banks may dispense "alternative media" from their CBCT branches, including public

transportation tickets, event tickets, gift certificates, and prepaid phone cards). See also, Arnold Tours, Inc. v. Camp, 472 F.2d 427, 438 (1st Cir. 1972) (national banks may sell travelers checks).

A secondary function of the LLC will be to provide record keeping services on the stored value transactions. This is also a function that is clearly part of the business of banking. An earlier version of 12 C.F.R. § 7.1019 states that "as part of its banking business and incidental thereto, a national bank may collect, transcribe, process, analyze, and store for itself and others, banking, financial, or related economic data." Interpretive Ruling 7.3500, 39 Fed. Reg. 14195 (Apr. 22, 1974). Although in its 1984 revision of the ruling the OCC deleted this statement because it believed that "specific examples [of permissible electronic activities] are inappropriate given the imprecision of terms and rapid pace of change in the data processing industry", 49 Fed. Reg. 11157 (Mar. 26, 1984), the "analytical framework" embodied in the ruling remained the same, *id.* There was no intent to narrow or restrict the substantive effect of the rule. OCC Interpretive Letter No. 677, *supra*. See also, OCC Interpretive Letter No. 653 reprinted in [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (national bank may maintain records when acting as an informational and payments interface between insurance underwriters and general insurance agents); OCC Letter No. 346 [1985-1987] Transfer Binder] Fed. Banking Law. Rep. (CCH) ¶ 85,516 (national banks may maintain records on commodities transactions).

In connection with these payments and record keeping functions, the LLC will also provide system participants with certain hardware and software that will be used for the stored value functions. The LLC will provide System Customers with preprogrammed smart cards and card readers for payment sites (e.g., at campus copy machines or laundromats). Participating merchants will receive card readers and associated software and hardware that will allow them to acquire and present stored value for settlement.

In analyzing the extent to which national banks may provide hardware and software, the OCC has distinguished between limited purpose and general purpose items:

When the hardware is such that it is not to be used for uses beyond the [bank services], it may well be considered literally an indistinguishable part of the [banking services]. Accordingly, a national bank's sale of such hardware is permissible as a part of the [service] permitted under 12 U.S.C. 24(7), just as the bank's sale of checkbooks to its customers is a permissible part of offering checking accounts.

OCC Interpretive Letter No. 345, reprinted in, [1985-1987] Transfer Binder] Fed. Banking Law. Rep. (CCH) ¶ 85,515.

The hardware and software the LLC will provide to the merchants can only be used to support the stored value function and, thus, it is permissible as part of the business of banking. The hardware and software being provided to System Customers can serve a dual

function of supporting the stored value system and also the information related functions and, thus, will be discussed below in connection with those functions.

b. *Functions Relating to Other Information*

As noted, the LLC will have a very limited role in the information related functions of the smart card systems. The LLC will provide certain hardware and software capacities so that System Customers will be able to use the smart card system to support certain ancillary information processing as well as a stored value function. For purposes of this letter, we will assume, without deciding, that the ancillary information could be characterized as not banking, financial, or related economic data that would fall within the business of banking. Nevertheless, we conclude that the LLC's limited role in the information function is a permissible exercise of a national bank's incidental powers. There are two reasons for this conclusion.

First, while this is a determination that must be made on a case-by-case basis, the multi-function capacity that the LLC will provide Service Customers appears to be necessary for the banking services provided (i.e., stored value system support) and not to be an excessive amount of the total stored value service package. The test was well summarized in OCC Interpretive letter No. 345, supra:

[Unlike hardware limited to banking purposes,] hardware which can be used for purposes beyond the [banking] services is no longer merely part of the permitted services. The sale of such hardware ... as part of its services package is permissible for national banks as incidental to the permitted services when the inclusion of the hardware is necessary, convenient, or useful to providing the permitted services in the package taken as a whole. The determination that hardware is subordinate within the total package can only be done on a case-by-case basis, taking into consideration factors such as cost, expected revenues, and the expected life of the hardware relative to other aspects of the package. Regulation Y's standard that the cost of the hardware 'not constitute more than 30 percent of the cost of any packaged offering,' see 12 C.F.R. 225.25(b)(7)(iii), is one means of demonstrating that the sale of the hardware is incidental to the permitted banking service. There may be other means as well.

See also, Letter from Michael J. O'Keefe, District Counsel, Midwestern District dated July 13, 1987 (unpublished) (distribution of software and hardware to banks permissible if full function hardware does not "dominate" permissible data processing services involved); OCC Interpretive Letter No. 516, reprinted in [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,220 (hardware permissible when necessary and convenient to information services and where sale of such incidental hardware does not exceed 30% of total cost of the package). Cf., Association of Data Processing v. Board of Governors, 745 F.2d 677 (D.C. Cir. 1984).

Here, as noted, the LLC will provide no manipulation or processing of the System Customer's non-banking data. Further, a substantial portion of the system hardware and software (specifically, that provided to the merchants and that provided to System Customers which will be used exclusively for payments purposes) is limited to banking functions. The Bank states that the manufacturing cost of the multi-function smart cards is small and not a significant economic factor in relation to the total stored value system. Thus, it appears that the "multi-function" hardware and software the LLC will provide System Customers will not be an excessive part of the entire package. Moreover, the LLC has committed in the LLC Operating Agreement to engage only in activities that are permissible for national banks and, thus, to operate the "multi-function" aspects of its program in conformance with the standard described above.

Second, under the facts of this case, the providing of multi-function smart cards and card readers is incidental to the business of banking because it enables the LLC to create a package of related services required to satisfy customer needs and to market successfully its stored value system. National banks under their incidental powers may provide ancillary non-banking services when those ancillary services are needed to successfully package and to promote other permissible banking services. OCC Interpretive Letter No. 611, reprinted in [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,449 (national banks selling home banking service may also provide customer access to non-banking services "to increase the customer base and the usage of the program"); OCC Interpretive Letter No. 653, supra (national banks may offer non-banking products as part of larger product or service when necessary, convenient and useful to bank permissible activities).

Here, the LLC needs to provide hardware and software related to the information functions to market successfully its stored value smart card system to institutions such as universities that need to use the cards for multiple purposes, some of which may not involve banking, financial, or economic data that national banks may process as part of the "business of banking." Smart cards are essentially mini-computers that can perform many useful data storage functions beyond just stored value systems. Systems Customers will undoubtedly be reluctant to purchase smart card systems from national banks (or the LLC) if those systems must be limited to performing only stored value functions. As one authority has noted:

While stored value is likely to be a popular smart card application and of great interest to bankers, the extraordinary data storage and processing capabilities of modern microchip technology allow multiple applications to be provided on the same card. For example, a smart card could store personal information such as medical insurance data, health records, and financial data. The cardholder could use the same card in a consumer loyalty program.

Wright, "Smart Cards: Legal and Regulatory Challenges," Bankers Magazine, March/April 1996 at p. 24. See, generally, Fancher, "Smart Cards," Scientific American, August 1996. In many cases, bank-provided smart card systems will need to permit their system customers to utilize and enjoy this multi-functionality potential of smart card systems.

Where, as here, the System users purchase the smart cards from LLC,¹³ they will want to be able to make full use of the cards and, thus, will need to have the cards programed to permit the System users to perform additional non-banking functions using the cards. Similarly, System Customers will need to have card readers connected to their data systems so that the readers can be used for both banking and non-banking functions. The additional card programing and reader connections needed to permit these non-banking functions are ancillary and incidental to the primary stored value function being provided by the LLC and, thus, permissible.

2. *The Bank must be able to prevent the LLC from engaging in activities that do not meet the foregoing standard.*

This is an obvious corollary to the first standard. It is not sufficient that the LLC's activities are permissible at the time the bank initially purchases LLC membership shares; they must also remain permissible for as long as the bank retains an ownership interest in the LLC.

Section 2.3 of the LLC's Operating Agreement provides that the LLC will only engage in activities permissible for national banks. In addition, the consent of all members through their representatives on the Board of Managers will be required before the LLC may engage in any new activities. Thus, Bank can prevent proposed new activities not permissible for national banks. Also, any amendment to the LLC Operating Agreement to change the LLC's purposes or permissible activities or to change any of the voting or consent requirements would require Bank's consent. As a result, Bank will be able, on an ongoing basis, to prevent the LLC from engaging in new activities that may be impermissible for national banks.

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 should 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 bank's investment not expose it to unlimited liability. This

¹³ If the LLC retained ownership of the cards, there might be an argument that the additional information functions could be provided under an "excess capacity" theory. In most smart card stored value systems, the stored value function is not expected to consume the entire programing and data capacity of the smart cards. As recognized in 12 C.F.R. § 7.1019, "[a] national bank may also, in order to optimize the use of the bank's resources, market and sell to third parties electronic capacities acquired or developed by the bank in good faith for banking purposes." However, this theory does not apply where, as here, the bank does not retain ownership of excess capacity.

is the case here.¹⁴ As a legal matter, investors in a Delaware LLC will not incur liability beyond their investment in the LLC because of being a member or manager of the LLC -- even if they actively participate in the management or control of the business. Del. Code Ann. Tit. 6, § 18-303(a) (1994). Additionally, the LLC Operating Agreement does not expose the Bank to unlimited liability due to its investment in the LLC.

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 or investment in an LLC is to report it as an unconsolidated entity under the equity method of accounting. Under this method, unless the bank has extended a loan to the entity, guaranteed any of its liabilities or has other financial obligations to the entity, losses generally are limited to the amount of the investment shown on the investor's books. See generally, Accounting Principles Board, Op. 18 § 19 (1971) (equity method of accounting for investments in common stock). Interpretive Letter 692, supra. Bank's investment will amount to a one-third ownership interest in the LLC; therefore, it may rely on the equity method.

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 also must satisfy the requirement that the investment have a beneficial connection to the bank's business, i.e., be convenient or useful to the investing bank's business activities, and not be a mere passive investment unrelated to that bank's business activities, "Necessary" has been judicially construed to mean "convenient or useful." See Arnold Tours, Inc. v. Camp, supra, 472 F.2d at 432. The provision in 12 U.S.C. § 24(Seventh) relating to the purchase of stock, derived from section 16 of the Glass-Steagall Act, was only intended to make it clear that section 16 did not authorize speculative investments in stock. See OCC Interpretive Letter No. 697, reprinted in [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-102. 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.

That requirement is met in this case. Bank is actively engaged in many aspects of electronic banking and has become known as an innovator in the field. The basic function of the LLC is to effectuate transfers of financial value, and this will provide opportunities, particularly

¹⁴ As noted, this opinion does not address any *direct* activities of the Bank with regard to the stored value systems. See footnote 3, supra. Such direct activities could, of course, involve exposure of the bank in other aspects and, accordingly, will be subject to OCC monitoring and review even during the pilot program.

within Bank's market area, for Bank to provide account services for the holders of smart cards. In fact, Bank may serve as the issuer of the stored value used in the LLC's system. As has been shown in the discussion set forth above, the investment by Bank in LLC is designed to contribute to customer convenience in using the system for cashless payments; expand Bank's customer base; permit better use of Bank's data processing capacity and technical personnel; expand the number of Bank's contacts with universities and other entities using the system, with the potential for offering additional cash management and deposit processing services; and expand the Bank's merchant customer base as vendor capabilities. Additionally, existing customers of Bank's core banking and other services, who can use a stored value system, are increasingly looking to Bank to provide such a system and the ability of Bank to provide such a system to such customers will be a factor in Bank's being able to retain these existing customers for core banking and other services. Finally, the use of a joint venture vehicle to develop the stored value system gives the Bank access to technology owned by Battelle and Sallie Mae that might otherwise be unavailable to the Bank.

C. Conclusion

Based upon the information and representations you have provided, and for the reasons discussed above, Bank's investment in the LLC satisfies the four standards for a national bank's majority and minority, noncontrolling investment in a LLC. Therefore, the investment is approved subject to the following conditions:

1. the LLCs may engage only in activities that are part of or incidental to the business of banking;
2. the Bank will have veto power over any activities and major decisions of the LLC that are inconsistent with condition number one, or will withdraw from the LLC in the event its engages in an activity that is inconsistent with condition number one;
3. the Bank will account for the investment in the LLC under the equity method of accounting; and
4. the LLC will be subject to OCC supervision, regulation, and examination.¹⁵

¹⁵ In the future, the nature and scope of the LLC's activities might be so substantially enhanced that the methodology the OCC uses to compute the Bank's assessment will need to be adjusted to cover adequately the expense of supervising and examining the LLC.

Please be advised that all conditions of this approval are "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.

Sincerely,

/s/
Julie L. Williams
Chief Counsel