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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

**Conditional Approval #409  
September 2000**

August 10, 2000

Joseph E. Sutaris  
Vice President & Planning Officer  
Wilber National Bank  
245 Main Street  
Oneonta, New York 13620-0430

Re: Application by Wilber National Bank, Oneonta, New York, to Establish an Operating  
Subsidiary to Provide Internet Access to Bank Customers in the Bank's Service Area  
Application Control Number: 2000-NE-08-019

Dear Mr. Sutaris:

This is in response to the application filed by Wilber National Bank, Oneonta, New York ("Bank"), dated March 30, 2000, as amended on June 5, and June 29, 2000, to establish a wholly-owned operating subsidiary pursuant to 12 C.F.R. § 5.34 to provide, incidental to the Bank's provision of Internet banking services, Internet access to customers in the Bank's service area. The proposed operating subsidiary will be a New York limited liability company ("LLC"). For the reasons discussed below, the application is conditionally approved.

**I. BACKGROUND**

The Bank is a community bank that currently operates a transactional web site providing banking services to its customers. The Bank, through the LLC, will offer Internet access to permit its customers to access the Internet with either a local or a toll-free telephone call. Along with the Internet dial-up service, the customer would have access to Internet hosting services, email accounts, and download space on the Bank's servers.

The Bank plans to offer this service to its banking customers, and, at least initially, to provide this service through a separate contractual relationship with an established Internet service provider ("ISP") located in Binghamton, New York. The ISP supplies much of the hardware and support necessary for the operation for a per-user fee, subject to negotiated minimums. The LLC will own four servers and an established firewall. Two of the servers will be located at the third-party ISP in Binghamton and the

other two at Bank headquarters in Oneonta. While a standard local call will enable most customers to access the Bank's product, the Bank has also agreed to lease full T1-communication lines in order to provide toll-free access to customers of its more remote Cobleskill, New York branch.

## 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.<sup>1</sup> The provision of full Internet access to the Bank's customers, in the manner proposed by the Bank, is incidental to the power of a national bank, as part of the "business of banking," to provide Internet banking services to its customers under 12 U.S.C. § 24(Seventh).<sup>2</sup>

Full Internet access service is permissible under national banks' incidental authority to provide electronic products or services that can be used for both banking and non-banking functions as part of a package of banking related products or services where the full function products or services are not an excessive amount of the total package.<sup>3</sup> The provision of full Internet access creates a package of related services needed to satisfy consumer demand and enable the Bank to successfully market its home banking services. We have held that the provision of such ancillary non-banking services is permissible as incidental to the business of banking when needed to successfully package and promote other permissible banking services.<sup>4</sup>

The Bank has demonstrated that providing Internet access does not present a unique risk to the Bank. Through the purchase of an electronic firewall and a commitment that its Internet activities are performed on servers solely dedicated to these functions, the Bank has taken the necessary steps to ensure systems integrity. No electronic connection is maintained between the systems to be used by the ISP and the Bank's internal information systems. Therefore, even if an individual were to obtain unauthorized access to the Bank's Internet servers, the Bank's information systems would not be compromised. Moreover, the Bank has provided banking services over the Internet for some time, granting it some degree of familiarity with the risks and the importance of adopting and regularly reviewing its risk assessment plan, risk mitigation controls, intrusion response policies and procedures, and testing processes.<sup>5</sup> We remind the Bank that it should conform the privacy practices of the

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<sup>1</sup> See 12 C.F.R. § 5.34(e)(1), *reprinted in* 65 Fed. Reg. 12,905, 12,911 (March 10, 2000).

<sup>2</sup> Conditional Approval No. 221 (December 4, 1996); Interpretive Letter No. 742, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-106 (August 19, 1996).

<sup>3</sup> *Id.*; see also Interpretive Letter No. 611, *reprinted in* [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,449 (November 23, 1992) (sale of computerized telephone "smart phone" is incidental to banking even though the phone can be used for non-banking functions).

<sup>4</sup> Interpretive Letter No. 742, *supra*; Interpretive Letter No. 611, *supra*.

<sup>5</sup> See also "Infrastructure Threats -- Intrusion Risks," OCC Bulletin 2000-14 (May 15, 2000).

proposed Internet access service to the Bank's overall privacy statement and include a confidentiality provision relating to the use of the customer information in its contract with any third-party Internet access service provider.<sup>6</sup>

### III. CONCLUSION

Based upon a thorough review of the information you provided, including representations and commitments made by the Bank's representatives, and subject to the condition set forth below, the Bank's application to establish and operate the operating subsidiary is hereby approved.

- The Bank shall develop a risk assessment plan and appropriate risk mitigation controls, intrusion response policies and procedures, and testing processes consistent with OCC's supervisory guidance on Internet banking prior to commencing the proposed Internet access service and implement these measures on an ongoing basis.

Please be advised that the condition of this approval is deemed to be a "condition 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.

If you have any questions regarding this decision, please contact John W. Graetz, Senior Advisor, e-Banking, in Washington, DC, at (202) 874-5060, or Stephen Lybarger, Acting Licensing Manager, in our Northeastern District Office, at (212) 790-4055.

Sincerely,

**-signed-**

Steven J. Weiss  
Deputy Comptroller for  
Bank Organization and Structure

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<sup>6</sup> See 65 Fed Reg 35162 (June 1, 2000). On June 1, 2000, the OCC, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision published jointly final regulations for privacy of consumer financial information. The regulations implement the requirements of the Gramm-Leach-Bliley Act.