



Comptroller of the Currency
Administrator of National Banks

Washington, D.C.

Corporate Decision #2005-02
April 2005

March 24, 2005

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1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

Re: **JPMorgan Chase Bank, N.A., Acquisition of Vastera, Inc.,
as an Operating Subsidiary (Application Control Number 2005-ML-08-0001)**

Dear Mr. Sweet:

This is in response to the operating subsidiary application, dated February 16, 2005, you submitted on behalf of JPMorgan Chase Bank, National Association, New York, New York ("JPMCB" or the "Bank"). JPMCB seeks the approval of the Office of the Comptroller of the Currency ("OCC") to acquire Vastera, Inc., ("Vastera" or the "Company"). Vastera provides global trade management services. JPMCB's Global Trade unit currently also offers a wide range of trade-related services. The Vastera activities will be combined with the Bank's existing activities to create a more comprehensive package of services. For the reasons set forth below, we believe the activities are within national banks' banking powers and that JPMCB has the capacity to conduct them in a safe and sound manner. Accordingly, JPMCB's application to acquire Vastera as an operating subsidiary is approved.

I. BACKGROUND

A. The Bank's Global Trade Business

JPMCB's Global Trade business provides trade-related services to corporations and financial institutions globally. Global Trade offers customers various products and services necessary for the import and export of goods. Global Trade issues letters of credit, advises and confirms letters of credit issued by other financial institutions, provides payments under letters of credit, commits to provide standby letters of credit, facilitates bank to bank payment settlement and provides other services. Global Trade utilizes public and private insurance to

allocate and distribute its own and its customers' risk for trade instruments and serves as a riskless collection agent, handling the documentary exchange and settlement and ensuring a fair exchange of documents and payment in cross-border trade transactions. It also offers services for operational risk management and compliance associated with cross-border trades and can assist customers with external logistics coordination.

B. Vastera and its Business

Vastera engages in a variety of global trade management services. Vastera's products and services enable clients to manage the global import and export of goods. Vastera provides these services from locations throughout the country and through subsidiaries established in other countries.¹ Vastera's business is comprised of several parts, described below.

1. *Global Trade Content Database.* Vastera's Global Trade Content ("GTC") database is an electronic collection of proprietary processes, data, rules and regulations. The GTC database contains information regarding country-specific trade regulations, including updates, proposals and forms, trade data, government denied party lists, regulation updates and notices and trade committee meeting information. Vastera employs an experienced, full-time staff to track trade regulations and maintain the accuracy and currency of the GTC database.

2. *TradeSphere and Other Software Applications.* TradeSphere, which forms an integral part of the GTC database, is a combination of software applications designed to streamline and automate the exchange of information necessary to complete the cross-border movement of goods. The software applications access the GTC database and create the information and documents needed for managing trade transactions.²

¹ Vastera's operations in the United States would become an operating subsidiary of JPMCB. Vastera's subsidiaries in foreign countries would be transferred to JPMCB's Edge Act subsidiary.

² The TradeSphere suite of applications includes: (1) TradeSphere Restricted Party Screening, a robust name matching technology with workflow tools for screening of business entities against international government and country denied party lists and country level export controls; (2) TradeSphere Exporter, a complete export management tool based on international government regulations and export requirements of major nations around the world. It includes a rules database that provides accurate, compliant international export documentation that clears customs faster and reduces order cycle times; (3) TradeSphere Importer, an import management solution that automates the import data flow from product creation to warehouse receipt; (4) TradeSphere Customs Manager, a customs compliance software package allowing self-filers to file entries with customs organizations in the United States, Canada and the United Kingdom; it streamlines process flows and allows Vastera's customers to track events throughout the entire import transaction; (5) TradeSphere Finance, a tool providing importers control over global trade financial transactions, providing the latest details, status, and performance of all related transactions; and (6) TradeSphere Transit & Statistics, a World Customs Organization approved automated system for goods moving within the European Union that provides transportation filing capabilities for New Computerized Transit System and Intrastat reporting, both of which are computerized reporting systems relating to the transportation of goods. Vastera also manages other software applications that are not part of TradeSphere and makes these applications available to customers on a limited basis.

The components of TradeSphere are available to customers on a term license, perpetual license, transaction fee basis or as a hosted solution. These end-users may then use TradeSphere to gather and verify information necessary for the import and export of goods based on order and shipment information provided, and input by, the customer. For the implementation of Vastera software solutions, Vastera's professional services staff design, install, configure and integrate customized TradeSphere solutions for customers. To maximize the utility of TradeSphere to these customers, Vastera staff assists clients throughout the implementation phase, provides extensive documentation instructions and offers training classes to aid customers in understanding TradeSphere's functions.

3. *Managed Services.* Vastera's Managed Services business assists customers in managing their global trade operations. The services offered by the Managed Services business may broadly be classified into six categories: document preparation; advice on customs and duties; trade compliance; advising on suppliers and shippers as vendors to the customer; order and shipment tracking; and vendor contract management. These services are described in Part II-B below in connection with the legal analysis of each service.

4. *Trade Management Consulting.* Vastera's trade management consulting services include compliance assessments, design of processes and procedures and implementation of designed processes and procedures. These services are designed to assist customers in making their existing processes more efficient through implementation of Vastera's products and services. The consulting services are directly related to the Company's products and services and correlate to the areas in which the Company also provides Managed Services.

C. The Bank's Primary Business Reasons for Acquiring Vastera

The addition of Vastera will enable the Bank's Global Trade unit to become engaged with clients earlier and to better understand the total needs of a customer. The expansion of the Bank's traditional Global Trade capabilities will allow the Bank to more effectively meet customers' needs and expectations for integrated trade solutions. The Bank currently works with Vastera to jointly offer their respective services to clients. By acquiring Vastera, the Bank can integrate the parallel services more closely.

The Bank's proposed acquisition of Vastera is a competitive response to efforts by other firms engaged in transportation and shipment to provide financing for trade as part of a complete package of services for customers seeking a single provider for their global trade requirements. The Bank has observed that it is increasingly competing for its trade finance business with non-bank shippers and other trade services companies that provide a comprehensive package of finance and trade services. The acquisition of Vastera would enable the Bank to couple Vastera's services with those of the Trade Finance business to offer customers a package of trade-related finance and services that would be more competitive with other companies than would be the case with the Bank offering solely finance services.

II. DISCUSSION

A national bank may engage in activities pursuant to 12 U.S.C. § 24(Seventh) if the activities are part of, or incidental to, the business of banking. The Supreme Court has held that this authority is a broad grant of power to engage in the business of banking, including not only the five specifically recited powers but also the business of banking as a whole.³ Many activities not included in the express powers are part of the business of banking. Over the years, many judicial cases⁴ and OCC precedents⁵ have explored the scope of the “business of banking.” Based on this experience, the OCC has distilled several considerations used in determining whether an activity is part of the business of banking.⁶

The Supreme Court also made it clear that national banks are also authorized to engage in an activity that is incidental to the performance of the five enumerated powers or incidental to the performance of another activity that is part of the business of banking.⁷ Incidental activities are activities that are permissible for national banks, not because they are one of the activities expressly authorized for banks or another activity within the business of banking, but rather because they are convenient or useful to the performance of those activities.⁸

³ *NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co.*, 513 U.S. 251, 257-58 & n.2 (1995) (“VALIC”).

⁴ *See, e.g., Merchants’ National Bank of Boston v. The State National Bank of Boston*, 77 U.S. 604, 648 (1871) (certification of checks has grown out of the business needs of the country); *M & M Leasing Corp. v. Seattle First National Bank*, 563 F.2d 1377, 1382-83 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978) (personal property lease financing is “functionally interchangeable” with the express power to loan money on personal security); *American Insurance Association v. Clarke*, 865 F.2d 278, 282-83 (D.C. Cir. 1988) (standby letters of credit to insure municipal bonds is “functionally equivalent” to the issuance of a standby letter of credit).

⁵ *See, e.g.,* OCC Interpretive Letter No. 961 (March 17, 2003); OCC Conditional Approval No. 267 (January 12, 1998); OCC Interpretive Letter No. 494 (December 20, 1989).

⁶ These considerations are: (1) whether the activity is the functional equivalent to, or a logical outgrowth of, a recognized banking activity; (2) whether the activity strengthens the bank by responding to customer needs or otherwise benefiting its customers or its business; (3) whether the activity involves risks similar in nature to those already assumed by banks; and (4) whether the activity is authorized for state-chartered banks. *See, e.g.,* OCC Corporate Decision No. 98-51 (November 30, 1998); OCC Interpretive Letter No. 731 (July 1, 1996); OCC Interpretive Letter No. 494 (December 20, 1989). In 2002, the OCC expressly included these considerations in our regulations in the particular context of determining whether an electronic activity is part of the business of banking. *See* 12 C.F.R. § 7.5001(c).

⁷ *VALIC*, 513 U.S. at 257-58.

⁸ *See, e.g., Bank of America v. City & County of San Francisco*, 309 F.3d 551, 562 (9th Cir. 2002) (“[t]he incidental powers of national banks are thus not limited to activities deemed essential to the exercise of enumerated powers but include activities closely related to banking and useful in carrying out the business of banking.”); *Arnold Tours, Inc. v. Camp*, 472 F.2d 427, 431-32 (1st Cir. 1972).

A. Global Trade Content Database and TradeSphere Software

The majority of Vastera's activities involve the maintenance of the Global Trade Content database ("GTC"), the development and maintenance of the TradeSphere and other software applications for using the database and generating the information and documents needed for trade management, and making the database and software available for clients for the clients' use.⁹ These activities are clearly within the business of banking under long-established precedents permitting national banks to engage in data processing activities involving banking, financial, or economic data.¹⁰

The development and maintenance of the GTC database is part of the business of banking because the underlying data is economic in nature. Economic data includes data that is valuable to the making of banking and financial decisions. 12 C.F.R. § 7.5006(a). In making financial decisions regarding cross-border transactions, the GTC database enables a user, among other things, to calculate prospective tariffs, select necessary paperwork and determine whether a country maintains cumbersome regulations that would burden or prohibit the import or export of its goods. This information permits a user to make informed cost-benefit and risk analyses before proceeding with an import or export decision. Thus, it is valuable in the making of a financial decision.

Similarly, TradeSphere also involves predominantly banking, financial and economic data, and so it may be sold or licensed by the Bank as part of the business of banking. In addition, national banks may sell and license software that "performs a function or service that banks have traditionally performed . . . for their customers."¹¹ The TradeSphere software facilitates the completion of paperwork necessary for the import and export of goods and also permits the exchange of data between the customer's system and the TradeSphere database. This data is economic, and banks have traditionally aided the completion of other types of economic paperwork including credit applications, loan documentation, tax forms and creation of invoices and monthly statements. Thus, the Bank is permitted to sell and license TradeSphere as part of the business of banking.

⁹ The Global Trade Content database and TradeSphere software are also the foundation for Vastera's offering of Managed Services for customers.

¹⁰ The OCC has codified this well-established position in 12 C.F.R. § 7.5006(a). *See also* OCC Corporate Decision No. 2003-6 (March 17, 2003); OCC Corporate Decision No. 2002-11 (June 28, 2002); OCC Conditional Approval No. 289 (October 2, 1998); OCC Interpretive Letter No. 677 (June 28, 1995). *Cf. Association of Data Processing Servicing Organizations, Inc. v. Board of Governors of the Federal Reserve System*, 745 F.2d 677 (D.C. Cir. 1984) (similar finding that such data processing is closely related to banking under the Bank Holding Company Act).

¹¹ OCC Corporate Decision 2003-6 (March 17, 2003) (permitting a national bank to sell and license software that automatically collects information on corporate credit cards).\

Finally, the Bank may sell services including the design, installation, configuration and integration of TradeSphere to its banking and non-banking customers, as part of the business of banking. Because the Bank is permitted to maintain the GTC database and sell and license TradeSphere to customers, it is also permitted to offer advisory and consulting services, including advice on hardware and software requirements, related to the customer's use of TradeSphere and to provide advice to customers on how to install and use TradeSphere optimally.¹² Thus, the sale of services related to the TradeSphere database is a permissible activity for the Bank.

B. Managed Services

1. Document Preparation. Vastera assists customers in the production and completion of the paperwork necessary for the import and export of goods. Vastera uses its TradeSphere database to select the required documentation and to automatically complete the information on those documents based on order and shipment information provided by the customer to Vastera and input into TradeSphere. Vastera's data processing capabilities include completion of information on affidavits, applications, certificates, petitions, invoices, advices, letters of credit, other finance documentation and other types of forms.

The preparation by the Bank of such trade-related documentation for customers is functionally equivalent to, or a logical outgrowth of, a recognized banking activity, and is similar to many other document preparation activities in which banks have engaged. Financial and trade-related document preparation is an activity in which banks engage extensively on their own behalf and for third parties as part of other permitted activities.¹³

Moreover, preparation of financial and trade-related documents for internal and third-party use is a core expertise of JPMCB.¹⁴ The "logical outgrowth" component of the analysis

¹² See, e.g., OCC Corporate Decision 2002-11 (permitting an operating subsidiary to provide advisory and consulting services regarding hardware, software and other technologies necessary to use the bank's electronic services).

¹³ See, e.g., OCC Interpretive Letter No. 718 (March 14, 1996) (national bank providing billing, collection, and claims-processing services); OCC Interpretive Letter No. 712 (February 29, 1996) (same); OCC Corporate Decision No. 98-13 (February 9, 1998) (authorizing a national bank to collect premiums, remit funds to appropriate governmental agencies and complete associated insurance claim forms); OCC Conditional Approval No. 304 (March 5, 1999) (bill presentment, billing, and collecting activities); OCC Corporate Decision No. 2000-08 (June 1, 2000) (permitting a national bank to provide hosted merchants with information and reports relative to transactions on the merchants' websites); OCC Interpretive Letter No. 741 (August 19, 1996) (allowing a national bank to maintain comprehensive systems that allow car dealers to track customer referrals and generate market statistics); OCC Interpretive Letter No. 737 (August 19, 1996) (granting a national bank permission to provide transaction and information processing services to support stored value systems).

¹⁴ In its Global Trade business, the Bank already generates documents similar to those involved in Vastera's activities, including letters of credit, standby letters of credit, guarantees, credit agreements and agreements to negotiate. The Bank, through its TradeDoc database, also electronically creates trade

of the business of banking “recognizes that the ‘business of banking’ is defined not only by the services and products that banks provide, but also by the core competencies that banks use to produce them.”¹⁵ Through the acquisition of Vastera, the Bank will merely extend its existing capabilities to a broader array of customs and trade forms and documentation.

In addition, this extension of the Bank’s financial and trade-related document preparation services responds to customer needs, since it will be useful for customers to have a broader range of trade documents provided by one supplier. The risks involved are similar to those in preparing the documents the Bank already prepares. Therefore, we conclude Vastera’s trade-related document preparation activities are part of the business of banking.

2. Customs and Duties Services. Vastera provides information to its Managed Services customers on applicable customs and duties requirements at points of entry and exit worldwide. Vastera provides outsourcing and advice as to local customs and duties requirements, regulations and fees, duties provisions and the necessary documentation related thereto. These outsourcing services also include the provision of information and advice on the classification of goods and services for duties and fee schedules in the United States and elsewhere. Because Vastera offers such information, it must be, and is, licensed by the U.S. Customs Service as a customs broker. Vastera, however, does not serve, or hold itself out, as a customs broker; Vastera's primary role is to serve as an information intermediary, advisor and liaison between its customers, various customs services and acting customs brokers.¹⁶

The provision of customs and duties services and information is part of the recognized banking activity of offering financial advice, counseling, information, and processing. National banks are permitted to offer many different types of financial and investment advice and counseling.¹⁷ In particular, national banks are permitted to provide tax planning and

documentation for its customers and third parties under powers of attorney, including preparation of forms such as invoices, certificates of origin, drafts, insurance certificates, transport documents, packing lists, certificates of quality, advance shipment notices, warranty certificates, weight certificates, beneficiary statements/certificates and other certificates.

¹⁵ OCC Conditional Approval No. 267 (January 12, 1998) (page 12). *See also* OCC Interpretive Letter No. 928 (December 24, 2001).

¹⁶ Although Vastera maintains its customs broker license only because it is required for the customs information services it provides and does not serve as a customs broker, we note the OCC previously opined that national banks may act as customshouse brokers as part of the bank’s business of financing goods moving in international trade. *See, e.g.*, Letter from Chief National Bank Examiner F. H. Ellis to Union National Bank of Little Rock (May 11, 1971) (unpublished); Letter from Comptroller of the Currency William B. Camp to the National Customs Brokers & Forwarders Association of America, Inc. (December 21, 1967) (unpublished).

¹⁷ *See* 12 C.F.R. § 5.34(e)(5)(v)(I) & (K) (investment advice and financial advice in operating subsidiaries among activities eligible for notice process). *See also* *Comptroller’s Licensing Manual*, Investment in Subsidiaries and Equities Booklet (April 1998) (pages 61-67) (compilation of OCC precedents on financial advice and investment advice by national bank operating subsidiaries).

preparation services.¹⁸ Advice on customs, duties, and tariffs, as well as preparing related forms and documents, is similar to tax planning and preparation. The OCC also has permitted national banks to provide financial information and advice to customers with respect to other governmental requirements and benefits, such as private benefit plans, welfare and Medicare programs, that are similar to advice on governmental requirements for customs and duties.¹⁹ Thus, we believe the proposed customs and duties services are permissible for the Bank.

3. Trade Compliance Information and Advice. Vastera assists its Managed Services customers in compliance with applicable U.S. and foreign trade laws, including the provisions of the Office of Foreign Assets Control and anti-money laundering regulations. The company assists customers in determining the proper licensing jurisdictions as well as relevant requirements for such licenses. Vastera can verify compliance with U.S. export and import regulations and assist in the completion of and filing of license applications with U.S. regulatory authorities. Vastera staff also perform compliance assessments, design compliance processes and procedures and implement such measures for customers.

Just as with the customs and duties services and information discussed above, the provision of information and advice on trade compliance matters is part of the recognized banking activity of offering financial advice, counseling, information, and processing. Trade compliance advice involves assisting the customer in structuring trade transactions to comply with various countries' trade laws and thereby minimize financial risks. It is thus similar to other activities permitted for banks in which the banks advise customers on the conduct of some aspect of their business, including in particular conducting the business in compliance with government requirements.²⁰

¹⁸ See 12 C.F.R. § 7.1008 (national banks may assist customers in preparing tax returns). See also 12 C.F.R. § 5.34(e)(5)(v)(J) (tax planning and preparation in operating subsidiaries among activities eligible for notice process). See also *Comptroller's Licensing Manual*, Investment in Subsidiaries and Equities Booklet (April 1998) (page 63) (compilation of OCC precedents on tax planning and preparation by national bank operating subsidiaries).

¹⁹ See, e.g., OCC Corporate Decision No. 2000-11 (June 24, 2000) (permitting a national bank to provide government welfare-to-work counseling since it is financial planning and involves expenses common to many business enterprises); OCC Corporate Decision No. 99-43 (November 29, 1999) (permitting a national bank to provide employee relocation benefits consulting to small- and medium-sized business customers); OCC Corporate Decision 98-51 (November 30, 1998) (allowing the provision by a national bank of employee benefits advisory services); OCC Corporate Decision No. 98-13 (February 9, 1998) (health benefits consulting for employers).

²⁰ See, e.g., OCC Corporate Decision No. 98-51 (November 30, 1998) (national bank advising customers on employee benefit plans, including compliance with government requirements); OCC Corporate Decision No. 98-13 (February 9, 1998) (national bank operating subsidiary contracts with federal government and state governments to provide Medicare and Medicaid enrollment and insurance benefits counseling to program beneficiaries); OCC Corporate Decision No. 2000-11 (June 24, 2000) (national bank administering welfare-to-work programs under government contracts).

The Bank already engages in similar activities. Through its global operations and in particular its existing Global Trade operations, the Bank has developed expertise on the requirements for conducting business in a variety of countries.²¹ Thus, the offering of similar services, in the form of trade compliance advice, involves core competencies the Bank has developed in its international operations and trade finance business. The “logical outgrowth” component of the analysis of the business of banking “recognizes that the ‘business of banking’ is defined not only by the services and products that banks provide, but also by the core competencies that banks use to produce them.”²² With Vastera, the Bank will extend its existing capabilities to a broader array of trade-related compliance information and advice.

In addition, in view of the similarity of the new trade compliance advice to the activities in which the Bank is already engaged, the risks of the new activity are similar in nature to those already assumed by the Bank. We note that the Bank represents it has extensive risk management in place to manage these risks. The Bank employs an experienced and well-trained team to provide advice and counseling on a wide array of Global Trade issues. The Bank has taken suitable steps to control the risks associated with providing financial and transactional advisory services, including keeping adequate records of the advice rendered, obtaining appropriate insurance coverage, and ensuring that the staff rendering the advice is competent, trustworthy, and has appropriate credentials. Therefore, we conclude Vastera’s trade compliance information and advice activities are part of the business of banking.

4. Performance Management Advice on Suppliers and Shippers. Vastera maintains information that enables it to advise customers in comparing the costs of various shipping routes, and finding the best suppliers and shippers for a customer’s needs. Vastera has developed an extensive knowledge of the participants in the supply and shipping industries. As part of its Managed Services business, Vastera monitors the performance of suppliers and shippers in complying with customs requirements, assesses the performance of shippers and suppliers at each stage of the import/export process, and assists in the resolution of discrepancies between such parties and its customers.

Much of this activity is another type of the recognized banking activity of offering financial and economic advice. It involves assisting the customer in comparing the relative costs of alternative routes and the costs of using a particular supplier or shipper, including

²¹ The Bank’s internal compliance departments are organized to provide internal advice on country-specific regulations including the requirements of the Office of Foreign Assets Control, as well as anti-moneylaundering, import, export and embargo provisions. The Bank’s Global Trade business licenses to its customers software that assists in complying with certain regulatory requirements and assessing and identifying operational risks related to internal processes and external events including threats of terrorism, political instability and accounting fraud.

²² OCC Conditional Approval No. 267 (January 12, 1998) (page 12). *See also* OCC Interpretive Letter No. 928 (December 24, 2001).

costs due to lack of timely performance. Some aspects of the activity relate to the advice on customs and duties and trade compliance discussed above, inasmuch as it involves monitoring the suppliers' and shippers' compliance. Some aspects of the activity are permissible under the authority of national banks to act as finders.²³ Thus, this activity is part of the business of banking. To the extent that some portion of it is found not to be part of the business of banking, it is incidental to the business of banking, as discussed in subsection II-B-7 below.

5. Order and Shipment Tracking. Vastera tracks when a client has placed an order and forecasts when an order will be needed. It tracks shipments from supplier through the shipper to delivery to the client. Vastera assists in the management of shipment delays, obtains missing information and resolves missing information issues and forwards reports to the appropriate logistics partners, including customs brokers, freight forwarders and carriers, on behalf of its customers.

Much of this activity is another type of the recognized banking activity of offering financial and economic advice. It involves assisting the customer in optimizing utilization of capital and managing their financing needs by keeping track of shipments that replace inventory and determining when the customer will need to make payments.

The Bank currently engages in similar activities. As part of its payment processing and financing business, the Bank has developed the capacity to track orders and shipments.²⁴ The Bank has developed a core competency in the tracking of information including the status of letters of credit, trade and cash transactions and the balances of accounts. Thus, the offering of similar services, in the form of more comprehensive order and shipment tracking, involves core competencies the Bank has developed in its international operations and trade finance business. Through the acquisition of Vastera, the Bank will merely extend its existing capabilities to a broader array of order and shipment tracking. Thus, this order and shipment tracking activity is part of the business of banking. To the extent that some portion of it is found not to be part of the business of banking, it is incidental to the business of banking, as discussed in subsection II-B-7 below.

6. Vendor Contract Management. Vastera assists its customers in managing their relationships with vendors and customs brokers. The Company monitors the performance of

²³ As a finder a national bank may "identify potential parties, make inquiries as to interest, introduce or arrange contacts or meetings of interested parties, act as an intermediary between interested parties, and otherwise bring parties together for a transaction that the parties themselves negotiate and consummate." 12 C.F.R. § 7.1002.

²⁴ For example, as part of the Bank's letter of credit business, the Bank provides tracking services in connection with the freight that is the subject of a letter of credit. The Bank monitors supply chain events because of their impact on financial events in the Bank's processing of payment flows under letters of credit and documentary collections. Since the Bank already tracks shipments to some extent for its own financial purposes, it can use the same information to assist the client manage workflow and inventory.

vendors and certain brokers and benchmarks it against the contractual terms, industry practice, customer-established performance metrics and standards or a combination thereof. After engaging in a performance review of a customer's vendors, Vastera develops processes and specific procedures to correct any identified deficiencies.

Vastera's vendor contract management activities are permissible for the Bank as an incidental power. A national bank may engage in an activity if it is incidental to the performance of an activity that is part of the business of banking.²⁵ In performing the foregoing five aspects of the Managed Services business and in other aspects of the trade finance and trade facilitation relationship, the Bank would already be dealing with the vendors. The addition of the vendor management function increases the usefulness of the overall package of services for customers and so enhances the Bank's ability to market the overall package of services. Moreover, as discussed in the next subsection, customers expect a unified provision of services, and the Bank would be at a disadvantage in the marketplace if it did not offer vendor management in its package. Thus, the provision of vendor management services is permissible as an incidental power.

7. *Managed Services, Individually and Together, are Reasonably Necessary to Provide Banking Products on a Competitive Basis.* As set out above, we believe that the first five Managed Services (document preparation; customs and duties services; trade compliance information and advice; performance management advice on suppliers and shippers; and order and shipment tracking) are part of the business of banking and that the sixth Managed Service (vendor contract management) is incidental to the business of banking. In addition, we also believe that, if some portion of the first five Managed Services were found not to be part of business of banking, it would nevertheless be incidental to the business of banking and so within the authority of section 24(Seventh).²⁶

²⁵ See, e.g., *NationsBank of North Carolina, N.A. v. Variable Life Annuity Co.*, 513 U.S. 251 (1995); OCC Interpretive Letter No. 928 (December 24, 2001); OCC Interpretive Letter No. 742 (August 19, 1996).

²⁶ Under the incidental powers of 12 U.S.C. § 24(Seventh), national banks may offer even nonbanking services when it is convenient or useful to the provision of banking services.

The OCC has long held that, under their incidental powers, national banks may sell non-banking products and services when reasonably necessary to provide banking products on a competitive basis by creating a package of related services needed to satisfy consumer demand, meet market competition, and enable the Bank to successfully market its banking services.

OCC Interpretive Letter No. 928 (December 24, 2001) (page 4) (building of websites for participating merchants as part of a commercial Internet services package). See also OCC Interpretive Letter No. 742 (August 19, 1996) (allowing a national bank to offer Internet access service to aid in marketing of the bank's Internet banking services); OCC Interpretive Letter No. 345 (July 9, 1985) (sale of general purpose computer hardware when inclusion in overall financial services package is useful for marketing the package).

The Bank believes the addition of the Vastera services to its existing Global Trade business is reasonably necessary to create a package of services to remain competitive in the market. Trade customers increasingly are looking for a global trade service provider that offers "one-stop shopping" for import/export transactions. Customers in the import/export business have come to expect the provision of coordinated services, as offered by many of the Bank's and Vastera's competitors. Global trade services are offered by both banks and nonbanks. Nonbank global trade service providers already can offer the trade management services that Vastera offers, as well as offering financing products. These competitors have increased their market shares by introducing packaged trade solutions.

The Bank proposes to acquire Vastera to supplement the services that are currently provided through its Trade Finance division. The Bank has observed that it is increasingly competing for its trade finance business with non-bank shippers and other trade services companies that provide a comprehensive package of finance and trade services. The acquisition of Vastera would enable the Bank to offer customers a package of trade-related services that would be more competitive with other companies in the market. Thus we conclude that, any portion of the Managed Services that were to be found not to be part of the business of banking would be incidental to the business of banking when it is part of a broad offering of a range of trade-related services.

C. Trade Management Consulting

In its Trade Management Consulting business, Vastera offers a service in which it reviews a client's existing trade management processes, recommends changes, and assists in implementing changes. The service is designed to assist customers in making their existing processes more efficient and effective through implementation of Vastera's products and services; the consulting services are directly related to the Company's products and services.

This activity is part of the business of banking for a bank, like JPMCB after the acquisition, that is authorized to directly provide trade management services. If a bank can directly offer a particular service to a customer, then it can advise the customer on how to perform the service for itself or advise the customer on how to obtain the service from another supplier and monitor the other supplier's performance of the service for the customer. There have been prior examples of the OCC approving a bank to offer advice and consulting services to customers about a banking product, separate from offering the product itself.²⁷ However, the principle itself is almost self-evident: if a bank has the power to offer a product or service, it can offer advice about that product or service. It is, as it were, a "lesser included power."

²⁷ See, e.g., OCC Interpretive Letter No. 928 (December 24, 2001) (advice to customers on maintaining security of information on bank-hosted website where bank could provide safekeeping and security services directly to its customers on the information); OCC Interpretive Letter No. 567 (October 29, 1991) (providing consulting services to clients regarding personal property leases).

D. Risk Assessment / Safety and Soundness Review

The foregoing analysis establishes that the activities performed by Vastera are part of the business of banking or incidental to the business of banking and so are within the activities authorized for national banks under 12 U.S.C. § 24(Seventh). However, for a particular bank to permissibly engage in these activities, the bank must have the systems and controls, and the general capacity, to conduct the activity in compliance with applicable law and in a safe and sound manner.

JPMCB has that capacity with respect to the Vastera activities. The activities are similar to those already conducted in the Bank's Global Trade business. The types of risk – primarily operational, but also legal and reputation – are similar to those the Bank already manages in that business. The Bank conducted extensive due diligence procedures in determining to proceed with the Vastera acquisition. Bank representatives reviewed Vastera's material documents and also conducted management due diligence sessions with representatives from each of Vastera's principal divisions. In addition, the Bank has operated a contractual joint venture with Vastera for the past one and a half years. Under this arrangement, the Bank made Vastera's services available to its customers. This has provided the Bank an opportunity to assess Vastera's operations.

In the Bank's assessment of the risks involved in Vastera's business, it identified the potential liability for failure to render competent advice and for negligent errors and omissions in the transactions handled. In particular, such an error could arise with a customs duties classification because such classifications are technical and require the exercise of judgment. Since the business depends on the GTC database and knowledgeable staff, the Bank also identified a risk that Vastera's senior management and those responsible for maintaining the GTC database may leave the combined company at some future juncture.

The Bank has undertaken to take suitable steps to control these risks. The Bank will draft engagement letters that define the scope of advice to be rendered and limit the Bank's liability for such advice. It will also keep adequate records of the advice rendered and obtain appropriate insurance coverage. Moreover, the Bank will only render advice on banking services in which it has actual, direct experience and will avoid managing or controlling any advisee.

The Bank will ensure that the staff rendering advice is competent, trustworthy, and has appropriate professional credentials. Each member of Vastera's senior management has extensive experience in the technology industry, and many, including those supervising the maintenance of the GTC database, hold broad expertise in issues related to the import and export of goods. Moreover, retention agreements will be executed with members of Vastera's senior management team.

In an attempt to avoid conflicts of interest, the Bank will not enter into, without disclosure, relationships or incentive arrangements with third-party hardware and software providers to endorse or recommend particular hardware or software products that relate to the provision of Vastera's services by the Bank. Finally, the Bank will disclose to Vastera's consulting clients any other situations where it develops an interest in promoting specific technologies or configurations related to the provision of Vastera's services by the Bank.

With these risk mitigation measures, which address concerns raised in OCC precedent,²⁸ the Bank believes it can ensure that these activities are conducted in a safe and sound manner.

III. CONCLUSION

For the reasons set forth above, and based on the representations and commitments of the applicant, we find that the activities performed by Vastera are part of the business of banking or incidental to the business of banking under 12 U.S.C. § 24(Seventh). JPMCB's systems and controls also are sufficient to enable it to conduct the activities in a safe and sound manner. Accordingly, the Bank's application to acquire Vastera as an operating subsidiary under 12 C.F.R. § 5.34 is hereby approved.²⁹

Very truly yours,

-signed-

Daniel P. Stipano
Acting Chief Counsel

²⁸ See OCC Corporate Decision 2002-11 (June 28, 2002) (recommending measures to minimize the risks associated with the provision of technology consulting services); OCC Interpretive Letter No. 928 (December 24, 2001) (enumerating special precautions that should be adopted by banks offering technical advice).

²⁹ 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 United States, any agency or entity of the United States, or an officer or employee of the United States, 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 United States.