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**Comptroller of the Currency  
Administrator of National Banks**

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Washington, DC 20219

**Corporate Decision #97-60  
July 1997**

July 1, 1997

Michael W. Briggs, Esq.  
Regulatory Relations Attorney  
Barnett Banks, Inc.  
50 North Laura Street  
Jacksonville, Florida 32202-3638

Re: Operating Subsidiary Application by Barnett Bank, National Association, Jacksonville, Florida, Application Control Number: 97-SE-08-0024

Dear Mr. Briggs:

This is in response to your letter of April 28, 1997, notifying the Office of the Comptroller of the Currency ("OCC") of the intent of Barnett Bank, National Association ("Barnett"), to expand the activities of an existing, indirect operating subsidiary and thereby engage in certain Internet-based finder activities related to sales of pre-owned automobiles. For the reasons set forth below, I find that these additional finder activities would be permissible for a national bank and its subsidiaries and would be conducted on a safe and sound basis. Accordingly, Barnett's operating subsidiary application is approved.

**BACKGROUND**

**Description of the Parties**

Barnett is the primary banking subsidiary of Barnett Banks, Inc. ("BBI"), a registered bank holding company. Barnett was formed on June 29, 1996, when 28 subsidiary banks of BBI, pursuant to an April 4, 1996, OCC approval order, merged with and into Barnett Bank of Jacksonville, N.A., under the name of Barnett. As part of this corporate reorganization, Barnett also acquired certain of BBI's nonbanking companies as operating subsidiaries, including Barnett Dealer Financial Services, Inc. ("BDFS"). BDFS engages in leasing of personal property and making, acquiring and servicing consumer loans, and ancillary activities.

On April 1, 1997, BBI acquired all of the outstanding stock of Oxford Resources Corp. ("Oxford"), a specialized automobile finance company. Immediately after this transaction was consummated, BBI contributed its 100% ownership interest in Oxford to Barnett. Oxford now operates as a wholly-owned operating subsidiary of Barnett.<sup>1</sup>

Prior to its acquisition by Barnett, Oxford acquired an 80% ownership interest in a start-up technology company, Electronic Vehicle Remarketing, Inc. ("EVRI"). EVRI was formed to develop technology that would enable sellers of used vehicles to market their inventory to interested buyers via an electronic marketplace. To that end, EVRI has developed and operates the Price Auto Outlet™ system ("PAO"). PAO is an interactive Internet-based used motor vehicle marketplace on which a consumer can locate specific models of used vehicles that are being offered for sale by Oxford.

### **Description of Proposed Activities**

Currently, the PAO system only markets Oxford's pre-owned and off-lease vehicle inventory in certain states. However, the notification proposes that the PAO system be expanded to include both retail and wholesale components and, more significantly, to include vehicles owned by independent third parties as well as Oxford's inventory. In other words, the PAO would no longer be used only as a device to dispose of Barnett's off-lease and other vehicles acquired through auto leasing and lending activities; the PAO would also be used to market vehicles owned by third parties that have no other connection with the bank. This expansion will permit EVRI to earn fee income on the sale of the service to unaffiliated sellers and to enhance its opportunities to sell Oxford's financing products.

The proposed retail system, which could be accessed by consumers either through personal computers or at designated and strategically located PAO terminals, would work as follows: A consumer will access PAO either by a direct Internet connection to the EVRI website, or through a hyperlink connection from other websites with whom EVRI has arranged connections. Once on the PAO system, the consumer will be asked to provide information relating to the consumer's preferences.

As users of the PAO system review the subsidiary pages to this website, EVRI will provide all appropriate disclosures. These will include the identity of the owner of each vehicle and the party with whom the consigner will or would be contracting in the event a purchase selection is made. Thus, EVRI's role with respect to the selected vehicle will be disclosed. Specially, customers will be told whether EVRI (or Barnett or Oxford)<sup>2</sup> is the owner of the subject

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<sup>1</sup> Barnett asserts that it operates Oxford as a subsidiary pursuant to its existing authority granted to Barnett at the time of its acquisition of BDFS. See 12 C.F.R. § 5.33(e)(3).

<sup>2</sup> EVRI may or may not be the contracting party to sale transactions involving Oxford- or Barnett-owned vehicles.

vehicle and, thus, the contracting party to any sales transaction or, alternatively, whether EVRI is serving only as a finder for both purchasers and sellers and is neither a party to the transaction nor acting on behalf of either contracting party.

The listings will also provide the consumer with certain information about the vehicle including vehicle descriptions, photographs, the criteria used for an independent inspection and pricing information. Consumers will be able to print copies of all disclosures and application materials to maintain for their records.

After the consumer has selected one or more vehicles of interest, EVRI will transmit to the seller(s) (if other than Barnett or Oxford) the name, address and phone number of the consumer (a "purchase request") so that the dealer can contact the consumer and arrange for an appointment to visit the seller's location to view/purchase the vehicle.

Also, after a buyer/seller "match" has occurred, PAO will also make the following products and services available to customers: vehicle financing through Oxford/Barnett<sup>3</sup>; referrals to vendors of both short-term and extended-term warranties on selected vehicles; sale (as agent) of vehicle service contracts to PAO system customers who finance their vehicle purchases and leases through Oxford<sup>4</sup>; referrals for related insurance products, such as credit-life, Gap and road-service protection coverages<sup>5</sup>; and referrals to national auto service companies, such as Firestone, Jiffy Lube and other appropriate parties. EVRI would earn a fee for such referrals.

During the consumer's visit to the seller, and assuming the decision is made to purchase the vehicle, the purchase documentation will be completed between the seller and the consumer, including title paperwork showing the transfer of the ownership of the vehicle from the seller to the consumer (or lender as appropriate).<sup>6</sup>

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<sup>3</sup> Customers would be given the option of securing the necessary financing through Barnett/Oxford. The use of the PAO service would in no way be tied to Barnett/Oxford financing.

<sup>4</sup> Barnett has committed that these sales will conform to existing OCC precedent and interpretative rulings, including OCC Interpretive Letter No. 671, reprinted in, [1994-1995 Transfer Binder] Fed. Banking Law Rep. (CCH) ¶ 83,619 (July 10, 1995).

<sup>5</sup> The OCC has previously addressed other types of situations where referral of bank customers to unaffiliated firms for insurance coverage has been found to be a valid finder activity. See, e.g., OCC Interpretive Letter No. 567, reprinted in [1991-1992 Transfer Binder] Fed. Banking Law Rep. (CCH) ¶ 83,337 (Oct. 29, 1991) and OCC Interpretive Letter No. 472, reprinted in [1989-1990 Transfer Binder] Fed. Banking Law Rep. (CCH) ¶ 83,008 (Mar. 2, 1989).

<sup>6</sup> With respect to vehicles owned by third parties, when Barnett/Oxford is not providing the financing, the third-party dealer and the financing source will provide any requisite disclosures to the consumer incident to the sale of such vehicles.

The wholesale side of the PAO system would include "electronic vehicle auctions," through which dealers would bid on listed cars for resale to consumers. Alternatively, dealers would be able to access PAO's electronic inventory of vehicles to identify specific vehicles of interest to that dealer's customers.

EVRI anticipates that the bulk of revenue will be derived from vehicle financing transactions initiated via the PAO system and from referral income derived from the sources outlined above. Neither Barnett nor Oxford would take title to any of the vehicles listed by such third parties. Neither EVRI nor Oxford would be adding to Oxford's existing inventory by purchasing additional vehicles from those third parties utilizing the PAO system. Rather, EVRI's role would be as a provider of the means that brings together unaffiliated sellers of used cars and interested buyers.

## **ANALYSIS**

Essentially, this proposal entails the operation of an Internet-based referral system for sellers of used vehicles and for services connected with the purchase or ownership of such vehicles that will expand and supplement the financing business of Oxford/Barnett. We believe this is a permissible application of national bank's finder authority.

The OCC has long recognized the finder function as a permissible banking activity that includes, "without limitation, identifying potential parties, making inquiries as to interest, introducing or arranging meetings of interested parties, and otherwise bringing parties together for a transaction that the parties themselves negotiate and consummate." 61 Fed. Reg. 4849, 4863 (Feb. 9, 1996) (codified at 12 C.F.R. § 7.1002).<sup>7</sup> Such activities are part of the business of banking. OCC Conditional Approval Letter No. 221, (December 4, 1996) (hereinafter: "Integrion Letter").

Among other finder activities, the OCC has permitted national banks to bring together potential purchasers and sellers of automobiles. Specifically, in OCC Interpretive Letter No. 741, supra, the OCC permitted a national bank to operate a call center facility for new or used automobiles through which potential purchasers of vehicles could access databases containing information on the used and new vehicle inventories of dealers. In this program, consumers interested in automobiles would contact the call center facility and tell the center

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<sup>7</sup> See also, Letter from J.T. Watson, Deputy Comptroller of the Currency, February 26, 1969 (unpublished); Letter from John M. Miller, July 26, 1977 (unpublished); Letter from Paul Allan Schott, Chief Counsel, May 9, 1988 (unpublished); Letter from Elizabeth Corey, May 18, 1989 (unpublished); OCC Interpretive Letter No. 238, reprinted in [1983-1984 Transfer Binder], Fed. Banking L. Rep. (CCH) ¶ 85,402 (Feb. 9, 1982); OCC Interpretive Letter No. 472, reprinted in [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,008 (Mar. 2 1989); Letter from Lee Walzer, Attorney, Securities, Investments and Fiduciary Practices Division, August 24, 1992 (unpublished) and OCC Interpretive Letter No. 741, reprinted in [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-105 (Aug. 19, 1996); and Letter from Julie L. Williams, Chief Counsel, October 2, 1996 (to be published).

representatives their pertinent information. The call center representative would then match the consumer with a dealer handling the desired vehicle and would telecopy the consumer data to the dealer as a qualified sales lead. The bank, which had no further role in the transactions, will be compensated by the dealers for the referrals. After reviewing its precedent on permissible finder activities, the OCC concluded that these listing and referral activities were “within the scope of activities of a finder contemplated by I.R. § 7.1002 and therefore are permissible activities for a national bank or its subsidiaries.”

Barnett proposes to provide virtually the identical service with respect to used automobiles, except that the service would be delivered through the media of the Internet rather than a telephone call center. The use of a different technology to perform an otherwise permissible finder activity does not cause the activity to become impermissible; national banks may provide finder services via the Internet. Integriion Letter, supra. The other finder referral activities that Barnett proposes to engage in regarding related services, such as referrals to warranty firms, are likewise permissible.<sup>8</sup> Id.

As noted, the PAO will list vehicles owned by Barnett and Oxford<sup>9</sup> and by unaffiliated third parties. Thus, in some transactions resulting from the PAO, Barnett will be acting as principal (and seller) while in others it will be acting in the limited role of finder. However, to avoid consumer confusion over Barnett’s role (and the potential liability that could arise from role confusion), Barnett commits that consumers choosing to initiate a vehicle purchase or lease transaction via the PAO will receive all required and appropriate disclosures. Specifically, such consumers will be advised online (and also in writing) when EVRI is acting as a principal in the sale of pre-owned and off-lease vehicles owned by Oxford and Barnett and, alternatively, when EVRI is serving as finder, providing only the link between seller and purchaser, as well as referrals to any financing or related products and services. Moreover, to assure that it will not be incurring any special obligations through this program, Barnett commits that EVRI, Oxford, and Barnett will not issue warranties on vehicles sold either by Oxford/Barnett or by third parties using the PAO system.<sup>10</sup> Finally, Barnett, Oxford, and EVRI will not offer any commitments to third party sellers of vehicles under which Barnett (or Oxford or EVRI) would agree to purchase those vehicles listed on the PAO system which have not sold within a certain time period.

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<sup>8</sup> Barnett commits that the finder activities contemplated by the proposed expansion by EVRI will be conducted in accordance with the provisions of 12 C.F.R. § 7.1002.

<sup>9</sup> As noted previously, these vehicles are off-lease and other vehicles acquired as a result of the auto leasing and lending activities conducted by Barnett and Oxford.

<sup>10</sup> However, as noted above, interested consumers may be referred to vendors of warranty contracts with which Barnett or EVRI has referral agreements.

**CONCLUSION**

Based upon the foregoing facts and analysis, and the representations and commitments made by Barnett in connection with its request, the operating subsidiary application is hereby approved.

If you have any questions regarding this approval, please contact Senior Bank Structure Analyst John W. Graetz at (202) 874-5060 or Licensing Manager John Stein in our Southeastern District Office at (404) 588-4525.

Sincerely,

/s/

Julie L. Williams  
Chief Counsel