



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

December 23, 1999

**Corporate Decision #99-50
January 2000**

JoEllen I. Keating
Corporate Secretary's Office
First National Bank of Omaha
One First National Center
1620 Dodge Street
Omaha, Nebraska 68102-1596

Re: Request of First National Bank of Omaha, Omaha, Nebraska, for Approval to Expand the Activities of an Existing Operating Subsidiary
Application Control Number: 1999-MW-08-0031

Dear Ms. Keating:

This responds to the application submitted by the First National Bank of Omaha, Omaha, Nebraska ("Bank"), pursuant to 12 C.F.R. § 5.34, to expand the activities of SPC, Inc. ("SPC"), an existing operating subsidiary. As discussed below, we approve the expansion of the subsidiary's activities to include referring its merchant customers to a third party that would provide Web site development services for these merchants and processing purchases made over the Internet with debit and credit cards.

I. Background

SPC provides a wide variety of services to small business merchants. More specifically, the OCC has previously approved SPC's applications to engage in the following activities: (1) conducting merchant and data processing; (2) marketing merchant and data processing services; (3) providing its customers with equipment incidental to merchant and data processing; (4) providing its customers with information about products and services offered by the Bank and its affiliates; (5) providing customers with information about products and services offered by unaffiliated businesses (*i.e.*, acting as a finder); (6) paying finders fees to others for referring potential customers to SPC; (7) operating an Internet site that can be accessed by, and provide information to, current and potential customers of SPC; and (8) establishing links to merchant processing-related third party vendors on SPC's Internet site.

As discussed above, SPC proposes to refer merchants to an unaffiliated, third party Web site development company (“Company”).¹ The Company would provide these merchants with software and services designed to facilitate the merchants' sales of goods and services via the Internet, and SPC would process the payments for purchases generated via the Internet. More specifically, SPC, through the Company, would offer the merchants three alternative product options.

SPC would refer merchants to the Company, which would offer the merchants the ability to create commerce-enabled Web sites. Such Web sites would allow the merchants to display catalogues of their goods and services as well as the ability for the merchants to accept online credit and debit card payments. Second, the Company would offer merchants the ability to create Web sites that would allow these merchants to display catalogues of their goods and services. Although the second option would not allow the merchants to accept online credit or debit card payments, SPC would be available to process the merchants' credit or debit card orders through traditional credit card processing means. Third, the Company would offer merchants the ability to create Web sites that would allow these merchants to display informational brochures about their products and services without displaying a catalogue of the goods and services.

For all three options, the Web site product for each merchant would be created and maintained by the Company on the Company's secure server. Because SPC would not be hosting the Web sites on its own server, the Company has the responsibility and liability for protecting the integrity of the merchants' information. SPC would refer an interested merchant to the Company, and the software and hosting agreements would be between the merchant and the Company. An interested merchant would either telephone or meet with the Company, which would create the Web site on the merchant's behalf, or the merchant would log onto the Company's Web site and create the merchant's own Web site using a Web browser. In return for SPC arranging the introduction between the merchants and the Company, SPC would receive a fee as well as transaction fees in connection with processing credit and debit card transactions or other payment transactions.

II. Analysis

The OCC has previously addressed the provision of Internet services and related order and payment processing services and found that they are part of, or incidental to, the business of banking, and therefore, authorized for national banks pursuant to 12 U.S.C. § 24(Seventh).²

¹ Neither the Bank nor SPC will own any interest in the Company.

² National banks may provide a “package” of Internet-based services to retail merchants including: hosting merchants' Web sites on the bank's own server; registering merchants with search engines and obtaining Universal Resource Locators; providing an electronic communication pathway for product ordering and payment; maintaining merchants' data associated with the Web sites on its server (e.g., price information, product descriptions, and images); providing merchants with software to create Web sites; providing reports on transactions, Web site “hits,” and sales data; and processing credit card transactions. OCC Interpretive Letter No. 856, [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,313 (Mar. 5, 1999).

The processing of payments resulting from orders received through a merchant's Web site is clearly part of the business of banking.³ As discussed above, SPC would process purchases made over the Internet with debit and credit cards. Merchant debit and credit card processing services generally involve verifying credit card authorizations at the time of purchase, processing card transactions, settlement of card transactions, and depositing funds in merchants' accounts. SPC would also process electronic checks and other means by which a purchaser electronically authorizes payment for the purchase of goods or services. This payment processing activity would include verifying authorizations, processing transactions, settlement of transactions, and depositing funds in merchants' accounts. The fact that the credit and debit card and other electronic payment transactions would involve purchases of goods or services over the Internet does not change the nature of the service that would be provided. Thus, the proposed payment processing activities of SPC are part of the business of banking.

In the Bank's application, SPC would refer its merchants to the Company, which would host and maintain the merchants' Web sites. 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 transactions that the parties themselves negotiate and consummate." 12 C.F.R. § 7.1002(b) (1999), *see* Interpretive Letter No. 856, *supra*; OCC Corporate Decision No. 97-60 (July 1, 1997); and OCC Conditional Approval Letter No. 221 (Dec. 4, 1996).

The function of finder involves the "conveying of information about available products or services to potential markets for them." OCC Interpretive Letter No. 741, [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-105 (Aug. 19, 1996). *See also*, OCC Corporate Decision No. 98-13 (Feb. 9, 1998) (national bank finder, as a benefits counselor, could provide potential buyers with information on benefits programs available); OCC Interpretive Letter No. 824, [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-273 (Feb. 27, 1998) (banks participating in a finder program would provide brochures, leaflets, and other literature informing customers on the availability of products and services from the potential seller); OCC Interpretive Letter No. 630, [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,513 (May 11, 1993) (finder banks may distribute informational brochures); OCC Interpretive Letter No. 593, [1992-1993 Transfer Binder] Fed.

³ OCC Interpretive Letter No. 856, *supra*. *See also* OCC Conditional Approval No. 289 (Oct. 2, 1998) (national banks may acquire a minority interest in a firm that, among other things, provides accounts receivable processing and accounts payable processing); OCC Conditional Approval Letter No. 248 (June 27, 1998) (national bank operating subsidiary may acquire a minority interest in an entity that provides merchant credit and debit card processing services), OCC Conditional Approval No. 282 (July 7, 1998) (national bank may acquire an interest in a firm that would, among other things, engage in payments processing for the health care firms); and OCC Interpretive Letter No. 731, [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,048 (July 1, 1996) (national banks as part of the banking business may collect and process accounts relating to an electronic toll collection system).

Banking L. Rep. (CCH) ¶ 83,418 (July 1, 1992) (finder banks providing information on third party brokerage services); and Letter from Julie L. Williams, Chief Counsel, Oct. 2, 1996 (unpublished) (national bank as part of finder function could provide marketing materials and information about third party service providers to potential buyers).

Thus, when SPC brings merchants and the Company together for a transaction of Web hosting services that the parties themselves negotiate and consummate, it is engaged in a permissible finder activity. Similarly, processing credit and debit card transactions and other electronic payments are clearly part of the business of banking.

III. Conclusion

Based on the facts as described, I conclude that the activities proposed to be conducted by SPC are permissible activities for a national bank and its operating subsidiaries. Accordingly, the Bank's application is approved.

This approval is granted based on a thorough review of all information available, including the representations and commitments made in the application and by Bank representatives. If you have any questions, please do not hesitate to contact Jill Kennard, Senior Corporate Analyst, at (816) 556-1860 or Madelynn Orr, Senior Attorney, at (816) 556-1870.

Sincerely,

/s/

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel