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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

**Interpretive Letter #805**  
**November 1997**  
**12 U.S.C. 24(7)14**

October 9, 1997

RE: Notice of Expanded Marketing by [ ]

Dear [ ]:

This is in response to your notice dated August 22, 1997 (the "Notice") that [ ] (the "Company"), in which [ ] (the "Bank") holds a minority interest, plans to expand the marketing of its electronic imaging services<sup>1</sup> beyond medical claims processing. Specifically, the Company intends to market electronic imaging services to (1) banks and other financial services companies, and (2) non-financial services companies for use with financial data. In addition, the Company plans to utilize its excess capacity in electronic imaging to provide limited services to non-financial entities for use with non-financial data. For the reasons below, we do not object to the expanded as described in the Notice, provided that the conditions imposed in the OCC's March 12, 1996 letter shall continue to apply to all activities conducted by the Company.

On March 12, 1996, OCC issued an opinion letter to [ *Corporation* ] concluding that, subject to certain conditions, the Bank could lawfully acquire a 49% interest in the Company, which is engaged in the use of data processing and electronic interchange facilities to assist hospitals and physicians in communicating billing and payment-related information. Among other things, the Company stores, processes, and retrieves documents and information needed to substantiate submitted medical claims through proprietary software systems designed by the Company for these purposes.

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<sup>1</sup> Electronic imaging systems use digital technology to capture, index, store and retrieve electronic images of paper documents. See, generally, OCC Bulletin 94-8 (January 27, 1994).

Subsequent to the Bank's acquisition of its minority interest in the Company, the Company decided (based upon the Bank's recommendation) to market its document storage, retrieval and management systems using electronic imaging to banks and other financial institutions. For example, the electronic imaging services proposed to be offered to the banking industry include loan document management systems and signature verification systems using optical storage technology. The Company also proposes to market its electronic imaging systems to non-bank firms, but would limit the marketing to financial information systems.

The OCC has said that national banks are legally permitted to make a minority investment in a company provided four criteria or standards are met. See Interpretive Letter No. 732, reprinted in [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-049 (May 10, 1996); Interpretive Letter No. 692, reprinted in [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,007 (Nov. 1, 1995); and OCC Interpretive Letter No. 694, reprinted in [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,009 (Dec. 13, 1995). These standards, which have been distilled from our previous decisions on permissible minority investments for national banks and their subsidiaries, are:

- (1) The activities of the enterprise in which the investment is made 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.
- (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.

In the March 12, 1996 letter, the OCC concluded that the proposed investment in the Company met all four criteria. The Notice states that the proposed expansion of activities will not affect the second, third, and fourth criteria. We agree. We also agree that the proposed additional activities of the Company are part of the "business of banking" or incidental thereto under 12 U. S.C. §24 (Seventh), and therefore satisfy the first criterion.

The provision of electronic imaging services to banks and other financial institutions is clearly part of the business of banking. Many banks and financial institutions use electronic imaging systems to process and store their documents efficiently.<sup>2</sup> National banks are permitted to

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<sup>2</sup> See, e.g., OCC Bulletin 94-8, supra, and Remarks of Comptroller Eugene A Ludwig Before the Women in Housing and Finance Technology Symposium (December 4, 1996).

provide data processing and other computer-related services to other financial institutions. Interpretive Letter No. 754, reprinted in [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-118 (Nov. 6, 1996). Because they are correspondent banking services, such services are part of the business of banking. Id. Moreover, the OCC has found document control and record keeping to be a permissible bank correspondent service.<sup>3</sup> The use of electronic imaging technology to provide the same type of correspondent banking document management services does not render the services impermissible. 12 C.F.R. 7.1019. Thus, the Company may provide electronic imaging services to banks and other financial institutions.<sup>4</sup>

The Company also proposes to market its image processing services to non-banks for use with financial data and documents. This is permissible under the OCC's March 12, 1996 letter. The letter found the Company's document and data processing for medical firms to be permissible based upon OCC's longstanding position that, as part of the business of banking, national banks may provide non-banks with electronic data processing for financially related data. While the Company proposes no longer to limit its processing to medical firms, the nature of the customer firms was not a material factor in the legal analysis of the March 12, 1996 letter or the precedent cited. Thus, this aspect of the proposed expansion is also permissible.

Finally, the Company plans, on a limited basis, to market excess capacity in its imaging processing equipment to school districts and other nonfinancial entities for use in processing non-financial data.<sup>5</sup> You have represented that the Company will conduct these non-financial activities using good faith excess capacity as required in 12 C.F.R. 7.7019. See, e.g., Interpretive Letter No. 742, reprinted in [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-106 (Aug. 19, 1996). In this regard, the Company does not expect revenues from the sale of its services to school districts and other non-financial services companies to exceed five (5) percent of its total revenues.

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<sup>3</sup> See Interpretive Letter No. 513, reprinted in [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,215 (June 18, 1990) (permitting national banks to provide other financial institutions with loan application and disclosure documents, mail room processing, bank communication support services, and courier services).

<sup>4</sup> The Company should be aware that use of electronic imaging systems by banks can raise supervisory issues (see OCC Bulletin 94-8, supra) and that, by providing such services to depository institutions, the Company will become subject to examination and regulation under the Bank Service Company Act, 12 U.S.C. 1867(c).

<sup>5</sup> However, the Company anticipates that the school districts will use the Company's services in part, if not primarily, for processing financial data.

Thus, we have no objection to the Company conducting the expanded marketing of its electronic imaging systems as described in the Notice, provided that the conditions imposed in the OCC's March 12, 1996, letter shall continue to apply to all activities conducted by the Company.

Sincerely,

/s/

Julie L. Williams  
Chief Counsel