



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Conditional Approval #773
December 2006

November 30, 2006

Keith T. Holmes
King, Holmes, Paterno & Berliner, LLP
1900 Avenue of the Stars, 25th Floor
Los Angeles, California 90067-4506

Re: National Bank of California, Los Angeles, California
Application to establish an operating subsidiary, NBOC Processing Services, Inc. and
engage in merchant processing and ancillary finders' activities.
OCC Control No.: 2006-WE-08-0007

Dear Mr. Holmes:

This is in response to your operating subsidiary application, filed on behalf of National Bank of California, Los Angeles, California (the "Bank") on June 16, 2006, and as supplemented by your subsequent correspondence. The Bank proposes to establish a wholly owned subsidiary, NBOC Processing Services, Inc. (the "Subsidiary"), which in turn would own 51% of NBOC Merchant Services, LLC (the "LLC"). The LLC would engage in the business of acquiring merchant credit card account relationships through an arrangement with an unaffiliated acquiring bank¹ and an unaffiliated intermediary company. The LLC would use a sales force of independent sales agents, groups of agents, or independent sales organizations.² The Bank represents that it will not acquire accounts from high-risk merchants. The LLC, as finder, would also facilitate the sale of ancillary products and services to its merchant customers, such products and services to be provided by third parties.

Whether conducted directly or through operating subsidiaries, merchant processing activities are part of, or incidental to, the business of banking under 12 U.S.C. § 24(Seventh).³ In addition, the

¹ An acquiring bank is a bank that contracts with merchants for the settlement of credit card transactions. Acquiring banks contract directly with the merchant, or indirectly through agent banks or other third party organizations, to process credit card transactions.

² Independent Sales Organizations provide a variety of merchant processing functions on behalf of the acquiring bank. These functions may include soliciting new merchant accounts, arranging for equipment terminal purchases or leases, and providing backroom services. The acquiring bank must register all ISOs with the bankcard associations.

³ See Conditional Approvals Nos. 582 and 583 (both Mar. 12, 2003); Interpretive Letter No. 883, reprinted in [2000-2001 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-402 (Mar. 3, 2000); Interpretive Letter No. 875, reprinted

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LLC's sale of the ancillary products and services is a form of finder activity long-established as a part of the business of banking under 12 U.S.C. § 24(seventh).⁴

Based on a thorough review of all information available, including the representations and commitments made in the application and by the Bank's representatives, I conditionally approve the Bank's establishment of the operating subsidiary and its plan to conduct the proposed activities.

We conclude that, subject to the following conditions⁵, the Bank may proceed with its plan:

- 1) Prior to consummation, the Bank shall cause the Subsidiary and LLC to request and obtain the OCC's written determination of non-objection with respect to the LLC's internal policies and procedures.
- 2) The Bank (i) shall cause the Subsidiary and LLC to give the Supervisory Office at least sixty (60) days prior written notice of the Subsidiary's or LLC's intent to significantly deviate or change from the business plan or operations of the Subsidiary or LLC as set forth in the Bank's application to establish NBOC Processing Services, Inc., and (ii) shall obtain the OCC's written determination of non-objection before the Subsidiary or LLC engages in any significant deviation or change from the business plan or operations of the Subsidiary or LLC.

For illustrative purposes, a significant deviation includes, but is not limited to, the following:

- a) Material changes to underwriting standards for merchants that increase the credit risk to the LLC, Subsidiary or Bank.

in [1999-2000 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-369 (Oct. 31, 1999); Interpretive Letter No. 856, reprinted in [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-313 (Mar. 5, 1999); Conditional Approval No. 287 (Sept. 4, 1998); Corporate Decision No. 98-39 (Mar. 3, 1998); Conditional Approval No. 269 (Jan. 13, 1998); Conditional Approval No. 265 (Dec. 29, 1997); Interpretive Letter No. 813, reprinted in [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-261 (Oct. 14, 1997); Conditional Approval No. 255 (Sept. 25, 1997); Conditional Approval No. 248 (Jun. 27, 1997); Interpretive Letter No. 720, reprinted in [1995-1996] Fed. Banking L. Rep. (CCH) ¶ 81-035 and Conditional Approval No. 194 (both Jan. 26, 1996); Conditional Approval No. 192 (Dec. 27, 1995); Interpretive Letter No. 689, reprinted in [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-004.

⁴ 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 of parties, and otherwise bringing parties together for transactions that the parties themselves negotiate and consummate." 61 Fed. Reg. 4863 (Feb. 9, 1996) (codified at 12 C.F.R. 7.1002(b)). The Bank has represented that the LLC will engage in finder activities only in a manner consistent with 12 C.F.R. § 7.1002.

⁵ In these conditions, references to "the Supervisory Office" mean the OCC's Southern California – South Field Office and references to days mean calendar days.

- b) Targeting high-risk customers presently excluded from the targeted market.
- c) Amendments to the LLC Operating Agreement that changes the ownership structure of the LLC, the respective control rights of LLC members, the rights of the Bank to dissolve the LLC, or other changes that materially affect the Bank.
- d) A change of acquiring bank or intermediary company, or material changes to the contractual arrangements between the LLC, any intermediary company, the acquiring bank, or their successors.
- e) Offering the ancillary products directly as principal.
- f) Projected growth or shrinkage, such as planning significant growth or shrinkage in a business line or product line that significantly impacts the operations or financial projections.
- g) Changes in operations or fee structures that cause material variations from projected growth or earnings.

Notwithstanding the foregoing, no notice and determination of non-objection is required hereunder with respect to activities that require an application to the OCC to obtain the OCC's prior approval pursuant to 12 C.F.R. § 5.34(e)(5) or that require an after-the-fact notice pursuant to 12 C.F.R. § 5.34(e)(5)(iv).⁶

- 3) The Bank shall (i) give the Supervisory Office at least thirty (30) days prior written notice of the Bank's intent to extend credit to the Subsidiary, LLC, or other investors in the LLC where the proceeds of the extension of credit are to be used directly or indirectly to support the operations of the Subsidiary or LLC, and (ii) obtain the OCC's written determination of non-objection before extending any such credit.
- 4) The Bank shall monitor the condition of the LLC regularly to determine if the dollar loss threshold set forth in the LLC Operating Agreement may be about to be crossed. Prior to, or no later than five (5) days after, a material event that has caused or is likely to cause the threshold to be crossed, the Bank shall provide a written notice to the Supervisory Office that shall include the Bank's intentions as to dissolving the LLC pursuant to the Bank's rights under the LLC Operating Agreement, or other plans the Bank may have to capitalize or otherwise fund the LLC's operations.

⁶ Prior approval pursuant to section 5.34(e)(5) would be required for a number of new activities, including any finder activities not permitted by published OCC precedent and merchant processing activities.

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- 5) The Bank shall give the Supervisory Office at least thirty (30) days prior written notice of its intent to effect a change in accounting practices that would result in the LLC no longer being consolidated into the books of the Bank and Subsidiary.
- 6) The OCC may impose, and the Bank shall thereafter adhere to, and cause the Subsidiary and LLC to adhere to, additional conditions the OCC deems appropriate in response to any notice hereunder, including in any written determination of non-objection.

These conditions are conditions “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. As such, the conditions are enforceable under 12 U.S.C. § 1818.

This conditional 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 any 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.

If you have any questions, please contact Senior Licensing Analyst Jim Bundy at (720) 475-7650, or by E-mail at jim.bundy@occ.treas.gov.

Sincerely,

/s/

Stephen A. Lybarger
Acting Deputy Comptroller, Licensing

cc: Richard Ritter, EVP, National Bank of California