



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

Southwestern District Office
1600 Lincoln Plaza
Dallas, TX 75201-3394

Voice (214) 720 -7012
Fax (214) 720 - 7071

**Interpretive Letter #843
November 1998
12 U.S.C. 36J**

September 29, 1998

Dear []:

This responds to your inquiry regarding whether [] (the bank), at its loan/deposit production office (LPO/DPO) in [*City, State*], may also provide certain services without the LPO/DPO being considered to be a branch of the bank.¹ The services are: (1) the installation of an automated teller machine (ATM) for the payment of withdrawals; (2) the sale of cashier's checks, money orders and traveler's checks; (3) provision of safe deposit boxes; and (4) the cashing of checks. In addition, you ask whether the LPO/DPO may share space with a facility operated by a courier service. For the reasons stated below, and under the facts presented, we conclude that the LPO/DPO may provide the proposed services and share space, as proposed, without being considered to be a branch of the bank.

I. Background

Title 12 U.S.C. § 36 permits national banks to establish branches under certain circumstances and defines branches as facilities at which "deposits are received, or checks [are] paid, or money [is] lent."² These activities are referred to as the "core banking functions."³ The Comptroller of the Currency has determined that national bank offices performing loan production and deposit production functions are not branches provided that they do not engage in any of the core

¹ This letter supersedes our letter of February 11, 1998, sent in response to your inquiry of January 26, 1998. The information contained in this letter is based on your inquiry and subsequent telephone conversations between you, others involved in this proposal, and OCC staff.

² 12 U.S.C. § 36(j).

³ This phraseology has its origin in *Securities Industry Association v. Clarke*, 479 U.S. 388, 404 (1987) (*Clarke*) (holding that the provision of discount brokerage services is not a core banking function and, thus, a bank office engaged in that activity is not a branch).

banking functions.⁴ Moreover, Congress in 1996, amended the national banking laws pertaining to branching to provide that ATMs are not branches.⁵ In addition, we note that the OCC permits national banks to share premises with other businesses,⁶ and to utilize courier services to transport deposits between the customer and the bank.⁷ Whether these courier services are considered to be bank branches depends on an evaluation of a variety of factors.⁸

For the reasons discussed below, we conclude that neither the activities listed above to be undertaken by the bank, nor the space sharing arrangement, cause the LPO/DPO to be considered to be a branch of the bank.

II. Discussion

A. Activities to be performed by the bank at the LPO/DPO

With the above statutory and regulatory framework in mind, the following discusses more specifically the four activities that the bank seeks to perform at the site and their impact on whether the site would be considered to be a branch of the bank.

First, you ask whether the presence of an ATM for the payment of withdrawals at the site would cause the site to be considered to be a branch of the bank. As discussed, it is clear that ATMs are no longer considered to be branches as a result of the 1996 changes to the definition of “branch” as used in section 36. Moreover, as we understand the facts, the ATM would be physically separate from the LPO/DPO and, while on the premises of the LPO/DPO, would be installed in the outside wall so that it will be accessible from the street only, rather than from inside the office. Further, withdrawals undertaken at the ATM will be accomplished by depositors, not by bank personnel; in fact, withdrawals can be undertaken even when the LPO/DPO is closed. In addition, the ATM will be available for use by customers of any bank which is a member of the networks to which the ATM is linked, not just to customers of the bank. Under these circumstances, it is clear that the presence of the ATM, in and of itself not a branch, does not convert the LPO/DPO, also otherwise not a branch, into a branch.

Second, you ask about the sale of cashier’s checks, money orders and traveler’s checks. As we understand the facts, these instruments would be available for sale to anyone who could pay for

⁴ 12 U.S.C. §§ 7.1003--7.1005 (providing that loan production offices are not branches as long as bank funds representing loan proceeds are not disbursed in-person to borrowers at the site); OCC Interpretive Letter No. 691, *reprinted in* [1995-96 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-006 (Sept. 25, 1995) (deposit production offices are not branches where deposits are not accepted at the DPO but rather are mailed by the customer to the bank after filling out preliminary paperwork at the DPO).

⁵ 12 U.S.C. § 36(j).

⁶ 12 C.F.R. § 7.3001.

⁷ 12 C.F.R. § 7.1012.

⁸ *Id.* at § 7.1012(c).

them using cash or a credit card. Consequently, none of these activities can be construed as a core banking function -- no deposits are being received, no funds are being withdrawn and no money is being lent -- that would cause the facility to be considered to be a branch.⁹

Third, you have asked about the provision of safe deposit boxes at the LPO/DPO. A safe deposit box service is an activity in which a customer contracts with a bank to rent a safe deposit box for the storage of valuables. The bank assumes responsibility to exercise reasonable care and to take precautions against loss of the box's contents. Any sums of money that may be placed in a safe deposit box are *not* credited to the customer's account at the bank. Thus, providing a safe deposit box service at the LPO/DPO is not "taking deposits" within the meaning of section 36(j) and does not cause the facility to be considered to be a branch.¹⁰

Fourth, you ask whether the LPO/DPO can cash checks drawn on other banks without being considered to be a branch of the bank. The term "checks paid," within the meaning of the definition of a "branch" refers to withdrawals from a deposit account at the bank.¹¹ Thus, cashing checks drawn on another bank is not an activity covered by the phrase "checks paid" in the branching definition and this activity, conducted at the LPO/DPO, would not cause that facility to be considered to be a branch of the bank.¹²

B. Operation of the courier service in space shared with the LPO/DPO

Your proposal also contemplates that an [*State*] courier service, [], a subsidiary of [*Inc.*], (together these companies are referred to in this letter as the courier service), a publicly traded company that operates throughout the United States, will operate a pick-up point at the LPO/DPO.

⁹ We note that one could argue that the use of a credit card issued by the bank to purchase a check or money order or similar instrument could be construed as the receipt of loan proceeds and, thus, the lending of money under sections 36(j) and 7.1003. However, this issue does not arise in this case, because your bank does not issue credit cards. Moreover, even if it did, because the bank would sell these instruments on similar terms and conditions without regard to the identity of the issuer of the credit card being presented by the purchaser, this activity, too, would not be considered to be branching function. See OCC Interpretive Letter No. 814, *reprinted in* [Current Binder], Fed. Banking L. Rep. (CCH) ¶ 81-262 (November 3, 1997) (national bank subsidiary's offices that, in fact, disburse loan proceeds, on behalf of numerous other financial institutions, including banks and savings associations, on substantially similar terms and conditions as applicable to loans made by parent bank are not branches because they are not facilities to attract *bank* customers).

¹⁰ In fact, the Supreme Court has specifically recognized that the conduct of a safe deposit box business by a national bank is not constrained by the section 36 branching limitations. See *Clarke* at p. 406.

¹¹ *E.g., Independent Bankers Association of America v. Smith*, 534 F.2d 921, 944 (D.C. Cir.), *cert. denied*, 429 U.S. 862 (1976). This court noted that, in using the "shorthand phrase 'checks paid,' [Congress] envisioned all account withdrawals" and included "those facilities that permit bank customers to perform the traditional banking function of withdrawing funds from their accounts."

¹² Under the facts presented, we have no need to consider whether the facility would be considered to be a branch if it *also* cashed checks drawn on the bank itself, whether presented by a bank customer or not.

The bank has no ownership interest in the courier service which provides a scheduled and routed delivery service for the pick-up and delivery of documents and other items to or on behalf of a variety of businesses including banks, credit unions, thrifts, finance companies, other financial institutions, pharmaceutical companies, medical laboratories and hospitals as well as universities, military installations, Federal Reserve Bank branches and various governmental agencies. We understand that the company in [*State*] serves most financial institutions in the state. The company has about 65 employees in [*State*] and 8,000 nationwide. In [*State*] alone it operates 33 vehicles and about 150 through owner-operator independent contractors. The pick-up location operated at the LPO/DPO will constitute one of thousands of pick-up locations of the courier service throughout [*State*] and numerous others nationwide.¹³

Pick-ups at the [*City*] location are scheduled for 2 p.m. each business day and, following each day's pick-up, the courier service will not receive items at its [*City*] site for the remainder of that day because it prefers that no items be left in the box overnight.¹⁴ The courier service will include the [*City*] site in its list of service locations in the telephone book and in its advertising. Moreover, the presence of the courier service's pick-up location will be advertised by signage in the window of the premises shared with the LPO/DPO. The service will be available for use by the general public and the courier service will deliver items dropped off at the site to any destination in [*State*] and nationwide that it would normally serve. This could include deposits being sent to the bank or to any other bank or other type of financial institution as well as deliveries to recipients, other than financial institutions, of other items normally transported by the courier service.

As stated, national banks are permitted to share space with other entities under 12 U.S.C. § 7.3001(a) subject to the requirements set forth in paragraph (c).¹⁵ The bank has represented that these requirements will be satisfied. Moreover, section 7.3001 permits the sharing of employees subject to certain requirements set forth in paragraph (c).¹⁶ In the arrangement proposed, a bank

¹³ In fact, in [*State*] alone, vehicles operated by and on behalf of the company make about 6,000 stops per day although the number of locations served is less than that because pick-ups may occur more than once a day at certain sites.

¹⁴ In this regard, we note that the courier service assumes responsibility for items once they are dropped off at its pick-up point and during transit.

¹⁵ These requirements pertain to conspicuous identification of the businesses, that the arrangement does not constitute a joint venture or partnership, that the relationship between the entities is at arm's length, that security issues are resolved, that the activities of the other business do not adversely affect the safety and soundness of the bank, and that the assets and records of the parties are segregated.

¹⁶ In addition to those requirements listed in footnote 15, requirements triggered by the sharing of employees are that these employees fully disclose the nature of their relationship to the customers so that customers will know the identity of the bank or other business that is providing the service and that the shared employees meet licensing or qualification requirements, if any, applicable to the other business.

employee will provide limited services to the courier service.¹⁷ Consequently, the bank also has agreed to comply with restrictions that pertain to the use of shared personnel.

We further note that the courier service clearly complies with the factors set forth in 12 U.S.C. § 7.1012(c)(2) which provides a safe harbor to determine when a courier service that transports items for deposit to a national bank should not be considered to be a branch of that bank. As discussed above, the courier service makes its services available to the public including other depository institutions,¹⁸ retains ultimate discretion to determine which customers and which geographical areas it will serve,¹⁹ maintains ultimate responsibility for scheduling, movement, and routing,²⁰ does not operate under the name of the bank nor will the bank or the messenger service advertise or represent that the service is provided by the bank,²¹ assumes responsibility for the items once they are dropped off at its pick-up point and during transit,²² and acts as agent for the customer.²³ Moreover, when the courier service does transport items for deposit to the bank, they are not credited to the customer's account until they are received at the bank's main office in [City].²⁴ Finally, we note that the courier service provides its services through its own employees and facilities in accordance with 12 C.F.R. § 7.1012(c)(2)(i).²⁵

¹⁷ As proposed, when a customer enters the facility, a bank employee will determine whether the customer intends to drop an item off at the courier service's pick up point. If the customer intends to do so and has not already signed a contract with the courier service, the employee will provide a copy of the contract to the customer to sign. This is done irrespective of the identity of the intended recipient of the item being dropped off. The customer then places the item in the slot at the pick up point. If the item is too big to fit into the slot the employee instructs the customer to contact the courier service directly. In no event will the employee handle the item being dropped off. Items are placed in the slot only by the customer and are picked up only by the courier service's pick up and delivery person. The employee keeps a log of the items placed in the pick-up facility which is given to the courier service's pick-up and delivery person when he or she arrives to collect the contents of the box. With respect to deposits being transported by the courier service, included among the contractual terms is a provision stating that items placed in the courier service's box are not considered to be delivered to the addressee until they are actually delivered to the addressee by the courier service and that the courier service is the agent of the customer.

¹⁸ 12 C.F.R. § 7.1012(c)(2)(ii)(A).

¹⁹ *Id.* at (c)(2)(ii)(B).

²⁰ *Id.* at (c)(2)(ii)(C).

²¹ *Id.* at (c)(2)(ii)(D).

²² *Id.* at (c)(2)(ii)(E). In this regard, we note that the courier service will assume responsibility for maintaining adequate insurance covering in-transit losses.

²³ *Id.* at (c)(2)(ii)(F).

²⁴ *Id.*

²⁵ While, as described, a bank employee at the LPO/DPO will provide some minimal services when customers of the courier service drop off items, sharing of employees, as noted, is permissible, and will be done in accordance with the applicable regulations codified at 12 C.F.R. § 7.3001. Moreover, the fact that one of the courier service's pick-up sites is occupied and utilized

[], President/CEO
September 29, 1998
Page 6

III. Conclusion

Consequently, we conclude that an LPO/DPO of a national bank that provides the services discussed above and which shares space with a pick-up site of a third party courier service, as described, is not a branch of the national bank.

I hope that this has been responsive to your inquiry.

Sincerely yours,

/s/

Randall M. Ryskamp
District Counsel

by the courier service pursuant to an arrangement with the bank does not require a different result on the branching issue. The factors set forth in the safe harbor are for the purpose of evaluating whether a messenger service is "established" by a national bank and thus, whether its facilities should be considered branches of a national bank. See 12 C.F.R. § 7.1012(c)(2); 58 Fed. Reg. 4070, 4071-72 (January 13, 1993) (preamble to final rule adopting current approach to determining whether a messenger service constitutes a branch of a national bank). That one site out of numerous sites and vehicles utilized by the messenger service to make pick-ups throughout [*State*] and the United States is made available by a bank which is one of many financial institutions for which the messenger service transports deposits from their customers cannot be said to require that the messenger be considered to be "established" by the bank and, thus, a branch of the bank.