



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

SCOTT G. ALVAREZ  
GENERAL COUNSEL

JAN 08 2008

Gene R. Elerding, Esq.  
Manatt, Phelps & Phillips, LLP  
11355 West Olympic Boulevard  
Los Angeles, California 90064-1614

Dear Mr. Elerding:

This responds to your October 17, 2007, letter (“Letter”) requesting a determination on behalf of \_\_\_\_\_ and its parent company, \_\_\_\_\_, that \_\_\_\_\_ would continue to qualify for the “credit card bank exemption” from the definition of bank in section 2(c)(2)(F) of the Bank Holding Company Act (“BHC Act”),<sup>1</sup> if the bank elects to underwrite and offer debt protection services (“DPS”) as described below.

The credit card bank exemption from the definition of bank in the BHC Act applies to any “institution, including an institution that accepts collateral for extensions of credit by holding deposits under \$100,000, and by other means which – (i) engages only in credit card operations; (ii) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; (iii) does not accept any savings or time deposit of less than \$100,000; (iv) maintains only one office that accepts deposits; and (v) does not engage in the business of making commercial loans.”<sup>2</sup>

\_\_\_\_\_ currently markets DPS to its credit card customers (“Customers”) in the capacity as agent for an unaffiliated third party. \_\_\_\_\_ does not underwrite DPS itself. For a fee, \_\_\_\_\_’s Customers

<sup>1</sup> 12 U.S.C. § 1841(c)(2)(F).

<sup>2</sup> Id.

who elect to receive DPS receive deferral or cancellation of some or all of their credit card obligations to the bank in the event of an unexpected, predefined hardship – death, disability, or involuntary unemployment (“Covered Events”).

now proposes to underwrite DPS for its existing and future Customers.

would offer DPS as an optional, supplemental feature to the bank’s existing credit card operations. The bank and its Customers would enter into a contractual agreement that would specify when debt deferral or cancellation begins and ends for any Covered Event, exclusions from coverage, and other coverage requirements. A Customer would pay a monthly service charge and would continue to have full access to the benefits of the program as long as the bank received its monthly fee. A Customer may cancel its participation in DPS at any time.

’s DPS consist of debt suspension services and debt cancellation services, depending on the Covered Event. In the event of a Customer’s unanticipated disability or involuntary unemployment, the bank would suspend the Customer’s credit card payment obligations for a predefined period (“Cancellation Period”). During the Cancellation Period, Customers would not be required to make their regular minimum monthly payment, but interest would continue to accrue and Customers could not use their accounts for purchases or cash advances. In the event of a loss of life, the Customer’s entire outstanding balance would be cancelled (up to the maximum amount stated in the bank’s agreement with the Customer).

To qualify for the credit card bank exemption in the BHC Act, a financial institution must “engage only in credit card operations.”<sup>4</sup> The legislative history of this provision indicates that a qualifying institution must engage “only in the business of issuing and processing credit cards for individuals and in transactions that are a necessary incident to that business.”<sup>5</sup> DPS would benefit

’s Customers by helping them meet their credit card obligations to the bank under adverse circumstances. These services also would aid

in defraying credit losses from its credit card lending to Customers. In light of the close risk management nexus between the bank’s DPS and its credit card lending, the proposed DPS appear to be part of or a necessary incident to the bank’s credit card operations.

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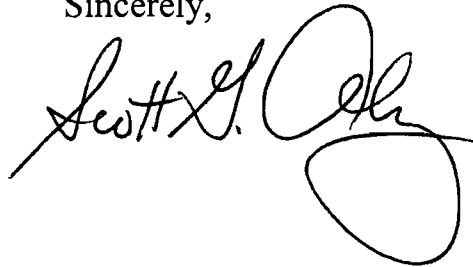
<sup>4</sup> 12 U.S.C. § 1841(c)(2)(F)(i).

<sup>5</sup> Sen. Comm. Rep. No. 100-19, 100<sup>th</sup> Cong., 1<sup>st</sup> Sess., pp. 29-30 (1987).

Based on all the facts of record and subject to the commitments and representations discussed above or otherwise set forth in the Letter, the Legal Division would not recommend that the Board find \_\_\_\_\_ to be a bank for purposes of the BHC Act as a result of underwriting and offering the DPS described above and in the Letter.

Any material change in the facts presented may result in different conclusions and should be reported promptly to Board staff. If you have any questions about this letter, please contact Mark E. Van Der Weide of my staff at (202) 452-2263.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott G. O'Neil". The signature is fluid and cursive, with a large loop at the end.

cc: Federal Reserve Bank of San Francisco  
Office of the Comptroller of the Currency