

---

Comptroller of the Currency  
Administrator of National Banks

---

Washington, DC 20219

**Corporate Decision #2000-08  
July 2000**

June 1, 2000

Donald S. Shamey  
President  
Citizens National Bank of Evans City  
101 East Diamond Street  
Butler, Pennsylvania 16003

Re: Application by Citizens National Bank of Evans City, Pennsylvania to establish operating subsidiary to provide e-commerce services to small businesses.  
Application Control Number: 2000-NE-08-0018

Dear Mr. Shamey:

This responds to your application, filed on March 28, 2000, requesting the Office of the Comptroller of the Currency ("OCC") to approve the establishment of a wholly-owned operating subsidiary by Citizens National Bank of Evans City, Pennsylvania ("Bank"). The proposed subsidiary, CNBCommerce.com, LLC ("LLC"), a Pennsylvania limited liability company located in Butler, Pennsylvania, will provide e-commerce services to small businesses, and to other financial institutions so they may offer such services to their merchant customers, from the Bank's operations center location in Evans City, Pennsylvania. Based upon the information contained in the application and supplementing materials and the representations provided by Bank management, the Bank's proposed operating subsidiary is legally permissible, as discussed below. Accordingly, we approve its establishment and operation.

**Proposed Activities**

The Bank and the LLC propose to provide services to merchants to facilitate the sales of goods and services over the Internet. They propose to offer merchants a package of electronic services ("Internet Services") that bundle payment processing services with ancillary support necessary for merchants to have retail web sites that will be linked to a "virtual mall" web site. Additionally, the LLC will provide these services to other financial institutions on a wholesale basis so that those institutions may offer similar Internet services to their merchant customers.

The LLC will seek to sell these Internet Services to merchants to which the Bank currently provides debit and credit card processing services, as well as to other merchants.<sup>1</sup> The LLC will provide merchants with software needed to create their own web sites on the Internet, and the merchant may select a web site template from a series of available templates, or opt to have the LLC custom build the web site.<sup>2</sup> The LLC also will help merchants maintain their web sites.<sup>3</sup> The LLC will provide sales tax calculations on the products and services sold to merchants who request that information, will register merchants with a number of Internet search engines, and will obtain an Internet web site address known as a Universal Resource Locator (“URL”) for the merchant.

There will be links between the LLC’s web sites and the web sites of the merchants that sign up for the LLC’s Internet Services, thus forming a type of “virtual mall.” There also will be links between the LLC’s web site and the Bank’s web site, so that a person visiting the Bank’s web site will be able to access the LLC’s virtual mall web site.<sup>4</sup>

The LLC, via the Internet, will provide an electronic communications pathway between the merchant and its potential customers through which product orders and payment information flow.<sup>5</sup> Thus, customers who wish to purchase products or services from the merchants through

---

<sup>1</sup> The Bank is a party to the contracts Welsch Financial currently has with merchants to provide debit and credit card processing services. Under these three-party contracts between the merchant, the Bank and Welsch Financial, the Bank is the sponsoring bank that provides access to the payments networks. Furthermore, the Bank will be a party to the contracts with merchants that the LLC signs up for the Internet Services. These contracts will likewise be three-party contracts between the merchant, Welsch Financial and the Bank under which the Bank provides access to the payments networks as sponsoring bank.

<sup>2</sup> The merchant purchasing the Internet Services will make all decisions as to what information will be presented on its web site and how that information will be presented.

<sup>3</sup> Such maintenance will include ongoing maintenance and support of the web site’s host servers, as well as providing merchants with reports on transaction volume and other data relating to the purchase of products and services from their web sites. Each merchant, however, is responsible for maintaining and updating the store and product information contained on its web site.

<sup>4</sup> The LLC’s home page will include a disclosure stating that the Bank and its affiliates do not guarantee, endorse or provide any of the goods or services available through the third-party web sites linked through the LLC’s site. The user agreement of the Bank’s web site will include a similar disclosure. The merchants’ web sites will not carry any indication that they are being hosted or supported by the Bank or the LLC. The Bank’s logo or other references to the Bank or the LLC will not appear on a merchant’s web site, except as may be necessary to effect the payments processing component. The Bank, through the LLC, will also limit its reputation risk by reserving the right to prohibit offensive or indecent material from hosted sites. Finally, the Bank has committed to ensure that the LLC complies with the FFIEC Interagency Statement on Nondeposit Investment Products (“FFIEC Statement”) if the OCC determines that the FFIEC Statement is applicable. *See* OCC Banking Circular 274 (February 16, 1994).

<sup>5</sup> In connection with the services it provides, the LLC may have access to personal information of its customers. In this regard, the LLC has adopted a statement of policy concerning the treatment of personal customer information in the conduct of its business that recognizes customer expectations for privacy and provides standards for the use, collection and retention of such information. The LLC’s policy states that if personally identifiable consumer information is provided to a third party, the LLC insists that the third party adhere to strict privacy guidelines that provide for keeping such information confidential. The LLC further represents that it maintains security standards

their web sites can also pay for those purchases through the Internet by debit or credit card, electronic checks, or other means of electronic payment.<sup>6</sup> When a potential customer submits a purchase order at a merchant's web site, the order, along with payment and shipping information will be transmitted electronically to the merchant. The merchant will be able to electronically confirm payment authorization before shipping any goods.

The LLC will directly or indirectly provide the payment authorization and processing for these payment transactions. Merchants who sign up for the Internet Services will be charged various fees, including a licensing or start-up fee when they initially sign up for the services, monthly maintenance and hosting fees, and transaction fees in connection with processing credit and debit card transactions or other payment transactions. The LLC will receive no referral fee when a consumer links to a merchant's web site from the LLC's virtual mall web site.

The proposed activities involve risks associated with the processing of debit and credit card transactions and other payment transactions. These risks are the same types of risk that banks already assume when providing merchant debit and credit card processing services for business customers. The risks associated with accepting and authorizing payments through a merchant's web site are identical to those already assumed when banks enable an established web site to receive debit and credit card orders or other forms of electronic payments. To the extent that the LLC contracts with other service providers, notably technology firms, to provide any of the necessary products and services to offer the Internet Services to merchants, they will manage its indirect risk exposure to the activities of the service providers.

## **Discussion**

In the present case, the LLC will provide a package of Internet-related services linked with merchant debit and credit card processing and other electronic billing and payment services. Additionally, the LLC will provide these services to other financial institutions on a wholesale basis so that those institutions may offer similar Internet Services to their merchant customers. As discussed below, these proposed activities are part of, or incidental to, the business of banking.

The OCC has already addressed Internet services and related order and payment processing services and has found that they are part of, or incidental to the business of banking and, therefore, authorized for national banks under 12 U.S.C. § 24(Seventh).<sup>7</sup> We have previously determined that a national bank may provide a "package" of Internet-based services to retail merchants which included the following: hosting merchants' web sites on its server; registering merchants with search engines and obtaining URLs; providing an electronic communications

---

and procedures intended to preclude unauthorized access to customer information. The LLC's privacy statement will be accessible via link from each page of its web site.

<sup>6</sup> The Bank commits that it will notify the OCC at least 30 days before the LLC begins to enable electronic payments for Web site purchases by means other than debit card, credit card, or ACH transfers.

<sup>7</sup> OCC Interpretive Letter Nos. 856 (March 6, 1999) and 875 (October 31, 1999).

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. The LLC proposes to provide all of these previously approved activities.

In our previous decisions, we concluded that the hosting of commercial web sites, registering merchants with search engines and obtaining URLs, providing an electronic communications pathway for product ordering and payment, and electronically storing and retrieving the data set for a merchant's on-line catalog are forms of finder activities authorized for national banks.<sup>8</sup> The finder function has long been recognized 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."<sup>9</sup> The Interpretive Ruling, at 12 C.F.R. § 7.1002, provides in its entirety:

- (a) General. A national bank may act as a finder in bringing together a buyer and seller.
- (b) Qualification. Acting as a finder 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 they themselves negotiate and consummate. Acting as a finder does not include activities that would characterize the bank as a broker under applicable federal law.
- (c) Advertisement and fee. Unless otherwise prohibited, a national bank may advertise the availability of, and accept a fee for, the services provided pursuant to this section.

Earlier OCC decisions regarding finder activities cite 12 C.F.R. § 7.7200. OCC interpretive rulings at 12 C.F.R. Part 7 were revised and renumbered effective April 1, 1996. Interpretive ruling § 7.1002 (1996) replaced former interpretive ruling § 7.7200. Providing information to prospective buyers about the products or services of prospective sellers is also one of the fundamental activities of a finder.<sup>10</sup> By hosting merchants' web sites, the LLC will be bringing potential customers and merchants together for a transaction that the parties themselves negotiate and consummate, and providing potential customers with information about those merchants' goods and services. Accordingly, we conclude that the components of the LLC's proposed

---

<sup>8</sup> See also OCC Corporate Decision No. 97-60 (July 1, 1997) (national bank operating subsidiary maintaining and operating an Internet web site which provides information on pre-owned automobiles to potential buyers); OCC Conditional Approval No. 221, (Dec. 4, 1996) (national bank making a minority investment in a company that provides an electronic "gateway" through which customers of bank will be able to obtain home banking and other financial services from their respective financial institutions through various electronic access devices); OCC Interpretive Letter No. 611, *reprinted in* [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,449 (Nov. 23, 1992) (national bank linking non-bank service providers to its communications platform of smart phone banking services).

<sup>9</sup> 61 Fed. Reg. 4863 (Feb. 9, 1996) (codified at 12 C.F.R. 7.1002(b)).

<sup>10</sup> See OCC Interpretive Letter No. 653, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (Dec. 22, 1994).

Internet Services package that involve hosting of commercial web sites, registering merchants with search engines and obtaining URLs, [and electronic storage and retrieval of the data set for a merchant's on-line catalog] are permissible finders activities authorized for national banks pursuant to 12 U.S.C. § 24(Seventh).

We have also previously determined that a national bank engaged in permissible web site hosting activity may provide merchants with software that will enable them to design their web sites. The software is "necessary" to use or fully enjoy the permissible service and, thus, is either part of the service (if limited function) or incidental thereto (if full function).<sup>11</sup> Thus, the LLC's provision to merchants of software to enable them to design their web sites is permissible under 12 U.S.C. § 24(Seventh).

The processing of payments resulting from orders received through a merchant's bank-hosted web site is clearly part of the business of banking.<sup>12</sup> The LLC will process payments resulting from orders received from a merchant's web site in several ways. The LLC will process purchases made over the Internet with debit and credit cards. Merchant debit and credit card processing services generally involves verifying credit card authorizations at the time of purchase, processing card transactions, settlement of card transactions, and depositing funds in merchants' accounts. The LLC will 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 will include verifying authorizations, processing transactions, settlement of transactions, and depositing funds in merchants' accounts. The fact that the debit and credit card and other electronic payment transactions will involve purchases of goods or services over the Internet does not change the nature of the services that will be provided. Thus, the proposed payments processing activities of the LLC are part of the business of banking.

The LLC also propose to provide merchants with monthly reports on empirical data such as site "hits" and transaction volume arising from their web sites, including number and types of products sold. Again, we have previously concluded that to the extent those reports involve the processing and transmittal of information relating to specific payment transactions the bank handles for the merchant, it is part of the payment processing function and not a separate

---

<sup>11</sup> OCC Interpretive Letter Nos. 856 and 875. *See also* Conditional Approval No. 221(Dec. 4, 1996) (providing full-function web browser software is a permissible incidental activity when a national bank is offering a home banking system based on web server technology using "Internet compatible" browser software).

<sup>12</sup> OCC Interpretive Letter Nos. 856 and 875. *See also* OCC Conditional Approval No. 289 (October 2, 1998) (national banks may acquire a minority interest in a firm that, among other things, provides accounts receivable processing and accounts payable processing); Conditional Approval Letter No. 248 (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, *reprinted in* [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 in relating to an electronic toll collection system).

service.<sup>13</sup> Additionally, we have determined that a bank's calculation of sales taxes owed by the merchants on their Internet sales is an activity incidental to the payments processing services and is thus permissible.<sup>14</sup>

Finally, we have concluded that the bank could, as part of its proposed web site hosting services, provide the merchants with more general information and reports relative to their web sites.<sup>15</sup> We have long held that as part of the business of banking, national banks may collect, transcribe, process, analyze, and store for itself and others banking, financial, or related economic data.<sup>16</sup> Interpretive Ruling 7.3500, 39 Fed. Reg. 14195 (Apr. 22, 1974).<sup>17</sup> 49 Fed. Reg. 11157 (Mar. 26, 1984).<sup>18</sup> OCC Interpretive Letter No. 677, *reprinted in*, [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625 (June 28, 1995). *See also*, OCC Interpretive Letter No. 737, *supra* (national bank may provide transaction and information processing services to support an electronic stored value system); OCC Interpretive Letter No. 653, *supra* (national bank may act as an informational and payments interface between insurance underwriters and general insurance agents); and OCC Interpretive Letter No. 346, *reprinted in* (1985-1987 Transfer Binder) Fed. Banking L. Rep. (CCH) ¶ 85,516 (July 31, 1985) (national banks may maintain records on commodities transactions).

Case authority strongly supports the OCC precedent. In *Ass'n of Data Processing v. Board of Governors*, 745 F.2d 677 (D.C. Cir. 1984), the D.C. Circuit Court of Appeals upheld a Federal Reserve Board finding that data processing and database services were closely related to banking (and thus a proper activity for bank holding companies) if the "data to be processed ... are financial, banking or economic...." In reaching this conclusion the court said: "The record of

---

<sup>13</sup> OCC Interpretive Letter Nos. 856 and 875. *See also* OCC Interpretive Letter No. 731, *supra* and OCC Interpretive Letter No. 732, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,049 (May 10, 1996) (design, development, marketing, and maintenance of a network for electronic funds transfer and electronic data interchange permissible for a national bank). *Cf.* Letter from Julie L. Williams, Chief Counsel, October 2, 1996 (unpublished) (national bank acting as finder could maintain a database of transactions resulting from its finder activities was "integral" to the finder function).

<sup>14</sup> OCC Interpretive Letter Nos. 856 and 875. *See also* *Clement Nat'l Bank v. Vermont*, 231 U.S. 120 (1913).

<sup>15</sup> OCC Interpretive Letter Nos. 856 and 875. *See also* OCC Interpretive Letter No. 653, *supra* (national bank acting as a finder for insurance could also keep financial and other records relating to the client agency sales, receipts and disbursements); OCC Interpretive Letter No. 741, *supra* (national bank acting as finder for automobile dealers may also maintain a comprehensive system that allows dealers to track information on customers referred and to generate market statistics such as buying trends and cycles).

<sup>16</sup> An earlier version of 12 C.F.R. § 7.1019 stated that "as part of its banking business and incidental thereto, a national bank may collect, transcribe, process, analyze, and store for itself and others, banking, financial, or related economic data."

<sup>17</sup> Interpretive Ruling 7.3500, 39 Fed. Reg. 14195 (Apr. 22, 1974). Although in its 1984 revision of the ruling, the OCC deleted this statement because it believed that "specific examples [of permissible electronic activities] are inappropriate given the imprecision of terms and rapid pace of change in the data processing industry, the "analytical framework" embodied in the ruling remained the same.

<sup>18</sup> 49 Fed. Reg. 11157 (Mar. 26, 1984). There was no intent to narrow or restrict the substantive effect of the rule.

this proceeding amply demonstrates, if any demonstration is needed, that banks regularly develop and process for their customers large amounts of banking, financial and economic data, and that they do so (and will presumably continue to do so) through the most advanced technological means.” 745 F.2d at 689. Moreover, the court indicated that “economic data” would include: “agricultural matters, retail sales matters, housing matters, corporate profits matters, and anything of value in banking and financial decisions.” 745 F.2d at 691.<sup>19</sup> Here, the LLC proposes to provide similar types of information and reports to the merchants as part of their Internet Services package. Accordingly, those proposed activities of the LLC also are permissible.

The LLC also proposes to provide billing services, to provide links from their web sites to the web sites of merchants that have subscribed to the Internet Services package, to provide the Internet merchant hosting services on a wholesale basis to other financial institutions to enable those institutions to resell the services to its merchant customers, and to build the merchants’ web sites at the merchant’s option.

We have previously found that electronic bill presentment is part of the business of banking.<sup>20</sup> Thus, the proposed billing services of the LLC are permissible activities pursuant to 12 U.S.C. § 24(Seventh).

We also have previously determined that providing links to third party vendors’ web sites, in the manner proposed by the LLC, is a finder activity and, thus, part of the business of banking.<sup>21</sup> By providing links to the merchant’ web sites, the LLC introduces two parties who may engage in a transaction. Any further negotiations will then occur between the customer and the merchant. At that point, the LLC’s role in the transaction is complete. Thus, the process of providing hypertext links in the manner proposed is acting as a finder and is a new way of conducting this aspect of the business of banking.

Providing the Internet merchant hosting services to other financial institutions for their resale to their merchant customers also qualifies as a modern correspondent banking function. The OCC has long permitted national banks to offer correspondent services as part of the business of

---

<sup>19</sup> OCC Interpretive Letter No. 677, *reprinted in*, [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625 (June 28, 1995). *See also*, OCC Interpretive Letter No. 737, *supra* (national bank may provide transaction and information processing services to support an electronic stored value system); OCC Interpretive Letter No. 653, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (Dec. 22, 1994) (national bank may act as an informational and payments interface between insurance underwriters and general insurance agents); and OCC Interpretive Letter No. 346, *reprinted in* (1985-1987 Transfer Binder) Fed. Banking L. Rep. (CCH) ¶ 85,516 (July 31, 1985) (national banks may maintain records on commodities transactions).

<sup>20</sup> *See, e.g.*, OCC Conditional Approval No. 304 (March 5, 1999) (electronic bill payment and presentment services over the Internet); OCC Interpretive Letter No. 731, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking Law. Rep. (CCH) ¶ 81-048 (July 1, 1996) (operation of electronic toll collection system); OCC Interpretive Letter No. 836, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking Law. Rep. (CCH) ¶ 81-290 (March 12, 1996) (data processing and electronic data interchange system to assist in the billing and collection for medical services).

<sup>21</sup> *See* OCC Conditional Approval No. 221 (December 4, 1996).

banking.<sup>22</sup> More specifically, the OCC has allowed national banks as a permissible correspondent activity to provide data processing and other computer-related services to other financial institutions.<sup>23</sup>

Moreover, the OCC has permitted a national bank to market specially designed computerized "smart phones" to other financial institutions as a correspondent banking function.<sup>24</sup> Like the Internet merchant hosting services package here, the "smart phones" enabled customers to communicate with their banks and with other service providers through a supporting network of computers and software to conduct various financial transactions (*e.g.*, bill paying, point-of-sale, and credit card transactions).

The LLC's proposal to provide the Internet merchant hosting services package to financial institutions is functionally equivalent to providing them with the data processing services and the electronic gateways and communication devices referred to above. Providing Internet merchant hosting services packages that meet the banking needs of financial institution merchant customers is a valid correspondent banking service and, therefore, part of the business of banking.

Finally, the LLC proposes to build web sites for merchants as part of the Internet merchant hosting services package. The ability to build the web sites for the participating merchants as part of Internet Services package is critical to the successful marketing of the package.<sup>25</sup> To enhance marketability and reduce costs to merchants, the firms that will compete with the LLC in providing Internet commerce products and services are now offering complete packages to merchants, which include the building of the web sites. *See e.g.*, Bloom, *supra*; Steven Marjanovic, *First Data to Buy Stake in iMall, a Software Firm*, Am. Bankr., Nov. 9, 1998, at 17; Tami Luhby, *Wells Fargo Opens Door to Web for Small Business*, Am. Bankr., Sept. 15, 1998.<sup>26</sup> Accordingly, the proposed building of web sites by the LLC for those merchants desiring that service is incidental to the business of banking.

---

<sup>22</sup> *See e.g.*, OCC Interpretive Letter No. 811, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-259 (Dec. 18, 1997) (permitting national bank to offer printing services to other financial institutions as correspondent service); Corporate Decision No. 97-79 (July 11, 1997) (federal flood hazard determinations).

<sup>23</sup> *See* OCC Interpretive Letter No. 516, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,220 (July 12, 1990) (authorizing national bank to provide other financial institutions with electronic "gateways" to communicate and receive financial information and to conduct transactions); OCC Interpretive Letter No. 346, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,516 (July 31, 1985) (bank operating subsidiary may provide electronic information and transaction services and linkage for financial settlement services).

<sup>24</sup> OCC Interpretive Letter No. 611, *reprinted in* [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,449 (Nov. 23, 1992).

<sup>25</sup> *See* Jennifer Kingson Bloom, *Vendor Groups Woo Banks into Net Services*, Am. Bankr., May 27, 1999, at 14 (reporting that vice president of the National Retail Federation says merchants of all sizes prefer to outsource the building of virtual stores).

<sup>26</sup> Experts say that without these packages, most smaller companies lack the budget and manpower to do a thorough job of creating and maintaining a commerce-enabled web site. Bloom, *supra*.

Recently, the OCC determined that a national bank subsidiary may provide home banking services via an Internet connection to the bank's home banking system and, incidental to that service, may also provide Internet access to customers and non-bank customers in the bank's service area.<sup>27</sup> The OCC based this conclusion in part upon a finding that, under the facts of that case, providing full Internet access created a package of related services needed to satisfy consumer demand and enable the bank to successfully market its home banking services:

OCC precedent has established that the provision of such ancillary non-banking services is permissible as incidental to the business of banking when needed to successfully package and promote other permissible banking services. [Citations omitted.]

Here, the service of building the merchant's web sites is needed to successfully market the LLC's Internet Services package. Without the web site building component, the LLC's Internet Services package will not fully satisfy customer demand, thus putting it at a competitive disadvantage relative to other providers of Internet commerce and web site hosting services. There is clear evidence that the LLC's competitors are and will be offering such a feature. Finally, the Internet access feature will be only a minor part of the entire package offered by the LLC.<sup>28</sup> Under these circumstances, the web site building services to be incidental to the other Internet Services and, therefore, authorized. Accordingly, all the proposed activities to be conducted by the LLC are part of, or incidental to, the business of banking.

## **Conclusion**

Based upon the information and representations the Bank has provided, and for the reasons discussed above, the Bank's application to establish the LLC in the manner and as described is approved.

---

<sup>27</sup> OCC Interpretive Letter No. 742, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep (CCH) ¶ 81-106 (Aug. 19, 1996) (the "Apollo Letter").

<sup>28</sup> Full function products provided as an incidental part of a package of banking services cannot dominate the banking services being provided. *See* OCC Interpretive Letter No. 737, *supra*; OCC Interpretive Letter No. 516, *supra*; Letter from Michael J. O'Keefe, District Counsel, Midwestern District (July 13, 1987) (unpublished); OCC Interpretive Letter No. 345, *reprinted in* [1986-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 77,799 (July 9, 1986). The OCC has two alternative tests for determining when sale of full function products as part of a package of banking services is "incidental" to those services. The older OCC test is whether the cost of the full function product is less than 30% of the cost of the entire package. OCC Interpretive Letter No. 742, *supra*. As an alternative to the cost test, a recent letter adopted a test based on the percentage of "gross profits" (sales less cost of goods sold) that is derived from the sale of the hardware. OCC Interpretive Letter No. 754, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-120 (Nov. 6, 1996). Specifically, this letter held that where the gross profits generated by a full function product provided in connection with a banking service do not exceed thirty percent of the total gross profits from that service, the sale of the full function product is incidental to the permitted banking service.

If you have any questions, please contact John W. Graetz, Senior Advisor, e-Banking, Bank Organization and Structure, Washington, D.C., at (202) 874-5060, or Nina Lipscomb, Analysis Specialist, in the Northeastern District Office at (212) 790-4055.

Sincerely,

**-signed-**

Julie L. Williams  
First Senior Deputy Comptroller and  
Chief Counsel