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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

**Conditional Approval #535**  
**July 2002**

June 21, 2002

Carl V. Howard, Esq.  
General Counsel – Bank Regulatory  
Citigroup, Inc.  
425 Park Avenue  
2<sup>nd</sup> Floor / Zone 2  
New York, NY 10043

Re: Operating Subsidiary Application of Citibank USA, N.A., New York, New York  
Application Control No. 2001-ML-08-0022

Dear Mr. Howard:

This is in response to the application filed by Citibank USA, N.A., New York, New York (“Bank”), to acquire three subsidiaries that operate and administer automotive roadside assistance programs and to acquire a fourth subsidiary that provides credit card registration and notification services. For the reasons given below, we conclude that the activities of the proposed operating subsidiaries are permissible, and approve the Bank’s application.

**A. Background**

*1. Roadside Assistance Programs*

As part of the corporate organization following the acquisition of Associates First Capital Corporation by the Bank’s parent, Citigroup Inc., the Bank will acquire 100 percent of the shares of Associates Auto Club Services, Inc. (and its subsidiaries, Associates Auto Club Services International, Inc., and Associates Autoclub, Sociedad de Responsabilidad Limitada de Capital Variable<sup>1</sup>) and United States Auto Club, Motoring Division, Inc. (collectively, “the Subsidiaries”), and thereby own operating subsidiaries that link customers to roadside assistance service programs (“Service Programs”). The Subsidiaries provide services through three Service Programs – a rental car company program, an auto manufacturer program, and a traditional auto club program. The services consist of the administration of roadside assistance services, all of

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<sup>1</sup> Sociedad de Responsabilidad Limitada de Capital Variable is headquartered and operates in Mexico. The Bank represents that it will take one of two actions to ensure compliance with Regulation K – either the Bank will move Sociedad to be a subsidiary of Citigroup’s Edge Act company or the Bank will merge Sociedad with its parent company and operate Sociedad as a branch office of the parent company.

which are provided by independent service contractors (“ISC”). The Subsidiaries operate (or may contract for) a telephone call center to handle calls from customers. When a customer needs assistance, he calls the telephone call center and speaks with a customer service representative. The representative confirms the caller’s membership information, ascertains his location and the services he requires, searches the Subsidiaries’ database for the nearest ISC, and dispatches that ISC to the customer.

Under the first two programs, rental car companies and auto manufacturers that provide their customers with roadside assistance services contract with the Subsidiaries to administer and operate these services. After the customer receives the roadside assistance services, the Subsidiaries advance payment to the ISC.<sup>2</sup> The Subsidiaries then bill the company or manufacturer for the cost of the services provided and a portion of the telephone call center expenses, plus an amount for the Subsidiaries’ profit.

The traditional auto club program operates in a slightly different manner. Individuals sign up with the club and pay an annual fee. In exchange for the annual fee, customers get a fixed number of roadside assistance service calls.<sup>3</sup> The Subsidiaries’ set the annual fee to cover cost of the anticipated number of roadside assistance calls and a portion of the telephone call center expenses, plus an amount for the Subsidiaries’ profit. The Bank represents that the traditional auto club program constitutes approximately 15 to 18 percent of the revenue of the Subsidiaries and has never functioned at an annual loss. However, to mitigate the risk that the expenses for roadside assistance service calls may exceed revenue from annual fees, the Subsidiaries will purchase an insurance policy that will reimburse the Subsidiaries for any excess expenses over revenue.

## 2. *Credit Card Registration and Notification Services*

Also as part of the corporate reorganization, the Bank will acquire 100 percent of the shares of Watch-Guard. Watch-Guard engages primarily in credit card registration and notification services. With these services, a customer registers his credit cards with Watch-Guard. In the event that he loses his cards, he would contact Watch-Guard, and Watch-Guard would notify his credit card issuers and arrange for replacement cards from the issuers.

Watch-Guard provides its customers with several additional services. The price protection service is a rebate that customers may obtain when, within a designated period of time, they find an identical product offered for less than they paid using the designated credit card.<sup>4</sup> Watch-Guard holds a reserve for expected claims from the fees it charges customers each year, and caps by contract the amount of rebates that any customer may receive in any year to

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<sup>2</sup> The Subsidiaries negotiate discount rates for services provided by ISCs and advance payment to the ISC pursuant to these negotiated rates.

<sup>3</sup> For service calls over the allotted number, the Subsidiaries advance to the ISCs at the discounted rate the cost of the services provided, and then bill the customer for the cost of such services.

<sup>4</sup> Watch-Guard does not sell any products and does not endorse any products as part of price protection service.

ensure that this service does not lose money. Other services offered by Watch-Guard include (i) a referral service for its customers to unrelated third-parties who offer extended warranty programs for various products; (ii) one free credit report per year; (iii) a newsletter containing consumer credits suggestions; and (iv) reimbursement, up to \$35 per year, for locksmith services.<sup>5</sup>

## **B. Discussion**

National banks may engage in activities that are part of or incidental to the business of banking by means of an operating subsidiary. 12 C.F.R. § 5.34(d).

### *1. Roadside Assistance Programs*

In operating and administering the rental car company and auto manufacturer programs, the Subsidiaries engage in permissible finder, financing, and billing services.<sup>6</sup> The Subsidiaries engage in permissible finder activities by bringing together the rental car company's or auto manufacturer's customers who require roadside assistance services with automotive ISCs for transactions that the customers and the ISCs consummate.<sup>7</sup> The Subsidiaries accomplish this by operating a telephone call center that receives customers' calls and dispatches ISCs. The OCC has approved the use of telephone call centers in the provision of finder services.<sup>8</sup> When the customer makes the decision to use an ISC, the Subsidiaries advance payment for the service to the ISC. The Subsidiaries then bill the rental car company or the auto manufacturer for the cost of the service. These services constitute permissible financing and billing services.<sup>9</sup>

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<sup>5</sup> Under this service, the customer would purchase the locksmith services and then seek reimbursement from Watch-Guard. Watch-Guard neither contracts with nor purchases services from locksmiths.

<sup>6</sup> The OCC has approved the provision of identical roadside assistance services administration. Corporate Decision 2001-28 (September 21, 2001) (acquisition of Associates' Fleet Services by Citibank, N.A., New York, N.Y.; one of the activities of AFS was the provision of identical finder, financing, and billing services). Here, the Club negotiates a discounted price with all ISCs. The OCC has approved a finder's reasonably choosing "to bring together with bank customers only those merchants who are willing to provide a discount." Conditional Approval No. 368 (Apr. 3, 2000) at fn. 7.

<sup>7</sup> The contract between the Subsidiaries and ISCs makes it clear that the Subsidiaries are not acting as a principal in and are not a party to the provision of the roadside assistance services. The contract between the Subsidiaries and its customers – rental car companies, auto manufacturers, and the traditional auto club program members – also makes it clear that the Subsidiaries accept no responsibility for the actions or omissions of the ISCs.

<sup>8</sup> *E.g.*, Interpretive Letter No. 741, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-105 (Aug. 19, 1996) (national banks may act as finders for automobile sales and financing through databases, call centers, and internet services).

<sup>9</sup> Corporate Decision 2001-28, *supra*; 12 C.F.R. § 5.34(e)(5)(v)(C) (making loans and extensions of credit) & (D) (servicing loans or other extensions of credit).

The Subsidiaries' administration and operation of the traditional auto club program is incidental to the rental car company and auto manufacturer programs. National banks are authorized to engage in an activity if that activity is incidental to the performance of the five powers enumerated in 12 U.S.C. § 24(Seventh) or incidental to the performance of an activity that is part of the business of banking.<sup>10</sup> Incidental activities are activities that are permissible for national banks, not because they are part of the "business of banking," but rather because they are "convenient" or "useful" to an activity that is part of the "business of banking."<sup>11</sup>

Products and services are incidental to a banking activity, as is the case here, when they make the use of a banking authorized product or service more convenient and useful and thereby increase customer demand for banking products.<sup>12</sup> In the instant case, the operation and administration of the traditional auto club program – which constitutes less than 20 percent of the revenue of the Subsidiaries – is convenient and useful to the rental car company and auto manufacturer programs. By operating the traditional auto club, the Subsidiaries have increased the number of potential drivers who may require roadside assistance. As a result, the Subsidiaries can sign up additional ISCs, thus making a larger number of service providers available. The availability of a larger pool of ISCs is convenient and useful to those drivers who receive roadside assistance under the rental car company and auto manufacturer programs. In turn, having a larger pool of ISCs enhances the rental car company and auto manufacturer programs, and enables the Subsidiaries to operate and administer these programs more efficiently and to compete more effectively with other companies offering similar programs. Therefore, operation and administration of traditional auto is convenient and useful, that is, incidental, to the rental car company and auto manufacturer programs.

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<sup>10</sup> *NationsBank of North Carolina, N.A., v. Variable Annuity Life Insurance Co.*, 513 U.S. 251, 258 n.2 (1995) ("VALIC"); Interpretive Letter No. 742, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,106 (Aug. 19, 1996) (bank may provide full Internet access to customers and non-customers in order to create a package of related services needed to satisfy consumer demand and enable the bank to successfully market its home banking services); Interpretive Letter No. 737, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,101 (Aug. 19, 1996) (where a national bank was providing a closed stored value system, the provision of multi-function smart cards and card readers is incidental to the business of banking because it enables the bank to create a package of related services required to satisfy customer needs and to market successfully its stored value system).

<sup>11</sup> *VALIC, supra*.

<sup>12</sup> *Clement Nat'l Bank v. Vermont*, 231 U.S. 120 (1913) (to promote customer use of bank's business and enhance demand for its services, national bank, as incidental to deposit services, may compute, report, and pay tax levied on interest earned by its deposit customers); *Miller v. King*, 223 U.S. 505 (1912) (to promote demand for its services, national bank, as incidental to power to accept deposits, may institute a lawsuit on behalf of a customer to collect funds); Interpretive Letter No. 611, *reprinted in* [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,449 (Nov. 23, 1992) (national banks may provide smart phone to offer variety of banking and non-banking services "to increase the customer base and the usage of the program"); Letter from Julie L. Williams, Chief Counsel (Oct. 2, 1996) (unpublished) (national bank may perform variety of activities as incidental to the bank's finder services in order to enhance the functionality and marketability of the finder services).

## 2. *Credit Card Registration and Notification Services*

Each of the services offered by Watch-Guard is a permissible banking service. Watch-Guard's principal service is the provision of credit card registration and notification services. The OCC has found that such services are permissible for national banks.<sup>13</sup> The OCC has determined that national banks may provide free credit reports to their customers<sup>14</sup> and may provide their customers with a newsletter containing consumer credit suggestions.<sup>15</sup> By referring its customers to unrelated third-parties who offer extended warranty programs, Watch-Guard is engaging in a permissible finder service.<sup>16</sup> The price protection service is consistent both with other types of promotional items that banks are permitted to provide customers for free or for minimal charges,<sup>17</sup> and with reward programs that banks offer to their customers to encourage the use of bank credit cards,<sup>18</sup> and therefore is permissible. Finally, the \$35 per year reimbursement for locksmith services is permissible either as the equivalent of a permissible promotional item<sup>19</sup> or as a value-added service necessary to meet the competition and, therefore, incidental to the provision of the credit card registration and notification services.<sup>20</sup>

### C. **Conclusion**

Based upon the facts and analysis herein, and the representations and commitments made in the application and by the Bank's representatives, the application to acquire the above-described subsidiaries is approved,<sup>21</sup> subject to the following conditions:

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<sup>13</sup> Letter from Jonathan L. Levin, Senior Attorney (Mar. 15, 1985) (unpublished); Letter from John E. Shockey, Deputy Chief Counsel (Sept. 18, 1975) (unpublished).

<sup>14</sup> National banks may act as credit bureaus, and providing credit reports is part of the credit bureau activity. Conditional Approval No. 276 (May 8, 1998); Letter from John E. Shockey, Deputy Chief Counsel (May 18, 1976) (unpublished).

<sup>15</sup> Such a newsletter constitutes permissible financial counseling services. 12 C.F.R. § 5.34(e)(5)(v)(I) (2002).

<sup>16</sup> 12 C.F.R. § 7.1002 (2002).

<sup>17</sup> Interpretive Letter No. 690, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-005 (Oct. 2, 1995) (sale of promotional merchandise).

<sup>18</sup> Conditional Approval No. 368 (Apr. 2, 2000) (travel point credit card reward program).

<sup>19</sup> *See* Interpretive Letter No. 690, *supra*.

<sup>20</sup> *See* Interpretive Letter No. 875, *supra*. The Bank represents that Watch-Guard's competitors offer such additional, value-added benefits as a marketing tool. For example, one competitor offers car rental discounts, emergency message relay, and change of address notification services. Another competitor offers new address identification services and lost key tags. Thus, the Watch-Guard would offer a value-added benefit, the locksmith services, in order to compete in the provision of credit card registration and notification services.

<sup>21</sup> This approval, and the activities and communication 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 U.S., any agency or entity of the U.S., or an officer or employee of the U.S., and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and

- (1) The Subsidiaries will at all times have in place an insurance policy to cover the potential excess of costs over revenues in the traditional auto club program; and
- (2) On an annual basis, the Bank shall provide its examiner-in-charge with information establishing whether the traditional auto club program functioned at a profit or at a loss for the previous twelve months. If the traditional auto club program functioned at a loss for the previous twelve months, the OCC may determine that its operation and administration is no longer convenient and useful to the rental car company and auto manufacturer programs and may require its divestiture.

Please be advised that the above conditions of this approval shall be deemed to be “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(b)(1). If you have any questions, please contact me at (202) 874-5060, or Steven Key, Senior Attorney, Bank Activities & Structure Division, at (202) 874-5300.

Sincerely,

**-signed-**

Richard T. Erb  
Licensing Manager  
Large Banks

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regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.