



# Office of the Comptroller of the Currency

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## Interpretive Letter #741

*Published in Interpretations and Actions September 1996*

**12 U.S.C. 24(7)21**

August 19, 1996

[ ]

Re: [ ] Proposed Acquisition

Dear [ ]:

This is in response to your August 12, 1996 letter to William Glidden regarding the proposed acquisition by [ ] ("Bank"), a state non-member bank, of a majority interest in [ ]. An application for this acquisition is pending with the Federal Deposit Insurance Corporation ("FDIC"). Under Section 24 of the Federal Deposit Insurance Act, 12 U.S.C. 1831a, and the FDIC's regulations at 12 C.F.R. Part 362, one basis upon which the FDIC may approve the acquisition is a finding that the activities of [ ] would be permissible for national banks and their subsidiaries. You therefore request OCC confirmation of your view that the activities of [ ] would be permissible if performed by a national bank.

### Facts

The Bank is a wholly owned subsidiary of [BHC], a registered bank holding company headquartered in [City, State].

[ ] is a [State] corporation headquartered in [City2, State]. [ ], through a call center facility, operates programs by which potential customers for new or used automobiles may access databases containing information on the used-car and new-car inventories of numerous automobile dealerships in the [City2, State] metropolitan area. [ ] provides its services through three programs: [Program1], [Program2], and [Program3].

[ ] created the [Program1] in 1995. [Program1] is an automated inventory system for used automobiles. Currently, approximately fifty automobile dealerships in the [City2] metropolitan area subscribe to [Program1]. These dealerships are inventoried one to three times a week, which provides an inventory of over ten thousand used automobiles in the [Program1] database. Potential customers that call into the [Program1] call center are provided specific information on the automobiles in the database, including their dealership location. The [Program1] customer call-ins are sold as referrals to the dealers. In addition, individual vehicle owners may list their vehicles for sale in the system by paying a monthly fee.

[ ] also operates [Program2], a call center service for new automobile dealers. When a customer calls a dealer requesting data on a new automobile, the call is routed to the [Program2] call center. The call center representatives collect data from the potential customer on what type of automobile the customer

wants, how the customer plans to finance the purchase, what automobile the customer plans to trade-in on the purchase, and other pertinent information. This data is then telecopied to the dealer as a qualified sales lead. [ ] is compensated by the dealer on a fee-per-call-handled basis.

[*Program3*] is a computer-based system that is tied to [*Program1*] and [*Program2*]. [*Program1*] is a comprehensive system that allows dealers to track information on [*Program1*] customers as well as other active and previous customers, and to generate market statistics such as buying trends and buying cycles. [*Program3*] also provides dealership management with a useful tool for measurement and accountability in connection with its sales operations. A dealer using the [*Program3*] service pays a yearly licensing fee and a monthly maintenance fee for the system software, and purchases the system hardware for a one-time charge.

[ ] has continued to develop the [*Program1*] system, so that it may now serve as a completely integrated system that includes the capability of access to and by financial institutions and insurance companies. [ ] intends to expand its market beyond metropolitan [*City2*] into other parts of [*State*] and upstate [*State2*].

The Bank plans to acquire a majority interest in [ ], which would then be operated as a Bank subsidiary.

## Discussion

The permissibility of a national bank acting as a finder to bring together buyers and sellers of various types of products and services is specifically set forth in OCC Interpretive Ruling 7.1002, 12 C.F.R. 7.1002. <NOTE: I.R. 7.1002, 12 C.F.R. 7.1002, provides:

(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 a transaction that the parties 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.> The OCC has confirmed the permissibility of national banks acting as finders in several interpretive letters.<NOTE: OCC interpretive rulings at 12 C.F.R. Part 7 were revised and renumbered effective April 1, 1996. See Interpretive Rulings (12 C.F.R. Part 7), 61 F.R. 4849, 4863 (Feb. 9, 1996). I.R. 7.1002 (1996) replaced former I.R. 7.7200. OCC letters issued prior to that date refer to the former interpretive ruling. For purposes of this analysis, there is no material difference between the two.> For example, in Interpretive Letter No. 653 (Dec. 22, 1994), *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) at 83,601, the OCC stated that a national bank, acting through an operating subsidiary, might act as a finder with respect to certain insurance services. The OCC noted that it has "historically permitted national banks to make inquiries as to interest, arrange a meeting of the interested parties, and provide information pertinent to the meeting of the buyer and seller." <NOTE: *Id.* at 71,801, *citing* Interpretive Letter No. 472 (Mar. 2, 1989), *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) 83,008 at 71,111 (quoting letter from James Kane, District Counsel, Central District Office (Oct. 24, 1985--unpublished)).> The letter described the function of a finder as involving the conveying of information about available products or services to potential markets for them, and noted that such activity could include the supplying of such financial advice as credit analysis, recommendations and appraisals.

In Interpretive Letter No. 567 (Oct. 29, 1991), *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) at 83,337, the OCC permitted a national bank to offer finder's services to unrelated third

party lessors through the bank's personal property leasing subsidiary. These services consisted of the subsidiary's communication of lessors' terms of proposed sale or renewal of equipment leases to potential lessees; and, where a lessee does not renew the lease or purchase the equipment at the end of the lease term, obtaining bids from potential buyers and taking steps to market the equipment under guidelines set by the lessors.

The OCC has also permitted a national bank to enter into an arrangement with an insurance company whereby, among other things, the bank would make the insurer's brochures available to bank customers and would refer bank customers to the insurer for insurance coverage. OCC Interpretive Letter No. 566 (Dec. 2, 1991), *reprinted in* 1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) at 83,320.

In Interpretive Letter No. No. 437 (July 27, 1988), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,661, the OCC allowed a national bank to engage in selling tax auditing representation services to customers. Finding this activity analogous to a national bank's function as a finder, "wherein the bank will merely introduce the seller of the service to potential buyers," the OCC noted that it had "previously ruled that national banks may act as finders in a wide variety of activities, including travel agency-related services and the purchase and sale of businesses." *See also* Interpretive Letter No. 472, n. 3, *supra* (national bank may act as finder to offer referral services in connection with sale of homeowner's insurance to bank's mortgage loan customers.)

In view of these OCC precedents, it is my view that the activities of [ ], as described above and as represented in your letter, are within the scope of activities of a finder contemplated by I.R. 7.1002 and therefore are permissible activities for a national bank or its subsidiaries.

In addition to the foregoing, I note that the activities of [*Program3*], which involve making available to its customers data processing hardware and software, may also be authorized under I.R. 7.1019, 12 C.F.R. 7.1019, "Furnishing of products and services by electronic means and services." Under this interpretive ruling, a national bank may perform, provide or deliver through electronic means and facilities any activity, function or service that it is otherwise authorized to perform. Providing hardware and software as part of a larger service is a permissible activity for national banks and their subsidiaries. In Interpretive Letter No. 653, *supra* at 71,802, the OCC noted that it

...has in the past allowed national banks and their operating subsidiaries to offer products and services to clients that would not ordinarily be considered part of the banking business, where the product or service was offered as part of a larger product or service. For example, national banks and their subsidiaries have long been able to sell computer hardware and software to their data processing clients. *See* Interpretive Letter No. 345 (July 9, 1985), *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,515 at 77,799.

Please note that the conclusion in this letter is based on the facts as described, and would not necessarily apply to any modification of [ ]'s activities.

I trust this has been responsive to your inquiry. Please contact me at (202) 874-5300 if you wish to discuss the matter further.

Sincerely,

/s/

Sue E. Auerbach  
Senior Attorney

## Bank Activities and Structure Division