



---

Comptroller of the Currency  
Administrator of National Banks

---

Washington, DC 20219

**Interpretive Letter #889**  
**May 2000**  
**12 USC 24(7)**

April 24, 2000

Dear [ ]:

This is in response to your letters of December 21, 1999, and February 17, 2000, requesting confirmation that several national banks (“Banks”)<sup>1</sup> may acquire indirectly through Star Systems, Inc. (“Star”), non-controlling equity investments in Bank Network Services, Inc. (“BNS”), a newly formed Illinois corporation that will provide online securities trading and related services. The Banks currently are non-controlling investors in Star, an electronic funds transfer (“EFT”) network, that plans to acquire a one-third interest in BNS. Banks wish to continue as non-controlling investors in Star after its investment in BNS.<sup>2</sup> For the reasons set forth below, the Banks may acquire and hold the indirect non-controlling equity investments in BNS, in the manner and as described herein.

*A. Background*

Star is a Delaware corporation formed in 1999 by the merger of Star System, Inc., San Diego, California, a California nonprofit mutual benefit corporation, and Honor Technologies, Inc., a Delaware stock corporation headquartered in Maitland, Florida. The general activities of Star are to develop, operate, manage, and market to financial institutions, processors, retailers, and

---

<sup>1</sup> The national banks joining in this request are [ ]; [ ]; [ ]; and [ ].

<sup>2</sup> Certain bank holding companies that own equity interests in Star have filed a comparable application with the Board of Governors of the Federal Reserve System (“the Board”) pursuant to section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. § 1843(c)(8), and the Board’s Regulation Y, 12 C.F.R. § 225.23. You supplied the OCC with a copy of that application and incorporated it by reference in your request letter. Accordingly, this letter relies in part upon facts and representations contained in that application. The Board approved the application by order dated February 18, 2000.

consumers, products and processing services for transactions conducted at electronic terminal devices. Banks' noncontrolling investment in Star has been previously approved by the OCC.<sup>3</sup>

BNS is a newly formed Illinois corporation headquartered in Chicago, Illinois. BNS intends to provide retail brokerage services, lending, and insurance-related services using the Internet to clients who have financial accounts with participating financial institutions. Financial institutions seeking to participate in BNS will be required to sign a participation agreement with BNS. Each participating financial institution will be able to choose among the services to be offered to its account holders, which will include, among others: (i) publicly-traded equities; (ii) third-party mutual funds; (iii) options; and (iv) proprietary asset allocation, fund selection, and investment monitoring support tools. BNS expects to offer such services through various account types including: (i) individual brokerage accounts; (ii) various types of individual retirement accounts; (iii) custodial accounts; and (iv) margin accounts.<sup>4</sup>

BNS clients will access the BNS online brokerage service primarily through the Internet. Account sign-up may be accomplished online through the Internet or through account applications coordinated by the participating financial institution. Client access to the BNS brokerage web site may be facilitated through the use of a hyperlink from the financial institution's own web pages (*e.g.*, from an electronic banking platform)<sup>5</sup> or through links to and from other web sites, such as those of Star. In this way, participating financial institutions will assist in the promotion and marketing of BNS services and will earn fees and other revenues for

---

<sup>3</sup> For a more detailed description of the structure and operations of Star, as well as the permissibility of Banks' investment in Star, *see* OCC Interpretive Letter No. 854 (February 25, 1999) ("Star 1999 Letter").

<sup>4</sup> The participating financial institutions will not hold the BNS client accounts directly and BNS will not be a clearing broker for the financial institutions. The accounts of BNS clients will belong to and be the responsibility of BNS, a registered broker-dealer under the federal securities laws.

<sup>5</sup> The OCC has found that national banks may, as part of the finder authority (*see* 12 C.F.R. § 7.1002), establish hyperlinks between a bank's retail web pages and the web pages of third parties. *See, e.g.*, Conditional Approval No. 347 (Jan. 29, 2000) (chartering AeroBank.com to deliver products and services to customers through a variety of electronic delivery channels, including the Internet); Interpretive Letter No. 875 (Oct. 31, 1999) (national bank may operate a "virtual mall," *i.e.* a bank-hosted set of web pages with various links to third party web sites offering a range of financial and non-financial products and services).

The OCC previously has indicated that it expects national banks offering these hyperlinks to take reasonable steps to clearly distinguish between products and services that are offered by the bank and those offered by a third party or bank affiliate. Bank customers should be able to identify when they are dealing with the bank itself and when they are dealing with another party. In general, the bank should indicate that it does not provide, endorse, or guarantee any of the products or services available through the third party web pages. For links to pages that provide nondeposit investment products, the disclosures also should alert customers to risks associated with these products, for example, by stating that the products are not insured by the FDIC, are not a deposit, and may lose value. Further, banks have responsibility for the appropriate placement of disclosures via electronic means on their web page(s). *See, e.g.*, OCC Bulletin 98-31 (July 30, 1998) ("FFIEC Guidance on Electronic Financial Services and Consumer Compliance"). The OCC will continue to work with Banks as these aspects of electronic commerce and the Internet develop.

their services. BNS also will provide marketing materials and marketing support for its participating financial institutions.

BNS will be registered as a broker-dealer with the Securities and Exchange Commission (“SEC”) pursuant to section 15 of the Securities and Exchange Act of 1934<sup>6</sup> and under all applicable state broker-dealer laws.<sup>7</sup> It also will be a member of the National Association of Securities Dealers, Inc. (“NASD”).<sup>8</sup> As a registered broker-dealer, BNS will be subject to substantial regulatory requirements under the federal securities laws, applicable state laws, and the rules of the NASD.<sup>9</sup>

## *B. Analysis*

A national bank may engage in activities that are part of or incidental to the business of banking by means of an operating subsidiary.<sup>10</sup> In a variety of circumstances, the OCC has permitted national banks to own, either directly, or indirectly through an operating subsidiary, a noncontrolling interest in an enterprise.<sup>11</sup> The OCC has concluded that national banks are legally permitted to make a noncontrolling investment in a company provided four criteria or standards are met.<sup>12</sup> These standards, which have been distilled from our previous decisions in the area of permissible noncontrolling investments for national banks and their subsidiaries, are:

(1) The activities of the enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking (or otherwise authorized for a national bank).

(2) The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment.

(3) The bank’s loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise.

---

<sup>6</sup> 15 U.S.C. § 78 *et seq.*

<sup>7</sup> For example, BNS states it will register as a broker-dealer in Illinois.

<sup>8</sup> *See, e.g.*, “Internet Guide for Registered Representatives” (Feb. 13, 1998) (guidance issued by NASD Regulation, Inc. to make members aware of compliance requirements and potential liabilities applicable to brokerage activities over the Internet).

<sup>9</sup> BNS represents it also will obtain any other permits or registrations, including insurance licenses, as may be required for its other business activities.

<sup>10</sup> 12 C.F.R. § 5.34.

<sup>11</sup> *See, e.g.*, Conditional Approval Letter No. 219 (July, 15, 1996).

<sup>12</sup> *See* Interpretive Letter No. 692 (November 1, 1995); Interpretive Letter No. 694 (December 13, 1995).

(4) The investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.

We conclude, as discussed below, that the Banks' investment in Star will continue to satisfy these four criteria upon Star's acquisition of a one-third interest in BNS.

*1. The activities of the enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking (or otherwise authorized for a national bank).*

The National Bank Act, in relevant part, provides that national banks shall have the power:

[t]o exercise . . . all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes . . . .

The Supreme Court has held that this powers clause of 12 U.S.C. § 24(Seventh) is a broad grant of power to engage in the business of banking, which is not limited to the five enumerated powers. Further, national banks are authorized to engage in an activity if it is incidental to the performance of the enumerated powers in section 24(Seventh) *or* if it is incidental to the performance of an activity that is part of the business of banking.<sup>13</sup> Since national banks must be able to make use of modern technology in performing their business, the OCC's Interpretive Ruling 7.1019 permits national banks to "perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that [they are] otherwise authorized to perform, provide, or deliver."<sup>14</sup>

The general activities of BNS will be to provide retail brokerage services, lending, and insurance-related services using the Internet to clients who have financial accounts with participating financial institutions. The OCC has already found that all of the specific activities in which BNS will engage are permissible for national banks. Accordingly, this letter will only describe briefly the various activities in which BNS will engage, with citations to OCC precedent for each activity. Please refer to the cited precedents for a more complete discussion of the legal authority for each activity.

As described in your proposal, the activities are as follows:

---

<sup>13</sup> *NationsBank of North Carolina, N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 215 (1995).

<sup>14</sup> 12 C.F.R. § 7.1019.

- i. Buying and selling securities on an agency or riskless principal basis.<sup>15</sup>
- ii. Investing and trading as principal in bank eligible securities.<sup>16</sup>
- iii. Underwriting and dealing in bank eligible securities, including obligations of the United States, and securities of states and political subdivisions which meet the definition of general obligation securities as defined by the OCC.<sup>17</sup>
- iv. Engaging in making, purchasing, selling, servicing, or warehousing loans or other extensions of credit, or interests therein, for its own account or for the account of others, including credit card loans.<sup>18</sup>
- v. Buying, selling, and otherwise dealing in mortgages.<sup>19</sup>
- vi. Providing insurance-related activities.<sup>20</sup>
- vii. Providing investment and financial advisory services.<sup>21</sup>
- viii. Engaging in securities brokerage services, related securities credit, and related activities including investment advice, both separately and combined.<sup>22</sup>
- ix. Providing cash management services.<sup>23</sup>

---

<sup>15</sup> See Interpretive Letter No. 647 (April 15, 1994); Interpretive Letter No. 622 (April 9, 1993); Interpretive Letter No. 626 (July 7, 1993); Interpretive Letter No. 371 (June 13, 1986).

<sup>16</sup> See 12 U.S.C. § 24(Seventh); 12 C.F.R. Part 1; Interpretive Letter No. 652 (Sept. 13, 1994).

<sup>17</sup> 12 C.F.R. § 1.2(b); see 12 U.S.C. § 24(Seventh); 12 C.F.R. Part 1.

<sup>18</sup> See Interpretive Letter No. 852 (December 11, 1998).

<sup>19</sup> See Letter from J. Michael Shepherd, Senior Deputy Comptroller for Corporate and Economic Programs (January 11, 1990).

<sup>20</sup> See 12 C.F.R. § 7.1002. BNS may engage in insurance-related “finder” activities and receive a fee for these activities. These activities may include bringing together a potential purchaser of insurance and the seller of insurance by 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. See, e.g., Corp. Dec. No. 99-38 (October 29, 1999); Interpretive Letter No. 824 (February 27, 1998); Cond. Approval No. 221 (December 4, 1996). BNS contemplates that another party will act as an insurance agent or broker and actually conduct the insurance sales transactions, however, BNS represents it will comply with state insurance licensing and other requirements, as applicable. Further, to the extent BNS engages in any insurance activity subject to provisions in the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338 (Nov. 12, 1999)), or regulations promulgated thereunder, BNS represents it will conform and conduct its activities as required.

<sup>21</sup> See Interpretive Letter No. 668 (April 27, 1995).

<sup>22</sup> See Cond. Approval No. 164 (December 9, 1994); Interpretive Letter No. 647 (April 15, 1994).

Accordingly, the activities in which Star will engage, upon its acquisition of BNS, are permissible for national banks. Thus, the first standard is satisfied.

*2. The banks must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw their investment*

This is an obvious corollary to the first standard. It is not sufficient that the entity's activities are permissible at the time a bank initially acquires its interest; they must also remain permissible for as long as the bank retains an ownership interest.

As previously determined by the OCC, Banks have the ability to withdraw their investments in Star should Star engage in activities that are impermissible for a national bank in which to invest.<sup>24</sup> By-Laws governing Star provide that shareholders have the right to transfer their shares to other shareholders or to Star itself. Shares may also be transferred to non-shareholder depository institutions or depository institution holding companies, subject to a right of first refusal on the part of other shareholders and Star. The By-Laws also recognize that a shareholder may transfer its shares if required to do so by a regulatory agency.<sup>25</sup> In addition, the License Agreement between Star and BNS states that BNS may not provide any additional services until all required regulatory approvals, permits or authorizations have been obtained. This would include applicable OCC approvals. These provisions appear adequate to permit the Banks to prevent BNS from undertaking activities impermissible for a national bank, or to permit Banks to withdraw their investment in Star should Star, either directly or through BNS, undertake impermissible activities.

Accordingly, the second standard is satisfied.

*3. The banks' loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise*

*a. Loss exposure from a legal standpoint*

A primary concern of the OCC is that national banks should not be subjected to undue risk. Where an investing bank will not control the operations of the entity in which the bank holds an interest, it is important that the national bank's investment not expose it to unlimited liability. Normally, this is not a concern when a national bank invests in a corporation, for it is generally accepted that a corporation is an entity distinct from its shareholders, with its own separate rights and liabilities, provided proper corporate separateness is maintained.<sup>26</sup> This is

---

<sup>23</sup> See Interpretive Letter No. 324 (August 17, 1999).

<sup>24</sup> See Star 1999 Letter.

<sup>25</sup> See generally Proposed By-Laws, art. II, section 13.

<sup>26</sup> 1 W. Fletcher, Cyclopedia of the Law of Private Corporations § 25 (rev. perm. ed. 1990).

the case here. The corporate veils of Star and BNS will protect the Banks from liability or loss associated with their ownership interests in Star and indirect ownership interest in BNS.<sup>27</sup>

*b. Loss exposure from an accounting standpoint*

In assessing a bank's loss exposure as an accounting matter, the OCC has previously noted that the appropriate accounting treatment for a bank's less than 20 percent ownership share or investment in a corporate entity is to report it as an unconsolidated entity under the equity or cost method of accounting. Under the equity method of accounting, unless the investor has extended a loan to the entity, guaranteed any of its liabilities, or has other financial obligations, the investor's losses are generally limited to the amount of the investment shown on the investor's books.<sup>28</sup> You have represented that the Banks will continue to account for their ownership interests in Star according to generally accepted accounting principles, which will satisfy the OCC's requirements in this regard. In addition, Star will report its investment in BNS under the equity method of accounting.

Therefore, for both legal and accounting purposes, the Banks' potential loss exposure arising from their respective investments in Star should be limited to the amount of those investments. Since that exposure will be quantifiable and controllable, the third standard is satisfied.

*4. The investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.*

A national bank's investment in an enterprise or entity must also satisfy the requirement that the investment have a beneficial connection to the bank's business, *i.e.*, be convenient or useful to the investing bank's business activities, and not constitute a mere passive investment unrelated to that bank's banking business. Twelve U.S.C. § 24(Seventh) gives national banks incidental powers that are "necessary" to carry on the business of banking. "Necessary" has been judicially construed to mean "convenient or useful."<sup>29</sup> Our precedents on bank non-controlling investments have indicated that the investment must be convenient or useful to the bank in conducting *that bank's* business. The investment must benefit or facilitate that business and cannot be a mere passive or speculative investment.<sup>30</sup>

In this instance, the proposed acquisition of an ownership by Star in BNS is not merely evidence of a passive relationship, but rather would provide useful services to member financial institutions of Star and their account holders. BNS services would provide customers

---

<sup>27</sup> Del. Code Ann. tit. 8, § 102(b)(6) (Michie 1991).

<sup>28</sup> See generally, Accounting Principles Board, Op. 18 ¶ 19 (1971).

<sup>29</sup> See *Arnold Tours, Inc. v. Camp*, 472 F.2d 427, 432 (1st Cir. 1972).

<sup>30</sup> See, e.g., Interpretive Letter No. 543 (February 13, 1991); Interpretive Letter No. 427 (May 9, 1988); Interpretive Letter No. 421 (March 14, 1988).

with convenient online services through links with their existing financial institutions. Customers of Star's member financial institutions who choose to participate in the BNS services will thus be benefited by being able to purchase a wider range of services from a single and convenient source. Participating financial institutions, such as Banks, will be able to offer these online services through BNS without having to incur the expense of developing these services themselves. Thus, the investment is not a mere passive investment unrelated to Banks' banking business.

Accordingly, the fourth standard is satisfied.

*C. Conclusion*

Based upon a thorough review of the information you provided, including the representations and commitments made both in your letters and in the Board filing incorporated therein by reference, and for the reasons discussed above, we conclude that the Banks may continue to hold their non-controlling equity investments in Star upon Star's acquisition of its interest in BNS, subject to the following conditions:

- (1) BNS will engage only in activities that are permissible for a national bank;
- (2) In the event that BNS engages in an activity that is inconsistent with condition number one, Banks will either withdraw from Star or, alternatively, Star will divest its interest in BNS in accord with Section B.2. of this letter;
- (3) the Banks will account for their respective investments in Star under the equity or cost method of accounting; and
- (4) BNS will be subject to OCC supervision and examination, subject to the limitations and requirements of 12 U.S.C. § 1831v.

These conditions are conditions imposed in writing by the OCC in connection with its action on the Banks' request for a legal opinion confirming that their respective investments are permissible under 12 U.S.C. § 24(Seventh) and, as such, may be enforced in proceedings under applicable law.

If you have any questions, please contact Senior Attorney John Soboeiro in the Bank Activities and Structure Division, at 202-874-5300, or Senior Attorney Suzette Greco in the Securities & Corporate Practices Division at 202-874-5210.

Sincerely,

**-signed-**

Julie L. Williams  
First Senior Deputy Comptroller and Chief Counsel