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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

May 11, 1998

**Corporate Decision #98-28**  
**June 1998**

Mr. William W. Templeton  
Counsel  
Legal Department (RI MO F18C)  
Fleet Financial Group  
50 Kennedy Plaza  
Providence, Rhode Island 02903

Re: Application by Fleet National Bank, Providence, Rhode Island, to establish Fleet Life Insurance Company and Fleet Insurance Company: 98-ML-08-001

Dear Mr. Templeton:

This responds to the application filed by Fleet National Bank, Providence, Rhode Island (the "Bank"), to establish Fleet Life Insurance Company ("Fleet Life") and Fleet Insurance Company ("Fleet Insurance"). Fleet Life will underwrite and reinsure credit life and credit disability insurance, and Fleet Insurance will underwrite and reinsure involuntary unemployment insurance. Fleet Life and Fleet Insurance will be held as "fourth tier" subsidiaries of the Bank and will be wholly-owned by Fleet Credit Card, LLC, a limited liability company established as a subsidiary of, and controlled by Fleet Bank (RI), National Association ("FBRI"). FBRI is a national credit card bank subsidiary of the Bank. Based upon the representations and commitments made by the Bank as described herein, we approve the Bank's application to establish Fleet Life and Fleet Insurance to engage in the proposed activities.

**I. BACKGROUND**

The Bank proposes to establish Fleet Life as an Arizona corporation, licensed by that state to underwrite and reinsure credit life and credit disability insurance. Credit life insurance is issued to ensure repayment of a borrower's loans in the event of the borrower's death. Credit disability insurance is issued to ensure repayment in the event of a borrower's disability. Fleet Life will only underwrite and reinsure credit life and disability insurance products that are sold to credit card customers of FBRI or to customers that borrow from the Bank and its lending subsidiaries.

The Bank also proposes to establish Fleet Insurance as an Arizona corporation, licensed by that state to underwrite and reinsure involuntary unemployment insurance. Involuntary unemployment insurance is another form of credit insurance that is issued to ensure repayment of a borrower's loans in the event that the borrower becomes involuntarily unemployed. Fleet Insurance will only underwrite and reinsure involuntary unemployment insurance products that are sold to credit card customers of FBRI or to customers that borrow from the Bank and its lending subsidiaries.

## **II. DISCUSSION**

### **A. Underwriting and Reinsuring Credit Related Insurance**

#### **1. The "Business of Banking" Analysis**

The National Bank Act 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 . . . .

12 U.S.C. § 24(Seventh).

The Supreme Court has held that this powers clause is a broad grant of the power to engage in the business of banking, including, but not limited to, the five specifically recited powers and the business of banking as a whole. See NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co., 513 U.S. 251 (1995). Many activities that are not included in the enumerated powers are also part of the business of banking. Judicial cases reflect three general principles used to determine whether an activity is within the scope of the "business of banking": (1) is the activity functionally equivalent to or a logical outgrowth of a recognized banking activity; (2) would the activity respond to customer needs or otherwise benefit the bank or its customers; and (3) does the activity involve risks similar in nature to those already assumed by banks. See, e.g., Merchants' Bank v. State Bank, 77 U.S. 604 (1871); M & M Leasing Corp. v. Seattle First National Bank, 563 F.2d 1377, 1382 (9th Cir. 1977), cert. denied, 436 U.S. 956 (1978); American Insurance Association v. Clarke, 865 F.2d 278, 282 (2d Cir. 1988).

**a. Functionally Equivalent to or a Logical Outgrowth of Recognized Banking Functions**

National banks have long been recognized to have broad authority to underwrite, reinsure, and sell as agent, credit-related insurance products.<sup>1</sup> See Corporate Decision No. 97-92 (November 1997) (authorizing underwriting and reinsurance of credit-related disability and involuntary unemployment insurance); Interpretive Letter No. 277, reprinted in [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,441 (December 13, 1983) (authorizing underwriting and reinsurance of credit-related life insurance); Letter dated March 31, 1995 (unpublished) (authorizing reinsurance of credit-related involuntary unemployment, life, and disability insurance); Interpretive Letter No. 812, reprinted in [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-260 (December 29, 1997) (authorizing the sale, as agent, of credit-related crop insurance); Letter dated June 17, 1993 (unpublished) (authorizing the sale, as agent, of credit-related mechanical breakdown insurance); Letter dated June 3, 1986 (unpublished) (authorizing the sale, as agent, of credit-related vendors double interest insurance); Interpretive Letter No. 283, reprinted in [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,447 (March 16, 1984) (authorizing the sale, as agent, of credit-related life, disability, involuntary unemployment, and vendors single interest insurance); 12 C.F.R. Part 2 (Sales of Credit Life Insurance); and IBAA v. Heimann, 613 F.2d 1164 (D.C. Cir. 1979), cert. denied, 449 U.S. 823 (1980) (confirming the OCC's authority to adopt its credit life insurance regulation at 12 C.F.R. Part 2).<sup>2</sup>

National banks may sell, underwrite and reinsure credit-related insurance products that assist bank customers in meeting loan obligations when unfortunate circumstances, such as death, disability or unemployment, occur. These credit-related products may be purchased by customers to mitigate risks arising from credit obligations, and thus constitute a component of outstanding credit relationships. Bank lenders necessarily must assume the risk that loan borrowers will experience adverse circumstances that may interfere with their ability to repay loan obligations. Credit-related insurance products involve the assumption of the risk that customers may experience such adverse circumstances. The credit life, disability and unemployment insurance products the Bank proposes to provide are an integral part of credit transactions and thus directly relate to and are logical outgrowths of the Bank's lending authority.

**b. Respond to Customer Needs or Otherwise Benefit the Bank**

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<sup>1</sup> A national bank may establish or acquire an operating subsidiary to conduct, or may conduct in an existing operating subsidiary, activities that are part of or incidental to the business of banking, pursuant to 12 U.S.C. § 24(Seventh), and other activities permissible for national banks or their subsidiaries under other statutory authority. 12 C.F.R. § 5.34(d)(1). Underwriting, reinsuring, and selling, as agent, credit-related insurance is, therefore, permissible for a bank's operating subsidiary as well.

<sup>2</sup> The OCC has also authorized national banks to enter into debt cancellation contracts that provide for the cancellation of outstanding loans when borrowers experience adverse circumstances. See 12 C.F.R. § 7.1013; and First National Bank of Eastern Arkansas v. Taylor, 907 F.2d 775 (8th Cir. 1990), cert. denied, 498 U.S. 972 (1990) (confirming the ability of national banks to enter into debt cancellation contracts).

### **or its Customers**

Credit life, credit disability, and involuntary unemployment insurance benefit the Bank's customers because these products enable those customers to ensure repayment of their loans in the event of death, disability, or involuntary unemployment. The Bank's proposal also benefits the Bank because it enables the Bank, Fleet Life, and Fleet Insurance to obtain new sources of income in connection with credit risks that the Bank already assumes in connection with its lending relationship with a customer. The Bank's involvement in underwriting and reinsuring credit life, credit disability, and involuntary unemployment insurance may promote competition between underwriters of these credit-related insurance products, and expand consumer choices.

#### **c. Risks Similar in Nature to Those Already Assumed by National Banks**

National banks are already authorized to underwrite and reinsure credit-related insurance. See Interpretive Letter No. 277, supra. See also Corporate Decision No.97-92, supra.; Letter dated March 31, 1995 (unpublished), supra. The risks assumed by Fleet Life and Fleet Insurance when they underwrite and reinsure the proposed credit-related insurance products are similar to the kinds of risks already assumed by national banks that underwrite and reinsure credit-related insurance products. These risks are similar for all borrowers with the same risk characteristics, regardless of the identity of the lender.

#### **2. The "Incidental to Banking" Analysis**

Even if the Bank's credit-related insurance proposal were not viewed as part of the business of banking, the proposal would qualify as incidental to the business of banking. The Bank's proposal is incidental to a bank's authority to make loans, pursuant to 12 U.S.C. § 24(Seventh), because underwriting and reinsuring credit-related insurance enhances a lender's ability to receive repayment for its loans; and promotes the lending business by making available a credit-related product useful to borrowers.

As discussed above, the OCC and the courts have authorized national banks to underwrite, reinsure, and sell, as agent, credit-related insurance products. The OCC's approvals and court holdings concluded that these activities are incidental to banking activities because they protect a lender's interest in its loans by reducing the risk of default when borrowers experience adverse circumstances. See Interpretive Letter No. 812 supra.; Corporate Decision No.97-92, supra.; Interpretive Letter No. 283, supra.; Interpretive Letter No. 277, supra.; 12 C.F.R. Part 2; IBAA v. Heimann, 613 F.2d 1164 (D.C. Cir. 1979), cert. denied, 449 U.S. 823 (1980); OCC letter dated March 31, 1995, supra. See also 12 C.F.R. § 7.1013; and First National Bank of Eastern Arkansas v. Taylor, 907 F.2d 775 (8th Cir. 1990), cert. denied, 498 U.S. 972 (1990). The rationale behind the above OCC precedents and court cases on credit-related insurance is applicable to the Bank's credit-related insurance proposal. Specifically, the proposed insurance products are permissible because they reduce the risk of loss when borrowers experience death, disability or unemployment.

OCC precedent has also established that the provision of certain products and services is permissible as incidental to the business of banking when needed to package successfully or promote other banking services. See Interpretive Letter No. 754, reprinted in [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-118 (November 6, 1996) (national bank operating subsidiary may sell general purpose computer hardware to other financial institutions as part of larger product or service when necessary, convenient, and useful to bank permissible activities); Interpretive Letter No. 742, reprinted in [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-106 (August 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. 653 (December 22, 1994) (national banks may offer non-banking products as part of larger product or service when necessary, convenient, and useful to bank permissible activities); Interpretive Letter No. 611, reprinted in [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,449 (November 23, 1992) (bank selling home banking service may also provide customer access to non-banking services “to increase the customer base and the usage of the program”).

Case authority also holds that national banks have an incidental power to promote their banking services, including by offering incidental services desired by customers. See Franklin Nat’l Bank v. New York, 347 U.S. 373 (1954) (advertising of savings accounts); Clement National Bank v. Vermont, 231 U.S. 120 (1913) (promoting the bank’s deposit services by computing, reporting and paying the state tax levied upon the interest earned by bank customers on their deposits); Corbett v. Devon Bank, 299 N.E.2d 521, 12 Ill. App. 3d 559 (1973) (as a means of promoting its banking business, a national bank may sell state motor vehicle licenses).<sup>3</sup> Customer convenience is one of the most important elements involved in competition among financial institutions. See Oklahoma v. Bank of Oklahoma, 409 F.Supp. 71, 88 (N.D. Okla. 1975). Cf. Order of the Federal Reserve Board Approving Notice by Mellon Bank Corporation to Acquire an Employee Benefits Consulting Company (June 16, 1997) (The Federal Reserve Board’s (the “Board”) Order approved Mellon Bank Corporation’s application to acquire an employee benefits consulting company that also provided insurance-related services. The Board determined that the provision of insurance-related activities was necessary and “incidental” to banking activities, because the employee benefits consulting company would operate at a competitive disadvantage if it could not provide the insurance-related services.).

Underwriting and reinsuring credit-related insurance similarly is incidental to banks’ lending activities where these activities enhance the successful packaging and promotion of the lending

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<sup>3</sup> The concept of promotional incidental powers for bank holding companies was judicially approved in National Courier Ass’n v. Board of Governors, 516 F.2d 1229, 1240 (D.C. Cir. 1975) (analogizing to the powers of national banks under 12 U.S.C. § 24(Seventh), the court agreed that “[i]n enumerating the activities that could be carried on, [Congress] certainly could not have meant to forbid engagement in other ‘incidental’ activities as were reasonably necessary to carrying out those that were enumerated.”)

activities of banks and their lending subsidiaries.<sup>4</sup> As described above, these insurance products can be a valuable component of a lending relationship that assists customers in making timely repayments when faced with adverse circumstances. In addition, these activities promote the banking business of the Bank and its subsidiary lenders, *i.e.*, making loans, by enabling customers to repay their loans and enhancing lenders' ability to secure repayment.<sup>5</sup>

### III. CONCLUSION

Based on the foregoing facts and analysis, and the representations and commitments made by the Bank in connection with this application, we conclude that the Bank's proposed credit-related insurance activities are permissible, and we approve the Bank's application to establish Fleet Life and Fleet Insurance. Also, to ensure that the proposed activities are consistent with FBRI's status as a CEBA credit card bank, you may wish to consult with the Federal Reserve for its interpretation of the limits of a credit card bank's activities, as defined in section 2(c)(F) of the Bank Holding Company Act, 12 U.S.C. § 1841(c)(2)(F).

Sincerely,

/s/

Raymond Natter  
Acting Chief Counsel

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<sup>4</sup> Of course, all credit-related insurance activities must be conducted consistently with applicable anti-tying provisions of 12 U.S.C. § 1972.

<sup>5</sup> Notably, since the Bank's proposal is related to a specific bank product, *i.e.*, bank loans, the conclusion that the Bank's proposal is, at least, incidental to banking is particularly compelling. Compare Corbett v. Devon Bank, 299 N.E.2d 521, 12 Ill. App. 3d 559 (1973) (where the activity permitted by the court, *i.e.*, selling state motor vehicle licenses, was not related to a specific bank product).