



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #904
February 2001
12 USC 24(7)

January 18, 2001

Re: Proposal by [], to Engage in Finder Activity

Dear []:

This responds to your request for confirmation of the legal permissibility of a proposal by [] (“Bank”), to help arrange for the purchase of nonfinancial products by its credit card customers (“Proposal”). The Bank proposes to make each customer who contacts the Bank’s call center aware that a nonfinancial product is available to the customer and that the Bank will, upon the customer’s request, transmit certain information to the product’s vendor. For the reasons below, and based on the representations and information provided, we find that such activities are permitted by the National Bank Act and are consistent with precedent of the Office of the Comptroller of the Currency.¹

A. Background

The Bank is one of the largest issuers of credit cards in the United States. The Bank’s credit card customers frequently telephone the Bank in order to obtain information, request a service, or conduct some other business with the Bank. Under the Proposal, the Bank will advise these customers that it can help arrange for the purchase of a nonfinancial product by the customer. At the end of each such “in-bound” call, the Bank will inform the customer that a product is

¹ This letter addresses only the legal authority of the Bank to conduct the proposed activities. We will address separately with the Bank the consumer privacy and telemarketing issues implicated by the Proposal. However, we note that, beginning July 1, 2001, the mandatory date for compliance with the privacy regulations (*see* 12 C.F.R. part 40), the Bank will be prohibited from disclosing its customers’ account numbers to a nonaffiliated vendor so that the vendor may charge the accounts of Bank customers for the vendor’s products. In accordance with the regulations, the Bank may provide encrypted account numbers to a vendor for use in a marketing program only if the Bank does not enable the vendor to decrypt the numbers.

available to the customer and that the customer has an opportunity to receive the product by informing the customer service representative that he is interested. The initial nonfinancial product the Bank proposes to help arrange for the purchase of is magazine subscriptions. If the customer is interested in receiving the product, the Bank will forward the pertinent information about the customer's interest to the product's vendor. The customer will also be advised that the product and any follow-up after the initial indication of interest will be handled by the product's vendor.

The Bank's role will not extend beyond the transmission of information to the vendor regarding a customer's indicated interest in the product, except for the Bank's function as the payment intermediary for the product when the customer is charged.² The actual products and services will be provided by unaffiliated vendors,³ and the Bank would have no responsibility for providing the product or service. The unaffiliated vendor would compensate the Bank for orders received from the Bank's customers.

B. Discussion

A national bank "may act as a finder in bringing together a buyer and a seller." 12 C.F.R. § 7.1002(a). The activity of 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." 12 C.F.R. § 7.1002(b). The finder function is an activity authorized for national banks under 12 U.S.C. § 24(Seventh) as part of the business of banking.

OCC interpretive letters and decisions have permitted national banks acting as a finders to bring together buyers and sellers of a wide variety types of products and services. *See, e.g.*, Corporate Decision 2000-11 (June 24, 2000) (national bank may act as finder to bring program beneficiaries together with program benefits); Conditional Approval No. 347 (Jan. 29, 2000)

² Twelve C.F.R. § 226.12(c) states the rights of a cardholder to assert against a card issuer claims or defenses concerning property or services purchased with a credit card when a merchant fails to adequately resolve the dispute. Generally, these rights apply only if the amount of credit extended to obtain the property or services that gives rise to the dispute exceeds \$50, and the disputed transaction occurred in the cardholder's home state or within 100 miles of the cardholder's home address. 12 C.F.R. § 226.12(c)(3)(ii). However, these dollar amount and geographic limitations do not apply when the person honoring the credit card, *inter alia*, obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer, *i.e.*, a statement stuffer. *Id.* at fn. 26. We recommend that the Bank check with the Federal Reserve Board ("Board") to determine whether the Board would find the Bank's telephone solicitation to be the equivalent of a statement stuffer for Regulation Z purposes.

³ The Bank will not be engaged in any tying arrangement whereby a subscription to a magazine would be required for the customer's participation in any other banking service offered by the Bank. In addition, the Bank represents that it will conduct its due diligence process for third-party vendors in light of OCC Advisory Letter 2000-9 (August 29, 2000).

(permitting Web page hyperlinks for customers to access products and services considered useful for small businesses); Interpretive Letter No. 875, *reprinted in* [1999-2000 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-369 (Oct. 31, 1999) (permitting a national bank to create a “virtual mall,” a bank-hosted collection of web pages with links to third-party vendors’ Web sites); 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 finder for insurance products); No-Objection Letter No. 89-02, *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,014 (Apr. 17, 1989) (permitting national bank acting as finder to distribute automobile club applications and assist customers in filling out applications).

As part of the finder authority, the OCC has permitted national banks to provide customers with information about a vendor’s products and services and their availability. *See* Conditional Approval No. 347, *supra*; Interpretive Letter No. 824, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-273 (Feb. 27, 1998) (permitting national bank to distribute informational materials and refer customers to third-party vendors); No-Objection Letter No. 89-02, *supra*. As finder, national banks may also convey one party’s expression of interest to the other party. *See* Interpretive Letter No. 478, *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,028 (Mar. 2, 1989) (national bank acting as finder may convey expressions of interest to potential party); Interpretive Letter No. 437, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,661 (July 27, 1988) (as finder, national bank may assist customers in completing applications and forward completed applications). National banks may accept a fee for their finder services. 12 C.F.R. § 7.1002(c).

The Proposal is consistent with a national bank’s authority to act as a finder. Bank credit card customers telephone the Bank to make inquiries or to request services of the Bank. At the end of each call, the Bank’s customer service representative will ask whether the customer is interested in receiving one of a number of magazines. If the customer indicates that he wishes to receive one or more subscriptions, the customer service representative forwards this expression of interest, along with the pertinent information collected from the customer, to the third-party vendor.

Conclusion

Based upon the foregoing facts and analysis, and the representations made by the Bank in connection with its request, I conclude that the proposed activity is permissible for a national bank.

If you have any questions, please contact Steven Key, Senior Attorney, at (202) 874-5300.

Sincerely,

-signed-

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel