



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

August 12, 2002

Interpretive Letter #944
September 2002
12 USC 24(7)

Subject: Proposed Loss Notification and Credit Monitoring Services

Dear []:

This is in response to your letter, transmitted via e-mail on June 27, 2002 to Richard Erb, Licensing Manager, Large Bank Supervision, regarding the proposal of [], [*City, State*] (“Bank”) to engage in certain loss notification and credit monitoring services. In particular, you seek the OCC’s concurrence with your view that the proposed activities are incidental to the business of banking under 12 U.S.C. § 24(Seventh) and therefore permissible for a national bank.

Facts

The Bank, which specializes in the issuance of retail and business credit cards, proposes to add loss notification and credit monitoring services to its product offerings. Initially these services would be offered solely to the Bank’s cardholders. At some later time, the Bank may also offer these services to cardholders of other issuers and to the general public. Customers would pay a monthly charge for each service. In the case of the Bank’s own cardholders, such charges would appear on the regular monthly billing statement.

Customers who purchase the Bank’s loss notification services would be able to register all their credit, debit, ATM and telephone calling cards with the Bank. Participating customers whose cards were lost or stolen would then be able to notify the Bank of the loss or theft and the Bank would then (a) notify the issuers of all the lost or stolen cards and (b) request that the cards be canceled or reissued. Through this process, the customers would receive full protection from their respective card issuers for fraudulent charges. They would also be eligible for emergency cash advances.

Customers who purchase the Bank's credit monitoring services would also be able to obtain, at any time, the following products or services:

- (a) a merged triple credit bureau report (*i.e.*, from the three major credit bureaus);
- (b) a current credit score;
- (c) monthly monitoring of their credit record for new accounts, inquiries and derogatory or adverse information;
- (d) access to their Social Security account to confirm accurate Social Security deductions by past and present employers;
- (e) access to medical information about them on file at the Medical Information Bureau, including health information used by insurance companies;¹
- (f) access to records of their motor vehicle violations, including points and dates by which points should be removed from their drivers license records; and
- (g) access to credit advisory consultants.

The Bank currently offers these services, provided by nonaffiliates, to its own cardholders pursuant to its authority to act as a finder under 12 C.F.R. § 7.1002. However, the Bank would like to bring these services in-house.

Analysis

The OCC has traditionally recognized the authority of national banks to organize and perform any of their lawful activities in a reasonable and convenient manner not prohibited by law. A national bank may engage in all activities that are part of or incidental to the business of banking. 12 U.S.C. § 24(Seventh). In *NationsBank of North Carolina, N.A., v. Variable Life Annuity Co.*, 513 U.S. 251 (1995), the Supreme Court held that the "business of banking" is not limited to the enumerated powers in 12 U.S.C. § 24(Seventh), but rather encompasses activities that are part of the business of banking. *Id.* at 258. The Court further established that banks may engage in activities that are incidental to the enumerated powers as well as the broader "business of banking."

The OCC determined a number of years ago that loss notification services such as those proposed by the Bank are incidental to banking.² Since the issuance of credit cards has long

¹ The Medical Information Bureau is a non-stock, not-for-profit membership association, organized under Delaware law, of approximately 600 U.S. and Canadian insurance companies. According to its website (www.mib.com), its purpose is to "detect and deter attempts by applicants of life, health, disability or long-term insurance who would omit or misrepresent facts." It maintains a database that assigns codes to a wide variety of medical conditions and other factors, such as adverse driving records and participation in hazardous sports, that might affect an individual's insurability. Member companies report to the bureau information they obtain about any insured person or insurance applicant that is considered significant to the person's risk classifications, and often check the bureau's database before approving an insurance application.

² See Letter from Jonathan L. Levin, Senior Attorney (March 15, 1985) (unpublished); Letter from John E. Shockey, Deputy Chief Counsel (Sept. 18, 1975) (unpublished).

been determined to be a proper activity for national banks, ancillary activities such as loss notification and providing emergency loans are a logical outgrowth of those services.

The OCC has also consistently stated for many years that the operation of a credit bureau is incidental to banking and thus permissible for national banks.³ In addition, it has determined that providing credit verification incidental to the issuance of credit cards is permissible.⁴ If it is permissible for a national bank to operate a credit bureau, then it is clearly also permissible for the bank to provide directly to its customers those services that are performed by a credit bureau or are a logical outgrowth of credit bureau activities, *i.e.*, credit reports, credit scores, and monitoring of credit records. Providing access to credit advisory consultants is well within a national bank's longstanding authority to offer financial counseling. 12 C.F.R. § 5.34(e)(5)(v)(I); OCC Interpretive Letter No. 137, *reprinted in* [1981-1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,218 (December 27, 1979).

While the other services proposed to be offered by the Bank (providing customers with access to their Social Security, medical, and motor vehicle records) are not viewed as strictly banking, financial or related economic information, the inclusion of these services along with the other credit monitoring services is permissible. The OCC has long held that, under their incidental powers, national banks may sell non-banking products and services when reasonably necessary to provide banking products on a competitive basis by creating a package of related services needed to satisfy consumer demand, meet market competition, and enable the national bank successfully to market its services. *See, e.g.*, OCC Interpretive Letter No. 928, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-453 (December 24, 2001).⁵ In this case, the inclusion of these other records as part of the credit monitoring services to be offered by the Bank will make the overall package more attractive and useful to customers by providing them with a single convenient source through which to gain access to a wide variety of personal, financial and other files.

Conclusion

The loss notification and credit monitoring activities described in your letter are permissible under 12 U.S.C. § 24(Seventh) because they are part of or incidental to the business of banking.

Sincerely,

-signed-

Sue E. Auerbach

Counsel

Bank Activities and Structure Division

³ *See, e.g.*, OCC Conditional Approval No. 336 (Nov. 2, 1999); OCC Conditional Approval No. 276 (May 8, 1998); Letter from John E. Shockey, Deputy Chief Counsel (May 18, 1976) (unpublished).

⁴ *See* Letter from Richard V. Fitzgerald, Director, Legal Advisory Services Division (Jan. 25, 1979) (unpublished).

⁵ *See also* OCC Interpretive Letter No. 653, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (Dec. 22, 1994).