



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

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Corporate Decision 2003-10
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Citigroup, Inc.
425 Park Avenue
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Re: Operating Subsidiary Application of Citibank USA, N.A., Sioux Falls, South Dakota
Application Control No. 2001-ML-08-0022

Dear Mr. Howard:

This is in response to the application filed by Citibank USA, N.A., Sioux Falls, South Dakota (“Bank”), to expand the activities of Citicorp Diners Club, Inc., its wholly-owned operating subsidiary (“Diners Club”). Diners Club issues the Diners Club credit card and operates a reward points program for its card members. The Bank proposes for Diners Club to sell reward points to unrelated third parties and act as a finder to assist individuals with reward points in redeeming those points. For the reasons given below, we conclude that the proposed activities are permissible, and approve the Bank’s application.

A. Background and Proposal

Diners Club issues the Diners Club credit card and offers the Club Rewards incentive program to its card members. Under the reward program, card members receive points for card usage, and the points may then be used to acquire merchandise or services. Diners Club manages the Club Rewards program for its card members by tracking the awarding of and redemption of reward points.¹ Diners Club also facilitates its card members’ redemption of the reward points by maintaining a database of available merchandise, publishing a catalog of available merchandise and reward points required, and transmitting card members’ “orders” to the appropriate vendor. Diners Club does not purchase any of the reward merchandise for its own account, nor does it store or distribute any of the reward merchandise selected by its card members.

¹ As part of the Club Rewards program, Diners Club maintains agreements with various third party merchants that the merchants will make specified products available to Diners Club card members for a specified number of points. Thus, a \$50 gift certificate to a restaurant may “cost” 500 points, while 1,000 airline miles may “cost” 1,000 points.

The Bank now proposes for Diners Club to sell reward points to third parties in both the loyalty and the incentive markets. In the loyalty market, Diners Club would sell points to merchants, who then would award the points to their customers. The merchants, and not Diners Club, would determine how to allocate the points to their customers. In the incentive market, Diners Club would sell points to businesses, who would then award the points to employees, distributors, or other parties. The businesses, and not Diners Club, would determine how to allocate the points to their employees, distributors, or other parties. Both the loyalty and the incentive programs would offer points which could be redeemable for a subset of the products and services currently available in the Club Rewards program – frequent flyer miles, gift certificates, car rentals, charity donations, and certain merchandise. Both programs would rely on the existing agreements between Diners Club and the third-party vendors.

Both programs would operate in a similar manner. Merchants and businesses would purchase reward points by paying for the points in advance.² The fees charged by Diners Club to the participating merchants and businesses would cover all of its costs in developing, maintaining, and administering the programs, its marketing costs, and the costs of reward merchandise that individuals receive in exchange for redeemed points.³ Diners Club would safekeep the portion of the fees that covers the cost of the reward merchandise and would disburse these funds to a vendor when an individual “purchases” (*i.e.*, redeems points for) that vendor’s merchandise. As with the current Club Rewards program, Diners Club would not purchase any of the reward products or services for its own account, and would not store or distribute any of the reward products selected by its card members.⁴

In the incentive program, Diners Club would provide the supporting administrative services for the program. In the loyalty program, Diners Club may provide the supporting administrative services. These administrative services are similar to those currently being provided as part of the Club Rewards program. Diners Club would track the awarding of and redemption of reward points, operate a telephone call center to provide customer assistance, maintain a database of merchandise available for redemption, publish a catalog of available merchandise and reward points required, and transmit card members’ “orders” to the appropriate vendor.

² All businesses participating in the incentive program would be required to purchase points in advance. Occasionally, in the loyalty program, Diners Club may agree to bill a merchant for the points on a monthly basis. Prior to making this option – receiving a monthly bill instead of paying in advance for the points – available to a merchant, the Bank has represented the relationship will be subjected to the same credit review process applicable to other credit extensions to the same party.

³ The Bank represents that the portion of the fees allocated to cover the cost of reward merchandise would cover the “cost” of all reward merchandise. This is because Diners Club maintains a consistent reward points-to-dollar “cost” of reward merchandise. Thus, if Diners Club must disburse \$25 to a merchant for an item an individual purchases with 500 points, the reward points-to-dollar “cost” 20-to-1. A similar ratio would apply across all available reward products.

⁴ The contracts between Diners Club and the companies that purchase the reward points would provide that all reward products and services are supplied by third-party vendors who are the sellers of the products and services. The contracts would further provide that only the sellers, and not Diners Club, are responsible for the products and services supplied.

B. Discussion

Section 5.34(e) of the OCC's operating subsidiary regulation provides that "a national bank may conduct in an operating subsidiary activities that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking, as determined by the OCC, or otherwise under other statutory authority."⁵ The reward points, whether sold to a business that uses them to reward its customers (loyalty market) or to reward its employees (incentive market), are the equivalent of gift certificates that may be used to purchase a limited number of products or services. The OCC has authorized national banks to dispense such prepayment media as the equivalent of "performing a bill payment function by transferring funds from the cardholder's account to the merchant's account."⁶ Here, the reward points serve the same purpose – transferring funds from the company that purchases the points from Diners Club to the merchant that provides the product for which an individual redeems his points. Diners Club accomplishes this transfer function by selling reward points to third parties, holding the funds until the points are redeemed, and then dispersing the funds to the merchant.⁷

The remainder of the proposal, with one exception discussed below, consists of permissible finder activities to bring individuals with reward points together with the merchants (*i.e.*, third-party providers that are willing to accept those reward points). Such activity is the essence of a national bank's finder role.⁸ Diners Club has negotiated with the merchants to offer reduced rates to those customers it refers to the merchants.⁹ Diners Club would perform the administrative and clerical tasks of tracking purchases of points (*i.e.*, the sale of gift certificates) and redemption of points (*i.e.*, use of gift certificates) and forwarding individuals' redemption

⁵ 12 C.F.R. § 5.34(e)(1).

⁶ Interpretive Letter No. 718, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-033 (Mar. 14, 1996). *See also* 12 C.F.R. § 5.34(e)(5)(v)(Y). In addition to being the permissible sale of prepayment media, the sale of reward points constitutes a permissible billing and financing function. Conditional Approval No. 535 (June 21, 2002) (subsidiary of the Bank to administer roadside assistance programs on behalf of rental car companies and auto makers; permissible billing and financing function for subsidiary to advance funds to service provider and bill companies); 12 C.F.R. § 5.34(e)(5)(v)(C) (making loans and extensions of credit) & (D) (servicing loans or other extensions of credit). When an individual redeems points, Diners Club makes a payment to the merchant and looks to the business that purchased those points for repayment. Since most businesses would prepay for the reward points, Diners Club would obtain repayment from the prepaid funds. For those businesses that qualify to pay at the end of each month, Diners Club would look to the businesses' monthly bills for repayment.

⁷ While we do not believe that the proposed activities constitute a stored value system, we believe that the activities raise risks similar to those raised by stored value systems. Therefore, the Bank should review the risks outlined in OCC Bulletin 96-48, "Stored Value Card Systems" (Sept. 10, 1996).

⁸ 12 C.F.R. § 7.1002.

⁹ The OCC has approved, as part of the finder activity, a national bank's arranging a discounted rate for customers it refers to a merchant. Conditional Approval No. 535, *supra*, at fn. 6; Conditional Approval No. 368 (Apr. 3, 2000) at fn. 7.

“orders” to merchants.¹⁰ Diners Club would also use its current telephone call center to take “orders” and answer questions.¹¹

The sole remaining activity that Diners Club would engage in is the publication of a catalog of merchandise and services available. The catalog would contain descriptions of the items available; the phone number for the telephone call center, which individuals could call to place “orders”; and an “order” form, on which individuals could submit orders by mail. National banks are authorized to engage in an activity if that activity is incidental to the performance of the five powers enumerated in 12 U.S.C. § 24(Seventh) or incidental to the performance of an activity that is part of the business of banking.¹² Incidental activities are activities that are permissible for national banks, not because they are part of the “business of banking,” but rather because they are “convenient” or “useful” to an activity that is part of the “business of banking.”¹³ Products and services are incidental to a banking activity, as is the case here, when they make the use of a banking authorized product or service more convenient and useful and thereby increase customer demand for banking products.¹⁴

¹⁰ The OCC has approved these administrative and clerical functions as part of the finder activity. Conditional Approval No. 535, *supra*; Letter from Julie L. Williams, Chief Counsel (Oct. 2, 1996) (unpublished); Interpretive Letter No. 653, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (Dec. 22, 1994); Interpretive Letter No. 607, *reprinted in* [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,445 (Aug. 24, 1992).

¹¹ The OCC has approved the use of telephone call centers in the provision of finder services. Conditional Approval No. 535, *supra*; Interpretive Letter No. 741, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-105 (Aug. 19, 1996).

¹² *NationsBank of North Carolina, N.A., v. Variable Annuity Life Insurance Co.*, 513 U.S. 251, 258 n.2 (1995) (“*VALIC*”); Interpretive Letter No. 742, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,106 (Aug. 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. 737, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,101 (Aug. 19, 1996) (where a national bank was providing a closed stored value system, the provision of multi-function smart cards and card readers is incidental to the business of banking because it enables the bank to create a package of related services required to satisfy customer needs and to market successfully its stored value system).

¹³ *VALIC*, *supra*.

¹⁴ *Clement Nat'l Bank v. Vermont*, 231 U.S. 120 (1913) (to promote customer use of bank's business and enhance demand for its services, national bank, as incidental to deposit services, may compute, report, and pay tax levied on interest earned by its deposit customers); *Miller v. King*, 223 U.S. 505 (1912) (to promote demand for its services, national bank, as incidental to power to accept deposits, may institute a lawsuit on behalf of a customer to collect funds); Interpretive Letter No. 611, *reprinted in* [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,449 (Nov. 23, 1992) (national banks may provide smart phone to offer variety of banking and non-banking services “to increase the customer base and the usage of the program”); Letter from Julie L. Williams, Chief Counsel (Oct. 2, 1996) (unpublished) (national bank may perform variety of activities as incidental to the bank's finder services in order to enhance the functionality and marketability of the finder services).

The Supreme Court in *Franklin Nat. Bank v. New York*, 347 U.S. 373 (1954), made it clear that national banks may advertise their products and services to the general public in the course of maintaining their current business relationships and soliciting new customers. This is true even in situations where a state for some reason has sought to circumscribe such advertising. In *Franklin*, New York had restricted to savings banks and saving and loan associations the use of the words “saving” and “savings” in advertising materials. However, the Court held that since Franklin National Bank could offer savings deposits, as an incidental banking power it must be able to advertise the nature and availability of such offerings notwithstanding the contrary state law on the subject.

In the instant case, the publication of the catalog is properly incidental to Diners Club’s finder activities and the selling of alternate media. The catalog would be the means by which individuals with reward points would know the items available and the “price” of those items. In this instance, without giving individuals the means to identify available items, the finder activity itself – the bringing together of individuals and merchants – would break down. Moreover, given the variety of items available from a number of merchants and given that Diners Club currently publishes a similar catalog as part of the Club Rewards program, it would be more efficient for Diners Club to publish this catalog. Therefore, we believe the publishing of the catalog would be incidental to Diners Club’s other permissible activities.

C. Conclusion

Accordingly, based upon the foregoing, the Bank’s application to expand the activities of Diners Club is approved.¹⁵ If you have any questions, please contact Richard Erb, Licensing Manager, Large Banks, at (202) 874-5060, or Steven Key, Senior Attorney, Bank Activities & Structure Division, at (202) 874-5300.

Sincerely,

/s/ Julie L. Williams

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

¹⁵ This approval, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the U.S., any agency or entity of the U.S., or any officer or employee of the U.S., and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.