Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #1093
March 2008
12 USC 24(7)
12 CFR 37

October 29, 2007

Subject: Sales of National Bank Debt Cancellation Contracts through Automobile Dealers

Dear **[ ]**:

This responds to your letter of August 30, 2007, in which you describe the proposed sale of debt cancellation contracts or debt suspension agreements (collectively referred to in this letter as DCCs) by **[*Bank*]**, **[*City, State*]** (Bank) through automobile dealers (Dealers). As you describe, the Bank would offer DCCs to consumers, contingent on the Bank's purchase from the Dealers of retail installment sales contracts (RICs) that the Dealers have originated to finance a consumer's purchase of an automobile. For the reasons set forth below, the Office of the Comptroller of the Currency (OCC) confirms that the Bank's activities are authorized by federal law set forth at 12 U.S.C. 24(Seventh) and 12 C.F.R. part 37 of the OCC's regulations, and are subject to the standards of part 37 as well.

I. BACKGROUND

As your letter explains, the Bank has agreements with many Dealers to purchase RICs that satisfy the Bank's underwriting guidelines. The Bank intends to offer DCCs through some of these Dealers. The Dealers will act as the Bank's non-exclusive agents for purposes of offering DCCs to consumers who enter into RICs that the Dealers expect to be purchased by the Bank. The Bank purchases only RICs that meet its credit underwriting guidelines.

A Dealer entering into such a RIC would explain to the consumer that the RIC will be sold to the Bank, and that the Bank would be willing to enter into a DCC with the consumer when the Bank purchases the RIC.[1] The Dealer would inform the consumer that the DCC would be with the Bank, not the Dealer, and that the Dealer would have no liability under that

[1] The DCC that would be offered is a guaranteed automobile protection product and provides that the Bank will cancel all or a portion of the consumer's deficiency balance in the event the automobile is stolen, or declared a "total loss" by the insurer, and the insurance value of the vehicle is less than the loan or lease balance.

agreement. On behalf of the Bank, the Dealer would provide the disclosures required by part 37 and obtain a customer's acknowledgement of receipt of those disclosures. The Dealer would obtain the customer's affirmative election to purchase the product and would ask the consumer to sign a DCC with the Bank setting forth the terms and conditions of the benefits. The DCC would be separate from the RIC and would include a disclosure that the DCC is not effective until the RIC is assigned to the Bank. If, for some reason, the RIC is not assigned to the Bank, the Dealer would enter into a revised RIC with the consumer that would not reflect the Bank's DCC.

II. DISCUSSION

A national bank's authority to provide DCCs is well-established.[2] Part 37 provides that a "national bank is authorized to enter into debt cancellation contracts and debt suspension agreements and charge a fee therefore, in connection with extensions of credit it makes, pursuant to 12 U.S.C. 24(Seventh)."[3] Section 24(Seventh) authorizes a national bank to engage in activities that are part of, or incidental to, the business of banking as well as to engage in certain specified activities listed in the statute. "Negotiating promissory notes" and "loaning money on personal security" are activities specified in section 24(Seventh).

Pursuant to Part 37, national banks are authorized to enter into DCCs with respect to loans they purchase as well as loans they originate directly. The OCC has previously indicated that a national bank-owned RIC is the equivalent of a national bank loan.[4] As your letter notes, once purchased, a RIC is treated for regulatory and reporting purposes the same as a loan originated by the bank.[5] Therefore, the purchase of a RIC is a permissible exercise of a national bank's lending powers under Section 24(Seventh) and thus constitutes an extension of credit on which a national bank may offer a DCC under Part 37.

Moreover, a national bank may offer and sell DCCs through an agent. Section 24(Seventh) states expressly that a national bank may use "duly authorized officers or agents" to exercise its incidental powers.[6] Thus, national banks are authorized by federal law to offer,

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[2] For a detailed discussion of OCC precedents on this point, see the preamble to the OCC's final rule adopting part 37. 67 Fed. Reg. 58962-58963 (Sept. 19, 2002).

[3] 12 C.F.R. 37.1(a).

[4] *See* OCC Interpretive Letter No. 416 (Feb. 16, 1988) (referring to motor vehicle retail installment sales contracts as "loan assets"); *see also* OCC Interpretive Letter No. 585 (June 8, 1992) (stating that the securitization of installment sales paper is a permissible method for a national bank to sell its "loans").

[5] The Federal Financial Institutions Examination Council's call report instructions treat the purchase of retail installment sales paper as a loan. FFEIC Form No. 031 and 041, item number 6.c. In addition, the discount of installment consumer paper is a loan for purposes of the OCC's lending limit rules. 12 C.F.R. §§ 32.2(k) and 32.3(b)(2).

[6] 12 U.S.C. 24(Seventh); *see also* 12 C.F.R. § 7.1004; and *SPGGC v. Ayotte*, 488 F.3d 525, 532 (May 30, 2007) (national bank sale of stored value gift cards through agents) ("Accordingly, we agree . . . that the National Bank Act authorizes national banks to engage agents to carry out some of their activities.")

through agents, DCCs on RICs that the bank purchases. This conclusion is not altered by the fact that the offer of the DCC, made through the Bank's agent, is contingent on the Bank's purchase of the underlying RIC. Under the circumstances described in your letter, it is clear that the DCC would always be the Bank's product. The Dealer would offer the DCC on behalf of the Bank. The rights and obligations under a DCC of both the Bank and its customer would become effective only if and when the *Bank* purchases the underlying RIC – the Dealer is never a party to the DCC. As such, the contingency is a condition imposed on the sale of the DCC designed to ensure that the Bank enters into DCCs only with respect to its own extensions of credit and, thus, in accordance with Part 37. It does not change the underlying character of the activity in which the Bank, through its agent, is engaging. Thus, federal law, including Part 37, applies to the Bank's DCC activities and state restrictions that conflict with the Bank's federal authorization to conduct those activities would not. [7]

The consumer protection standards and safety and soundness requirements of Part 37 accordingly apply to the Bank's proposed DCC activities. While the model disclosures provided in Part 37 do not specifically cover the type of contingent DCC offer the Bank plans to make through the Dealers, you have represented that the Bank will provide consumers with a disclosure that the DCC is not effective until the RIC is assigned to the Bank. The OCC expects that such a disclosure will be made consistent with the standards in Part 37[8] and that the Bank will have procedures for ensuring that the customer is notified as to the effectiveness of the DCC once the Bank has determined whether to purchase the underlying RIC.[9]

Finally, your letter notes that many states have enacted motor vehicle retail installment sales acts (MVRISAs) governing the origination of retail installment contracts.[10] Under the facts presented in your letter, the Bank purchases RICs that have been originated by Dealers. We express no view as to how MVRISAs, or other laws, may apply to Dealers who originate RICs that could be purchased by the Bank.

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[7] *Watters v. Wachovia Bank, N.A*, 127 S. Ct. 1559 (2007); *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 33-34 (1996). *See also* 12 C.F.R. § 37.1(c) ("National banks' [DCCs] are governed by this part and applicable Federal law and regulations, and not . . . by State law.")

[8] *See* 12 C.F.R. §§ 37.6(d) (providing that disclosures required by Part 37 be readily understandable and meaningful).

[9] The rule generally requires a national bank that offers a customer the option to pay the fee for a DCC in a single payment also to offer that customer a *bona fide* option to pay the fee on a periodic basis ("periodic payment option"). However, the periodic payment option requirement is not presently in effect for sales of national bank DCCs through unaffiliated, non-exclusive agents. Accordingly, the OCC expects that the Bank will comply with all of the requirements of Part 37 except for the periodic payment option. 68 Fed. Reg. 35283, 35284 (June 13, 2003).

[10] *See, e.g.*, NY Pers. Prop. §§ 301 *et seq.*, MCLS §§ 492.101 *et seq.*, N.J. Stat. §§ 17:16C-1 *et seq.*

I trust this has been responsive to your inquiry. Please feel free to contact Michele Meyer, Assistant Director, Legislative and Regulatory Activities Division, at (202) 874-5090 should you have further questions

Sincerely,

signed

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel