INTERPRETIVE LETTER 93-029 (DECEMBER 16, 1993)

Sections 6 and 7 of the Illinois Credit Card Issuance Act are pre-empted by federal law with respect to national banks; Commissioner of Banks and Trust Companies will not seek to enforce these provisions of the Act against national banks.

This is in response to your letter to the Illinois Commissioner of Banks and Trust Companies ("Commissioner") dated *, in which *, N.A. ("Bank") declined to comply with the Credit Card Issuance Act ("Illinois Act"), 815 ILCS 140/0.01-9 (1992) [Ill. Rev. Stat. ch. 17, pars. 6000-6012]. Please be advised that the Commissioner will no longer seek to enforce these provisions of the Illinois Act.

Bank is chartered as a national banking association by the Office of the Comptroller of the Currency ("OCC"). As a federally-chartered institution located in *, your letter acknowledges the applicable rules and regulations set forth by the Board of Governors of the Federal Reserve System, the OCC and the applicable laws of *. Since your credit is extended from *, this extension is governed by * and federal law.

Section 7 of the Illinois Act requires credit card issuers to file statements with the Commissioner if the credit cards are issued to or offered to residents of Illinois. The statements are required to contain information, including annual percentage rates, fees and grace periods, that apply to the credit cards. Section 6(b) of the Illinois Act requires that credit card issuers include on each periodic billing statement the following statement:

> "Residents of Illinois may contact the Illinois Commissioner of Banks and Trust Companies for comparative information on interest rates, charges, fees and grace periods."

The OCC has taken the position that individual states may not compel national banks to file credit information similar to that specified in Section 7 of the Illinois Act with state authorities, because such state laws are preempted by federal law. In OCC Interpretive Letter No. 614, reprinted in [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) 83,454 (January 15, 1993), the OCC determined that various credit card and consumer credit laws of Idaho, Wisconsin and Wyoming could not be enforced by those states against national banks. The OCC relied on a body of case law interpreting 12 U.S.C. 484(a). See, e.g., Guthrie v. Harkness, 199 U.S. 148, 159 (1905), First National Bank of Youngstown v. Hughes, 6 F. 737, 740 (6th Cir. 1881), appeal dismissed, 106 U.S. 523 (1883), National State Bank, Elizabeth, N.J. v. Long, 630 F. 2d 981 (3rd Cir. 1980). That federal statute provides that national banks are not subject to "any visitorial powers" except as authorized by federal law or by the courts. According to the case law cited by the OCC, such "visitorial powers" include actions by state officials that amount to inspections, regulations or control of the operations of national banks. The Idaho, Wisconsin and Wyoming statutes at issue required national banks to file certain credit information with state officials. OCC Interpretive Letter No. 614 concluded that those

statutes were preempted by the federal law as unenforceable attempts by Idaho, Wisconsin and Wyoming to assert visitorial or licensing authority over national banks.

OCC Interpretive Letter No. 616, reprinted in [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) 83,456 (February 26, 1993), addressed a Massachusetts statute that required credit card issuers to report the finance charge rate, the amount of any fees charged to cardholders and the condition under which finance charges would be assessed, including any grace period, to the Massachusetts Commissioner of Banks. The OCC again cited federal law that grants exclusive visitorial authority over national banks to the OCC and concluded that the Massachusetts statute "is a form of visitation by state authorities upon national banks issuing credit cards to residents of the state" and that, therefore, the Massachusetts statute was preempted by 12 U.S.C. 484(a).

We concur with the OCC's conclusion regarding Section 7 of the Illinois Act and conclude that the reporting requirement in Section 7, which is similar to the Massachusetts statute addressed in OCC Interpretive Letter No. 616, is unenforceable by the State of Illinois against Bank.

Because Section 7 is unenforceable against Bank due to federal preemption, Section 6(b) also is preempted because, as the OCC concluded, Illinois does not have the authority to regulate Bank's credit card solicitations and billing statements. Further, the statement required by Section 6(b) which refers cardholders to the Commissioner for comparative rates is rendered meaningless if out-of-state national banks such as Bank would no longer report their rates to the Commissioner because of the preemption of Section 7.

Due to this federal law preemption, we will no longer pursue enforcement of Sections 6(b) and 7 of the Illinois Act against national banks, including Bank.