

INTERPRETIVE LETTER 96-4 (AUGUST 14, 1996)

Bank may conduct activity as an Internet Service Provider if the activity is undertaken for the enhancement and support of community development and to enrich the lives and educational opportunities for bank customers and community residents.

We are writing in response to your letter notifying the Office of Banks and Real Estate ("Office") of the intent of the * ("Bank") to enter into an agreement with *, Inc. ("Company") to provide Internet access to Bank's customers. The Bank proposes to offer this service to provide benefits to the community, to increase marketing and visibility for Bank, and to develop Bank's ability in the future to offer banking transactions via the Internet. Subject to the conditions and limitations set forth, Bank may go forward with the proposal to provide Internet access to its community.

Bank's Proposed Activity as ISP

Bank proposes to operate as an Internet Service Provider ("ISP") providing a direct link to the Internet for the customers of Bank and the people in Bank's community. Due to the location of Bank and Bank's community, current methods of accessing the Internet through established service providers (e.g., America On Line) requires a toll telephone call. Under Bank's proposal, Bank's customers will be able to access the Internet without the need for a toll call. This would benefit the Bank's community by providing Internet access in a more cost-effective manner and providing added marketing resources and Internet experience for Bank.

To become an ISP, Bank will purchase the computer hardware to establish the Internet link. For security purposes, this equipment will be separate from the Bank's current computer operations network. Bank will also receive on-going technical support and service from Company. The initial Bank investment is not expected to exceed \$30,000. Once the hardware is installed, Bank will offer subscriptions to residents of the Bank's community for which it will bill these customers monthly. Bank's budget for the first year of the program does not project that the service will provide a significant source of income for Bank and, in fact, may result in a minimal expense.

You indicated that each subscriber must sign an agreement with the Bank which contains, provisions including at least the following areas: (i) Bank may terminate the relationship with any subscriber or the Bank's ISP status at any time and at Bank's sole discretion; (ii) users must comply with laws governing copyright, trademarks and other proprietary information; (iii) users may not issue or circulate defamatory and sexually graphic information and other prohibited content; (iv) subscribers must disclaim any claim of liability against Bank for access to inappropriate information by minors; and (v) subscribers will indemnify Bank for any liabilities arising from any violation of the subscriber agreement by the subscriber. As stated earlier, Bank's operating computer network is, and will continue to be, separate from the ISP computer hardware and not accessible to persons other than authorized Bank personnel.

Expanding Bank Powers

The Federal Reserve Board ("Fed") recently allowed an institution that they regulate to provide and develop Internet services. The Fed permitted a thrift subsidiary of a bank holding company to acquire a corporation that develops and sells computer software and provides Internet banking and financial services. See, Federal Reserve Board, Order dated May 21, 1996. The Fed concluded that these activities are "closely related to banking," and therefore allowed the thrift to proceed with the purchase. At the present time Bank will act only as an ISP providing Internet access and will not provide Internet banking services. You stated that Bank intends to use this program to assist Bank in deciding whether or not to provide Internet banking and services in the future. Bank will also use the service to maintain a "home page" on the Internet to promote Bank as well as Bank products and services to help establish Bank as the leader in the community with respect to Internet access. Advertising and promoting the bank are clearly activities which are incidental to the business of banking.

Bank also submits that providing this service will benefit the community of * by providing Internet access without residents having to make a toll call to an ISP. Initially, the Bank expects only minimal economic benefit from this service and may even incur a minimal expense. The ISP activity appears consistent with powers provided to state banks under the Illinois Banking Act to enhance and support community development, to enrich the lives of community residents and to enhance education for community residents as permitted by Sections 5(6) and 5(21) of the Illinois Banking Act ("Act"), 205 ILCS 5/1 et seq. (1994).

Section 5(6) of the Act grants banks the power to "make reasonable donations for the public welfare or for charitable, scientific, religious or educational purposes." 205 ILCS 5/5(6) (1994). While Bank is not making a donation to a specific institution, providing Internet access to Bank's community to enable people to access the Internet at reasonable costs is consistent with the "scientific, religious or educational purposes" of Section 5(6) of the Act.

Section 5(21) of the Act permits banks to "make debt or equity investments in corporations or projects, whether for profit or not for profit, designed to promote the development of the community and its welfare." 205 ILCS 5/5(21) (1994). Bank is assisting in the development of the community by providing access to the Internet at a reasonable cost. The Office therefore similarly concludes that under Section 5(21) of the

Act the Bank's activity as an ISP is consistent with the grant of power under the Act to support community development.

In arriving at this conclusion, the Office is relying upon the fact that this service will be for the "benefit of the community and its development," including educational projects. Our conclusion might very well be different if, for instance, Bank were proposing to act as an ISP for areas outside what the Bank defines as its principal market area.

The Office will allow Bank to act as an ISP for its customers and principal market area as long as the following safety and soundness guidelines are observed:

1. The computer communication/telephone line enabling Bank to become an ISP will be separate from any communication/telephone line accessing Bank's computer systems;
2. Bank will limit its liability to subscribers of Bank's ISP services by requiring subscribers to agree in writing to indemnify bank for subscribers' actions;
3. Bank must be able to terminate service to any or all subscribers, terminate its contract with Company, and terminate Bank's activity as an ISP at any time and at Bank's sole discretion; and
4. The Bank will terminate activity as a ISP should the activity jeopardize the safety and soundness of Bank as determined by the Office or the appropriate federal regulatory agency, if the Office or an appropriate federal regulatory agency later determines that the activity as an ISP is not permitted, or if State or Federal law or regulations later provide that activity as an ISP is unlawful.

These guidelines are not exclusive and the Office may add to or amend the guidelines for banks acting as an ISP by rule or otherwise. Bank's activity as an ISP will be examined and reviewed by the Office for safety and soundness and compliance with applicable laws and regulations (present provisions or any hereafter enacted). Pursuant to Section 48(2.5) of the Act, Bank shall notify the Office of the existence of a relationship with Company or any other servicer when a contract or agreement is signed and shall also provide notice of any subsequent changes in the servicer. 205 ILCS 5/48(2.5) (1994).