



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Conditional Approval #289
November 1998

October 2, 1998

Mr. John L. Douglas
Alston & Bird LLP
1201 West Peachtree Street, N.W.
Atlanta, Georgia 30309

Re: Request of Operating Subsidiaries of Various National Banking Associations to Acquire Ownership Interests in CheckFree Corporation through Integriion Financial Network, L.L.C.
Application Control Nos. 98-WO-0006 through -0018 and -0021

Dear Mr. Douglas:

This is in response to the operating subsidiary application ("Application") submitted on behalf of Bank of America National Trust and Savings Association; Barnett Bank, National Association; NationsBank, National Association; Bank One, National Association; KeyBank National Association; Mellon Bank, N.A.; U.S. Bank National Association; PNC Bank, National Association; Michigan National Bank; The First National Bank of Chicago; Comerica Bank - Ann Arbor, National Association; Fleet National Bank; Citibank, N.A.; and First Union National Bank (collectively, the "Integriion Owner Banks" or "Applicant Banks").¹ Each of these banks owns a membership interest in Integriion Financial Network, L.L.C. ("Integriion") either directly or through direct or indirect wholly-owned operating subsidiaries.

¹ The OCC previously granted most of the Integriion Owner Banks approval to invest in Integriion through operating subsidiaries. OCC Conditional Approval No. 221 (December 4, 1996). Recently the OCC has granted approval to Citibank, N.A. (OCC Conditional Approval No. 273 (February 26, 1998)) and First Union National Bank (OCC Conditional Approval No. 271 (January 28, 1996)) to acquire their membership interest through an operating subsidiary. There are three other financial institution members of Integriion, ABN AMRO, Royal Bank of Canada, and Norwest Corporation, that either hold their interests in Integriion through bank holding company subsidiaries or are foreign banking organizations subject to the requirements of the Bank Holding Company Act (These approvals were granted by the Federal Reserve Bank of Chicago on March 10, 1998 (ABN AMRO), the Federal Reserve Bank of New York on March 27, 1998 (Royal Bank of Canada), and the Secretary of the Board of Governors on April 6, 1998 (Norwest Corporation).) One financial institution member, Washington Mutual, Inc., is a savings and loan holding company regulated by the Office of Thrift Supervision. Other members of Integriion are subsidiaries of International Business Machines Corporation and Visa U.S.A., Inc.

Integrion has entered into a series of agreements with CheckFree Corporation ("CheckFree") pursuant to which Integrion will obtain warrants to acquire shares of CheckFree common stock.²

This request is submitted pursuant to 12 C.F.R. § 5.34 and the representation set out in OCC Conditional Approval No. 221 (December 4, 1996) regarding the formation of operating subsidiaries for the purpose of investing in the Integrion Financial Network L.L.C., subsequently referred to as the First Integrion Letter. For the reasons discussed below, the application is approved, subject to the conditions set forth herein.³ Please note that our response is solely directed to the investment in CheckFree and not to any other agreement and activities that Integrion may contemplate with CheckFree. It is also based upon the description of current CheckFree activities contained in the Application.⁴

A. *Background*

1. *Integrion.*

Integrion is a Delaware limited liability company, ("L.L.C.") formed in 1996 by sixteen of the nation's largest financial institutions and International Business Machines Corporation ("IBM").⁵ In the First Integrion Letter, OCC approved direct and indirect investments in

² While Integrion is acquiring warrants, rather than stock in CheckFree, the Applicant Banks have asked that this notice be treated as if the warrants were fully exercised so that there is no need to seek further approval if the warrants are exercised. Under its agreements with CheckFree, Integrion has the right to distribute the warrants it may acquire, or the shares of CheckFree common stock it may acquire upon exercise of the warrants, to its owners.

³ You have confirmed that this application seeks approval of Integrion's acquisition of CheckFree stock, *i.e.* a new activity of Integrion. Under the First Integrion Letter and subsequent approvals, OCC approved the direct and indirect acquisition of Integrion based on the activities it engaged in at that time. Therefore, this application implicitly requests approval of continued ownership interests in Integrion, notwithstanding its proposed ownership interest in CheckFree. Further, you have represented that if the Integrion Owner Banks desire to own the interests in CheckFree through their respective operating subsidiaries, or directly, they will seek OCC approval.

⁴ If CheckFree should commence additional activities beyond those described in the Notice and approved in this letter, the Integrion Banks holding their Integrion interests in operating subsidiaries may need to file a new application under 12 C.F.R. § 5.34 depending on that nature of those new activities. Moreover, we are aware that Integrion and CheckFree contemplate a series of related agreements, described in the Application, that may further integrate the operations of both firms (the "Strategic Alliance"). In approving the investment in CheckFree, the OCC does not express its views upon the Strategic Alliance or any part of that relationship. The Alliance is still very much in the developmental phase with many important details to be worked out between the parties. Thus, it would be premature for the OCC at this time to express any opinion on Alliance. The OCC is, of course, willing to confer with the parties to the Alliance going forward to provide appropriate guidance.

⁵ Subsequent to the formation of Integrion, a subsidiary of Visa U.S.A. acquired a non-voting membership interest in Integrion, and subsidiaries of First Union National Bank and Citibank, N.A. acquired voting membership interests.

Integriion to act as an electronic distribution channel for financial institutions to provide financial services to their customers. More specifically, the L.L.C. would establish an electronic "gateway" through which customers of the Banks will be able to obtain home banking and other financial services from their respective financial institutions through various electronic access devices, including telephone, personal computer, interactive television, etc.⁶ After the initial introduction of these home banking and other financial services, it is contemplated that other value-oriented services (such as stock quotations) would be offered to the financial institutions' customers by third party providers through the gateway.⁷ It was contemplated that the gateway eventually would be available, for a fee, to financial institutions that are not members of the L.L.C..⁸

⁶ Integriion represents that its internal data processing systems will be year 2000 ready within the time frames specified in OCC Advisory Letter 97-6 and other subsequent OCC issuances. Further, Integriion represents that it will perform due diligence to ensure that any third-party data processing service providers or purchased applications or systems it uses, including those provided by CheckFree, will be year 2000 compliant in accord with OCC issuances. This due diligence process will enable Integriion, among other things, to monitor that the service provider or software vendor is taking appropriate action to achieve year 2000 readiness and to adopt contingency plans for mission-critical products and services. Moreover, pursuant to the First Integriion Letter, Integriion is subject to OCC supervision, examination, and regulation, including year 2000 readiness. The OCC has examination and regulation authority over CheckFree for services performed by contract or otherwise for Integriion or any national bank pursuant to 12 U.S.C. § 1867(c).

⁷ In connection with the services it provides to financial institutions, Integriion may have access to personal information of a financial institution's customers. In this regard, Integriion has adopted a statement of policy concerning the treatment of personal customer information in the conduct of its business that recognizes the customer expectations for privacy and provides standards for the collection, retention and use of the customer's financial information. Under this statement, Integriion represents that it does not share customer information with unaffiliated parties except under limited circumstances. This includes where the customer or the customer's financial institution specifically consents, where it is necessary in order to complete a customer-initiated transaction, or in response to judicial subpoena. Subcontractors, processors, auditors or other third parties, including CheckFree, that provide services to Integriion are also required to abide by the confidentiality principles set forth in Integriion's statement of policy. Integriion represents that it will monitor compliance with this statement through its internal audit program and will take appropriate disciplinary measures to enforce the privacy responsibilities contained in the statement. Integriion further represents in this statement that it maintains security standards and procedures intended to preclude unauthorized access to or disclosure of customer information.

⁸ A more complete description of the approved activities of Integriion is contained in the First Integriion Letter at pp. 2-5.

2. *CheckFree.*

CheckFree is a Delaware corporation, headquartered in Norcross, Georgia. CheckFree provides electronic commerce services, financial application software and related products. CheckFree provides home banking, bill payment and related services under contracts with more than 280 financial institutions in two distinct business segments, the electronic commerce segment and the financial application software segment. The electronic commerce segment includes electronic home banking, electronic bill payment, automatic accounts receivable collection, electronic accounts payable processing, investment portfolio management services and investment trading and reporting services. These services are primarily directed to the financial services industry and their customers. The financial application software segment includes reconciliation, wire transfer, mortgage loan origination and servicing, lease accounting and debt recovery software. These products and services are primarily directed to financial institutions and large corporations.

3. *The Relationship between Integrion and CheckFree.*

The relationship between Integrion and CheckFree is embodied in a series of agreements, discussed in the application relating to the Strategic Alliance. Among these is the "Warrant Agreement." Under the Warrant Agreement, dated January 8, 1998, Integrion will have the right to obtain warrants to acquire ten million shares of CheckFree common stock. Warrants for three million shares will be immediately exercisable; the remainder will be exercisable upon achievement of certain usage or revenue goals, measured at year-end 2000 and 2001. If exercised, the initial warrants (i.e., warrants for three million shares) would allow Integrion to own approximately 5.17% of CheckFree's outstanding shares. Were all warrants (i.e., warrants for the entire ten million shares) to be earned and exercised, Integrion would own approximately 15.38% of CheckFree's outstanding shares.

Because of CheckFree concerns about the risks of a block sale of its stock by Integrion, CheckFree insisted upon and the parties negotiated the "Stock Restriction Agreement."⁹ The Stock Restriction Agreement, dated as of January 8, 1998, imposes certain restrictions on Integrion's ability to transfer the warrants or shares to protect CheckFree from facing a potentially large shareholder that was not its agreed-upon strategic partner. Generally, the warrants are not transferable except to Integrion's members; the shares are transferable subject to compliance with applicable securities laws. Integrion has agreed to hold the shares for a

⁹ Although Integrion initially negotiated for the ability to sell its position immediately in the event of impermissible activities in connection with its various agreements with CheckFree, CheckFree was unable and unwilling to give Integrion the ability to place a large block of its stock in potentially unfriendly hands. CheckFree similarly was not willing to suffer the impact on its stock associated with the possibility of Integrion dumping a large block of stock on the market at one time. Accordingly, Integrion agreed to dispose of its interest in CheckFree gradually, and in a manner such that the ownership interest would likely be dispersed among a number of unrelated shareholders.

limited period, and has agreed to transfer the shares generally subject to the volume limitations imposed under Rule 144 of the Securities Act of 1933, as amended. Those volume limitations are increased under certain circumstances. The applicants represent that even under the most adverse circumstance, it could take Integrion approximately two years to fully dispose of its ownership position in CheckFree stock. Under the most likely scenarios, Integrion could dispose of its position within twelve months.

B. Analysis

A national bank may engage in activities that are part of or incidental to the business of banking by means of an operating subsidiary. 12 C.F.R. § 5.34. In a variety of circumstances, the OCC has permitted national banks to own, either directly, or indirectly through an operating subsidiary, a minority interest in an enterprise.¹⁰ The OCC has concluded that national banks are legally permitted to make a minority investment in a company provided four criteria or standards are met.¹¹ These standards, which have been distilled from our previous decisions in the area of permissible minority investments for national banks and their subsidiaries, are:

- (1) The activities of the enterprise in which the investment is made must be limited to activities that are part of or incidental to the business of banking.
- (2) The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment.
- (3) The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise.
- (4) The investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.

As noted, the OCC previously approved the investment by the national bank Integrion Owner Banks in the Integrion L.L.C. under these four standards. We conclude, as discussed below, that Integrion's proposed acquisition of CheckFree stock, and thus the continued indirect investment by the Applicant Banks in Integrion, satisfies these four criteria.

¹⁰ See, e.g., OCC Conditional Approval Letter No. 219 (July, 15, 1996).

¹¹ See Interpretive Letter No. 692, reprinted in [1995 - 1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,007 (November 1, 1995), and OCC Interpretive Letter No. 694, reprinted in [1995 - 1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,009 (December 13, 1995).

1. *The activities of the enterprise in which the investment is made must be limited to activities that are part of or incidental to the business of banking*

The National Bank Act, in relevant part, provides that national banks shall have the power:

[t]o exercise ... all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes ...

12 U.S.C. § 24(Seventh).

The Supreme Court has held that the powers clause of 12 U.S.C. § 24(Seventh) is a broad grant of power to engage in the business of banking, including but not limited to the enumerated powers and the business of banking as a whole.¹² Judicial cases reflect three general principles used to determine whether an activity is within the scope of the “business of banking”: (1) is the activity functionally equivalent to or a logical outgrowth of a recognized banking activity; (2) would the activity respond to customer needs or otherwise benefit the bank or its customers; and (3) does the activity involve risks similar in nature to those already assumed by banks.¹³ Further, as established by the Supreme Court in *VALIC*, national banks are authorized to engage in an activity if it is incidental to the performance of the five enumerated powers in section 24(Seventh) or if it is incidental to the performance of an activity that is part of the business of banking.

We find that CheckFree’s current activities as described in the Notice are permissible for national banks. CheckFree’s most significant line of business is its bill payment operations under which CheckFree receives instructions from the customer of a financial institution to pay a specific bill. CheckFree then processes the information and undertakes the payment, either electronically or through a draft or other paper-based system. The OCC has held that such activities are clearly within the business of banking.¹⁴

¹² See *NationsBank of North Carolina, N.A. v. Variable Life Annuity Co.*, 513 U.S. 215 (1995) (“*VALIC*”).

¹³ See, e.g., *Merchants’ Bank v. State Bank*, 77 U.S. 604, 648 (1871) (certification of checks has grown out of the business needs of the country and involves no greater risk than a bank giving a certificate of deposit); *M&M Leasing Corp. v. Seattle First National Bank*, 563 F.2d 1377, 1382-83 (9th Cir. 1977), cert. denied, 436 U.S. 987 (1978) (personal property lease financing is “functionally interchangeable” with the express power to loan money on personal property); *American Ins. Assoc. v. Clarke*, 865 F.2d 278, 282 (D.C. Cir. 1988) (standby credits to insure municipal bonds is “functionally equivalent” to the issuance of a standby letter of credit)(“*AMBAC*”).

¹⁴ See, e.g., OCC Interpretive Letter No. 737, reprinted in [1996-97 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,101 (Aug. 19, 1996)(national bank issuing stored value cards performing established banking

Similarly, CheckFree's other activities -- electronic home banking services, automatic accounts receivable collection, and electronic accounts payable processing services -- are also permissible activities for national banks.¹⁵ Moreover, all these services relate to aspects of the payments systems that, as OCC recently noted, are central to banking.¹⁶

The financial application software programs that CheckFree provides, such as end-to-end reconciliation, wire transfer, mortgage loan origination and servicing, lease accounting, and debt recovery software are also permissible to the extent that they perform activities commonly performed by banks either directly for themselves or as part of servicing customers, or constitute the underlying software allowing the banks and their customers to perform these financially related services.¹⁷ It is well established that a national bank may use electronic

function of bill payment and bill presentment); OCC Interpretive Letter No. 718, reprinted in [1995-96 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶81,033 (March 14, 1996) (national bank ATMs dispensing alternative media performing permissible bill payment function); and OCC Interpretive Letter No. 419, reprinted in [1988-89 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,643 (Feb. 18, 1988) (national banks may provide specialized electronic payments system for the collection, processing, and deposit of patient payments).

¹⁵ See, e.g., OCC Interpretive Letter No. 742, reprinted in [1996-97 Transfer Binder] Fed. Banking Law. Rep. (CCH) ¶81,105 (Aug. 19, 1996) (national banks may provide home banking services via dedicated phone lines and the Internet); OCC Interpretive Letter No. 677, reprinted in [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625 (June 28, 1995)(national bank may acquire software development personnel, equipment and facilities to develop home banking software); OCC Interpretive Letter No. 611, reprinted in [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,449 (Nov. 23, 1992) (national bank may provide banking services using specially designed computerized "smart phone"); OCC Interpretive Letter No. 731, reprinted in [1995-96 Transfer Binder] Fed. Banking Law. Rep. (CCH) ¶ 81,048 (July 1, 1996)(national banks may initiate and process payments on behalf of a public authority to operate on behalf of the authority an electronic toll collection system); OCC Interpretive Letter No. 732, reprinted in [1995-96 Transfer Binder] Fed. Banking Law. Rep. (CCH) ¶ 81,049 (May 10, 1996)(national bank may design and develop a network for the processing of accounts receivable); and OCC Interpretive Letter No. 419, supra (national banks may use automated data processing to provide accounts receivable services).

¹⁶ See OCC Conditional Approval Letter No. 220, 1996 OCC Letter. LEXIS 140 (Dec. 2, 1996) (the "Mondex Letter") ("Banks are the most important institutional participants in the nation's payment system. They deal with cash, issue, process, clear and settle checks and similar monetary instruments, administer credit card and debit card programs for consumers and merchants, and transfer funds electronically in a variety of situations and circumstances").

¹⁷ See, e.g., First Integrion Letter, supra (national bank can sell software where the software will enable the bank customer to receive or utilize other services of the bank.); OCC Interpretive Letter No. 677, supra (national bank operating subsidiary may enter into a joint venture arrangement through a limited liability company to acquire a company that develops, produces, markets and distributes home banking and financial management software products designed to assist individuals and small business manage their finances through their personal computers); and OCC Interpretive Letter No. 756, reprinted in, [1996-97 Transfer Binder] Fed. Banking Law. Rep. (CCH) ¶ 81,120 (November 6, 1996)(national banks may provide cash management software to their customers).

means to perform services expressly or incidentally authorized to national banks.¹⁸ In fact, the OCC Interpretive Ruling setting forth this authority was recently revised to authorize a national bank to “perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that it is otherwise authorized to perform, provide, or deliver.” 61 Fed. Reg. 4849 (1996) codified at 12 C.F.R. § 7.1019.¹⁹

Investment portfolio management and investment trading and reporting data processing services are also permissible activities for national banks.²⁰ These data processing services will involve the processing of banking, financial, or related economic data and, thus, are part of the business of banking. An earlier version of 12 C.F.R. § 7.1019 stated that “as part of its banking business and incidental thereto, a national bank may collect, transcribe, process, analyze, and store for itself and others, banking, financial, or related economic data.”²¹ Although in its 1984 revision of the ruling, the OCC deleted this statement because it believed that “specific examples [of permissible electronic activities] are inappropriate given the imprecision of terms and rapid pace of change in the data processing industry, the “analytical framework” embodied in the ruling remained the same.²² There was no intent to narrow or restrict the substantive effect of the rule.²³

¹⁸ See, e.g., OCC Interpretive Letter No. 677; supra; OCC Interpretive Letter No. 284, reprinted in [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶85,448 (Mar. 26, 1984); and OCC Interpretive Letter No. 449, reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,673 (Aug. 23, 1988).

¹⁹ As CheckFree is a provider of services for financial institutions, its performance of those services is subject to examination by the various Federal banking agencies under provisions of the Bank Service Company Act. 12 U.S.C. § 1867(c). CheckFree is routinely examined by each of the federal banking agencies, as well as state banking authorities, and receives reports of examination as it is evaluated. We note that the services that CheckFree will perform for banks indirectly through Integrion will also be subject to examination and regulation under the Bank Service Company Act. Because several national banks own directly or indirectly an interest in CheckFree, the OCC will monitor its financial condition.

²⁰ See, e.g., OCC Interpretive Letter No. 346, reprinted in [1985-1987] Transfer Binder] Fed. Banking Law Rep. (CCH) ¶ 85,516 (July 31, 1985)(national bank may provide electronic information and transaction services for commodities transactions); and OCC Interpretive Letter No. 516, reprinted in [1990-1991 Transfer Binder] Fed. Banking Law Rep. (CCH) ¶ 83,220 (July 12, 1990)(national bank may provide electronic communication channels for persons participating in securities transactions).

²¹ Interpretive Ruling 7.3500, 39 Fed. Reg. 14195 (Apr. 22, 1974).

²² 49 Fed. Reg. 11157 (Mar. 26, 1984).

²³ OCC Interpretive Letter No. 677, supra. See also OCC Interpretive Letter No. 737, supra (national bank may provide transaction and information processing services to support an electronic stored value system); OCC Interpretive Letter No. 653, reprinted in [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (Dec. 22, 1994) (national bank may act as an informational and payments interface between insurance underwriters and general insurance agents); and OCC Letter No. 346, supra (national banks may maintain records on commodities transactions).

Thus, the first standard is satisfied.

2. *The Banks must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw their investment*

This is an obvious corollary to the first standard. It is not sufficient that the entity's activities are permissible at the time a bank initially acquires its interest; they must also remain permissible for as long as the bank retains an ownership interest.

Minority shareholders in a corporation do not possess a veto power over corporate activities as a matter of corporate law. Accordingly, Applicant Banks and Integrion lack the ability to restrict the activities of CheckFree to only bank permissible activities. It has (or will have upon exercise of the warrants) a relatively small ownership interest, lacks representation on the board of directors, and has no contractual provision requiring CheckFree to conform its activities to only those that are bank permissible. However, Integrion can divest its shares of CheckFree stock subject to the Stock Restriction Agreement. For the reasons below, the OCC finds that under the facts of this case, this divestiture option is adequate to meet the second element.

In the present case, there is no doubt as to the ability of the Integrion to divest its investment in CheckFree should it commence impermissible activities; there are however restrictions as to the timing of this divestiture. Under the Stock Restriction Agreement, Integrion does not have the ability to immediately sell its interest in CheckFree if or when CheckFree commences to engage in an impermissible activity. Under the arrangements, Integrion has agreed to hold its ownership interests under the restrictions applicable under Rule 144 of the Securities Act of 1933 (basically requiring that Integrion hold its ownership interest for one year before disposition), and thereafter to dispose of its interest only subject to the volume limitations of Rule 144. As these limits apply to Integrion, it may take approximately two years to dispose of the entire interest were Integrion to earn and exercise all warrants. Integrion has certain registration rights, however, that accelerate the ability to dispose of the shares. Applicants state that under the most adverse circumstances Integrion would be able to dispose of its ownership interest within two years, and under most circumstances within one year.

Under the specific facts and circumstances of this request, we believe that the ability to divest the shares within two years is sufficient to protect Applicant Banks and Integrion and satisfy the policy concerns of the OCC in the event CheckFree commences impermissible activities. First, the limitation on divestiture is clearly the result of good faith negotiations and is not a subterfuge to avoid the activities limitations of the National Bank Act. Second, the longest period of time during which Integrion and the banks may be holding a non-conforming investment is two years. This is in accord with the OCC policy in other non-conforming

holdings by national banks.²⁴ Third, the ownership interest in any non-conforming operation will not be large (less than 20% of CheckFree's outstanding shares if all warrants are earned and exercised), and Integrion will not be directly operating the business of CheckFree.

Thus, should CheckFree engage in impermissible activities, OCC will accept a delay in divestiture of up to two years. However, the OCC expects Integrion to notify OCC immediately of any new CheckFree activities disclosed in a public securities filing or when Integrion otherwise acquires actual knowledge of such activities. As noted above, the investing banks may also be required to file an application under 12 C.F.R. 5.34 should CheckFree begin new activities.²⁵

3. *The Banks' loss exposure must be limited, as a legal and accounting matter, and the Banks must not have open-ended liability for the obligations of the enterprise*

a. *Loss exposure from a legal standpoint*

A primary concern of the OCC is that national banks should not be subjected to undue risk. Where an investing bank will not control the operations of the entity in which the bank holds an interest, it is important that a bank's investment not expose it to unlimited liability. Typically, this is not a concern when a national bank invests in a corporations, for shareholders are not liable for the debts of the corporations, provided proper corporate separateness is maintained.²⁶ This is the case here.

The corporate structure contemplated insulates both the Integrion Owner Banks, their respective operating subsidiaries, and Integrion from liability or loss associated with their ownership interest in CheckFree. Not only does the arrangement have the protection of the corporate insulation, there is an actual remoteness between the Integrion Owner Banks and CheckFree. Each of the Integrion Owner Banks (other than PNC) holds its respective interest

²⁴ OCC policy allows a reasonable time period for a bank to bring newly acquired business into conformance by divesting nonconforming assets. See e.g. OCC Conditional Approval No. 259 (October 31, 1997). Similarly, the OCC generally requires a national bank to divest or conform nonconforming assets, or discontinue nonconforming activities, within a reasonable period of time following a business combination. See 12 C.F.R. § 5.33(e)(5); OCC Corporate Manual (Business Combinations). See also Corporate Decision 97-14 (March 4, 1997) "The OCC permits a reasonable divestiture period in these instances so that converting banks may be able to resolve nonconforming subsidiaries without hardship."; See also OCC Corporate Decision 97-41 (June 1, 1997).

²⁵ Moreover, OCC expressly reserves the authority to require Integrion to commence the divestiture process immediately any time that the revenue from new activities exceeds 30% of CheckFree's total revenues and the OCC concludes that the new activities are not part of or incidental to the business of banking.

²⁶ 1 W. Fletcher, Cyclopedia of the Law of Private Corporations, § 25 (rev. perm. ed. 1990).

in Integrion through a corporate operating subsidiary, which holds and owns its membership interest in Integrion (itself a limited liability company, which affords statutory protection for the owners against liabilities of the limited liability company), which in turn will hold and own the shares of CheckFree. This arrangement should more than adequately protect the Integrion Owner Banks, and Integrion, from any liability for the obligations of the enterprise.

b. Loss exposure from an accounting standpoint

In assessing a bank's loss exposure as an accounting matter, the OCC has previously noted that the appropriate accounting treatment for a bank's less than 20 percent ownership share or investment in a corporate entity is to report it as an unconsolidated entity under the equity or cost method of accounting. Under the equity method of accounting, unless the investor has extended a loan to the entity, guaranteed any of its liabilities, or has other financial obligations, the investor's losses are generally limited to the amount of the investment shown on the investor's books. Here, the investment of the Integrion Owner Banks in Integrion is reported under the equity or cost method of accounting. See First Integrion Letter at p.15. Similarly, Integrion's minority ownership interest in CheckFree will be reported under the equity method of accounting.

Accordingly, the third standard is satisfied.

4. The investment must be convenient or useful to the Bank in carrying out its business and not a mere passive investment unrelated to that Bank's banking business.

A national bank's investment in an enterprise or entity that is not an operating subsidiary of the bank also must satisfy the requirement that the investment have a beneficial connection to the bank's business, i.e., be convenient or useful to the investing bank's business activities, and not be a mere passive investment unrelated to that bank's business activities. "Necessary" has been judicially construed to mean "convenient or useful." See *Arnold Tours*, 472 F.2d at 432. Section 24(Seventh) does not authorize national banks to engage in speculative, investment banking activities with respect to stock.²⁷ Therefore, a consistent thread running through our precedents concerning stock ownership is that it must be convenient or useful to the bank in conducting that bank's banking business. The investment must benefit or facilitate that business and cannot be a mere passive or speculative investment.

²⁷ See OCC Interpretive Letter No. 697, reprinted in [1995 - 1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-102 (November 15, 1995).

In this instance, the warrants and the share ownership are not merely evidences of a passive relationship, but are rather the results of the strategic business relationship created between Integrion and CheckFree as evidenced by the Strategic Alliance. Integrion and CheckFree plan to develop a fully-integrated bill payment system to be offered to Integrion's member banks and other customers.²⁸ As customers move to this integrated product, Integrion and its owner banks will be compensated for that movement through the warrants and potential share ownership. Integrion will cooperate with CheckFree in creating a mutually agreeable bill payment system and plans to market that system to its Owner Banks and other financial institutions. The ownership interests provide the method of involving Integrion and its member banks in the provision of the bill payment and related services contemplated by the strategic alliance, and of compensating Integrion for what it and its members bring to the strategic alliance.

C. Conclusion

Based upon the information and representations you have provided, and for the reasons discussed above, we conclude that the Applicant Banks may continue their investment in Integrion following Integrion's acquisition of an ownership interest in CheckFree, and that the application is approved subject to the conditions:²⁹

1. CheckFree may engage only in activities that are part of, or incidental to, the business of banking;
2. In the event that CheckFree engages in an activity that is inconsistent with condition number one, the Integrion Owner Banks will either withdraw from the Integrion or, alternatively, Integrion will divest its interest in CheckFree in accord with Section B.2. of this letter;³⁰
3. The Integrion Owner Banks will account for their investment in the Integrion (including their indirect investment in CheckFree) under the equity or cost method of accounting and, similarly, Integrion will account for its investment in CheckFree under the equity or cost method of accounting; and

²⁸ In connection with the processing of customer information, the OCC will require Integrion in its new relationship with CheckFree to conform to its existing commitment to preserve the confidentiality of bank customer information. See Note 6, *supra*; First Integrion Letter, Note 4, pp. 3-4.

²⁹ The conditions imposed in the First Integrion Letter still apply and are not modified by this letter.

³⁰ As noted, Integrion has requested up to two years to divest of its interest in CheckFree. Based on the representations and commitments you have provided, the OCC is willing to accept this divestiture period.

4. CheckFree will be subject to OCC examination.³¹

Please be advised that all conditions of this approval are “conditions imposed in writing by the agency in connection with the granting of any application or other request” within the meaning of 12 U.S.C. § 1818.

If you have any questions regarding this decision, please contact John W. Graetz, Licensing Expert (Financial Analyst), in Bank Organization and Structure at (202) 874-5060, or Kristina Whittaker, Assistant Director, Bank Activities and Structure at (202) 874-5300.

Sincerely,

/s/

Raymond Natter
Acting Chief Counsel

³¹ This examination authority will be in addition to the authority vested in OCC by the Bank Service Company Act over CheckFree. 12 U.S.C. § 1867(c).