



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #796
September 1997
12 U.S.C. 36J3 & 36J2
12 U.S.C. 24(7)18

August 18, 1997

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Dear []]:

This is in response to your letter of June 25, 1997, in which you requested confirmation that a proposed arrangement between a national bank that you represent (“the Bank”) and a bank in another state (“the Correspondent Bank”) involves correspondent services and would not raise branching concerns. For the reasons discussed below, I agree with this conclusion.

Factual Background

According to your letter and subsequent telephone conversations, the Bank is located in [*State1*] but has several business customers with operations in [*State2*]. From time to time, those customers have a need for cash, or have a surplus of cash which they would like to have returned to their [*State1*] accounts. Although the customers maintain their deposit relationships directly with the Bank in [*State1*], it is too expensive for the Bank and its customers to arrange for cash shipments by armored carrier between the Bank’s cash vault and the customers’ [*State2*] locations. The customers, for cash management and other reasons, also do not want to establish separate deposit arrangements in [*State2*] simply to meet their cash vault needs.

To solve this problem, the Bank would like to establish a correspondent account at an unaffiliated bank in [*State2*] and arrange for that institution to provide cash vault services for the Bank’s customers in that state through the correspondent account. You envision that the arrangement would work as follows:

For customers with excess cash:

1. A customer with excess cash would deliver the cash by courier to the cash vault of the Correspondent Bank in [*State2*].

2. The customer would use the Bank's touch-tone banking system to report the transaction to the Bank.
3. The deposit would be provisionally credited by the Bank at that time, subject to verification that funds have been credited to the Bank's correspondent account at the Correspondent Bank.
4. The Correspondent Bank would process and verify the cash deposit, credit the Bank's correspondent account, and notify the Bank of any exceptions.

For customers in need of cash:

1. The customer would notify the Bank (usually electronically) of its need for cash.
2. Upon its receipt of the notice, the Bank would notify the Correspondent Bank to charge the Bank's correspondent account, prepare the cash for pickup, and make the cash available to a courier for delivery to the customer.
3. The Bank would charge the customer's account in [*State1*] for the amount delivered to the courier.
4. The withdrawal would be considered to be made at that time, subject to verification that the Bank's correspondent account at the Correspondent Bank has been debited.

In each side of this arrangement, the courier would be a "third-party messenger service," as that term is used in the OCC's Interpretive Ruling § 7.1012, 12 C.F.R. § 7.1012. All couriers would be hired directly by customers to act as their agents, although the Bank may reimburse customers for the costs of the messenger service. Customers would bear the risk of loss in transit.

You noted that, although it would be possible to wire funds between the Bank and the Correspondent Bank instead of crediting or charging the Bank's correspondent account at the Correspondent Bank, this would result in significantly higher costs, would be much more complex, and would be prone to error. You believe that banks often enter into agreements with larger institutions to provide cash vault services, and this arrangement should not cause the Correspondent Bank to be a branch of the Bank. However, since you did not discover any OCC interpretations directly on point, you have requested our views.

Legal Analysis

For a banking facility to be a “branch” within the meaning of 12 U.S.C. § 36, three requirements must be satisfied:

1. The facility must perform at least one of the core banking functions of receiving deposits, paying checks, or lending money, listed in 12 U.S.C. § 36.
2. The facility must be “established,” *i.e.*, owned or rented, by the bank.
3. The convenience of the location of the office or facility to the public must give the bank a competitive advantage in obtaining customers.

If any of these factors is lacking, the facility is not a branch. *See generally*, Interpretive Letter No. 634, [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,518 (July 23, 1993), and cases cited therein. I find that the Correspondent Bank will not be a branch of the Bank because, even though deposits may arguably be received there,¹ the other two requirements will not be satisfied.

The Correspondent Bank will be an independent institution not owned by or affiliated with the Bank. Although the Correspondent Bank will be compensated by the Bank for its services, the mere payment of fees or charges for the use of a facility by a bank’s customers does not make the facility one that is “rented” for purposes of branching. *Independent Bankers Association of New York v. Marine Midland Bank*, 757 F.2d 453, 463 (2d Cir. 1985), *cert. denied*, 476 U.S. 1186 (1986). Since it will be neither owned nor rented, the Correspondent Bank will not be “established” by the Bank.

The Correspondent Bank’s location will not provide the Bank with a competitive advantage because the Bank will not be competing for customers at the Correspondent Bank’s location. This service will be offered only to existing customers of the Bank, and the Correspondent Bank will not open new accounts for the Bank or engage in any other activity designed to attract new business for the Bank.

¹ It appears that the Bank will consider deposits to be made at the time it credits customers’ accounts on its books. The courts have held that, while banks and their depositors are free to contractually agree on any terms they choose for the handling of deposits, a deposit is deemed to be “received” for branching purposes when a customer delivers a sum of money to a bank-established facility for credit to his or her account. *First Nat’l Bank in Plant City v. Dickinson*, 396 U.S. 122, 136-37 (1969); *Independent Bankers Ass’n of America v. Smith*, 534 F.2d 921, 940 (D.C. Cir.), *cert. denied*, 429 U.S. 862 (1976). Presumably the same rule would apply to non-established facilities, therefore it could be argued that deposits will be received by the Bank for purposes of 12 U.S.C. § 36 either when they are received by the Correspondent Bank, or at the time the Bank’s correspondent account is credited.

Moreover, an indispensable aspect of the competitive advantage test is public access, because if customers do not make use of a banking facility in person, its location is irrelevant and provides no competitive advantage. Interpretive Letter No. 634, *supra*. At this time, the specific facility to be used is undetermined. However, you note that it will be whatever the Correspondent Bank uses as its main cash vault, which normally is either a bank's main office or a nonpublic facility.

If it is the latter, there will be no public access, and the arrangement you propose will be essentially the same as the one discussed in Interpretive Letter No. 639, [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,526 (January 14, 1994). There, deposits were delivered by an independent courier to a nonpublic facility of a third party contractor hired by the bank. The contractor processed the deposits and then forwarded them to the Federal Reserve Bank. The OCC concluded that the contractor's facility was not a branch because it was not established by the bank and had no public access. Here, the Correspondent Bank will function in exactly the same way. It will simply be a third party contractor hired by the Bank to process deposits that it receives from a messenger service.²

Rather than branching, the arrangement between the Bank and the Correspondent Bank is properly characterized as a correspondent service. Correspondent banking is a "system of interbank relationships in which a bank sells services to other financial institutions. The institution providing the services is the correspondent bank or upstream correspondent. The institution buying the services is the respondent bank or downstream correspondent." Charles J. Woelfel, *The Fitzroy Dearborn Encyclopedia of Banking & Finance* 258 (10th ed. 1994). Correspondent banking enables banks to obtain, through other banks, services that they cannot economically perform themselves. The Supreme Court has noted that correspondent banking goes back to colonial times and today includes a wide range of services that is "varied, extensive, and constantly expanding." *United States v. Citizens & Southern National Bank*, 422 U.S. 86, 115 (1975). It is recognized that one of the services a correspondent bank may provide is acting as a depository for liquid balances of the respondent bank. Donald P. Jacobs et al., *Financial Institutions* 133 (5th ed. 1972).

The OCC has long recognized that correspondent services include deposit-related services. In fact, as long ago as 1966, the OCC approved an arrangement that was virtually the same as what you propose:

² Even if the Correspondent Bank's main office is used, so that the Correspondent Bank's *own* customers have access to the facility, there will be no public access to the Correspondent Bank for *the Bank's* customers. Their only contact with the Correspondent Bank will be via the courier. A facility does not offer public access if it does not serve customers in person and the only access is by means of a messenger service. Interpretive Letter No. 639, *supra*. As far as the Bank's customers are concerned, the Correspondent Bank's facility will be merely a nonbranch back office. An independent courier service as described in the OCC's interpretive ruling is not itself a branch, and may deliver deposit items to both branch and nonbranch facilities. See *generally* Interpretive Ruling 7.1012(c), 12 C.F.R. § 7.1012(c).

Bank B has customers in Bank A's service area. Bank B opens a correspondent account in Bank A. Bank B's customers deposit their funds in Bank A to the account of Bank B. From time to time Bank B draws down its account in Bank A and deposits these funds to the accounts of its customers who had deposited the funds in Bank A

The transaction you describe is not an uncommon practice for correspondent banks It provides for the convenient movement of funds from one bank to another and is recognized as a service of correspondent banking. Transactions such as these are not prohibited by Federal statute or regulation nor do they constitute unauthorized branch banking

Letter of Robert L. Schwind, Regional Counsel, Sixth National Bank Region, January 10, 1966 (unpublished).

The arrangement you describe also closely resembles the correspondent service known as "facility" or "agent" banking. In facility banking, customers of one depository institution may perform deposit, withdrawal, and certain other transactions in person at another institution. We have concluded that this is a correspondent service, and the agent or correspondent bank is not a branch of the customer's bank. Interpretive Letter No. 610, [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,448 (October 8, 1992).³ The only apparent difference between facility banking and your proposal is that the Bank's customers will not visit the Correspondent Bank in person.

I therefore conclude that the proposed arrangement between the Bank and the Correspondent Bank will be a correspondent service and will not constitute branch banking. This conclusion is based on the facts contained in your letter and subsequent telephone conversations. A material change in the facts could lead to a different conclusion.

I trust that this has been responsive to your inquiry. If you have further questions, please contact me at (202) 874-5300.

Sincerely,

³ Facility banking between affiliate institutions has since been authorized by statute. 12 U.S.C. § 1828(r).

/s/

Christopher C. Manthey
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