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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

**Interpretive Letter #854**  
**March 1999**  
**12 USC 24(7)**

February 25, 1999

Dear [ ]:

This is in response to your letter of January 20, 1999, requesting confirmation that several national banks (“the Banks”)<sup>1</sup> may acquire and hold non-controlling equity investments in an electronic funds transfer (“EFT”) network. The Banks currently are non-controlling investors in an EFT network that plans to merge with another EFT network, and they wish to continue as non-controlling investors in the network resulting from the merger.<sup>2</sup> For the reasons set forth below, it is my opinion that the Banks may acquire and hold non-controlling equity investments in the merged network, in the manner and as described herein.

A. The Transaction

Star System, Inc. (“Star”) is a California nonprofit mutual benefit corporation<sup>3</sup> headquartered in San Diego, California. As of November 30, 1998, Star was owned by 17 financial depository institution or depository institution holding company members, including the Banks. Star operates the Star Network, which provides automated teller machine (“ATM”), point of sale

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<sup>1</sup> The national banks joining in this request are [ *Bank1* ]; [ *Bank2* ]; [ *Bank3* ]; and [ *Bank4* ].

<sup>2</sup> Certain bank holding companies that own equity interests in the current networks filed a comparable application with the Board of Governors of the Federal Reserve System (“the Board”) pursuant to section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. § 1843(c)(8), and the Board’s Regulation Y, 12 C.F.R. § 225.23. You supplied the OCC with a copy of that application and incorporated it by reference in your request letter. Accordingly, this letter relies in part upon facts and representations contained in that application. The Board approved the application by order dated February 1, 1999.

<sup>3</sup> Such a corporation is organized under the California Nonprofit Mutual Benefit Corporation Law and is characterized by having members and memberships rather than shareholders and shares of stock. See generally Cal. Corp. Code §§ 7110 *et. seq.* (West 1990).

("POS"), and EFT services to customers primarily located in 12 western states.<sup>4</sup> Honor Technologies, Inc. ("Honor") is a Delaware stock corporation headquartered in Maitland, Florida. As of November 30, 1998, Honor was owned by 36 depository institution holding company shareholders. Honor operates the HONOR Network and the HONOR West Network, which together provide services comparable to the Star Network in 22 primarily southeastern states and the District of Columbia.<sup>5</sup>

Star and Honor have agreed to merge according to the following plan ("the Merger"). A new Delaware stock corporation known as H&S Holding Company, Inc. ("H&S") has been formed, headquartered in Maitland, Florida. ("H&S" is a provisional name; a permanent name will be chosen later.) H&S will acquire ownership of Star and Honor through an exchange of stock with their current owners. The Banks will each exchange their current membership interests in Star for [ ] per cent of the stock of H&S, and thus will become minority investors in H&S.<sup>6</sup> As a result of this exchange, Star and Honor will become wholly-owned subsidiaries of H&S. They will continue to operate the Star, HONOR, and HONOR West Networks ("the Networks"). (Although it is envisioned that the Networks ultimately will be combined, initially the Networks will retain their individual identities.) H&S will be governed by a 30-person board of directors, consisting of 14 directors elected by current Honor shareholders, 14 elected by current Star members, and 2 directors who will be the current presidents of Star and Honor.

H&S will engage in a broad range of EFT-related activities including operating the Networks, data processing, and providing consulting services to depository institutions.<sup>7</sup> H&S will also own equity interests in two companies that provide services related to debit card security and check verification, respectively. These activities are discussed in more detail in the following section.

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<sup>4</sup> As of September 1998, Star had approximately 1,013 member and affiliate depository institutions participating in the network, consisting of 435 banks, 64 savings institutions, and 514 credit unions. At that time, the network included approximately 44,257 ATMs and approximately 627,069 POS terminals.

<sup>5</sup> As of September 1998, the HONOR Network had a total of 2,613 participating depository institutions, consisting of 1,813 banks, 165 savings institutions, and 635 credit unions. As of July 1998, there were 56,941 ATMs and more than 400,000 POS terminals in the network. As of September 1998, HONOR West had 868 participating depository institutions, consisting of 696 banks, 13 savings institutions, and 159 credit unions, and included 6,708 ATMs and approximately 26,500 POS terminals

<sup>6</sup> There is a fifth national bank investor in Star, [ *Bank5* ]. However, following the merger, its shares of H&S will be immediately transferred by dividend to its holding company, [ ] Corporation. Accordingly, [ *Bank5* ] has not joined the Banks in the present request.

<sup>7</sup> Although H&S will maintain records of transactions necessary for auditing purposes, you have represented that this information will not be identifiable by customer names or Social Security numbers. You have also represented that H&S will not collect, maintain, or disclose to third parties private transaction-related information relating to identifiable customers, and that appropriate data security procedures are in place or will be implemented to protect confidential information.

## B. Analysis

The Banks' letter raises the issue of the ability of national banks to own a non-controlling equity interest in an enterprise. In a variety of circumstances, the OCC has permitted national banks to own, either directly as proposed here, or indirectly through operating subsidiaries, such minority interests.<sup>8</sup> The OCC has concluded that national banks are legally permitted to make minority equity investments provided that four criteria are satisfied. These standards 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.

We conclude, as discussed below, that the Banks' proposed investment in H&S satisfies these four criteria.

*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 . . . .

The Supreme Court has held that this powers clause of 12 U.S.C. § 24(Seventh) is a broad grant of power to engage in the business of banking, which is not limited to the five enumerated powers. Further, national banks are authorized to engage in an activity if it is incidental to the

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<sup>8</sup> See, e.g., Conditional Approval No. 293, November 24, 1998; Interpretive Letter No. 771, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-135 (February 24, 1997); Conditional Approval No. 221, December 4, 1996; Interpretive Letter No. 720, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-035 (January 26, 1996); Interpretive Letter No. 697, *reprinted in id.* ¶ 81-012 (November 15, 1995).

performance of the 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.<sup>9</sup> Since national banks must be able to make use of modern technology in performing their business, the OCC's Interpretive Ruling 7.1019, 12 C.F.R. § 7.1019, permits national banks to "perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that [they are] otherwise authorized to perform, provide, or deliver."

The general activities of H&S, through the Networks, will be to develop, operate, manage, and market to financial institutions, processors, retailers, and consumers, products and processing services for transactions conducted at electronic terminal devices, including but not limited to ATMs, POS terminals, scrip terminals,<sup>10</sup> and similar devices. These are permissible banking or correspondent services. Indeed, the OCC has already found that all of the specific activities in which H&S will engage are permissible for national banks. Moreover, the Banks, through Star, are already engaged in most of these activities (exceptions are noted in the footnotes). Therefore, to a large extent, the Merger will merely constitute a change of form for the Banks' current activities. Accordingly, this letter will only describe briefly the various activities in which H&S will engage, with citations to OCC precedent for each activity. Please refer to the cited precedents for a more complete discussion of the legal authority for each activity.

The proposed activities are as follows:

- i. ATM services. H&S will provide data processing services in connection with ATM transaction requests for withdrawals from accounts, cash advances from lines of credit and credit card accounts, deposit account balance inquiries, transfers between checking and savings accounts and, to the extent permitted by law, deposit taking. (Individual financial institution participants will decide whether their customers will be permitted to make deposits at Network ATMs.)<sup>11</sup>
- ii. On-line and off-line POS services. Data processing services in connection with on-line and off-line POS transaction requests.<sup>12</sup>

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<sup>9</sup> *NationsBank of North Carolina, N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 215 (1995).

<sup>10</sup> A scrip terminal is a dedicated terminal that dispenses a cash equivalent, such as a voucher, that can be redeemed for goods or services at designated merchants.

<sup>11</sup> Interpretive Letter No. 381, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,605 (May 5, 1987); Interpretive Letter No. 289, *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,453 (May 15, 1984); Interpretive Letter No. 153, *reprinted in* [1981-1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,234 (July 7, 1980).

<sup>12</sup> Letter of Robert B. Serino, Deputy Chief Counsel (November 9, 1992) (unpublished).

iii. Point of Banking (“POB”) services. H&S will provide data processing services in connection with transactions originated at POB terminals. At POB terminals, customers of participating financial institutions can conduct the same types of transactions available at ATMs. POB terminals differ from ATMs in that a third party (usually an employee of the merchant at whose retail location the POB terminal is deployed) assists the customer in accessing the EFT service. Bill payment is also usually available at POB terminals.<sup>13</sup>

iv. Scrip services. Data processing services in connection with transactions originating at scrip terminals.<sup>14</sup>

v. Gateway services. H&S will provide data processing arrangements that will allow H&S to route transaction requests for participants between the Networks and other EFT networks, including both ATM and POS networks. In the case of ATM-related activities, this routing will permit customers of each Network’s participating financial institutions to access their accounts at terminals in the other networks.<sup>15</sup>

vi. Other gateway services. H&S will operate and support communication links for ATM, POS, and related transactions between individual financial institutions and affiliates, and other regional EFT networks, national networks such as Visa and MasterCard, and other card issuing organizations. These other gateway services will be very similar to those provided as part of the EFT network gateway access services.<sup>16</sup>

vii. Group purchasing. H&S will purchase EFT-related supplies such as signage, statement stuffers, and terminals, in bulk for the benefit of participants.<sup>17</sup>

viii. ATM terminal driving. H&S will provide ATM terminal driving (*i.e.*, operating) services to participating financial institutions, merchants, and other businesses.<sup>18</sup>

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<sup>13</sup> See notes 11 and 12, *supra*. Star does not currently engage in this activity, therefore this will be a new activity for the Banks.

<sup>14</sup> Interpretive Letter No. 718, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-033 (March 14, 1996); Interpretive Letter No. 705, *reprinted in id.* ¶ 81-020 (October 25, 1995).

<sup>15</sup> Interpretive Letter No. 382, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,606 (May 5, 1987); see Interpretive Letter No. 346, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,516 (July 31, 1985) (gateway services for financial settlement of commodities transactions).

<sup>16</sup> *Id.*

<sup>17</sup> Interpretive Letter No. 705, *supra* note 14; No-Objection Letter No. 87-11, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 84,040 (November 30, 1987).

<sup>18</sup> See note 11, *supra*. Star does not currently engage in this activity, therefore this will be a new activity for the Banks.

ix. Card production, issuance, and related functions. H&S will provide a full service card production facility, together with card issuance support and card database management.<sup>19</sup>

x. Electronic benefit transfer (“EBT”) services. H&S will provide EBT services that will enable ATMs, POS terminals, and other similar devices connected to H&S’ data processing systems to be used to deliver government welfare benefits to qualified recipients. Such payments might include food stamps, unemployment assistance, social security, and aid to families with dependent children, which are for the most part currently distributed by check, coupon, or stamp.<sup>20</sup>

xi. Automated clearinghouse (“ACH”) processing. H&S will act as a regional ACH processor for the southeast and mid-Atlantic United States, which would include the states of Alabama, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Tennessee, and the District of Columbia.<sup>21</sup>

xii. Electronic bill payment and home banking. H&S will offer home banking and electronic payment systems to financial institutions that they, in turn, can offer to their customers as part of an enhanced account services portfolio. The services are currently provided through an arrangement with a third party vendor, and will not be offered or marketed directly to account holders. The electronic bill payment and home banking services enable account holders to obtain account information, transfer funds between accounts, or pay bills to participating merchants or others. These services may be accessed through various means, including telephone, personal computer, or the Internet. Internet access is accomplished by installing a hyperlink in the financial institution web site to the contractor’s electronic bill payment and home banking web page, which can be accessed by subscribing financial institution customers. H&S will not sell any hardware to any financial institution customers, and will not be an Internet service provider.<sup>22</sup>

xiii. Check verification. H&S will offer check verification services as an ancillary service to its ATM and POS-related services. These services will be provided by Primary Payment Systems, Inc. (“PPS”), a Delaware corporation that, after the mergers, will be a

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<sup>19</sup> See note 17, *supra*. Star does not currently engage in this activity, therefore this will be a new activity for the Banks.

<sup>20</sup> Interpretive Letter No. 718, *supra* note 14.

<sup>21</sup> Letter of Julie L. Williams, Chief Counsel (May 16, 1997) (unpublished); Interpretive Letter No. 419, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,643 (February 16, 1988).

<sup>22</sup> Conditional Approval No. 221, *supra* note 8; Interpretive Letter No. 742, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-106 (August 19, 1996); Interpretive Letter No. 611, *reprinted in* [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,499 (November 23, 1992). Star does not currently engage in this activity, therefore this will be a new activity for the Banks.

majority-owned subsidiary of H&S (as successor in interest to Star). PPS's principal service is to provide participating financial institutions access to a database that contains the status of over 80 million checking accounts. This information warns financial institutions of possible check returns and enables them to make appropriate "funds hold" decisions. These decisions are based on an electronic verification of the checking account which includes a positive verification of the account's existence and multiple other status codes such as account closed, insufficient funds, and others, to prevent the early release of uncollected funds. PPS also provides certain account status information to check acceptance companies who provide check verification and guarantee services to merchants.<sup>23</sup>

xiv. Proprietary ATM services for non-financial entities. H&S will provide proprietary ATM services for non-financial entities that will include driving EFT devices owned by financial or non-financial entities; providing EFT account authorizations for customers of non-financial entities; processing EFT transactions to permit non-financial entity participants in one EFT network to gain access to other EFT networks; monitoring EFT networks and devices to enable accurate and secure transmission of data for non-financial entities; telephone banking services such as telephone bill payment services; and providing EFT-related support and maintenance services to non-financial entities.<sup>24</sup>

xv. Private financial network services. This service consists of telecommunications network services, used to link ATMs, that are resold to participating financial institutions, retail merchants, and other customers of H&S in conjunction with other EFT services. These services, however, will be discontinued in the near future.<sup>25</sup>

xvi. Card fraud detection services. Following the Merger, H&S will become a minority owner (as successor in interest to Star and Honor) of Card Alert Services, Inc. ("CAS"), a Delaware corporation that provides a debit card anti-fraud system. It seeks to create and maintain a nationwide electronic database of debit card fraud information that will be used to: (i) provide early warning to financial institutions and EFT networks of multiple-card counterfeit fraud; (ii) determine the dimensions of the fraud, distinguishing multiple-card incidents from single-card incidents and determining the magnitude of the exposure; (iii) identify suspect cards (both cards already used and cards in the perpetrator's inventory), allowing action to be taken to contain losses; and (iv) provide a central data

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<sup>23</sup> Conditional Approval No. 287 (September 4, 1998); letter of John E. Shockey, Deputy Chief Counsel (June 7, 1976) (unpublished).

<sup>24</sup> No-Objection Letter No. 87-11, *supra* note 17.

<sup>25</sup> Interpretive Letter No. 513, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,215 (June 13, 1990).

base of fraud information to support investigative efforts and fraud level monitoring and reporting. All of the information involved in the data processing activities related to the CAS system will be banking, financial, or economic data.<sup>26</sup>

xvii. Consulting services. H&S will offer EFT consulting services to both member and non-member depository institutions to assist such institutions in areas such as ATM site selection; card design; EFT program graphics; customer and employee education and promotion; strategic EFT marketing planning and advertising; and public relations planning. H&S will also offer consulting services related to EFT operations, disaster recovery, and security to member and non-member depository institutions, which may include, among other things: hardware and software selection; selection and installation of ATMs, POS terminals, and other similar devices; telecommunications; plastic card production, encoding, and distribution; transaction set selection; EFT security and fraud prevention; and organize and coordinate EFT research studies sponsored by participating depository institutions.<sup>27</sup>

H&S will also offer consulting services on web page design and development and web service hosting. These services will involve designing and creating web pages from selected web page templates and hosting such web pages through a third party web server under contract with H&S. H&S also anticipates providing annual web page maintenance services to enable financial institutions to correct errors, amend, and/or update the web the web sites hosted by H&S's third party web server. All web hosting services will be offered through a third party contractor, and will not be performed directly by H&S.<sup>28</sup>

*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.*

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<sup>26</sup> The OCC has long held that national banks may collect, transcribe, process, analyze, store, and make available to others, banking, financial, or other economic data. See, e.g., Interpretive Letter No. 741, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-105 (August 19, 1996) (automobile dealer inventory database); Interpretive Letter No. 653, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (December 22, 1994) (insurance agent database); Interpretive Letter No. 516, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,220 (July 12, 1990) (electronic database of information on financial instruments, domestic and international financial markets, economic information and news).

<sup>27</sup> These are all activities which national banks may perform directly. See, e.g., No-Objection Letter No. 87-11, *supra* note 17; note 26, *supra*. Therefore, it is also permissible to provide consulting services concerning these activities. Interpretive Letter No. 137, *reprinted in* [1981-1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,218 (December 27, 1979).

<sup>28</sup> See Interpretive Letter No. 805, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-252 (October 9, 1997) (providing electronic imaging services to banks and other financial institutions); Interpretive Letter No. 754, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-118 (November 6, 1996) (computer network consulting and support). Star does not currently engage in web page design and development or web service hosting, therefore these will be new activities for the Banks.



This is an obvious corollary of 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. Moreover, under the proposed bylaws of H&S ("Proposed By-Laws"), no shareholder is entitled to name more than one director.<sup>29</sup> Thus, the Banks lack the ability to restrict the activities of H&S to only those that are bank permissible. In addition, the Proposed By-Laws do not currently contain any provision limiting the activities of H&S to those that are bank permissible. Accordingly, you have represented that the managements of Star and Honor have committed that, prior to the consummation of the Merger, they will effect the necessary changes in the Proposed By-Laws to impose such a limitation.

Nevertheless, the Banks have the ability to withdraw their investments in H&S should that become necessary. While the governing provisions are complex, the Proposed By-Laws generally provide that shareholders have the right to transfer their shares to other shareholders or to H&S, itself. Shares may also be transferred to non-shareholder depository institutions or depository institution holding companies, subject to a right of first refusal on the part of other shareholders and H&S. The Proposed By-Laws also recognize that a shareholder may transfer its shares if required to do so by a regulatory agency.<sup>30</sup> These provisions appear adequate to permit the Banks to withdraw their investment in H&S. Accordingly, the second standard is satisfied.

*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.*

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 the national bank's investment not expose it to unlimited liability. Normally, this is not a concern when a national bank invests in a corporation, for it is generally accepted that a corporation is an entity distinct from its shareholders, with its own

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<sup>29</sup> Specifically, the Proposed By-Laws provide that each director must be an executive level officer, or equivalent, of a shareholder, but no more than one director may be such an officer of any one shareholder. Art. III, § 1.

<sup>30</sup> See generally Proposed By-Laws, art. II, section 13.

separate rights and liabilities, provided proper corporate separateness is maintained.<sup>31</sup> This is the case here. The corporate veil of H&S will protect the Banks from liability or loss associated with their ownership interests in H&S.<sup>32</sup>

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.<sup>33</sup> You have represented that the Banks will account for their ownership interests in H&S according to generally accepted accounting principles, which will satisfy the OCC's requirements in this regard.

Therefore, for both legal and accounting purposes, the Banks' potential loss exposure arising from their respective investments in H&S should be limited to the amount of those investments. Since that exposure will be quantifiable and controllable, 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.*

Twelve U.S.C. § 24(Seventh) gives national banks incidental powers that are "necessary" to carry on the business of banking. "Necessary" has been judicially construed to mean "convenient or useful."<sup>34</sup> Further, the provision in 12 U.S.C. § 24(Seventh) relating to the purchase of stock does not authorize speculative investment banking activities in connection with stock. Therefore, a consistent thread running through our precedents concerning a national bank's investment in an enterprise or entity that is not an operating subsidiary is that it must be convenient or useful to the bank in conducting its banking business. The investment must benefit or facilitate that business and cannot be a mere passive or speculative investment.

According to your letter, the primary purpose of H&S and the Networks will be to permit customers of participating financial institutions, including the Banks, (i) to perform banking

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<sup>31</sup> 1 W. Fletcher, *Cyclopedia of the Law of Private Corporations* § 25 (rev. perm. ed. 1990).

<sup>32</sup> Del. Code Ann. tit. 8, § 102(b)(6) (Michie 1991).

<sup>33</sup> *See generally*, Accounting Principles Board, Op. 18 ¶ 19 (1971).

<sup>34</sup> *Arnold Tours, Inc. v. Camp*, 472 F.2d 427, 432 (1st Cir. 1972).

transactions through ATMs, and (ii) to allow the transfer of funds from the accounts of cardholders, who have accounts in member institutions, to the accounts of participating retailers through POS terminals. The OCC has recognized that such activities are a “fundamental part of the basic business of banking.”<sup>35</sup> Indeed, any bank that did not make these services available to its customers in today’s economy would be at a serious competitive disadvantage. The Banks’ ownership of H&S stock will both facilitate their participation in the Networks, and allow them to influence and supervise the services provided by the Networks. Therefore, the investments by the Banks in H&S will be “convenient or useful” to the core businesses of the Banks, and not a passive or speculative activity. Accordingly, the fourth standard is satisfied.

### C. Conclusion

Based upon a thorough review of the information you provided, including the representations and commitments made both in your letter and in the Board filing incorporated therein by reference, and for the reasons discussed above, we conclude that the Banks may acquire non-controlling equity investments in H&S in exchange for their current non-controlling equity investments in Star pursuant to the Merger, subject to the following conditions:

- (1) H&S and its subsidiaries will engage only in activities that are part of, or incidental to, the business of banking;
- (2) the Banks will withdraw their investments from H&S in the event that H&S or its subsidiaries engage in an activity that is inconsistent with condition number one;
- (3) the Banks will account for their respective investments in H&S under the equity or cost method of accounting; and
- (4) H&S and its subsidiaries will be subject to OCC supervision, regulation, and examination.

These conditions are conditions imposed in writing by the OCC in connection with its action on the Banks’ request for a legal opinion confirming that their respective investments are permissible under 12 U.S.C. § 24(Seventh) and, as such, may be enforced in proceedings under applicable law.

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<sup>35</sup> Letter of Robert B. Serino, *supra* note 12; see Interpretive Letter No. 419, *supra* note 21.

If you have any questions, please contact Senior Attorney Christopher Manthey in the Bank Activities and Structure Division at 202-874-5300.

Sincerely,

/s/

Julie L. Williams  
Chief Counsel