

§ 7.1012

12 CFR Ch. I (1-1-06 Edition)

funds by direct payment to the employee, by crediting an account in the employee's name at the disbursing bank, or by forwarding funds to another institution in which an employee maintains an account.

§ 7.1012 Messenger service.

(a) *Definition.* For purposes of this section, a "messenger service" means any service, such as a courier service or armored car service, used by a national bank and its customers to pick up from, and deliver to, specific customers at locations such as their homes or offices, items relating to transactions between the bank and those customers.

(b) *Pick-up and delivery of items constituting nonbranching activities.* Pursuant to 12 U.S.C. 24 (Seventh), a national bank may establish and operate a messenger service, or use, with its customers, a third party messenger service. The bank may use the messenger service to transport items relevant to the bank's transactions with its customers without regard to the branching limitations set forth in 12 U.S.C. 36, provided the service does not engage in branching functions within the meaning of 12 U.S.C. 36(j). In establishing or using such a facility, the national bank may establish terms, conditions, and limitations consistent with this section and appropriate to assure compliance with safe and sound banking practices.

(c) *Pick-up and delivery of items constituting branching functions by a messenger service established by a third party.* (1) Pursuant to 12 U.S.C. 24 (Seventh), a national bank and its customers may use a messenger service to pick up from, and deliver to customers items that relate to branching functions within the meaning of 12 U.S.C. 36, provided the messenger service is established and operated by a third party. In using such a facility, a national bank may establish terms, conditions, and limitations, consistent with this section and appropriate to assure compliance with safe and sound banking practices.

(2) The OCC reviews whether a messenger service is established by a third party on a case-by-case basis, considering all of the circumstances. How-

ever, a messenger service is clearly established by a third party if:

(i) A party other than the national bank owns or rents the messenger service and its facilities and employs the persons who provide the service;

(ii)(A) The messenger service retains the discretion to determine in its own business judgment which customers and geographic areas it will serve; or

(B) If the messenger service and the bank are under common ownership or control, the messenger service actually provides its services to the general public, including other depository institutions, and retains the discretion to determine in its own business judgment which customers and geographic areas it will serve;

(iii) The messenger service maintains ultimate responsibility for scheduling, movement, and routing;

(iv) The messenger service does not operate under the name of the bank, and the bank and the messenger service do not advertise, or otherwise represent, that the bank itself is providing the service, although the bank may advertise that its customers may use one or more third party messenger services to transact business with the bank;

(v) The messenger service assumes responsibility for the items during transit and for maintaining adequate insurance covering thefts, employee fidelity, and other in-transit losses; and

(vi) The messenger service acts as the agent for the customer when the items are in transit. The bank deems items intended for deposit to be deposited when credited to the customer's account at the bank's main office, one of its branches, or another permissible facility, such as a back office facility that is not a branch. The bank deems items representing withdrawals to be paid when the items are given to the messenger service.

(3) A national bank may defray all or part of the costs incurred by a customer in transporting items through a messenger service. Payment of those costs may only cover expenses associated with each transaction involving the customer and the messenger service. The national bank may impose terms, conditions, and limitations that it deems appropriate with respect to the payment of such costs.

(d) *Pickup and delivery of items pertaining to branching activities where the messenger service is established by the national bank.* A national bank may establish and operate a messenger service to transport items relevant to the bank's transactions with its customers if such transactions constitute one or more branching functions within the meaning of 12 U.S.C. 36(j), provided the bank receives approval to establish a branch pursuant to 12 CFR 5.30.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60098, Nov. 4, 1999]

§ 7.1014 Sale of money orders at non-banking outlets.

A national bank may designate bonded agents to sell the bank's money orders at nonbanking outlets. The responsibility of both the bank and its agent should be defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent. The bank's agents need not report on sales and transmit funds from the nonbanking outlets more frequently than at the end of the third business day following receipt of the funds.

§ 7.1015 Receipt of stock from a small business investment company.

A national bank may purchase the stock of a small business investment company (SBIC) (*see* 15 U.S.C. 682(b)), and may receive the benefits of such stock ownership (*e.g.*, stock dividends). The receipt and retention of a dividend by a national bank from an SBIC in the form of stock of a corporate borrower of the SBIC is not a purchase of stock within the meaning of 12 U.S.C. 24 (Seventh).

§ 7.1016 Independent undertakings to pay against documents.

(a) *General authority.* A national bank may issue and commit to issue letters of credit and other independent undertakings within the scope of the applicable laws or rules of practice recognized by law.¹ Under such letters of credit

¹Examples of such laws or rules of practice include: The applicable version of Article 5 of the Uniform Commercial Code (UCC) (1962, as amended 1990) or revised Article 5 of the UCC (as amended 1995) (available from West

and other independent undertakings, the bank's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the applicant and the beneficiary. A national bank may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

(b) *Safety and soundness considerations—(1) Terms.* As a matter of safe and sound banking practice, banks that issue independent undertakings should not be exposed to undue risk. At a minimum, banks should consider the following:

(i) The independent character of the undertaking should be apparent from its terms (such as terms that subject it to laws or rules providing for its independent character);

(ii) The undertaking should be limited in amount;

(iii) The undertaking should:

(A) Be limited in duration; or

(B) Permit the bank to terminate the undertaking either on a periodic basis (consistent with the bank's ability to make any necessary credit assessments) or at will upon either notice or payment to the beneficiary; or

(C) Entitle the bank to cash collateral from the applicant on demand (with a right to accelerate the applicant's obligations, as appropriate); and

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