U.S. BANKING REGULATION AND THE INTERNET*

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The ways in which the Internet is fundamentally changing the business of banking may be roughly divided into two types. First, the Internet may lead to the authorization of new banking products. Some of these products, such as electronic signatures, arise from the need to develop electronic analogues to traditional banking functions. Other products may push banks into completely new areas. For example, the Office of the Comptroller of the Currency has determined that operating a Web site for buyers and sellers of used cars is part of the business of banking, based on the authority of a national bank to act as a finder.[1] Under this rationale, many of the businesses that have sprung up on the Internet, including the many varieties of on-line auctions, may be permissible activities for banks.

A second fundamental way in which the Internet is changing banking stems from the different way banks deliver products over the Internet. On first glance, the implications may appear banal. For example, the Office of Thrift Supervision issued a new regulation concerning electronic operations by Federal savings associations.[2] The lengthy Federal Register notice that accompanied the new regulation can be boiled down to a not very exciting statement: a Federal savings association can engage in any activity through electronic means that it can conduct through traditional delivery mechanisms, provided that adequate security measures are in place. However, the change in delivery mechanism alters the business model that is the basis for much of banking regulation: banks traditionally have operated through brick and mortar branches, and a great deal of banking regulation is based on the location of those branches.

Focusing on the regulatory implications of the change in the way banking services are delivered, this article discusses how two regulatory schemes that are based on branch systems are affected by the Internet. The first part of the article discusses the regulation of foreign bank activities in the United States, which historically has been based on the establishment of an office. To what extent do the current statutes and regulations apply to transactions between U.S. customers and foreign banks that occur over the Internet, without the involvement of any U.S. office of the bank? The second part of the article discusses the impact of the Internet on the Community Reinvestment Act of 1977 ("CRA"). CRA compliance generally is evaluated based

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on the geographic area (the "assessment area") in which a bank has branches. To what extent does a bank have CRA obligations to customers outside that "assessment area"? What are the CRA obligations of an Internet bank that has no branches?

INTERNET TRANSACTIONS BY FOREIGN BANKS WITH U.S. CUSTOMERS

Many foreign banks have established Internet Web sites through which they market deposit, loan and other products. These Web sites are often "transactional" Web sites through which customers can apply for loans, obtain account information, and purchase and sell securities. The question arises as to whether the availability of the Web site to persons in the United States causes the site to be subject to U.S. banking regulation.

Banking Services Offered by Foreign Bank Web Sites

Pursuant to the International Banking Act of 1978, as amended (the "IBA"), foreign banks are required to obtain the approval of the Board of Governors of the Federal Reserve System prior to establishing an office in the United States.[3] In addition, a foreign bank is required to obtain a license from the Comptroller of the Currency (in the case of a proposed federal branch or agency) or from the state in which the office will be located (in the case of a state branch or agency).

For purposes of the IBA, the term office is defined to include an agency, a branch, or a representative office. A branch is defined as "any office or any place of business of a foreign bank located in any State of the United States at which deposits are received."[4] The definitions of "agency" and "representative office" also include the concept of a place of business that is located in a State.[5] Based on these definitions, a foreign bank is not required to obtain the approval of the Federal Reserve prior to establishing a Web site through which U.S. customers obtain banking services, provided that the foreign bank does not use a physical location in the United States to facilitate such transactions.

A foreign bank must also consider the application of state law to Internet transactions. The New York Banking Law is less clear than the IBA. Although the New York Banking Department has not issued any policy statement or regulations regarding Internet banking, Section 131 of the N.Y. Banking Law provides that a company may not "exercise in this state" various enumerated banking powers without a license. The phrase "exercise in this state" could be interpreted to cover a pattern of Internet transactions with New York customers. However, there do not appear to be any published cases or Banking Department interpretations that apply this statute to a bank that does not have a physical presence or at least an agent that is physically present in New York.

Similarly, Section 200 of the New York Banking Law provides that a foreign bank may not "transact in this state the business of" making loans, receiving deposits, etc., without first obtaining a license. This provision is not specifically limited to activities conducted through a New York office, but it appears unlikely that it would be applied, for example, where a New

York resident sends a deposit to a bank in Germany in connection with a transaction initiated on the German bank's Web site.

Section 340 of the New York Banking Law requires a person or entity that solicits personal loans in New York in an amount of $25,000 or less or that solicits business loans in New York in an amount of $50,000 or less to obtain a license. Although the statute contains an exception for "isolated, incidental, or occasional transactions", the license requirement otherwise appears to apply to a foreign bank that targets New York residents regardless of whether the foreign bank does so from an office in New York. However, the mere availability of such transactions through a foreign bank's Web site arguably does not constitute a "solicitation".

A foreign bank that makes certificates of deposit available to U.S. residents must also consider the federal securities law implications. In general, a deposit issued by a non-U.S. bank (including one issued in non-U.S. currency) is not considered a "security" for purposes of the U.S. federal securities laws if it is issued by a bank that is subject to regulations that are similar to the regulations that apply to U.S. banks.[6] Banks from countries that provide comprehensive supervision on a consolidated basis would be likely to satisfy this standard. Moreover, the offering of such deposits to U.S. customers by off-shore foreign banks appears to be a common practice.[7] However, it is possible that such deposits would be considered "securities" for purposes of state securities laws (so-called "blue sky" laws) and such laws should be reviewed by a foreign bank if it intends to use its Web site to actively offer its deposits in the United States.

The sale of deposits by non-U.S. banks to U.S. investors is subject to the Interagency Statement on Retail Sales of Nondeposit Investment Products, which requires the Bank to inform retail investors that the deposits are not insured by the Federal Deposit Insurance Corporation and are subject to investment risks, including possible loss of the principal invested.

Nonbanking Services Offered by Foreign Bank Web Sites

The IBA subjects a foreign bank that has an agency, branch or commercial lending company located in the United States to the restrictions on nonbanking activities that are contained in Section 4 of the Bank Holding Company Act of 1956, as amended.[8] Section 4 requires foreign banks to obtain the approval of the Federal Reserve prior to engaging in financial activities in the United States. Pursuant to amendments that the Gramm-Leach-Bliley Act made to the Bank Holding Company Act, foreign banks that qualify as financial holding companies will be permitted to engage in financial activities without Federal Reserve approval, but it is not clear at this time how the Federal Reserve will adopt the criteria for becoming financial holding companies to the circumstances of foreign banks.

The IBA restrictions on nonbanking activities of foreign banks are implemented by the Federal Reserve's Regulation K. Regulation K applies only if the foreign bank engages in the

nonbanking activity in the United States.[9] The regulation defines the terms "engage in business" or "engage in activities" in the United States" to mean maintaining an office (other than a representative office) or a subsidiary in the United States.[10] A foreign bank that engages in an activity through telephone, mail and electronic contact with U.S. customers is not engaged in that nonbank activity in the United States for purposes of Regulation K.

The Federal Reserve has occasionally suggested a different approach. For example, when it proposed revisions to Regulation K in 1984, the Federal Reserve stated that the sale of securities into the United States by foreign banks would be subject to Regulation K even if such sales did not employ a U.S. office.[11] However, such statements are inconsistent with the language of Regulation K. These statements are also inconsistent with a number of Federal Reserve interpretations that permit a non-U.S. broker-dealer affiliate of a bank that is dealing in securities to engage in transactions with U.S. affiliates (pursuant to Rule 15a-6).[12] Such dealing activities would not have been permissible of they were construed as being engaged in through a U.S. office. The better view is that nonbanking activities conducted from a foreign bank's Web site, without the involvement of a U.S. office of the bank, are not activities "engaged in the United States" for purposes of Regulation K and do not require the prior approval of the Federal Reserve.[13]

Securities Offerings Through Foreign Bank Web Sites

The Securities Act of 1933 requires that public offers and sales of securities be registered with the U.S. Securities and Exchange Commission (the "SEC"). The SEC interprets this requirement to apply to public offers and sales of securities in the United States. Assuming a foreign bank's Web site is offering securities, the questions that arise are whether any such offer (i) is being made "in the United States" and (ii) is a "public" offer.

Although the existence of a Web site that offers securities and that is accessible from the United States could be viewed as giving rise to a registration requirement, the SEC takes the position that, in the case of a Web site established outside the United State by a non-U.S. issuer or broker, it will not regard it to be conducting activities in the United States if the Web site implements measures reasonably designed to guard against sales or the provision of securities services to U.S. persons.[14] The SEC generally would not consider an offshore Internet offer made by a non-U.S. offeror as targeted at United States investors, if:

(i) the Web site includes a prominent disclaimer making it clear that the offer is directed only to countries other than the United States;[15] and

(ii) the Web site implements procedures that are reasonably designed to guard against sales to U.S. persons in the offshore offering.

One type of procedure that would satisfy the second requirement would be to require the prospective purchaser to provide his or her address prior to the sale, which would enable the issuer to avoid sales to U.S. persons. (The SEC would not regard a sale to be in violation of the

Securities Act if the prospective purchaser misrepresents his or her location and if nothing about the transaction (such as the purchaser providing a U.S. telephone number) puts the offeror on notice that the purchaser is located in the United States.)

The foregoing discussion relates to Web site postings. The SEC distinguishes between passive postings that are merely accessible to U.S. investors and offers that are targeted at U.S. investors. Sending mail or e-mails or making telephone calls to U.S. investors for the purpose of offering securities would be subject to the securities registration requirement unless the transaction qualifies for an exemption from the registration requirement, such as the private placement exemption.

An offering of securities may be exempt from the registration requirement of the Securities Act if it is conducted as a "private placement". The SEC's Regulation D provides guidance as to the type of transactions that qualify as private placements. Generally, in a private placement the securities may only be offered to persons who are "accredited investors" (institutions and wealthy individuals who satisfy certain requirements). Another requirement is that the transaction not involve any general advertising or general solicitation of investors.

The SEC has not objected to certain arrangements for conducting private placements over the Internet. In the approved arrangements investors provide information to an issuer or broker-dealer on line to demonstrate that the investors are accredited investors; once this is demonstrated, the investors are given a password which, in the future, enable them to access a part of the Web site where information relating to private offerings is found.[16] It is important that the initial effort to locate accredited investors not involve a general solicitation or advertising. In particular, the SEC takes the position that publicly accessible Web site posting may not be used as a means to locate investors to participate in a pending or imminent U.S. offering relying on the private placement exemption. The SEC no-action letters cited above allowed Web sites to be used to determine whether a person is an accredited investor and to give such persons a password contemplate that such investors could later (for example, after 30 days) use the password to access private placement material on the site.

Brokerage Transactions on Foreign Bank Web Sites

Section 15 of the Securities Exchange Act of 1934 generally requires persons who effect (or attempt to effect) transactions in securities with U.S. customers to register with the SEC as brokers and to comply with the capital and other regulations that apply to registered brokers. With regard to Web sites established by non-U.S. brokers, the SEC has taken the position that the registration requirement will not apply provided that:

(i) the Web site includes a prominent disclaimer making it clear that the broker's services are not available to U.S. persons; and

(ii) the Web site implements procedures that are reasonably designed to guard against transactions with U.S. persons.[17]

The SEC's Rule 15a-6 provides non-U.S. brokers with an exemption from registration requirements if they contact only U.S. institutional investors and if a broker that is registered with the SEC participates in the discussions and effects the transactions. A non-U.S. broker is permitted to contact "major U.S. institutional investors" without the participation of an SEC registered broker, provided that a U.S. broker effects the transaction. A U.S. broker "effects a transaction" if it issues the confirmation, maintains the customer records required by the SEC, handles the customer funds, etc.

Rule 15a-6 also permits a non-U.S. broker to effect transactions with U.S. customers, without requiring any involvement by an SEC registered broker in the discussions or in effecting the transactions that result, provided that U.S. investor contacts the non-U.S. broker on his own initiative and the transaction is not solicited by the non-U.S. broker.[18] Activities such as telephoning customers, advertising and conducting investment seminars in the United States constitute solicitation for this purpose. A non-U.S. broker also would be regarded as soliciting transactions with a customer if the customer contacted the broker as a result of viewing the broker's Web site.

CRA COMPLIANCE IN A VIRTUAL COMMUNITY

Turning from the impact of the Internet on the regulation of international banking to its impact on regulations relating to investments in local neighborhoods, we find again that the advent of Internet banking has substantially undermined the regulatory scheme.

The Community Reinvestment Act of 1977 ("CRA") states that banks are "required by law" to demonstrate that their deposit facilities serve the credit needs of the communities in which they are chartered to do business.[19] The idea, which is reflected in the phrase "community reinvestment" is that banks have an obligation to use (to some undefined extent) the deposits they gather in a community to meet the credit needs of that community. This idea continues to find favor in Congress, as indicated by more recent laws that prohibit banks from using out-of-state branches as "deposit production offices".[20] The second mandate contained in CRA is that the obligation of banks to meet the credit needs of its local community includes meeting the credit needs of low- and moderate-income ("LMI") neighborhoods, consistent with safe and sound operations.[21] Although CRA does not specify a particular type of credit need, the regulators regard residential mortgage loans as especially important to CRA.

CRA was enacted at a time when banks gathered most of their deposits through physical offices that were clustered in a particular geographic area, such as a county or a group of contiguous counties, which could be reasonably be viewed as its "community". The advent of interstate banking did not significantly alter this paradigm; it merely meant that bank holding companies were permitted to acquire distant bank subsidiaries, each of which retained its CRA obligations to its own local community. Similarly, interstate bank mergers could be fit into the paradigm, by requiring the surviving bank to continue to treat each of the communities of the constituent banks as communities of the surviving bank.[22]

Special purpose credit card banks, however, did not fit the CRA paradigm. In the 1980s certain states, most notably Delaware, allowed out-of-state bank holding companies to establish banks in Delaware that were permitted to engage in credit card lending on a regional or nationwide basis but that were not permitted to compete with local Delaware banks for deposits or borrowers. Because such credit card banks were not permitted to gather deposits locally, CRA should not have been interpreted to require them to "reinvest" in Delaware deposits gathered elsewhere. In fact, because the Delaware law did not permit credit card banks to engage in direct lending activities in Delaware, such banks could not fulfill CRA obligations in the traditional way by making residential mortgage loans in Delaware. Nevertheless, in 1990 the FFIEC took the position that special purpose credit card banks do have a CRA obligation to the community in which their head office is located. Such banks were permitted to meet this obligation by engaging in community development activities rather than direct lending. Although this obligation was not very burdensome, it seems perverse to say that the community obligations of a bank are to the city listed in its charter as its main office even though virtually all of its deposits are gathered and all of its loans are made elsewhere.

In recent years, there has been in increase in the number of banks that offer a variety of products nationwide through direct mail, telemarketing and the Internet. Some of these banks, referred to herein as "Internet banks", do not have any offices to which customers have physical access. Internet banks are similar to the special purpose credit card banks except that they offer a variety of products. This business model was on the horizon during the 1993-1995 period in which the CRA regulations were revised, and was in fact discussed among the regulators in the course of making those revisions, but it is not explicitly acknowledged in the new regulations. The revised CRA regulations require every bank that is subject to CRA, including wholesale banks, limited purpose banks and banks that have adopted a strategic plan, to designate an "assessment area" that is no larger than an MSA.

The revised CRA regulations contain a more sensible approach to credit card banks and other "limited purpose" banks. In recognition of the nationwide service area of credit card banks, the revised CRA regulations provide that, as long as the bank has adequately addressed the needs of its assessment area, the regulators will consider the community development activities of the bank outside its assessment area.[23] This approach reflects, in part, the fact that many large credit card banks were located in Wilmington, Delaware and it was difficult for all of the them to satisfy their CRA obligations by engaging in community development activities in the same city. The approach also tacitly accepts the proposition that the community in which such a bank has its head office, but from which it draws few of its customers, is not the relevant community for CRA purposes. In effect, the relevant community for such a bank is its customer base, not a geographic community.

However, an Internet bank that sells a variety of products to retail customers is not eligible for limited purpose or wholesale bank status. Instead, the bank must satisfy the lending, service and investment tests that apply to retail banks that have branch networks. Although the revised regulations provide that a bank's CRA performance will be judged in the context of information about the institution, its community, its competitors, and its peers,

including the bank's business strategy, there is no reason to believe that the regulators will accept an Internet bank's business strategy as a valid reason for it to make a very low proportion of its loans in its assessment area.

The only other option for Internet banks is to adopt a strategic plan. The CRA regulations explain the process for obtaining approval of a strategic plan and indicate that the plan must contain "measurable goals for helping to meet the credit needs of each assessment area covered by the plan", but say little else about what such a plan must provide. For example, could the strategic plan for an Internet bank be limited to community development activities, in effect treating the bank as a limited purpose bank?

The Approach of the OTS

The Office of Thrift Supervision has taken the lead among the regulators in adopting CRA to nontraditional banking organizations. OTS Director Ellen Seidman has pointed out that evaluating the CRA performance of Internet banks based on the assessment area in which their head office happens to be located means that such banks have little incentive to meet the credit needs of LMI borrowers located outside of the bank's assessment area, where the bank does virtually all of its lending.[24]

Director Seidman provides two suggestions for dealing with this issue. One approach she offers is to allow Internet banks to use the community development test that is now reserved for wholesale and limited purpose banks. As noted above, the regulators give consideration to the community development activities that wholesale and limited purpose are engaged in outside of their assessment area. However, this alternative seems to trouble Seidman. Under the community development test, a bank is not required to engage in any direct lending in its assessment area and may meet its CRA obligations by purchasing securities that primarily benefit LMI areas or LMI borrowers. In Seidman's view, the core of CRA is that a bank that provides retail services should provide direct loans in its community.

The second approach she offers is to evaluate Internet banks based on whether they make loans to all income segments, regardless of where the borrowers are located. CRA expressly provides for customer-based assessment areas only for banks the business of which predominately consists of serving the needs of military personnel who are not located within a defined geographic area. Such a bank may "define its 'entire community' to include its entire deposit customer base without regard to geographic proximity."[25]

Director Seidman has put this second approach into practice. The OTS requires applicants for federal savings bank charter that proposed to engage in nationwide or super-regional multi-product lending to, in effect, adopt a customer-based assessment area. In view of the fact that a customer-based assessment area is not contemplated by the CRA regulations, the initial OTS approval orders of this type suggest that, in addition to CRA activities within its assessment area, the applicants had voluntarily established goals for lending to LMI borrowers outsider their assessment area. State Farm, Travelers, Lehman Brothers and others who

obtained approval to acquire or establish federal savings banks established goals, expressed in dollar amounts, for loans to LMI borrowers outside of their assessment area. For example, the November 12, 1998 OTS press release regarding the approval of the State Farm application to charter a federal savings bank states:

> Although its Community Reinvestment Act (CRA) assessment area is Bloomington-Normal, State Farm Financial has committed to making $195 million in loans to low- and moderate-income borrowers in the states served during the first three years of operations. It has set a long-term goal of CRA-related loan commitments and activities equal to the greater of 5 percent of the thrift's assets or the amount of deposits generated from low- and moderate-income persons.

Household, FSB took essentially the same approach, but within the context of a strategic plan. Household, FSB, which has an affinity relationship with the AFL-CIO, established goals for community development activities within the Chicago metropolitan area, where its home office is located, as well as LMI lending goals related to its nationwide lending affinity with the AFL-CIO. In Director Seidman's view, the Household, FSB strategic plan illustrates how the customer-based relationship can substitute for a branch-based assessment area and "effectively address an institution's obligation to help meet the credit needs of the low- and moderate-income segments of a nationwide market."[26]

In a subsequent speech, Director Seidman made it clear that such commitments relating to nationwide lending are not optional. The OTS requires applicants that propose to engage in nationwide or super-regional multi-product lending to show, among other things, that the "prospects for its retail products penetrating low- and moderate-income markets in the regions it reaches outside its assessment area are favorable".[27]

There are several difficulties with this approach. First, as at least one Congressional critic has pointed out, it has no basis in the CRA regulations. Arguably, in the case of an Internet bank, the purpose of CRA is better served by using a nationwide assessment area rather than by focusing on the city or town that is listed as the main office in the bank's charter. However, the approach appears to be inconsistent with the multiple references in CRA to the "local" community in which the bank is chartered. The special exception in CRA for banks that primarily serve military personnel would not have been necessary if any bank can use a customer-based assessment area. Moreover, the inter-agency regulations adopted to implement CRA clearly limit assessment areas to geographic areas no larger than an MSA. This definition applies to all banks, including banks that operate pursuant to a strategic plan. Except in the case of wholesale and limited purpose banks, the CRA regulations do not permit consideration to be given to activities conducted outside of a bank's assessment area.

The second difficulty is that the applicant is required to formulate goals based on a projected business plan. The OTS expects LMI lending goals to be consistent with both the proposed business plan and with the Peer HMDA Data Report, which provides national

statistics that indicate the proportion of loans that similar sized institutions made to LMI borrowers. At the time that it obtains its approval from the OTS to establish a federal savings bank, the applicant may not have a reliable way of estimating to what extent its nationwide marketing will result in loans to LMI borrowers.

Finally, the approach may not be consistent with the bank's business plan. A customer base that consists of military personnel or AFL-CIO members can be expected to have substantial proportion of LMI members. What happens if the customer base is derived from marketing through affiliated investment advisors or securities brokers? Will such a thrift be required to have the same proportion of LMI borrowers as Household, FSB? Or, as the State Farm CRA plan suggests, would it be sufficient for such a thrift to lend to LMI borrowers in the same proportion that it obtains deposits from LMI depositors?

The Approach of the Comptroller of the Currency

The Office of the Comptroller of the Currency (the "OCC") has approved charters for a number of banks that proposed to offer products without the use of traditional branches, but the OCC has attempted to fit them within the existing CRA regulations rather than elicit commitments that adjust their CRA compliance plans to their nontraditional structures.

In 1997 the OCC granted a charter to Compubank, National Association, the first national bank to deliver products and services to customers primarily through electronic means. The bank proposed to focus on deposit products and electronic bill payment and did not propose to offer any loan products. The OCC granted the bank's request to be treated as a limited purpose bank under CRA. The approval order indicated that the assessment area of the bank would be the area around its main office and that its community development services would focus on personal computer availability and access to on-line banking services for low- and moderate-income individuals.[28]

Nextbank, N.A. was chartered in 1998 as a credit card bank and, as such was eligible for limited purpose bank status under CRA. The bank intended to market its credit cards on a nationwide basis. However, as required by the CRA regulations, it chose a single MSA (the San Francisco-Oakland-San Jose MSA) as its assessment area and planned to serve this community by making qualified investments and providing community development services.[29]

The OCC recently granted a charter to CIBC National Bank.[30] The approval order states that the bank will not have any traditional branches and plans to provide access to its services by telephone and the Internet. It also will also have a physical presence through kiosks (containing ATMs and means to access the bank telephone and the Internet) located in grocery stores. The first kiosks, as well as the bank's headquarters are located in Orlando and the bank chose that as its assessment area. The OCC did not require the bank to address the activities conducted by the bank outside its assessment area.

The CIBC charter approval states that it is the third charter proposal (after Compubank and Nextbank) filed with the OCC for a national bank that will deliver products primarily through electronic means. Curiously, the OCC does not include TD Waterhouse Bank in this group. TD Waterhouse Bank markets its services, by mail, telemarketing and the Internet, to the customer base of its affiliated discount broker, which is currently the second largest Internet broker. The bank initially offered only credit card loans and was designated as a limited purpose bank, which permitted it to meet its CRA obligations through community development activities. When the bank decided to expand its product line to include mortgage products, it adopted a strategic plan. The strategic plan is based on engaging in community development activities (primarily qualified investments) in its local assessment area. In effect, the OCC continues to treat the bank as a limited purpose bank. The OCC did not require the bank to establish any targets for lending to LMI borrowers outside its assessment area.

CONCLUSION

The ability of banks to deliver products over the Internet without brick and mortar branch systems undermines much of traditional banking regulation. This article has discussed two of the ways in which that is occurring. In the case of transactions between U.S. customers and foreign banks conducted over the Internet, the statutory basis for federal banking regulation appears to be missing. Even if the Federal Reserve had the statutory authority to adopt an approach similar to that adopted by the SEC under the federal securities laws, it is not clear that the SEC's approach is either practical or desirable in for international banking activities. In the case of CRA, Director Ellen Seidman of the OTS is to be commended for her thoughtful critique of the implications of the Internet bank for CRA. However, the current CRA regulations provide little support for the CRA compliance programs that applicants for Federal savings bank charters are being obliged to accept as a condition of OTS approval.

ENDNOTES

1. OCC Corp. Decision #97-60, July 1, 1997.

2. *Electronic Operations*, 63 Fed. Reg. 65673 (1998).

3. 12 U.S.C. §3105(d)(1).

4. 12 U.S.C. §3101(3).

5. 12 U.S.C. §§3101(1), 3101(15). *See also* 12 C.F.R. §§211.22(b), 211.22(d), 211.22(v).

6. *Wolf v. Banco Nacional de Mexico, S.A.*, 739 F.2d 1458 (9th Cir. 1984), *cert. denied*, 469 U.S. 1108 (1985).

7. *See* OCC Staff Interpretive Letter No. 778, March 20, 1997.

8. 12 U.S.C. §3106(a).

9. 12 C.F.R. §211.23(f)(1).

10. 12 C.F.R. §211.2(g).

11. *Regulation K*, 49 Fed. Reg. 26002 (1984).

12. *See, e.g.,* Federal Reserve Letter to Dan C. Aardal, Esq., April 18, 1988.

13. For the same reason, revenues derived from Internet transactions with U.S. customers should be considered revenues derived from outside the United States for purposes of determining whether a foreign bank is a qualifying foreign banking organization ("QFBO"). 12 C.F.R. §211.23(b). The QFBO test is based on the location of the office that generates revenues, not on the location of the customer.

14. Securities Act Release 7516 (March 23, 1998).

15. This requirement would not be satisfied by a disclaimer which merely states that the offer is not being made where it is illegal to make it.

16. *See* Lamp Technologies (May 29, 1997), 1997 No-Act. LEXIS 638; IPONET (July 26, 1996), 1996 No-Act. LEXIS 642.

17. Securities Act Release 7516 (March 23, 1998).

18. 17 C.F.R. §240.15a-6(a)(1).

19. 12 U.S.C. §2901(a)(3).

20. 12 U.S.C. §1835a.

21. 12 U.S.C. §2903.

22. 12 U.S.C. §2906(d)(1).

23. *Community Reinvestment Act Regulations*, 60 Fed. Reg. 22156, 22167 (May 4, 1995) (joint final rule).

24. "CRA: Revisiting Some Fundamentals", Remarks by Ellen Seidman at the Consumer Bankers' Association Annual Conference, Arlington, Virginia (April 26, 1999).

25. 12 U.S.C. §2902(4).

26. Seidman Speech, n.24 *supra*, at 5.

27. "Challenges to Measuring CRA Performance", Remarks by Ellen Seidman, Director, Office of Thrift Supervision, at the Fair Lending and CRA Colloquium, Newport, Rhode Island (June 17, 1999).

28. OCC Conditional Approval No. 253, August 20, 1997.

29. OCC Conditional Approval No. 312, May 8,1999.

30. OCC Conditional Approval No. 313, July 9, 1999.