



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #980
January 2004
12 USC 36

December 24, 2003

Subject: UPS drop boxes at [**NB**], financial centers

Dear []:

This is in your response to your request for confirmation that the installation of United Parcel Service (“UPS”) drop boxes at various nonbranch offices of [**NB**], [**City**], [**State**] (the Bank), does not cause those offices to be considered branches, which would subject them to restrictions on branching set forth in 12 U.S.C. 36. Your inquiry was prompted by the OCC’s request seeking additional information about the operation of drop boxes on the premises of the Bank’s financial centers into which deposit account applicants would place their applications, along with their initial deposits, for pick up and delivery to the bank’s main office in [**State**]. The concern at the time was that the operation of these drop boxes could cause the financial centers to be considered to be branches of the Bank.¹

Since then, you advised us that the drop boxes are being replaced with UPS drop boxes. You seek OCC confirmation that, as operated, these drop boxes do not cause the financial centers to be considered branches. We understand that while Bank customers still use these drop boxes to send the account-opening documentation and a check or checks representing the initial deposit to the Bank’s main office, the UPS drop boxes also are available for use by the general public. In this regard, you note that UPS lists the drop box sites at the Bank’s financial centers, along with

¹ Facilities of national banks that provide for the in-person receipt of deposits, paying of checks, or lending of money between the bank and a customer are considered to be branches. 12 U.S.C 36(j); 12 C.F.R. 5.30(d)(1). The Supreme Court has determined that bank-provided drop boxes, in which customers place deposits, require branch authorization, and the OCC branching regulation reflects this determination. *First National Bank in Plant City v. Dickinson*, 396 U.S. 122, 137-138 (1969) (stating that “at the time a customer delivers a sum of money . . . to . . . the stationary receptacle, the bank has for all purposes contemplated by Congress in [12 U.S.C. 36(j)] received a deposit”); 12 C.F.R. 5.30(d)(1)(i). In contrast, while customers may fill out deposit account forms and give them to a bank at a bank office, this does not, standing alone, convert the facility into a branch. 12 C.F.R. 7.4004(a.) We note also that the exception in section 36(j), adopted in 1996, for automated teller machines and remote service facilities applies only to automated facilities for receiving deposits or paying withdrawals. 12 C.F.R. 7.4003.

all of its other drop box locations, on its UPS web site. In addition, the locations of the drop boxes also are available by dialing the UPS 800 number, which directs callers to nearby drop box locations, based on zip code or telephone number, along with last pick-up times. Moreover, the drop boxes at the financial centers are available to ship any items that UPS drop boxes normally handle to any location to which UPS normally delivers, including to other financial institutions. You further represent that UPS shipping supplies, such as envelopes and waybills, are provided at the drop boxes so that any person wishing to utilize the service may do so. Moreover, we understand that the drop boxes in no way indicate that they are available for use only by Bank customers, are clearly marked with UPS logos, are not be customized in any way for the Bank, and are of the same type and appearance as those placed by UPS in commercial office buildings and on street corners nationally.

You further represent that UPS, a nationwide delivery service that operates thousands of pick up locations, including drop boxes, throughout the country and which delivers to virtually everywhere in the United States and abroad, is an independent third party that is not owned, operated or controlled by the Bank. You note that UPS employs and controls the persons who provide the services in question, that the Bank and UPS do not share employees at the sites, and that only UPS employees, not Bank employees, have access to the contents of the drop boxes. Moreover, you note that Bank employees at no time handle the deposits; envelopes containing deposit account documentation and deposits are placed in the drop boxes directly by Bank customers, not by Bank employees.² Further, UPS determines the schedule by which it picks up, transports and delivers shipments.

You also represent that UPS acts as agent for the customers and all others using the drop boxes while the items are in the drop boxes or in transit, and that UPS does not act as agent for the Bank. Accordingly, UPS assumes responsibility for items during transit, and for maintaining adequate insurance covering thefts, employee fidelity, and other transit losses, as well as for loss or damage to third persons and property resulting from the installation and use of the drop boxes. Only upon physical delivery of the checks by UPS to the Bank's main office, and processing by Bank employees of the account opening documents, are the checks accepted for deposit.³

² As we understand the facts, customers seeking to open deposit accounts with the Bank may fill out application forms at these financial centers. Bank employees provide customers with information regarding Bank products and assist customers with completion of account opening documentation. In addition to the application, account disclosures, and signature cards, Bank employees provide customers seeking to open a deposit account a Bank inner envelope and a preaddressed UPS Next Day Air Envelope (the UPS envelope). The customer is instructed to place the account opening documentation, which may include a check or checks for the initial deposit, in the Bank's inner envelope, complete and retain the disclosure form on the Bank's inner envelope, and place the Bank's inner envelope in the UPS envelope. The customer is instructed to seal and place the UPS envelope in the UPS drop box. Once the UPS envelope is inside the UPS drop box, Bank employees cannot retrieve it; UPS maintains the only keys to the drop box. A UPS employee removes the contents of the drop box on a daily basis based on UPS's own routing schedule and UPS delivers the UPS envelopes to the Bank's main office in [*State*] and the other shipments to the stated addressees. The Bank then processes the account application at its main office and either opens the account or returns the applicant's check by mail if the account is not opened.

³ The Bank represents that customers are advised in writing prior to the use of the UPS service that (a) UPS, a third party delivery service, acts as agent of the customer rather than the Bank, (b) that the Bank is not responsible should the deposit be lost, stolen, damaged or delayed in delivery; and (c) the application and deposit are not considered to

For the following reasons, we confirm that the presence of the UPS drop boxes, as you describe, at nonbranch offices of the Bank does not cause those offices to be considered branches under 12 U.S.C. 36.

National banks are permitted to share space with other businesses under 12 U.S.C. 7.3001(a), subject to the requirements set forth in paragraph (c).⁴ The Bank has represented that its space sharing arrangement with UPS complies with each of these requirements. In this regard, the Bank notes that the drop boxes are conspicuously identified as belonging to UPS and that no Bank advertising suggests otherwise; that the arrangement between the Bank and UPS does not constitute a joint venture or partnership under applicable law; that the arrangement is an arm's length relationship with no shared responsibilities or liabilities; that UPS, by contract, incurs liability for security issues unless any loss or damage is the result of negligence or wrong-doing by the Bank; that the activities of UPS do not adversely affect the safety and soundness of the Bank; and that the assets and records of UPS and the Bank are segregated. According to the Bank, while the lease agreement under which UPS places its drop box in bank facilities is rent-free, this is consistent with the UPS's customary and usual practice when it places a drop box on the premises of any business that requests placement of a drop box.

Moreover, as the facts are represented by the Bank and described above, the arrangement complies with the factors set forth in 12 U.S.C. 7.1012(c)(2), which the OCC employs in determining whether a messenger service that transports items for deposit to a national bank should not be considered a branch of that bank. Section 7.1012(c)(1) provides that a messenger service is not considered a branch of a bank provided that it is established and operated by a third party. Section 7.1012(c)(2) provides that whether a messenger service is established by a third party is determined on a case-by-case basis and then provides a variety of factors that are considered in making that determination.⁵

These factors are: A party other than the national bank owns or rents the messenger service and its facilities, and employs the persons who provide the service; the messenger service must retain

be received by the Bank until received at the Bank's main office. These disclosures are contained on a form attached to the outside of the Bank's inner envelope on which the customer writes the date, the title of the account, a reference number that the Bank has assigned to the account, the check number and amount, and the UPS tracking number. In addition, the form contains a box for the customer to check in order to acknowledge receipt of the disclosures. The customer tears off and retains one copy of this form and the other remains attached to the Bank inner envelope.

⁴ These requirements pertain to conspicuous identification of the businesses, that the arrangement does not constitute a joint venture or partnership, that the relationship between the entities is at arm's length, that security issues are resolved, that the activities of the other business do not adversely affect the safety and soundness of the bank, and that the assets and records of the parties are segregated. We note that UPS and the Bank do not share any employees; consequently, the provisions of section 7.3001 that pertain to the sharing of employees are not applicable.

⁵ 12 C.F.R. 7.1012(c)(2)(i)-(vi).

the discretion to determine in its own business judgment which customers and geographic areas it serves;⁶ the messenger service maintains ultimate responsibility for scheduling, movement, and routing; 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; the messenger service assumes responsibility for the items during transit and for maintaining adequate insurance covering thefts, employee fidelity, and other in-transit losses; the messenger service must act as the agent for the customer when the items are in transit; and the bank must deem items intended for deposit to be deposited when credited to the customer's account at the bank's main office, branch office or other permissible nonbranch location.⁷

I conclude that based upon the Bank's representations and the analysis set forth above, the placement of UPS drop boxes in the Bank's nonbranch financial center offices does not cause those facilities to be considered branches of the Bank and does not subject those offices to branching restrictions and requirements. I hope that this is responsive to your inquiry.

Sincerely,

/s/ *Eric Thompson*

Eric Thompson
Director, Bank Activities and Structure

⁶ Where the messenger service and the bank are under common ownership or control, the regulation sets forth an alternative factor -- that the "the messenger service actually provides its services to the general public, including other depository institutions . . ." *Id.* at 7.1012(c)(2)(ii)(B). We note that construing the placement and operation of the UPS drop boxes on Bank premises as being subject to the control of the Bank, this alternative requirement is satisfied. The drop boxes clearly are made available to the general public.

⁷ We note that a national bank may defray all or part of the costs incurred by a customer in transporting items through a messenger service, but that 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. 12 C.F.R. 7.1012(c)(3).