



1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

*World-Class Solutions,
Leadership & Advocacy
Since 1875*

James D. McLaughlin
Director
Regulatory & Trust Affairs
Phone: 202-663-5324
Fax: 202-828-4548
jmclaugh@aba.com

April 1, 2003

Office of the Comptroller of the Currency
250 E Street, SW
Public Information Room, Mailstop 1-5
Washington, DC 20219

Attention: Docket No. 03-02

Re: Visitorial Powers and Miscellaneous Amendments
68 Federal Register 6363, February 7, 2002

Dear Sir or Madam:

The American Bankers Association (“ABA”) is responding to the proposal of the Office of the Comptroller of the Currency (“OCC”) to amend its regulations at 12 C.F.R. Parts 5 and 7 to implement the American Homeownership and Economic Opportunity Act of 2000 (“AHEOA”)¹ and to clarify the scope of its visitorial powers and other rules under 12 C.F.R. Part 7. ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Our membership—which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks—makes ABA the largest banking trade association in the country. Because the proposed amendments will benefit our members, ABA supports the proposal.

AHEOA

OCC has proposed to amend its regulations at 12 C.F.R. Parts 5 and 7 to implement the provisions of AHEOA which was intended to modernize certain provisions of the National Bank Consolidation and Merger Act² and liberalize statutory reorganization and corporate governance requirements for national banks. Specifically, AHEOA would

- Permit a national bank to reorganize to become a subsidiary of a bank holding company with OCC’s approval and the vote of shareholders holding at least two-third of the bank’s outstanding capital stock;

¹ Pub. L. 106-569, 114 Stat. 2944 (December 27, 2000) (codified at 12 U.S.C. § 215a).

² 12 U.S.C. § 215 *et seq.*

- Provide new authority for a national bank to merge with one or more of its nonbank affiliates;
- Increase the terms of national bank directors, authorize staggered terms, and with OCC approval permit a national bank to have more than 25 directors.

OCC's proposal fulfills the legislative requirements. Accordingly, ABA supports the proposal.

Visitorial Powers

The proposal would amend 12 C.F.R. § 7.4000 to clarify the scope of OCC's visitorial power authorized under 12 U.S.C. § 484 and to incorporate into the regulation two existing statutory exceptions to that authority. Specifically, OCC would add new

§ 7.4000(a)(3) stating that:

- (i) Its visitorial powers are exclusive (except where otherwise provided by federal law) with respect to national banks' activities that are expressly authorized or recognized as permissible for national banks under federal law and OCC's regulations and interpretations, including the content of those activities and the manner in which and standards whereby, those activities are conducted; and
- (ii) Only federal law may be used to decide whether OCC possesses the exclusive authority to determine both the applicability of a state law to a national bank and enforce compliance with it by national banks.

In addition, new § 7.4000(b) would include with the existing examples of federal laws that vest visitorial powers in other entities, the two statutory exceptions for visitorial powers "vested in the courts of justice," and "Congress . . . or any committee of Congress . . . duly authorized." The new exception for "courts of justice" would make clear that state authorities cannot exercise indirectly through the courts visitorial powers with which they are not otherwise empowered.

ABA concurs both with OCC's discussion of the history of visitorial powers under the National Currency Act and the National Bank Act and the proposed clarifications to § 7.400. Accordingly, ABA supports these amendments.

Other Amendments

Finally, ABA has no objection to the proposed amendments concerning limited purpose national banks, elimination of the prohibition against serving as an expert tax consultant, frequency of valuation of certain fiduciary assets, and conforming 12 CFR Part 34 to changes in the underlying statute, 12 U.S.C. § 371.

Conclusion

For the above reasons, ABA supports the proposal. Should you have any questions concerning any of these issues, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. McLaughlin". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

James D. McLaughlin