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## Submitted electronically

September 4, 2007

Office of the Comptroller of the Currency  
250 E Street, SW  
Mail Stop 1-5  
Washington, DC 20219

Re: Notice of Proposed Rulemaking, "Regulatory Review Amendments," Docket ID OCC-2007-0008; RIN 1557-AC79 (72 Fed. Reg. 36550 (July 3, 2007))

Ladies and Gentlemen:

The American Bankers Associations (ABA)<sup>1</sup> appreciates the opportunity to respond to the request of the Comptroller of the Currency (OCC) for comments on recently proposed revisions to several sections of the OCC's rules. We applaud the OCC for its continuing efforts to eliminate unnecessary burden and to ensure that its rules remain appropriate in light of constant changes to the business of banking.

ABA supports the vast majority of the changes proposed. We believe that they are consistent with safe and sound banking and will provide additional flexibility in certain key areas. There are four provisions, however, that warrant additional comment in our view. These provisions are discussed below.

### Authority, Purpose, and Scope (§ 1.1)

The OCC proposes to add to the general investment authority regulations a provision recognizing that the OCC also may determine, on a case-by-case basis, that a national bank may acquire an investment security that is not set out as one of the generic types of securities listed in the regulation. To do so, the bank's investment must be consistent with 12 U.S.C. 24 (Seventh) and with safe and sound banking practices.

The OCC's proposal appears to be well within its statutory authority, and the ABA supports the additional flexibility that would be created by the proposal. Given the industry-wide significance of OCC determinations under Part 1,<sup>2</sup> we encourage the OCC to continue

<sup>1</sup> ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, savings banks, and bankers banks--makes ABA the largest banking trade association in the country.

<sup>2</sup> As stated in the OCC's current regulation at 12 CFR 1.1(c), state banks that are members of the Federal Reserve System are also bound by the OCC's limitations on investments. Similarly, state nonmember banks are limited to activities and investments that are permissible for national banks unless the FDIC finds that the activity or investment is not a risk to the deposit insurance fund.

placing an emphasis on the timely disclosure of all approvals rendered under Part 1. In that regard, we note that the publication of permissible activities for national banks (<http://www.occ.treas.gov/corpapps/BankAct.pdf>), currently published annually, is a particularly helpful document, and we suggest that the electronic version be updated throughout the year so that it contains information about precedent-setting approvals as soon as practicable.

#### Operating Subsidiaries – Qualifying Standards (§ 5.34(e)(2)).

The OCC proposes to revise the circumstances under which a subsidiary of a national bank will qualify as an “operating subsidiary.” Currently, a subsidiary will qualify as an operating subsidiary if the parent bank owns more than 50% of the voting interests of the subsidiary *or* if the parent “otherwise controls” the subsidiary and no other party controls more than 50% of the voting interests. The OCC is proposing to replace this test with one that would require the parent bank to own more than 50% of the voting interests of the subsidiary *and* consolidate the subsidiary and parent bank under Generally Accepted Accounting Principles, as interpreted by the Financial Accounting Standards Board (FASB).<sup>3</sup> The stated reason for this change is a desire on the part of the OCC to “assure conformance with these new GAAP standards [i.e., FIN 46R].”

The proposed test may narrow the circumstances under which national banks may establish operating subsidiaries. However, we understand the need for institutions to conform to GAAP and the advantages of applying the familiar GAAP test when determining which entities qualify as operating subsidiaries. If the OCC determines that there is a need to adopt the proposal, we recommend that entities that are considered to be operating subsidiaries prior to the effective date of any change retain that status. These arrangements were created in good faith and pursuant to a rule that has been viewed for years as sufficient to ascertain when a bank subsidiary should be deemed to be an operating subsidiary. The burdens of disrupting existing arrangements would far outweigh any benefits of consistent standards applied retroactively.

#### Operating Subsidiaries – After-the-fact Notice Procedures (§ 5.34(e)(5))

The OCC proposes to require an application from a national bank that seeks to hold a limited partnership as an operating subsidiary where the bank holds less than 100% of the partnership ownership interests. The stated purpose of this approach is to “allow the OCC to review through the full application process more complex arrangements involving limited partnerships.”

This approach is likely to require a large number of applications based on the assumption that less than full ownership is a proxy for complexity. We believe that such assumption is not warranted and that there are other, less burdensome ways to achieve the OCC’s objective. For instance, the OCC could require a full application only in cases where a national bank seeks to acquire less than all the ownership interests of a limited partnership if the transaction is “complex” as that term is used in the Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities;<sup>4</sup> other

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<sup>3</sup> See FASB Interpretation No. 46 (revised), Consolidation of Variable Interest Entities (December 2003) (FIN 46R).

<sup>4</sup> 72 Fed. Reg. 1372 (Jan. 11, 2007).

investments in limited partnerships that would result in the establishment of an operating subsidiary could be subject to after-the-fact notice requirements.

#### National Bank as Guarantor or Surety (§ 7.1017)

The OCC is proposing to expand the circumstances under which a national bank may guarantee financial obligations of a customer, subsidiary, or affiliate. The ABA supports this additional flexibility.

The proposal's preamble discusses several methods by which national banks guarantee financial obligations, including the issuance of guarantees, sureties, and letters of credit. The proposed rule text refers, however, only to the authority of national banks to "guarantee" financial obligations. While we interpret "guarantee" as used in the proposed rule text to refer to the full range of activities discussed in the preamble, we suggest that this point be made clear in the final rule.

The OCC invites comment in particular on whether it should provide guidance on the risks and risk management in connection with the issuance of guarantees. The preamble discussion of this issue notes that there are differences between, for instance, guarantees and letters of credit. We believe such guidance would be helpful to the extent that regulatory expectations vary depending on the method by which a national bank acts as guarantor or surety. However, the OCC historically has been very careful not to dictate the terms of agreements entered into by private parties, and we encourage the OCC to continue that approach in any guidance on the risks and risk management of guarantees.

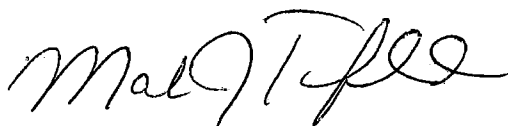
#### Conclusion

We appreciate the OCC's ongoing efforts to update its rules to remove unnecessary or outdated provisions and to preserve the flexibility in its rules that is so important for continued financial innovation. We support adoption of the rule largely as proposed, but we recommend that –

- The OCC continue looking for ways to improve access to information about recent OCC developments;
- the OCC not disrupt existing business arrangements formed under the current rules governing operating subsidiaries;
- the OCC require full applications for the establishment of operating subsidiaries involving limited partnerships only in situations involving complex transactions; and
- any guidance governing the risks and risk management of guarantor or surety activities be narrowly tailored to focus on the related regulatory expectations.

Should you wish to discuss any of the ABA's comments, please contact the undersigned at your convenience.

Sincerely,



Mark J. Tenhundfeld