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**Paul A. Smith**  
Senior Counsel  
Phone: 202-663-5331  
Fax: 202-828-4548  
[psmith@aba.com](mailto:psmith@aba.com)

March 8, 2004 Sent via email to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov)

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

Re: Docket No. 04-02; Proposed Requirement of Prior Approval Before a Fundamental Change in Asset Composition of a Bank; 69 Federal Register 892; January 7, 2004.

Dear Sir or Madam:

The Office of the Comptroller of the Currency (OCC) proposes to require a national bank to get prior OCC approval for two types of fundamental change in the composition of a national bank's assets: (1) a change in composition of all or substantially all of a bank's assets resulting from a sale or other disposition of the bank's assets, or (2) an increase in the asset size of a national bank that had previously "stripped down" in a transaction described in item (1), regardless of existing or new ownership. Transactions under (2) will be evaluated under the same standards that the OCC applies to a *de novo* national bank charter under the theory that a "stripped" or dormant charter that subsequently increases in asset size fundamentally resembles a new entrant obtaining a new charter. The American Bankers Association supports the OCC's proposal. The American Bankers Association (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 and savings banks - makes ABA the largest banking trade association in the country.

All of the bank regulatory agencies require application for chartering a new institution, for converting from one charter to another, and for a change in bank control. The Federal Deposit Insurance Corporation (FDIC) requires under 12 CFR Part 333 that a state nonmember bank get prior approval from the FDIC before changing the general character or type of business exercised by it, but the FDIC limits this to changes from the five listed businesses: commercial bank, bank and trust company, savings bank, industrial bank and cash depository. The OCC's proposal goes further, out of an apparent concern that a national bank could so alter its business by a total change of its assets that it could pose a significant safety and soundness problem. Therefore the OCC proposes to require its prior approval before such a change.

The OCC states that it will consider a number of factors in such an application for prior approval, including the purpose of the transaction, its impact on the safety

and soundness of the bank, any effect on the bank's customers, the reasons for the proposed decrease in asset size and future plans for the bank charter (including any plans for liquidation), future asset growth, future plans to market or sell the charter, and future business plans, as applicable. In reviewing an application to increase the assets of a stripped charter, the OCC will consider the bank's future business plan and whether this plan involves activities that significantly deviate from the bank's original business plan or operations prior to its stripped status. The OCC will also will consider the applicant's staffing plans, plans for oversight of the activity within the bank, and accountability to the board of directors, along with the applicant's plans to acquire, develop, or modify internal control systems adequate to monitor the new activity.

Given recent examples of troubled or failed banks that had markedly changed their business operations, such as becoming primarily a subprime credit card lender or wholesale buyer of subprime dealer paper, ABA believes that the OCC's proposal is appropriate. Extremely large shifts in the composition of a bank's assets may be made very rapidly in today's market, and such fundamental changes in asset composition raise issues of management controls and capabilities that should be reviewed *before* such changes rather than one or two years *after* them at the next examination. Further, ABA believes that this is a relatively rare occurrence and should not pose a significant new burden on community or other banks. Therefore, the American Bankers Association supports the OCC's proposal.

If you have any questions about this comment letter, please call the undersigned.

Sincerely,

A handwritten signature in black ink that reads "Paul Alan Smith". The signature is written in a cursive, flowing style with a large initial "P".

Paul A. Smith  
Senior Counsel