Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #97-92
November 1997

October 17, 1997

Mr. John Huffstutler
Senior Vice President
and Chief Regulatory Counsel
Legal Department North 3017
Bank of America, NT&SA
555 California Street, Suite 800
San Francisco, California 94104

Re: Notification by Bank of America, NT&SA, San Francisco, CA, of its intent to acquire General Fidelity Insurance Company, Application Control Number: 97-ML-08-010

Dear Mr. Huffstutler:

This responds to the notification filed by Bank of America, NT&SA, San Francisco, CA (the "Bank"), of the Bank's intent to acquire General Fidelity Insurance Company (the "Subsidiary") as an operating subsidiary. The Subsidiary is currently owned by the Bank's parent company, Bank America Corporation ("BAC").[1] The Subsidiary would underwrite and reinsure credit disability and involuntary unemployment insurance ("credit related insurance") in connection with credit card loans to customers of the Bank's affiliate, Bank of America, N.A., Phoenix, Arizona ("BANA"), and also would underwrite safe deposit box liability insurance ("safe deposit insurance") for the Bank and its bank affiliates that are in the safe deposit box business. The Subsidiary will be wholly owned by BA Leasing & Capital Corporation, an existing operating subsidiary of the Bank. Based upon the

[1] Under the Bank's proposal, the stock of the Subsidiary will be passed up to BAC by dividend and then contributed down to the Bank. The Bank has requested confirmation that, for purposes of determining compliance with the quantitative limitations prescribed by section 23A of the Federal Reserve Act, the value of the transaction whereby the stock of the Subsidiary is contributed to the Bank, is measured by the amount of affiliate liabilities assumed by the Bank and is not measured by the value of the assets acquired or by the common stock of the Subsidiary. The Bank's analysis is sound. The Federal Reserve Board has taken the position that where a bank's holding company donates the stock of a non-bank affiliate to a bank so that the donated affiliate becomes or is merged into a subsidiary of the bank, this transaction constitutes a purchase of assets if the non-bank affiliate has any liabilities on its books, and that the value of the transaction is the amount of the liabilities owed to affiliates of the bank by the donated affiliate.

representations and commitments made by the Bank as described herein, we have no objection to the Bank's plan to acquire the Subsidiary to engage in the proposed activities.

I. BACKGROUND

A. The Proposed Credit Related Insurance Activities

BAC currently underwrites various credit related insurance products through the Subsidiary, which is now a wholly-owned subsidiary of BankAmerica Insurance Group, Inc., a third tier subsidiary of BAC. The Subsidiary underwrites credit related insurance on credit card debt that is issued through BANA. BANA is the only bank that BAC owns that currently issues consumer credit cards, and the Bank refers its customers to BANA for credit cards. The Bank represents that BAC has chosen for business reasons to originate its credit card loans from BANA, to consolidate its credit related insurance activities in connection with those credit card loans in the Subsidiary, and now, to move the Subsidiary from under BankAmerica Insurance Group, Inc., to under the Bank.

Under the Bank's proposal, the current credit related insurance underwriting activities of the Subsidiary will remain unchanged. The Subsidiary will continue to underwrite and reinsure credit related insurance in connection with credit card loans to customers of BANA. The Bank believes the proposed transfer of the Subsidiary to the Bank will result in an organizational structure that is more efficient.

All loans issued through BAC's subsidiary banks are made in accordance with credit standards that are generally consistent throughout BAC. BAC's Credit Policy Group, under the direction of the BAC Credit Policy Committee, sets credit policies that are generally applicable to all BAC subsidiary banks. Accordingly, the Subsidiary would continue to underwrite credit related insurance on loans originated under credit policies established by BAC and applicable to the Bank and other subsidiary banks.

The Bank represents that the Bank and its affiliates promote BAC's brand image, products and services consistently across legal entities. The Bank notes that BAC customers may frequently be served by more than one BAC entity, and that this combination of services is designed to be as seamless as possible from the customer's perspective. For example, customers of the Bank who are interested in securing a credit card are provided this product through the Bank's affiliate, BANA. According to the Bank, BAC chooses to operate various activities in separate bank and nonbank entities to enhance its organizational efficiency and flexibility.

B. The Proposed Safe Deposit Insurance Activities

BAC also currently underwrites, through B.A. Insurance (Cayman) Ltd., a wholly-owned second tier subsidiary of BAC, safe deposit insurance for all BAC bank subsidiaries that offer safe deposit boxes. The safe deposit box liability insurance policy issued by B.A.

Insurance (Cayman) Ltd., insures the Bank, and its affiliated banks that offer safe deposit box services, from certain claims or losses arising from offering such services, including losses sustained by reason of damage, destruction, or disappearance of customers' property, other than cash.

Under the proposal, the Subsidiary will underwrite, in states where it is licensed to do business, safe deposit insurance for the Bank and its bank affiliates that are in the safe deposit box business. The Subsidiary will reinsure 100% of this business with B.A. Insurance (Cayman) Ltd., the non-bank subsidiary of BAC that currently underwrites all of BAC's safe deposit insurance. BAC proposes to move the initial underwriting of safe deposit insurance from B.A. Insurance (Cayman) Ltd., to the Subsidiary, but immediately transfer these insurance risks back to B.A. Insurance (Cayman) Ltd., via a reinsurance arrangement.

The Bank represents that BAC has elected to "self insure" the risk of loss associated with its safe deposit business through the Subsidiary, instead of managing the risk as an operating loss of each of its subsidiary banks. BAC has chosen to structure its proposed safe deposit box insurance activities in this way because it believes this structure will offer the Bank an important risk management product and enable BAC to benefit from business efficiencies that are accomplished by the proposed reorganization. Under both the existing and proposed arrangements, the risk associated with the safe deposit business will continue to reside with BAC through its Cayman subsidiary.

II. DISCUSSION

A. Underwriting and Reinsuring Credit Related Insurance

1. The "Business of Banking" Analysis

Judicial cases reflect three general principles used to determine whether an activity is within the scope of the "business of banking": (1) is the activity functionally equivalent to or a logical outgrowth of a recognized banking activity; (2) would the activity respond to customer needs or otherwise benefit the bank or its customers; and (3) does the activity involve risks similar in nature to those already assumed by banks. <u>See</u>, <u>e.g.</u>, <u>Merchants' Bank v. State Bank</u>, 77 U.S. 604 (1871); <u>M & M Leasing Corp. v. Seattle First National Bank</u>, 563 F.2d 1377, 1382 (9th Cir. 1977), <u>cert. denied</u>, 436 U.S. 956 (1978); <u>American Insurance Association v. Clarke</u>, 865 F.2d 278, 282 (2d Cir. 1988).

a. Functionally Equivalent to or a Logical Outgrowth of Recognized Banking Functions

The authority of national banks to underwrite, sell as agent, and reinsure credit related insurance, including credit disability insurance and involuntary unemployment insurance, is well established through a long line of precedents. These credit related insurance activities are part of, or incidental to, the business of banking because they enhance banks ability to recover payments on loans. Interpretive Letter 277 (December 13, 1983) (authorizing underwriting of credit related insurance); Letter dated March 31, 1995 (unpublished) (authorizing reinsurance of credit related insurance); Corporate Decisions No. 97-27 (May 2, 1997), No. 97-15 (March 17, 1997) and No. 97-06 (January 22, 1997), and Interpretive Letter 743 (October 17, 1996) (authorizing national banks to reinsure private mortgage insurance); Interpretive Letter 283 (March 16, 1984) (authorizing the sale, as agent, of credit related insurance); 12 C.F.R. Part 2 (Sales of Credit Life Insurance); and IBAA v. Heimann, 613 F.2d 1164 (D.C. Cir. 1979), cert. denied, 449 U.S. 823 (1980) (confirming the OCC's authority to adopt its credit life insurance regulation at 12 C.F.R. Part 2).

The OCC has also authorized national banks to agree to cancel outstanding loans upon the deaths or disability of borrowers by entering into debt cancellation contracts. See 12 C.F.R. § 7.1013; and First National Bank of Eastern Arkansas v. Taylor, 907 F.2d 775 (8th Cir. 1990), cert. denied, 111 S. Ct. 442 (1990) (confirming the ability of national banks to enter into debt cancellation contracts). The OCC has previously authorized all of these activities for national banks because the OCC has determined that they are directly related to and logical outgrowths of a bank's authority to make loans. As such, these activities are part of, or incidental to, the business of banking, pursuant to 12 U.S.C. § 24(Seventh).[2]

The proposed credit insurance activities similarly serve to limit a bank's risk of loss if a borrower cannot repay a loan due to disability or unemployment. The borrowers in this case often are customers of the Bank who are provided a credit card product by a Bank affiliate, rather than the Bank itself. In this circumstance, underwriting and reinsuring credit related insurance on the loans of a bank's affiliates is functionally equivalent to or a logical outgrowth of the bank's authority to conduct these activities on the bank's own loans.[3] The Subsidiary is underwriting and reinsuring the credit related insurance on loans originated by the banking organization of which the Subsidiary is a part. Each of the affiliated national banks separately has the authority to sell, underwrite and reinsure credit related insurance on their loans. For reasons of efficiency and expertise, BAC seeks to consolidate credit related insurance activities under one of its bank subsidiaries. In the context of a modern banking company with multiple lending affiliates, the authority of national banks to conduct the business of banking and activities incidental thereto must logically be construed to permit managing those activities efficiently. No purpose would be served under these circumstances by imposing the artifice of separate subsidiaries for each lending component of an integrated

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[2] A national bank may establish or acquire an operating subsidiary to conduct, or may conduct in an existing operating subsidiary, activities that are part of or incidental to the business of banking, pursuant to 12 U.S.C. § 24(Seventh), and other activities permissible for national banks or their subsidiaries under other statutory authority. 12 C.F.R. § 5.34(d)(1). Underwriting, reinsuring, and selling, as agent, credit disability insurance and involuntary unemployment insurance are, therefore, permissible for a bank's operating subsidiary as well.

[3] See generally, Corporate Decisions No. 97-27 (May 2, 1997), No. 97-15 (March 17, 1997) and No. 97-06 (January 22, 1997), and Interpretive Letter 743 (October 17, 1996).

banking company. The fact that BAC chooses for business reasons to originate some of its loans from a Bank affiliate, rather than from the Bank, should not limit the authority of the Subsidiary to engage in the proposed credit related insurance activities.[4]

For example, the OCC has authorized national bank subsidiaries to reinsure a portion of the mortgage insurance on loans originated or purchased by the parent bank or its lending affiliates where the parent bank and its affiliates use underwriting standards comparable to the parent bank's. The OCC's rationale for authorizing this activity in connection with mortgage loans that were not originated or purchased by the parent bank was that the subsidiaries were reinsuring essentially homogenous mortgage loans originated under the oversight and subject to the credit guidelines of the same overall banking company. See Corporate Decisions No. 97-27 (May 2, 1997), No. 97-15 (March 17, 1997) and No. 97-06 (January 22, 1997), and Interpretive Letter 743 (October 17, 1996). Thus, the fact that the banking companies had chosen for business reasons to originate some portion of their mortgage loans from bank affiliates, or to purchase some portion of their mortgage loans, did not in those instances limit the subsidiaries' authority to engage in the proposed reinsurance activity. Similarly, in BAC's case as discussed above, the fact that BAC chooses for business reasons to originate some of its loans from a Bank affiliate, rather than from the Bank, should not limit the authority of the Subsidiary to engage in the proposed credit related insurance activities.

b. Respond to Customer Needs or Otherwise Benefit the Bank or its Customers

The Bank's proposal benefits the Bank because it enables the Bank and the Subsidiary to obtain new sources of credit related income. The efficiencies obtained by BAC through the Bank's involvement in these activities may promote competition between underwriters of credit disability and involuntary unemployment insurance, and expand consumer choices. The Bank's involvement in these activities through the Subsidiary will do nothing to mitigate the benefits of optional credit insurance for consumers.

c. Risks Similar in Nature to Those Already Assumed by National Banks

Because the Bank's affiliates' credit standards are the same as the Bank's, the risks assumed by the Subsidiary through the proposed credit related insurance activities are similar to the types of lending risks that the Bank already manages. Moreover, the risks assumed by the Subsidiary when it engages in the proposed credit related insurance activities are similar to

[4] The OCC has also long permitted national banks to offer correspondent banking services to other banks as part of the business of banking. See Interpretive Letter 754 (November 6, 1996). The Bank, in providing these credit insurance services to its affiliated bank, is essentially performing a correspondent service similar to those previously authorized. See, e.g., Interpretive Letter 513 (June 18, 1990); Interpretive Letter 493 (November 22, 1989); Interpretive Letter 467 (January 24, 1989).

the kinds of risks already assumed by national banks that underwrite credit related insurance. These risks are similar for all borrowers with the same risk characteristics throughout the BAC banking organization, regardless of the identity of the lender.

2. The "Incidental to Banking" Analysis

Even if the Bank's credit related insurance proposal were not viewed as part of the business of banking, the proposal would qualify as incidental to the business of banking. The Bank's proposal is incidental to a bank's authority to make loans, pursuant to 12 U.S.C. § 24(Seventh), because underwriting and reinsuring credit related insurance enhances a national bank's ability to receive repayment for its loans; promotes the lending business of BAC's subsidiary banks by making available a credit related product sought by borrowers; and enables BAC to avoid economic waste in connection with the lending activities of its subsidiaries.

As discussed above, the OCC and the courts have long authorized national banks to underwrite, reinsure, and sell, as agent, credit related insurance. The OCC's approvals and court holdings concluded that these activities are incidental to a bank's lending activities because they protect banks' interest in their loans by reducing the risk of loss if borrowers cannot make their loan repayments. See Interpretive Letter 277, supra.; Interpretive Letter 283, supra.; 12 C.F.R. Part 2, supra.; IBAA v. Heimann, supra.; OCC letter dated March 31, 1995, supra. See also Corporate Decisions No. 97-27, supra., No. 97-15, supra., and No. 97-06, supra, and Interpretive Letter 743, supra.; 12 C.F.R. § 7.1013; First National Bank of Eastern Arkansas v. Taylor, supra. The rationale behind the above OCC precedents and court cases on credit related insurance is applicable to the Bank's credit related insurance proposal. Specifically, the Bank's proposal protects a national bank's interest in its loans by reducing the risk of loss if borrowers cannot make their loan repayments.

OCC precedent has also established that the provision of certain products and services is permissible as incidental to the business of banking when needed to successfully package or promote other banking services. See Interpretive Letter 754 (November 6, 1996) (national bank operating subsidiary may sell general purpose computer hardware to other financial institutions as part of larger product or service when necessary, convenient, and useful to bank permissible activities); Interpretive Letter 742 (August 19, 1996) (bank may provide full Internet access to customers and non-customers in order to create a package of related services needed to satisfy consumer demand and enable the bank to successfully market its home banking services); Interpretive Letter 653 (December 22, 1994) (national banks may offer non-banking products as part of larger product or service when necessary, convenient, and useful to bank permissible activities); Interpretive Letter 611 (November 23, 1992) (bank selling home banking service may also provide customer access to non-banking services "to increase the customer base and the usage of the program").

Case authority also holds that national banks have an incidental power to promote their banking services, including by offering incidental services desired by customers. See

Franklin Nat'l Bank v. New York, 347 U.S. 373 (1954) (advertising of savings accounts); Clement National Bank v. Vermont, 231 U.S. 120 (1913) (promoting the bank's deposit services by computing, reporting and paying the state tax levied upon the interest earned by bank customers on their deposits); Corbett v. Devon Bank, 299 N.E.2d 521, 12 Ill. App. 3d 559 (1973) (as a means of promoting its banking business, a national bank may sell state motor vehicle licenses).[5] Customer convenience is one of the most important elements involved in competition among financial institutions. See Oklahoma v. Bank of Oklahoma, 409 F.Supp. 71, 88. Cf. Order of the Federal Reserve Board Approving Notice by Mellon Bank Corporation to Acquire an Employee Benefits Consulting Company (June 16, 1997) (The Federal Reserve Board's (the "Board") Order approved Mellon Bank Corporation's application to acquire an employee benefits consulting company that also provided insurance-related services. The Board determined that the provision of insurance-related activities was necessary and "incidental" to banking activities, because the employee benefits consulting company would operate at a competitive disadvantage if it could not provide the insurance-related services.).

Underwriting and reinsuring credit related insurance similarly is incidental to banks' lending activities to the extent offering these activities enhance the successful packaging or promotion of the lending activities of BAC's subsidiary banks. These activities will promote the banking business of BAC's subsidiary banks, i.e., making loans, by enabling customers of BAC's subsidiary banks to make timely repayments on their loans and enhancing the banks' ability to secure repayment.[6] Moreover, BAC's reorganization, whereby the Subsidiary would be transferred to the Bank, will permit a more efficient way to offer credit related insurance products, and could therefore result in more cost effective options for customers.[7] Accordingly, the Bank's credit related insurance proposal enhances the efficiency and quality of banking services and products desired by customers.

Finally, in connection with reviewing the scope of national banks' incidental powers authority, the courts have also determined that, within reasonable limits, certain activities can be incidental to banking when those activities enable a bank to realize gain or avoid loss from activities that are part of or necessary to its banking business. See generally, Morris v.

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[5] The concept of promotional incidental powers for bank holding companies was judicially approved in National Courier Ass'n v. Board of Governors, 516 F.2d 1229, 1240 (D.C. Cir. 1975) (analogizing to the powers of national banks under 12 U.S.C. § 24(Seventh), the court agreed that "[i]n enumerating the activities that could be carried on, [Congress] certainly could not have meant to forbid engagement in other 'incidental' activities as were reasonably necessary to carrying out those that were enumerated.")

[6] Notably, since the Bank's proposal is related to a specific bank product, i.e., bank loans, the conclusion that the Bank's proposal is, at least, incidental to banking is particularly compelling. Compare Corbett v. Devon Bank, 299 N.E.2d 521, 12 Ill. App. 3d 559 (1973) (where the activity permitted by the court, i.e., selling state motor vehicle licenses, was not related to a specific bank product).

[7] Of course, all credit related insurance activities must be conducted consistently with applicable anti-tying provisions of 12 U.S.C. § 1972.

Third Nat'l Bank, 142 F. 25 (8th Cir. 1905), cert. denied, 201 U.S. 649 (1906); Birdsell Mfg. Co. v. Anderson, 104 F.2d 340 (6th Cir. 1939); Bailey v. Babcock, 241 F. 501 (W.D. Pa. 1915); Cooper v. Hill, 94 F. 582 (8th Cir. 1899); Cockrill v. Abeles, 86 F. 505 (8th Cir. 1898); National Bank v. Case, 99 U.S. 628 (1879); First Nat'l Bank v. National Exchange Bank, 92 U.S. 122 (1875). Thus, for example, national banks as an exercise of their incidental powers related to their lending powers have been permitted to acquire and hold otherwise impermissible property and engage in otherwise impermissible business activities. As one court observed: "A national bank may lawfully do many things in securing and collecting its loans, in the enforcement of its rights and the conservation of its property previously acquired, which it is not authorized to engage in as a primary business." Morris v. Third Nat'l Bank, supra.

The general conclusion reached by the courts, i.e., that activities that enable a bank to realize gain or avoid loss from activities that are part of or necessary to its banking business are incidental activities to banking, is directly applicable to the Bank's credit related insurance proposal. Underwriting the proposed credit related insurance on its affiliate's loans enables the Bank to generate additional income by taking advantage of business efficiencies accomplished by the proposed reorganization. The ability to conduct this activity in a subsidiary of the Bank, instead of in a subsidiary of the affiliated bank, provides BAC with organizational flexibility that will enable BAC to avail itself of benefits that result from conducting the activity in the most efficient manner, and thereby avoid economic waste.[8]

B. Underwriting Safe Deposit Insurance

1. The Safe Deposit Box Business Generally

The safe deposit box business involves renting, for remuneration, safe deposit boxes. See 10 Am Jur 2d Banks § 469 (Safe Deposit Business and Boxes). The safe deposit business was approved by the United States Supreme Court as being within the business of banking in Colorado National Bank of Denver v. Bedford, 310 U.S. 41 (1940), based on the Court's finding that "national banks do and for many years have carried on a safe deposit business." Pursuant to 12 U.S.C. § 24(Seventh), a national bank's investment in the stock of a safe deposit business is restricted to an amount equal to 15 percent of the capital stock of the bank and 15 percent of the bank's unimpaired surplus.

As discussed previously, a national bank may establish or acquire an operating subsidiary to conduct, or may conduct in an existing operating subsidiary, activities that are part of or incidental to the business of banking, pursuant to 12 U.S.C. § 24(Seventh), and other

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[8] We note that the OCC has, on many occasions, permitted national banks to perform services for affiliates. See Interpretive Letter No. 513 (July 1990) ("Allowing a bank holding company to consolidate servicing operations in a single entity permits all of the banks in the holding company to enjoy economies of scale in obtaining the services."). See also, Interpretive Letter No. 493 (December 1989); and Interpretive Letter No. 398 (January 1988).

activities permissible for national banks or their subsidiaries under other statutory authority. 12 C.F.R. § 5.34(d)(1). The safe deposit business is, therefore, permissible for a bank's operating subsidiary as well.

As a consequence of engaging in the safe deposit business, a national bank assumes certain risks based on its obligation for safe keeping of the contents of the safe deposit boxes. Banks effectively underwrite this risk since it is a component -- an unavoidable aspect -- of offering safe deposit boxes to customers. To manage this risk, a bank may purchase safe deposit insurance, assume the risk directly, or transfer this risk to a subsidiary.

2. The "Business of Banking" Analysis

a. Functionally Equivalent to or a Logical Outgrowth of Recognized Banking Functions

Underwriting safe deposit insurance for the Bank and its affiliates is a functional equivalent or a logical outgrowth of a bank's safe deposit business.[9] As part of being in the safe deposit business, banks assume the risk of loss arising from offering safe deposit boxes. A bank may transfer these banking risks to a subsidiary to manage its risk exposure. A bank also may assume these banking risks from affiliates for a fee and establish reserves to cover potential losses.[10] This simply adds volume to the bank's existing *de facto* underwriting activity for its own safe deposit boxes.

Since a bank and its bank affiliates are separately able to assume the liability of their respective safe deposit businesses, when the in-house safe deposit business of each bank in a group of affiliated banks is aggregated in a single operating subsidiary, the group of related banks, viewed as a whole, are not engaging in any new activities. The banks are underwriting safe deposit insurance to the same extent they were permitted to do so before consolidating the activity in an operating subsidiary. Consolidation is simply a business choice to take advantage of the benefits of a centralized operation.[11] In fact, BAC has

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[9] The OCC has also long permitted national banks to offer correspondent banking services to other banks as part of the business of banking. See footnote 4, supra. The Bank, in providing these safe deposit insurance services for itself and its affiliated banks, is essentially performing a correspondent service similar to those previously authorized. See, e.g., Interpretive Letter 513 (June 18, 1990); Interpretive Letter 493 (November 22, 1989); Interpretive Letter 467 (January 24, 1989).

[10] Cf. Letter from Richard V. Fitzgerald, Chief Counsel, to John J. Gill, General Counsel, American Bankers Association (October 22, 1986) (permitting national banks to participate in a nonassessable mutual, not-for-profit insurance company as policyholders, in order to obtain insurance protection for themselves and their management, although the policyholder banks were also considered insurers as well as insureds).

[11] See footnote 8, supra.

represented that its proposed safe deposit activities are essentially an internal risk management function that is being centralized for risk management efficiencies.

b. Respond to Customer Needs or Otherwise Benefit the Bank or its Customers

The proposed safe deposit insurance activity benefits the Bank and its Subsidiary because it enables the Bank and the Subsidiary to manage the risks in the safe deposit business and to obtain new sources of income. The Subsidiary's involvement in this activity will benefit the Bank by providing a risk management mechanism for the Bank's own safe deposit business.

c. Risks Similar in Nature to Those Already Assumed by National Banks

The risks assumed by a bank when it underwrites safe deposit insurance for its own business or for affiliates is the same risk a bank already assumes when it engages directly in the safe deposit business. In this case, the Bank is transferring its own and its affiliates' safe deposit business from B.A. Insurance (Cayman) Ltd., to the Subsidiary, and then transferring the risk back to B.A. Insurance (Cayman) Ltd. for business reasons. Thus, the proposed arrangements will not alter the nature of the banking risks involved or change the party that ultimately bears these risks.

3. The "Incidental to Banking" Analysis

Even if the proposed safe deposit insurance activity were not viewed as part of the business of banking, it would be incidental to this business because the activity enables the Bank and its bank affiliates to manage risks arising from their safe deposit business by transferring these risks to the Subsidiary and ultimately an affiliate. The proposed activities are also incidental to banking because they permit these banks to operate efficiently and avoid economic waste in connection with this business.[12]

The safe deposit insurance activities proposed for the Subsidiary are incidental to banking because they enable BAC to promote the safe deposit business of the Bank and its affiliates. This results from enhancing the efficiency and quality of this business by permitting the Bank to transfer risks from the safe deposit business to the Subsidiary. The Bank represents that BAC has elected to "self insure" the risk of loss associated with its safe deposit business, through the Subsidiary, instead of managing the risk as an operating loss of its subsidiary banks individually. "Self insurance" through the Subsidiary is a way for BAC to pool the risks of the safe deposit business, and is essentially an internal risk management function that is being centralized for risk management efficiencies. Thus, by enhancing the efficiency and

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[12] See pp. 6 - 8, supra., discussing national banks' incidental powers to avoid economic waste.

quality of the Bank's and its affiliates' safe deposit business, BAC will be able to promote its safe deposit business.

The Subsidiary's assumption of the Bank's and its national bank affiliates' risks arising from safe deposit business activities similarly is incidental to banking because it enables these banks to establish a consolidated, more cost effective means of managing their banking risks. BAC's business decision to place safe deposit business risks in one subsidiary, rather than establish subsidiaries for each bank to assume those risks, enables those banks to avoid economic waste and maximize the franchise value of their charters.[13]

III. CONCLUSION

Based on the foregoing facts and analysis, and the representations and commitments made by the Bank in connection with this application, we conclude that the Bank's proposed credit related insurance and safe deposit insurance activities are permissible for national banks, and we have no objection to the Bank's plans to acquire the Subsidiary and expand its activities to include underwriting safe deposit insurance for the Bank and its affiliates.

Sincerely,

/s/

Julie L. Williams
Chief Counsel

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[13] See footnote 8, supra.