Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

May 3, 2004

Interpretive Letter #1001
August 2004
12 CFR 1

Re: **[ ]** (“Bank”)

Dear **[ ]**:

This responds to your inquiry concerning whether the Bank may purchase and hold certificates issued by the **[ ]** (“ ”) and, if so, whether the certificates qualify as Type I securities under 12 C.F.R. Part 1. For the reasons discussed below, we conclude that the certificates qualify as Type I securities and are permissible for investment by national banks without limitation, subject to safety and soundness considerations.

The Bank has asked whether it may invest in unrated certificates of participation (“Certificates”) representing undivided fractional interests in a stream of principal and interest payments of up to $130 million due to **[ ]** under a loan it made to a third party. The interest and principal payments under the loan may total up to $130 million. The Certificates are to be sold in initial purchase amounts of $1 million and additional increments of at least $100,000. **[ ]** has guaranteed the payment of principal and interest payments due under the Certificates. The **[ ]** guaranty, in turn, is backed by the full faith and credit of the United States. **[ ]** will use the proceeds of the Certificates to fund the loan to the third party.

[ ] is an agency of the U.S., created under the Foreign Assistance Act.[1] **[ ]** funds loans for projects sponsored by or involving U.S. businesses in less developed countries through the issuance of certificates of participation. **[ ]** also guarantees investors in certificates of participation against loss on terms and conditions **[ ]** may establish. **[ ]** has authority to issue guaranties backed by the full faith and credit of the United States.[2]

A national bank may deal in, underwrite, purchase, and sell Type I securities for its own account.[3] Type I securities include obligations issued or guaranteed by a U.S. governmental

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[1] 22 U.S.C. §§ 2191, 2194.

[2] 22 U.S.C. § 2197(c).

[3] *See* 12 C.F.R. § 1.3(a) and OCC Interpretive Letter No. 579 (Mar. 24, 1992).

department or agency if the obligation or guaranty commits the full faith and credit of the U.S. for the repayment of the obligation.[4] Type I securities also include obligations representing an interest in a loan or a pool of loans made to third parties where a U.S. department or agency validly pledges the full faith and credit of the U.S. for the full and timely payment of the principal and interest on the loan(s) in the event of non-payment by the third party obligor(s).[5] The amount of Type I securities a national bank may deal in, underwrite, purchase, and sell is not limited to a specific percentage of a bank's capital and surplus, and subject only to the exercise of prudent banking judgment.[6]

The Certificates appear to qualify as Type I securities. The Certificates represent undivided fractional interests in principal and interest payments due to **[ ]** under a loan it made to a third party. **[ ]** unconditionally guarantees the payment of principal and interest owed to Certificate holders. The **[ ]** guaranty is backed by the full faith and credit of the U.S. Thus, a national bank may be able to purchase and hold the Certificates as Type I securities in unlimited amounts, subject to the exercise of prudent banking judgment.

The Certificates are one example of the instruments that **[ ]** may issue and guarantee. Other **[ ]** issuances with different terms and guaranties, and **[ ]** insured bonds,[7] may not qualify as Type I securities. It is the responsibility of the purchasing national bank to carefully review the terms of any securities to determine whether the issuance qualifies as a Type I security.

I trust the foregoing is responsive to your inquiry. If you have additional questions, please do not hesitate to contact me at (202) 874-5210.

Sincerely,

signed

Tena M. Alexander
Special Counsel
Securities & Corporate Practices Division

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[4] 12 C.F.R. § 1.2(j)(2).

[5] 12 C.F.R. § 1.2(j)(3).

[6] *Id.*

[7] **[ ]** insurance may be purchased by a bond issuer as a credit enhancement for a bond issue. **[ ]** insurance is limited by its terms, *i.e.*, the insurance may not necessarily cover the entire payment obligation under the bond in the event of a payment default and the insurance coverage will compensate the bondholder only for a default caused by an insured political event that **[ ]** is authorized to insure. **[ ]** may insure against risks such as the risk of loss of all or part of an investment in an approved project due to expropriation or confiscation by action of a foreign government, loss due to war, revolution, insurrection or civil strife, and loss due to business interruption caused by these risks or transfer or convertibility risk. 12 U.S.C. § 2194(a)(1)(A) - (D).