Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #1076
December 2006
12 USC 84
12 USC 24(11)

November 14, 2006

Subject: Investment Limit of 12 U.S.C. § 24(Eleventh)

Dear **[ ]**:

Your letter to Barry R. Wides, Deputy Comptroller, Community Affairs, has been referred to me for response. On behalf of your client, **[Bank]**, **[City, State]** ("Bank"), you requested confirmation that the investment authority contained in 12 U.S.C. § 24(Eleventh) is separate and distinct from the lending limits provided in 12 U.S.C. § 84. As discussed below, we agree; however, other considerations, such as avoidance of unsafe or unsound concentrations, may limit a bank's aggregate investments in, and loans to, a given entity, regardless of the source of authority relied upon by the bank for each type of investment or extension of credit.

Twelve U.S.C. § 24(Eleventh) permits national banks to make direct or indirect investments that promote the public welfare by benefiting primarily low- and moderate-income communities or families, subject to certain limits.[1] Your client contemplates making an investment in a limited partnership that will engage in community development activities.[2] The Bank also wishes to extend a line of credit to the limited partnership. Accordingly, you seek clarification of the interaction between the investment limits in 12 U.S.C. § 24(Eleventh) and the lending limits contained in 12 U.S.C. § 84.[3] You have requested confirmation that these two limits are separate and independent of each other.

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[1] This description reflects recent amendments made by the Financial Services Regulatory Relief Act of 2006, Pub. L. No. 109-351, § 305(a), 120 Stat. 1966, 1970 (Oct. 13, 2006). Under 12 U.S.C. § 24(Eleventh) as amended, aggregate investments may not exceed five percent of paid-in and unimpaired capital and unimpaired surplus unless the OCC approves a higher amount. However, in no case may aggregate investments exceed 15 percent of paid-in and unimpaired capital and unimpaired surplus. The OCC's implementing regulation, 12 C.F.R. Part 24, will be amended to the extent that it is inconsistent with the new statutory language.

[2] We will assume for purposes of this letter that the proposed investment will meet the standards of the amended 12 U.S.C. § 24(Eleventh) by "benefiting primarily low- and moderate-income communities."

[3] Under 12 U.S.C. § 84, loans and extensions of credit to one borrower are generally limited to 15 percent of unimpaired capital and surplus, or 25 percent of unimpaired capital and surplus if the portion above 15 percent is secured with qualifying collateral. The statute also contains a number of exceptions to these general rules.

You correctly point out that the OCC considers investment and lending limits to be separate. For example, under 12 U.S.C. § 24(Seventh), national banks may purchase "investment securities" for their own account up to a limit of ten percent of capital and surplus. The OCC's implementing regulations are found in 12 C.F.R. Part 1. The OCC has long held that this investment limit is separate and distinct from the lending limits in 12 U.S.C. § 84 and implementing regulations in 12 C.F.R. Part 32. The OCC's lending limit regulations provide:

> The lending limits in this part are separate and independent from the investment limits prescribed by 12 U.S.C. 24 (Seventh), and a national bank may make loans or extensions of credit to one borrower up to the full amount permitted by this part and also hold eligible securities of the same obligor up to the full amount permitted under 12 U.S.C. 24 (Seventh) and 12 CFR part 1.

12 C.F.R. § 32.1(c)(2). This regulation, originally Interpretive Ruling 1180, can be traced back at least to 1948. Thus, purchases of debt securities under the investment authority contained in 12 U.S.C. § 24(Seventh) are not considered loans to the issuer for purposes of the lending limit.

The same rationale would apply to the investment limits of 12 U.S.C. § 24(Eleventh). Moreover, OCC regulations at 12 C.F.R. § 24.1(d) provide:

> National banks that make loans or investments that are designed primarily to promote the public welfare and that are authorized under provisions of the banking laws other than 12 U.S.C. 24(Eleventh), may do so without regard to the provisions of 12 U.S.C. 24(Eleventh) or this part.

Therefore, I conclude that the investment authority of 12 U.S.C. § 24(Eleventh) should be considered as separate and independent from the lending limits of 12 U.S.C. § 84. However, while both these sources of legal authority are potentially available, banks must be mindful of the safety and soundness issues that arise with undue concentrations in their exposure to one entity. Banks should have systems and controls in place to monitor and control their credit concentrations. Excessive exposure to any given entity is an unsafe or unsound practice and the OCC retains the right to criticize such an exposure. *See, e.g.*, Comptroller's Handbook, *Loan Portfolio Management*, April 1998; OCC Bulletin 95-7, *Identifying Credit Concentrations*, February 9, 1995.

I hope that this has been responsive to your inquiry. If you have further questions, please do not hesitate to contact me at (202) 874-5300.

Sincerely,

/s/

Christopher C. Manthey
Special Counsel
Bank Activities & Structure Division