Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

June 28, 2004

Conditional Approval #646
July 2004

Ms. Mary E. Schaffner
Senior Counsel
Wells Fargo Bank, National Association
1700 Wells Fargo Center
Sixth & Marquette
Minneapolis, MN 55479

Re: Application by Wells Fargo Bank, N.A. to acquire an operating subsidiary
OCC Control No. 2004-ML-08-0004

Dear Ms. Schaffner:

On April 19, 2004, you submitted an application, pursuant to 12 C.F.R. 5.34(e)(5)(i), on behalf of Wells Fargo Bank, N.A., (the Bank[1]), to acquire an operating subsidiary in which a financial services company chartered and operating in the United Kingdom ("UKCo") also will have an interest.[2] The subsidiary ("InvestCo") would be a Delaware chartered limited liability company.[3]

The Bank, through an existing operating subsidiary, will purchase and hold two classes of preferred membership shares, designated as Class B and Class C shares, of InvestCo. As a result of holding these units, the Bank will control 10% of the voting rights and be the first in the order of priority to receive preferred distributions out of the profits of InvestCo. UKCo will purchase and hold all of the common shares of InvestCo. As a result of holding these shares, UKCo will control 90% of the voting rights but will have no preferred distribution rights over the Class B and Class C shares. Also as a result of owning the common shares,

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[1] For purposes of this decision, "the Bank" refers to Wells Fargo Bank, N.A. and any applicable subsidiaries.

[2] For purposes of this decision, "UKCo" refers to the United Kingdom financial services company as well as any applicable subsidiaries or affiliates.

[3] InvestCo will have two offices, one in the United States and one in the United Kingdom. Meetings of its board of directors will occur in the UK and the directors will be residents of the UK. All relevant activities will occur in the UK, except that the U.S. office will hold a duplicate set of books and records, and maintain the original "membership register," which will record the owners of the various units.

UKCo may elect four of the five members of InvestCo's board; the Bank may elect the fifth member.

Although the Bank, as a result of holding the Class B and Class C preferred shares, retains only 10% of the voting rights, approval by the holders of the preferred shares will be required in order for InvestCo to take certain actions, including engaging in activities other than those provided in the LLC agreement. In the event of any breach by InvestCo of the narrow constraints on its permissible activities, the Bank will have the right to require redemption of the preferred shares by InvestCo or to elect four additional members of the board of directors, thereby giving it control of the InvestCo board.

Likewise, if certain "specified events" occur, the Bank, as holder of the preferred shares, will have the right, upon notice which varies from one to ten days, to elect an additional four members to the board of InvestCo or to require InvestCo to redeem its shares. These "specified events" include any breach by InvestCo or by UKCo of the terms of the transaction documents, any failure of distributions on the preferred shares to be paid, a determination by the Bank that the economic benefit that it expected to receive from the transaction has been decreased by a specified margin as a result of changes in market interest rates, currency exchange rates, or other market conditions, or in the event that the net worth of InvestCo falls below a certain level.[4]

The ownership structure is consistent with InvestCo's status as an operating subsidiary. Under OCC's regulations, a national bank operating subsidiary includes a corporation or other entity in which "the parent bank owns more than 50 percent of the voting (*or similar type of controlling*) interest of the operating subsidiary; or the parent bank otherwise controls the operating subsidiary and no other party controls more than 50 percent of the voting (*or similar type of controlling*) interest in the operating subsidiary." 12 C.F.R. 5.34(e)(2) (emphasis added). The Bank, through its ownership of the preferred shares will hold 10% of the ordinary vote of the company, and UKCo will hold 90%. However, InvestCo's activities will be narrowly constrained by its governing documents to those activities listed above, which are permissible for national banks and their operating subsidiaries, and any decision to take any action outside of those constraints will require the approval of the Bank as a result of its ownership of the preferred shares.

Moreover, any breach of those restrictions by InvestCo will entitle the Bank to require InvestCo to redeem the Bank's preferred shares or to take control of InvestCo through the election of four additional directors that would give the Bank control of the InvestCo board. In addition, the Bank will have substantial rights to appoint four additional directors, thereby gaining control of the InvestCo board, or to require redemption of its preferred shares, upon the occurrence of a variety of "specified events" including those set forth above. Under these circumstances, and particularly where the subsidiary will engage in the limited types of activities provided for here, the OCC has determined that this gives the parent bank more than

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[4] InvestCo will also have the right to redeem the shares at any time, and the holder of the preferred shares will have the right to redeem the shares after the 30th anniversary of their issuance.

50% of the "similar type of controlling interest" of a subsidiary for purposes of section 5.34(e)(2). *See* OCC Conditional Approvals No. 536 (June 21, 2002) and No. 595 (June 5, 2003).[5]

You represent that UKCo intends to apply the funds it will indirectly receive from the Bank primarily to refinance existing assets or to fund certain of its operations on a more cost effective basis. We understand that the specific UKCo affiliates to receive funding will be investment grade companies and subject to the approval of the Bank.

Under InvestCo's LLC agreement, InvestCo may only invest in and hold various specified permitted investments; receive and collect all amounts due from the permitted investments; incur, maintain and pay liabilities incidental to managing the permitted investments; perform its obligations under the transaction documents, and engage in activities or transactions necessary or incidental to its obligations under the transaction documents that are in compliance with UK, Delaware and other applicable law; and deal with eligible collateral pursuant to the repurchase transactions.

The activities of the proposed subsidiary are clearly permissible. National banks may hold, purchase and sell loans and other extensions of credit as well as interests in loans and other extensions of credit and undertake activities that are incidental to those activities. 12 U.S.C. 24(7th); 12 C.F.R. 5.34(e)(5)(v)(C), (D). National banks may also hold and manage permissible investment assets. *Id.* at (e)(5)(A).

Thus, we believe that the Bank is legally authorized to acquire InvestCo as an operating subsidiary under 12 U.S.C. 24(7th) and 12 C.F.R. 5.34 subject to OCC examination, supervision, and regulation to the same extent as the Bank's other operating subsidiaries.

As part of its due diligence process, the Bank has received from UKCo a representation that the UK Financial Services Authority (FSA) has previously examined this type of proposal by UKCo and confirmed its non-objection to these types of transactions by UKCo subject to a cap on the aggregate amount of all such transactions by UKCo. UKCo represented that this transaction is the third that it will undertake and that it will remain within that cap. UKCo also must still seek FSA nonobjection to this transaction prior to consummation and UKCo must provide evidence of the FSA's nonobjection to the Bank at the time of consummation. The Bank has also obtained, as further due diligence, formal positive opinion letters from its own UK counsel as well as that prepared by UK counsel engaged by UKCo.

Subsequent to the filing of this application, a proposed interagency policy guidance on complex structured finance transactions was published for public comment. The proposed guidance emphasizes risk identification and management processes that will enable institutions to avoid illegal or inappropriate transactions wherein the counterparty is circumventing regulatory or

[5] We note also that the Bank represents that InvestCo will be treated as a consolidated subsidiary under GAAP. This is also consistent with our determination that InvestCo is properly considered to be an operating subsidiary of the Bank. 12 C.F.R. 5.34(e)(4).

financial requirements, evading tax liabilities, or furthering other illegal or inappropriate behavior.

During the course of our evaluation of this application, we reviewed the Bank's preexisting structured finance transaction policy and procedures in comparison to the recently published draft guidance. Based upon that review, we concluded the Bank already has in place formal policies and procedures that substantively satisfy the intent and thrust of that guidance.

The draft policy guidance envisions mechanisms established by a bank's directorate and senior management that will identify transactions with inherently higher reputation and legal risk; verify legality and appropriateness; and, require enhanced corporate governance. Hallmarks of such an effective risk management and internal control system include formal policies and procedures clearly defining which transactions and products are applicable; a delineated approval process, evaluation of reputation and legal risks; confirmation of counterparty's business objective and accounting/financial disclosure strategy for the transaction; document maintenance standards; monitoring reports of adequate detail and frequency for senior management and directors; adequate policy and procedures compliance training for personnel engaged in the structured transaction process; periodic independent review to test the effectiveness of policy and procedures implementation; and, effective internal audit coverage of a bank's structured transaction business.

With that view, we noted the Bank has formalized its risk management processes and controls for structured finance transactions by adopting a formal line of business policy which explicitly ensures that structured finance transaction risks are appropriately identified, evaluated and controlled. Within that policy, risk tolerance levels are expressed for structured transactions by category and the implementation of a risk control framework called for. That framework is characterized by expressed standards, criteria and macro limits for specific categories of structured transactions; defined responsibilities and approval authorities; reporting systems; assessment of a transaction's economic substance and appropriateness; and internal audit review.

To ensure sufficient independence in the adoption of the structured finance transaction policy, the policy was ratified by the Finance Committee of the Bank's parent company board of directors. This latter committee is composed solely of members outside of Wells Fargo & Company executive management and thus provided an independent consideration of the reputation risk generic to such transactions. As the first actual transaction to be encompassed by the Bank's policy, the particulars of the UKCo proposal were used as a specific illustration for the Finance Committee's evaluation of the policy's implications.

The policy calls for all functional areas relevant to the transaction to provide interdepartmental oversight, e.g., accounting, legal, financial control, funds management, and credit risk. Senior officer cross functional review is achieved by the creation of an executive Transaction Review Committee which must approve each transaction. The policy charges this committee with reviewing all risks inherent in a transaction and the gauging of its economic purpose and benefits. To ensure a sufficient level of independent scrutiny, the Bank's chief compliance officer, its general counsel, is a voting member of the committee.

As a byproduct of subjecting the UKCo proposal to the new structured finance policy process, the Bank has explicitly represented to the OCC that in the formal course of risk management, it has evaluated the purpose of the transaction to assess whether UKCo has attempted to achieve a financial statement objective that could be construed as materially misrepresenting its financial condition, even if in conformance with generally accepted accounting principles applicable to UKCo (GAAP).

If it is subsequently determined that the proposed transaction, or any subsequent modification or amendment to the proposed transaction, may result in materially misleading financial statements, the Bank has further represented that it will decline the transaction, condition approval upon UKCo making express disclosures regarding the nature and financial impact of the transaction on UKCo's financial position, or take other steps to assure that the role of the Bank is appropriate. In addition, the Bank will have an appropriate process for verifying that UKCo has satisfied any conditions that the Bank establishes concerning disclosures. As part of the process to determine appropriateness, the Bank may seek representations and warranties from UKCo stating the purpose of the transaction, how UKCo will account for the transaction, and that UKCo will account for the transaction in accordance with GAAP applicable to UKCo, consistently applied.

This continuing evaluation feature is a component of the structured finance operating procedures as are documentation standards; the generation of periodic reports of structured finance activity to the Bank's ALCO; and, internal audit coverage. As a prototype, the documentation for the UKCo proposal was seen to be of appropriate detail and transparent in its language. Actual periodic report formats and a structured finance audit program remain to be developed. Progress in this regard will be scrutinized at the next OCC examination of this operational area. However, the Bank has represented that a current audit will utilize the draft guidelines to assess the structured finance policies and procedures. A provision for policy/procedures training for structured finance personnel was not apparent. However, this was not viewed as having any immediate significance. The current staffing for this line of business is extremely small and all parties participated in the actual development of the policy and related procedures.

Accordingly, based upon a thorough review of the information and representations contained in your application and the supplementary materials that you provided, including your detailed explanation of Wells Fargo & Company's internal process through which this transaction was reviewed and approved, we conclude that the Bank may acquire InvestCo, as described, subject to the following conditions that are consistent with the Bank's representations in the application:

1. Prior to consummation of the Bank's indirect acquisition of the Investco preferred shares, UKCo must provide the Bank with evidence of the FSA's nonobjection to the transaction as described herein;

2. InvestCo may engage only in those activities specifically described in the application and in accordance with the representations made in connection with the application;

3. The books and records of InvestCo (or duplicate copies of any books and records of InvestCo the originals of which are required to be maintained in the United Kingdom under applicable law) must be maintained at facilities of the Bank in the United States, and that the Bank and InvestCo will ensure prompt OCC access to all books and records;

4. If any impediments arise to satisfactory OCC access to InvestCo's books and records, or to OCC examination, supervision and regulation, the OCC may direct the Bank to cease operations through InvestCo and the Bank will do so within a time period specified by the OCC; and,

5. If the Bank plans to establish or acquire additional operating subsidiaries pursuant to 12 C.F.R. 5.34 in the future to engage in activities similar to InvestCo, the Bank will file an operating subsidiary application with the OCC under 12 C.F.R. 5.34, notwithstanding the provisions of section 5.34(e)(5)(vi). No such application shall be filed until the OCC has first advised the Bank of the satisfactory conclusion of an examination of the Bank's structured finance line of business.

The conditions of this approval are conditions imposed in writing by the agency in connection with the granting of any application or other request within the meaning of 12 U.S.C. 1818. As such, the conditions are enforceable under 12 U.S.C. 1818.

This approval, and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States. In the event of questions, please contact Richard T. Erb, Licensing Manager, at (202) 874-5060 or by email: largebanks@occ.treas.gov.

Sincerely,

(signed)

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel