Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Conditional Approval #243
June 1997

May 9, 1997

Andrew T. Semmelman
Vice President and Senior Associate Counsel
Chase Manhattan Bank USA, N.A.
One Chase Manhattan Plaza
Wilmington, Delaware 19801

Re: Application of Chase Manhattan Bank USA, N.A., Wilmington, Delaware ("Bank"), to participate through one or more operating subsidiaries in joint ventures conducting residential mortgage lending services. Application Control Number: 97-NE-08-013

Dear Mr. Semmelman:

This is in response to your letter, dated March 5, 1997, which was supplemented by a letter, dated May 1, 1997, by which the Bank applied pursuant to 12 C.F.R. § 5.34(e)(1)(i)(B) to participate, through one or more existing operating subsidiaries or through ones that may be established in the future, in joint ventures to conduct residential mortgage lending services as described below. Joint ventures will use various structures including a general or limited partnership, corporation, or limited liability company ("LLC"). For the reasons set forth, it is our opinion that it is legally permissible and thus approved by the Office of the Comptroller of the Currency ("OCC") for the Bank to conduct these activities in the manner described.

Background

As described in the Bank's notification, the Bank intends to participate in the proposed joint ventures through Chase Manhattan Mortgage Company ("CMMC"), an existing wholly-owned nationwide mortgage lending operating subsidiary of the Bank, or through one or more existing wholly-owned operating subsidiaries of CMMC or to be established under CMMC. For convenience, "CMMC" shall be used herein to refer either to CMMC or to a wholly-owned subsidiary of CMMC.

Participating with CMMC in these joint ventures will be established real estate brokers engaged in the residential real estate brokerage business and established homebuilders engaged in the construction and sale of 1-4 family residential properties. Other lenders in addition to CMMC may participate in some joint ventures. Parties participating in the joint ventures with CMMC are herein referred to as "co-venturers."

The joint ventures will use various structures. A joint venture may take the form of a limited or general partnership, corporation, LLC or other entity permitted under applicable state law, or a contractual arrangement without the formation of a new entity. All such structural forms are herein referred to as "joint ventures." CMMC's ownership interests in joint ventures may be more or less than 50%. In joint ventures that are corporations or LLCs, however, no single co-venturer will own more than a 50% voting (or similar type of controlling) interest. Consequently, some of the joint ventures will qualify as operating subsidiaries for purposes of 12 C.F.R. § 5.34(d)(2) and other joint ventures will be permissible non-controlling, minority interests.[1] *See, e.g.*, Interpretive Letter No. 732, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-049 (May 10, 1996) (national bank permitted to hold minority interest in a company engaged in electronic funds transfers and data interchange network).

CMMC (whether CMMC itself or a subsidiary of CMMC) and the Bank will at all times for legal purposes maintain their existence as corporations separate from their subsidiaries, their direct parents and each joint venture. CMMC itself will not be a general partner in any general or limited partnership joint venture and, thus, CMMC itself will not be liable for the general liabilities of any joint venture. When a joint venture is a general partnership, only a new or existing subsidiary of CMMC will be a general partner to limit liability to CMMC. Should CMMC itself find it necessary to become a general partner, the Bank will submit an application to the OCC for prior review and approval of the structure. In no circumstance will the Bank be liable for the general liabilities of any joint venture. CMMC will not be liable for the debts and obligations of any co-venturers in a joint venture.

The activities to be conducted by the joint ventures include the origination, processing, servicing and sale of residential mortgage loans. Initially, a joint venture's mortgage lending services will be marketed to the customers of the broker or builder co-venturers in that joint venture. Marketing and advertising efforts will also be addressed to the general public in the co-venturer's trade area (and potentially beyond). A joint venture will typically lease space from one or more of its co-venturers at their office locations to house its sales force and to conduct its business. CMMC often will enter into a services agreement with a joint venture to provide administrative services to the joint venture on an arm's-length basis.

CMMC and co-venturers will provide capital for a joint venture to commence its operations. If a joint venture's operating funds fall below a minimum established in the joint venture agreement, CMMC or another lender (including a lender participating as a co-venturer) may be asked to provide operating loans to a joint venture on arm's-length terms as negotiated between the lender and the joint venture. All transactions among the Bank, CMMC, joint ventures and co-venturers will be conducted in accordance with applicable law and

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[1] The OCC recently amended its operating subsidiary rule, 12 C.F.R. § 5.34, as part of a general revision of Part 5 under the OCC's Regulation Review Program. Operating subsidiaries in which a national bank may invest include corporations, LLCs, or similar entities if the parent owns more than 50% of the voting interest.

regulations. The joint ventures will be subject to OCC supervision, regulation and examination and the Bank will make available to the OCC such information as necessary for the OCC to monitor the activities, profitability, liquidity and capital adequacy of each joint venture.

In addition, the arrangements between a co-venturer and a joint venture in conducting mortgage lending services will likely constitute “affiliated business arrangements” (“ABAs”) as defined under the Real Estate Settlement Procedures Act of 1974, as amended (“RESPA”). Such activities will fully comply with RESPA and all applicable regulations promulgated thereunder, including specifically the ABA rules. In order to monitor compliance with RESPA, a joint venture and its participants will observe the following procedures: (i) the joint venture will provide an ABA Disclosure Statement to customers as required by RESPA; (ii) customers will not be required to use any particular provider of settlement services; and (iii) the only thing of value that participants in a joint venture will receive will be returns on their ownership interests and other payments permissible under RESPA.

Discussion

A. National Bank Express and Incidental Powers (12 U.S.C. § 24(Seventh))

The Bank’s proposal raises both operational and structural issues: (1) whether the activities of the joint ventures are legally permissible for a national bank and its operating subsidiaries; and (2) whether a national bank has authority to hold--directly or indirectly through an operating subsidiary--an equity interest in the various proposed structures for joint ventures.

(1) Operational

The proposed operational activities, in this case mortgage lending, are expressly permissible under 12 U.S.C. §§ 24(Seventh) (general ability of national banks to make loans) and 371 (ability of national banks to make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate) and, thus, are part of the business of banking. The proposed related processing/servicing activities are incidental to the mortgage lending business under section 24(Seventh). *See also* 12 C.F.R. § 5.34(e)(2)(ii)(L).

(2) Structural

The OCC has traditionally recognized the authority of national banks to organize and perform any of their lawful activities in a reasonable and convenient manner not prohibited by law. A national bank may engage in activities that are part of or incidental to the business of banking under 12 U.S.C. § 24(Seventh) by means of an operating subsidiary. 12 C.F.R. § 5.34(d)(1). A national bank, through its operating subsidiary, has also been authorized to be a general partner. Similarly, the OCC has permitted national banks, directly or indirectly through operating subsidiaries, to be limited partners in partnerships.

In addition, the OCC has permitted national banks to own, directly or indirectly through an operating subsidiary, a non-controlling, minority interest in an enterprise. The enterprise might be a corporation, LLC, partnership, limited partnership or other similar entity. In recent interpretive letters, the OCC concluded that national banks are legally permitted to make a non-controlling, minority investment in a LLC provided four criteria or standards are met.[2] These standards, which have been distilled from our previous decisions in the area of permissible non-controlling, minority investments for national banks and their subsidiaries are:

> 1) The activities of the enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking;
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> 2) The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment;
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> 3) The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise; and
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> 4) The investment must be convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to *that bank's* banking business.

Each of these factors is discussed below and applied to your proposal with respect to non-controlling, minority investments in joint ventures. Even if the Bank's interest in a joint venture--directly or indirectly through CMMC--is a controlling stock interest, the investment will meet these four factors which subsume the OCC's requirements for acquiring a controlling interest in a joint venture.[3] Finally, similar standards with respect to bank-permissible activities, limits of liability and OCC supervision have been imposed by the OCC when a national bank's operating subsidiary serves as general partner in a partnership with a

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[2] *See* Interpretive Letter No. 692, *reprinted in* [Current] Fed. Banking L. Rep. (CCH) ¶ 81-007 (November 1, 1995) (national banks permitted to invest in a LLC, related to a state-sponsored educational program, at levels less than required for an operating subsidiary provided certain conditions were met); No. 694, *reprinted in* [Current] Fed. Banking L. Rep. (CCH) ¶ 81-009 (December 13, 1995)(national bank permitted to take non-controlling, minority interest in LLC that purchases secured home improvement loans and resells them in the secondary market); Interpretive Letter No. 697, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-012 (Nov. 15, 1995) (national bank's operating subsidiary to hold 25% interest and serve as general partner in a partnership to own a trust company). *See also* Letter of Steven J. Weiss, Deputy Comptroller, Bank Organization and Structure (December 27, 1995 unpublished) ("Weiss Letter").

[3] *See* Interpretive Letter No. 657, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,605 (March 31, 1995) (national bank permitted to take controlling interest in LLC engaging in sales of real estate acquired in satisfaction of debts previously contracted) and Interpretive Letter No. 645, *reprinted in* [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,554 (April 29, 1994) (national bank permitted to take controlling interest in LLC engaged in residential real estate lending activities). These letters approve a national bank's controlling participation in an entity provided: (1) the entity's underlying activities are part of, or incidental to, the business of banking; (2) the bank must be able to prevent the entity from engaging in activities that do not meet the foregoing standard; and (3) the banks loss exposure must be limited and the bank must not have open-ended liability for the obligations of the entity.

non-depository institution.[4] In essence, by satisfying these four standards, the Bank can use any of the proposed structures for joint ventures.

1) The activities of the entity or enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking.

Our precedents on controlling or non-controlling stock ownership have recognized that the enterprise in which the bank takes an equity interest must confine its activities to those that are part of or incidental to the business of banking. *See, e.g.*, Interpretive Letter No. 645, *reprinted in* [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,554 (April 29, 1994) (national bank can take a controlling interest in a LLC to originate and service residential real estate mortgage loans); Interpretive Letter No. 423, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,647 (April 11, 1988) (national bank operating subsidiary authorized to act as managing general partner of a limited partnership investing in real estate mortgage-related assets); Interpretive Letter No. 668, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,616 (October 14, 1994) (national bank permitted 50% ownership of LLC which acquires and services mortgage loans); Interpretive Letter No. 669, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,617 (October 14, 1994) (national bank has controlling interest in LLC to originate, acquire, service and resell secured loans); Interpretive Letter No. 694, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-009 (December 13, 1995) (national bank permitted to take non-controlling, minority interest in LLC that purchases secured home improvement loans and resells them in the secondary market); Interpretive Letter No. 711, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-026 (February 23, 1996) (national bank to take minority equity interest in mortgage banking company).

It is clear from the precedents cited herein that the proposed activities--mortgage banking and related activities--are part of and incidental to the business of banking under 12 U.S.C. §§ 24(Seventh) and 371 and, thus, permissible activities for the entities in which investments are to be made.

Accordingly, the first standard is satisfied.

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[4] *See* Interpretive Letter No. 411, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,635 (January 20, 1988). This letter approved a national bank's operating subsidiary to act as general partner in a partnership with a non-depository institution relating to merchant banking financing, provided certain legal, policy and prudential concerns were addressed. After determining the proposed activities were bank-permissible and the legal structure would shield the bank from unlimited liability, the OCC found the following such factors, among others, adequately addressed by the proposal:

- partnership decisions required the vote of no less than a majority of the partnership's managers, giving the bank's subsidiary effective veto power over partnership decisions; and

- the partnership agreement stated that the partnership would be subject to OCC supervision and examination, and that the partnership could not conduct activities that are impermissible for national banks.

2) The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment.

The activities of the enterprise in which a national bank may invest must be part of or incidental to the business of banking not only at the time the bank initially purchases stock, but for as long as the bank has an ownership interest. This standard may be met in different ways, depending upon the type of entity in which the investment is made. One way to assure continuing compliance with this standard is for the constituent documents of each joint venture, whether articles of incorporation, bylaws or by contractual provisions in a partnership or other agreement, to limit its activities to those that are permissible for national banks or to provide an effective veto over activities of the entity. *See, e.g.*, Interpretive Letter No.625, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,507 (July 1, 1993) (national bank operating subsidiary acting as one of two general partners, each of which had veto power over actions to be taken by the partnership).

You have represented that safeguards will be in place with respect to each joint venture to ensure that the joint venture conducts only activities permissible for national banks or their operating subsidiaries. For example, the constituent documents of each joint venture and the agreements with co-venturers will provide that (i) the joint venture may engage only in activities permissible to national banks or their operating subsidiaries, (ii) CMMC has effective veto power (through supermajority voting rights or otherwise) over decisions regarding the activities of the joint venture and/or has the right to withdraw from the joint venture if the joint venture engages in any activity not permissible for national banks or their operating subsidiaries, and (iii) the joint venture is subject to OCC supervision, regulation and examination. By these means, the Bank will be able to ensure that joint ventures conduct only activities that are part of or incidental to the business of banking, or that it may withdraw from a joint venture in the event that it is not able to prevent such activities from taking place.

Accordingly, the second standard is satisfied.

3) The bank's loss exposure must be limited and the bank must not have open-ended liability for the obligations of the enterprise.

a. Loss exposure from a legal standpoint

A primary concern of the OCC is that national banks should not be subjected to undue risk, especially where an investing bank will not control the operations of the entity in which the bank holds an interest. It is important that a national bank's investment not expose it to unlimited liability. Normally, this is not a concern when a national bank invests in a corporation, for shareholders are not liable for the debts of the corporation, provided proper corporate separateness is maintained. 1 William M. Fletcher, Fletcher Cyclopedia of the Law of Private Corporations § 25 (perm. ed. rev. vol. 1990).

Similarly, investors in a LLC generally will not incur liability with respect to the liabilities or obligations of the LLC.[5] This limited liability feature is what differentiates LLCs both from general partnerships, where all partners are generally liable for the debts of the partnership, and from limited partnerships, which must have at least one general partner who is personally liable for the obligations of the partnership.[6]

National banks are permitted--directly or indirectly through operating subsidiaries--to become limited partners in partnerships and to invest in LLCs engaging in activities permissible for national banks.[7] But they are not permitted to be general partners directly in general partnerships due to the potential unlimited liability for the acts of other partners within the scope of the partnerships. *Merchants National Bank v. Wehrmann*, 202 U.S. 295 (1906). However, the OCC has long permitted operating subsidiaries of national banks to enter into general partnerships that engage in bank-permissible activities because the corporate veil of the subsidiary corporation protects the bank from the potentially open-ended exposure associated with a direct partnership investment. *See, e.g.*, Interpretative Letter No. 289, *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,453 (May 15, 1984) (national bank's operating subsidiary permitted to act as general partner in banking-related venture--joint ATM network); Interpretive Letter No. 411, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,635 (January 20, 1988) (national bank operating subsidiary permitted to be a general partner in a partnership with a non-depository institution relating to merchant banking financing--*see* footnote 4, *supra*); Interpretive Letter No. 517, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,228 (August 16, 1990) (restructuring of general partnership in Interpretive Letter No. 411). In each of these general partnership situations, the OCC has allowed national bank participation provided the underlying activities are permissible under 12 U.S.C. § 24(Seventh) as part of or incidental to the business of banking and further provided that the national bank is shielded from unlimited liability for the acts of the other entities.

Such is the case here. Legal safeguards will be in place with respect to each joint venture, whether corporation, general or limited partnership, LLC or other contractual arrangement, in order to protect the Bank from unlimited liability. The constituent documents of each joint venture and the agreements with co-venturers will provide that CMMC will not be liable for the liabilities of co-venturers or for the general liabilities of the joint venture beyond the

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[5] Under specified circumstances and depending upon the law of the state under which the LLC is organized, managers and managing members may be held personally liable for monetary damages if that individual's breach or failure to perform duties resulted in, for example, a violation of criminal law and either the individual is culpable to an extent or the individual derived an improper personal benefit. Otherwise, the limit of liability generally is the individual's capital contributions to the LLC.

[6] The necessity for at least one general partner reflects a policy that someone have personal liability. *See* section 1 of the Uniform Limited Partnership Act. This is frequently circumvented, however, in states where a corporation (with limited liability under state corporate laws) can be the general partner.

[7] *See, e.g.,* Interpretive Letter No. 617, *reprinted in* [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,457 (March 4, 1993) (national bank may purchase for its own account limited partnership units in a partnership which will be formed and licensed as a Small Business Investment Company). For investment in LLCs, see Interpretive Letters Nos. 645, 668, 669 and 694, *supra*.

amount of its investment in the joint venture. Similarly, the legal structures of the joint ventures also will ensure that the Bank is shielded from unlimited liability with respect to the joint ventures. CMMC and its affiliates have represented that they will at all times adhere to corporate formalities and maintain their corporate existences separate from their affiliates and the joint ventures. Under principles of corporate law, CMMC's parent companies (including the Bank) will not be liable for the general liabilities of any joint venture. Under the laws governing many of the types of entities proposed to comprise joint ventures, such as limited partnerships and LLCs, CMMC will not be liable for the general liabilities of such a joint venture beyond the extent of its investment in the joint venture.

The Bank's loss exposure for the liabilities of the joint ventures, therefore, will be limited by statutes and any constituent documents and agreements executed by the co-venturers.

b. Loss exposure from an accounting standpoint

In assessing a bank's loss exposure as an accounting matter, the OCC has previously noted that the appropriate accounting treatment for a bank's less than 20 percent ownership share or investment in a LLC is to report it as an unconsolidated entity under the equity or cost method of accounting. *See e.g.*, Letter of Julie L. Williams, Chief Counsel, (March 4, 1997), Letter of Steven J. Weiss, Deputy Comptroller, Bank Organization and Structure, Conditional Approval 192 (January 1996), and Letter of Julie L. Williams, Chief Counsel, Conditional Approval 221 (December 1996). In instances where the ownership share or investment is between 20 and 50 percent, the OCC has not objected to a bank utilizing the equity method of accounting in reporting the LLC investment on an unconsolidated basis.

Under the equity method of accounting, unless the bank has extended a loan to the entity, guaranteed any of its liabilities or has other financial obligations to the entity, losses are generally limited to the amount of the investment shown on the investor's books.[8] Similarly, as discussed in the Letter from Julie L. Williams dated March 4, 1997, under the cost method of accounting, the investor records an investment at cost, dividends or distributions from the entity are the basis for recognition of earnings, and losses recognized by the investor are

[8] *See generally*, Letter from Julie L. Williams, Chief Counsel (March 4, 1997) discussing Accounting Principles Board, Op. 18 § 19 (1971) . Under the equity method, the investor records the initial investment at cost and, then, adjusts the carrying amount to recognize the investor's pro rata share of subsequent earnings or losses in the entity. When losses equal or exceed the carrying amount of the investment plus advances, the investment is reduced to zero value and no further losses need be recognized unless the investor has guaranteed obligations of the entity or has otherwise committed to provide further financial support of the entity. In contrast, under the cost method, the investor records the initial investment at cost and, then, adjusts the carrying amount to recognize dividends actually received. Operating losses are recognized if a series of other factors indicate that a decrease in the value of the investment has occurred which is other than temporary. Losses under the cost method, however, are recognized only to the extent of the adjusted carrying amount of the investment. *See also* Interpretive Letter 692, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-007 (November 1, 1995) (national banks permitted to take minority interests in LLCs in state-sponsored educational savings/lending program used equity method of accounting); Interpretive Letter No. 735, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-052 (July 15, 1996) (national bank's non-controlling minority interests--due to supermajority voting provisions--in LLCs to hold "other real estate owned" used equity method of accounting).

limited to the extent of the investment. In sum, regardless of which accounting method is used, the investing bank's potential loss is limited to the amount of its investment.

The Bank will consolidate results of majority-owned operating subsidiaries and joint ventures with parent company results in accordance with generally accepted accounting principles. Minority investments in joint ventures will be reported as unconsolidated entities under the equity method of accounting. Where CMMC owns a majority interest in a joint venture but does not control the joint venture due to supermajority voting provisions, the equity method of accounting still will be appropriate. If the equity method of accounting is not appropriate for investments in some joint ventures (such as those with respect to which CMMC has both majority ownership and corporate or management control), applicable law and the joint venture's constituent documents nevertheless will limit CMMC's liability to the amount of its investment in the joint venture. Even if a subsidiary of CMMC itself is a general partner in a joint venture that is a partnership, the corporate veil of the subsidiary and of CMMC will protect the Bank from the potentially open-ended exposure associated with a direct partnership investment. *See* Interpretive Letters Nos. 697 and 411, *supra*.

Accordingly, for both legal and accounting purposes, the Bank's potential loss exposure should be limited to the amount of its investment. Because the Bank will not have open-ended liability for the liabilities of the joint venture and its potential liability will be quantifiable and controllable, the third standard is satisfied.

> *4) The investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.*

A national bank's investment in an enterprise or entity must also satisfy the requirement that the investment have a beneficial connection to the *bank's* business, *i.e.*, be convenient or useful to the investing bank's business activities, and not constitute a mere passive investment unrelated to that bank's banking business. Twelve U.S.C. § 24(Seventh) gives national banks incidental powers that are "necessary" to carry on the business of banking. "Necessary" has been judicially construed to mean "convenient or useful". See *Arnold Tours, Inc. v. Camp*, 472 F.2d 427, 432 (1st Cir. 1972). The provision in 12 U.S.C. § 24(Seventh) relating to the purchase of stock, derived from section 16 of the Glass-Steagall Act, was only intended to make it clear that section 16 did not authorize speculative investments in stock. *See* Interpretive Letter No. 697, *supra*. Therefore, a consistent thread running through our precedents concerning stock ownership is that it must be convenient or useful to the bank in conducting *that bank's* banking business. The investment must benefit or facilitate that business and cannot be a mere passive or speculative investment. *See, e.g.,* Interpretive Letter No. 543, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,255 (February 13, 1991) (national bank authorized to acquire nominal stockholding for membership in corporation of primary dealers in government securities); Interpretive Letter No. 427, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,651 (May 9, 1988) (national bank permitted to buy Farmer Mac stock in nominal amounts); Interpretive Letter No. 421, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep.

(CCH) ¶ 85,645 (March 14, 1988) (national bank permitted to invest in the Government Securities Clearing Corporation).

As set forth in the "*Background*" section, the Bank is using its indirect investment in the joint ventures to provide CMMC new market exposure through relationships with brokers and builders and their customers and potential customers. Such exposure will enhance CMMC's abilities to originate mortgage loans. The proposed activity is intimately related to the Bank's business of making loans and provides a convenient method for the conduct and expansion of such business. Arrangements such as the proposed joint ventures are becoming commonplace in the mortgage industry and conducting its business in this way will help the Bank compete in the marketplace. The investment is, therefore, "necessary" to the Bank's ability to efficiently and capably offer these mortgage lending services, to attract a broader customer base, and to compete more effectively. For these reasons, the proposed investment is convenient and useful to the Bank in carrying out its business and is not a mere passive investment.

Accordingly, the fourth standard is satisfied.

B. Partnership Issues

Some features of a partnership, such as its activities and the Bank's or CMMC's veto power, have already been touched upon in discussing other issues. Certain other points about partnerships should also be briefly mentioned. Because the OCC considers a general partnership to be an activity of the partner operating subsidiary, and because we reserve the right to supervise and examine operating subsidiaries under 12 C.F.R. § 5.34(d)(3), the OCC requires that it have the right to supervise and examine general partnerships involving operating subsidiaries. *See, e.g.,*Interpretative Letter No. 625, *supra*; Interpretative Letter No. 381, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,605 (May 5, 1987) (national bank operating subsidiary permitted to be general partner in partnership to provide processing for ATM network) . Counsel for the Bank has represented that the OCC will have the right to supervise and examine the joint ventures, whether they are formed as corporations, general or limited partnerships, LLCs or other entities permitted under applicable state law.

The OCC has not required any minimum ownership level when operating subsidiaries participate in general partnerships. A search of our precedents will reveal a wide range of equity levels, including minority interests. *See, e.g.,* Letter of Vernon E. Fasbender, Director for Analysis, Southeastern District (December 6, 1990) (bank operating subsidiary to own 60 percent of partnership); Interpretative Letter No. 369, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,539 (September 25, 1986) (51 percent); Interpretative Letter No. 625, *supra* (50 percent); Interpretative Letter No. 381, *supra* (33 1/3 percent). Accordingly, various percentages of ownership interest in a partnership are therefore permissible.

C. Branching Issues

Although the joint ventures will be making loans, the locations of the joint ventures, including any CMMC majority owned joint ventures, will not be branches of the Bank within the meaning of the McFadden Act, at 12 U.S.C. § 36(j). The lending activities of the joint ventures will not result in the Bank or CMMC making loans for purposes of the McFadden Act. The operations of an entity in which a national bank has a non-controlling, minority interest are not ordinarily attributed to the bank for branching purposes. *See* Interpretive Letter No. 711, *supra.*

Whether or not the joint venture is CMMC majority owned, the activities will be conducted in compliance with OCC's Interpretive Rulings regarding the originating and making of loans at banking and other than banking offices. *See* 12 C.F.R. §§ 7.1003, 7.1004, and 7.1005. Specifically, no borrower will receive the proceeds of a loan from the Bank's funds at a facility that is established by the Bank. Loans of the joint ventures will not be loans of the Bank's funds, but of the joint ventures' own funds, and in most cases a joint venture's sources of funding will be sources other than the Bank. Such outside funding may also be used in the case of CMMC majority owned joint ventures.

In the present case, the proposed legal structures reinforce the conclusion that offices of the joint ventures will not be the Bank's branches. The joint ventures will be autonomous businesses, not part of the Bank, with their own customers and offices that are not located in the Bank's branches. Although the Bank in some instances may have representatives on a joint venture's board of directors or equivalent governing body, no Bank employees will participate in the day-to-day operations of a joint venture that will have its own employees. Each joint venture will be treated as an entity distinct from the Bank for supervisory purposes. For instance, should the Bank provide any extensions of credit to the joint ventures, such loans will be made on an arm's-length basis and, to those joint ventures not deemed operating subsidiaries, will be subject to the same lending limit rules as any other borrower unrelated to the Bank.

Conclusion

Based upon the information and representations you have provided, and for the reasons discussed above, we conclude that the Bank, through CMMC, may participate without further notification to the OCC in one or more joint ventures using a variety of structures to conduct mortgage banking activities in the manner and as described herein, provided:

> (1) CMMC and the joint ventures will engage only in activities that are part of, or incidental to, the business of banking;
>
> (2) the Bank through CMMC will have effective veto power over any activities and major decision of the joint ventures that is inconsistent with number one, or will withdraw from any joint venture in the event it engages in an activity that is inconsistent with condition number one;
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> (3) the Bank will account for any minority investment in the joint ventures under the equity method of accounting; and

(4) the joint ventures will be subject to OCC supervision, regulation, and examination.

Please be advised that the conditions of this approval are deemed to be “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 and, as such, may be enforced in proceedings under applicable law.

Sincerely,

/s/

Julie L. Williams
Chief Counsel