STATEMENT OF

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COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

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Chairman Platts, Ranking Member Towns, and members of the Subcommittee, on behalf of the Office of the Comptroller of the Currency, I appreciate the opportunity to appear before you today to discuss three interpretive letters issued by the OCC in December 2005.

As I describe in detail in my written statement, the decisions reflected in these letters are entirely consistent with the National Bank Act, and well within the principles of existing precedent for national banks' activities. The legal framework applicable in this area is narrow and fact-dependent, and the conclusions in these letters therefore simply cannot pave the way for the sort of expanded real estate activities that some have projected.

The conclusions in the letters are quite specific to the activities described, and limited in scope. They apply existing law and precedent to situations involving new facts. They authorize no more than the specific proposals they describe, and only for the particular banks involved. Thus, the letters do not endanger the fundamental separation of banking and commerce in this country.

Nor do the letters authorize national banks to engage in the real estate development or investment business, nor do they have anything to do with merchant banking, nor do they have anything to do with allowing national banks to conduct a real estate *brokerage business.* They were carefully evaluated by OCC supervisors to assure that the activities would be consistent with the safe and sound operations of the banks involved. Moreover, going forward, the OCC will continue to monitor these activities to ensure that they are conducted in a safe and sound manner, consistent with the representations made to us by each bank.

Two of the letters concern situations where national banks' seek to enhance the use of property they already own, in connection with the operational needs of their own banking business. Each letter permitted only a single building. In each case, we found that the bank demonstrated that the proposed building was being developed in good faith to address legitimate operational needs of the bank's own banking business. This connection to a bank's own

operational needs is essential to its legal authority to conduct the activity and prevents national banks from conducting a real estate investment or development business.

In one case, the building would be a mixed-use building with offices, hotel space, and upper floor space that would be sold off, in the form of condominiums. In that case the bank would occupy a portion of the offices and committed to use a percentage of the hotel rooms for bank officials and visitors.

In the second case, the building would be used entirely as a hotel. The Bank represented that visiting bank officials, board members, customers and prospective customers, and service providers would occupy over 37 percent of the rooms, constituting over 50 percent of the projected occupied rooms.

The third letter concluded that a bank could provide financing to a wind energy project in the form of payment for an equity interest in a limited liability company – in order for the bank to be eligible for federal tax credits and thereby lower the cost of funding for the project. It was important to us in reaching our conclusion that facilitating such financing is precisely Congress' purpose in creating such tax credits. A number of specific restrictions and limitations were included in the letter to make clear that our approval was based on the bank's interest being structured so as to preserve its economic substance as a loan rather than as a speculative equity investment.

This approach was based on decades of judicial and OCC precedent, which look to the economic substance of a transaction, rather than only its form, to determine whether it is permissible. Leasing arrangements, found to be permissible because they are functionally interchangeable with a secured loan, are a long-recognized example of this approach.

Let me again stress that, by statute, national banks have only limited authority to make real estate and equity investments. This limited authority precludes national banks from engaging in the real estate development business or the type of equity investment activity that would breach the separation between banking and commerce.

However, this same authority does enable national banks to take different types of direct and indirect interests in real estate in connection with conducting their own banking business. Over the past century, both the courts and the OCC have interpreted this limited authority to permit—or—prohibit particular types of activities, based on particular facts. This limited authority helps to maintain the fundamental separation of banking and commerce that distinguishes our nation's banking system.

Please be assured that the OCC fully recognizes these limits of national banks' authority with respect to real estate activities and will abide by and apply those standards consistently to all national banks.

Thank you for the opportunity to appear before you today, and I will be happy to answer any questions you may have.