



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

November 27, 2002

Community Development Investment Letter #2002-7

June 2004

12 CFR 24

Steven J. Johnson, Esq.
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4200 IDS Center
Minneapolis, MN 55402

Subject: Investments in Community Development Corporations and Projects and the Merchant Banking Regulation

Dear Mr. Johnson,

You have asked the Office of the Comptroller of the Currency's (OCC) opinion whether the merchant banking capital regulation, which establishes minimum capital requirements for certain equity investments in non-financial companies, applies to investments made in community development corporations (CDCs) and community development projects (CDPs), as defined in 12 CFR Part 24.¹ In short, the merchant banking capital regulation does not apply to such investments.

Background

In March 2000, the Federal Reserve Board proposed to establish special capital requirements for investments made, directly or indirectly, by bank holding companies in nonfinancial companies.² The Board's proposal applied to nonfinancial investments made pursuant to specified statutory or regulatory authorities, including investments made by financial holding companies under the merchant banking authority granted by the Gramm-Leach-Bliley Act and investments in a small business investment company (SBIC) under the authority granted by the Small Business Investment Act (SBIA).

The March 2000 proposal was amended and repropoed jointly by the Board, OCC and FDIC in February 2001.³ The 2001 proposal applied the higher capital charges symmetrically to nonfinancial equity investments held by both banks and bank holding companies but retained the approach of identifying assets subject to the merchant banking capital charge by reference to the

¹ Part 24 implements national banks' statutory authority to make investments "designed primarily to promote the public welfare." 12 U.S.C. § 24(Eleventh).

² 65 Fed. Reg. 16481 (March 28, 2000)

³ 66 Fed. Reg. 10212 (February 14, 2001).

underlying source of statutory or regulatory authority for the investment. The final rule, which also did not modify this approach, was issued in January, 2002.⁴

Discussion and Conclusions

The text of the OCC's final merchant banking capital rule provides that two – and only two – types of national bank investments are subject to the special capital requirements that the rule prescribes.⁵ The covered investments are: (1) investments in a SBIC made pursuant to the SBIA; and (2) investments made pursuant to the portfolio investment provisions of the Board's Regulation K. According to the express terms of the regulation, the special capital requirements do not apply to any other type of national bank investment.

Moreover, it is clear that the agencies considered, and rejected, applying the special capital rules to investments authorized by Part 24. Some of the commenters on the February 2001 proposal asked whether investments in companies predominantly engaged in banking or other permissible activities should be subjected to the higher capital charge. Some of these commenters inquired particularly concerning investments in CDCs authorized under 12 CFR Part 24.

The preamble to the final rule specifically and unambiguously responds to these comments.

In response to questions raised by commenters, the agencies wish to clarify that the rule does not apply to investments made in a community development corporation to promote the public welfare under 12 U.S.C. 24(Eleventh).⁶

This statement follows a more general discussion of investments in companies that engage in banking or bank permissible activities.

[T]he approach adopted by the final rule provides a clear standard for banking organizations and their supervisors to use in identifying investments covered by the rule while, at the same time, excluding from coverage investments in companies engaged solely in banking or financial activities that the banking organization could hold under their traditional authorities to engage in such activities.⁷

CDC and CDP investments, which are authorized pursuant to 12 U.S.C. 24(Eleventh) and 12 CFR Part 24, are “financial activities that the banking organization could hold under [its] traditional authority.”

⁴ 67 Fed. Reg. 3784 (January 25, 2002).

⁵ 67 Fed. Reg. at 3796, *to be codified at* 12 C.F.R part 3, app. A, §1(c)(13).

⁶ *Id.* at 3788.

⁷ *Id.*

For these reasons, national banks' investments in CDCs or CDPs are not subject to the higher capital charges imposed by the final rule. If you have any further questions, please feel free to contact me at (202) 874-4930.

Sincerely,

/s/ Barry Wides

Barry Wides
Director, Community Development
Office of the Comptroller of the Currency