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MEMORANDUM

March 13, 2000

To: Our Clients and Friends

Re: OCC's Final Rule Implementing the Financial Subsidiary Provisions of the Gramm-Leach-Bliley Act

The Office of the Comptroller of the Currency (OCC) has amended its regulations to implement section 121 of the Gramm-Leach-Bliley Act (GLBA), which authorizes national banks to conduct expanded financial activities through financial subsidiaries. The rule incorporates the requirements a bank and subsidiary must satisfy in order for a financial subsidiary to engage in specified activities that are financial in nature and in activities that are incidental to financial activities. The rule establishes alternative procedures for banks to obtain OCC approval to acquire control of, or an interest in, a financial subsidiary.

The OCC is also revising its operating subsidiary rule to make conforming changes and streamline procedures for banks that engage in activities through operating subsidiaries. The OCC is revising its regulation governing other equity investments to make corresponding changes to the procedures for certain types of non-controlling investments.

The rule describes activities that are permissible and impermissible for a financial subsidiary. The rule contains three conditions that a national bank must satisfy to acquire control of, or hold an interest in, a financial subsidiary. Under the rule, a national bank that controls a financial subsidiary must comply with several conditions.

The rule provides that for purposes of sections 23A and 23B of the Federal Reserve Act, a financial subsidiary shall be treated as an affiliate of the bank. Therefore, sections 23A and 23B apply to certain transactions between a bank and its financial subsidiary.

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The rule establishes alternative streamlined procedures for national banks seeking OCC approval to acquire control of, or hold an interest in, a financial subsidiary, or to commence an expanded financial activity in an existing financial subsidiary. The rule provides that the OCC prohibits a national bank from applying to commence any additional expanded financial activity, or to directly or indirectly acquire control of a company engaged in any such activity, if the bank or any of its insured depository institution affiliates received a Community Reinvestment Act (CRA) rating of less than “satisfactory record of meeting community credit needs” on its most recent CRA examination prior to when the bank files a notice under § 5.39. The CRA requirement does not apply to de novo banks that had not yet received CRA rating and to limited purpose banks that do not receive CRA ratings.

The rule states that a national bank and its affiliated depository institution must continue to satisfy the will managed, well capitalized, and asset size requirements applicable to its financial subsidiaries and the conditions in § 5.39(h)(1), (2), (3), and (4) after the bank acquires control of, or an interest in, a financial subsidiary.

The rule makes several changes to remove unnecessary regulatory burden and make other adjustment that are necessary in light of the GLBA. The rule consolidates and moves activities formerly subject to an expedited application review into the more streamlined category which requires banks to file a notice with the appropriate OCC district office no later than 10 days after establishing or acquiring an operating subsidiary, or commencing a new activity in an existing subsidiary. The rule expands the list of notice activities to include other activities that the OCC has found to be part of, or incidental to, the business of banking and has approved on a regular basis for national bank operating subsidiaries. Given the expansion of the notice category, the rule requires that a national bank using the notice procedure be well capitalized and well managed.

The rule makes clear that an operating subsidiary conducts its activities subject to the same authorization, terms, and conditions that apply to the conduct of those activities by its parent bank. The rule also clarifies that the OCC’s authority to examine and take action against certain subsidiaries is subject to limitations and requirements of new section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the GLBA (12 U.S.C. 1820a).

The final rule amends current § 5.36 to provide that a qualifying national bank may make certain non-controlling investments, directly or through its operating subsidiary, in an enterprise by filing a written notice with the appropriate OCC district office no later than 10 days after making the investment.