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**Comptroller of the Currency  
Administrator of National Banks**

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Washington, DC 20219

**Interpretive Letter #790**

**July 1997**

**12 U.S.C. 84**

**12 C.F.R. 32.2(j)(2)(vi) & 32.2(l)(1)**

July 2, 1997

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Re: Application of 12 C.F.R. §§ 32.2(l)(1) & 32.2(j)(2)(vi) to a line of credit.

Dear [ ]:

This is in response to your letter of May 9, 1997, in which you sought the view of the staff of the Office of the Comptroller of the Currency (“OCC”) on the legality of a participation in a revolving line of credit that is contemplated by [ ] (“Bank”), a bank incorporated under the laws of Minnesota. You seek confirmation that an exception to the lending limit, 12 C.F.R. § 32.2(j)(2)(vi) (“the participation exception”), applies to the arrangement described in your letter. Under that exception, in certain circumstances that portion of a loan that is sold as a participation by a bank on a nonrecourse basis is excluded from the bank’s loans or extensions of credit subject to the lending limit. In particular, you seek confirmation that the participation complies with the requirements of the participation exception if Bank makes advances on consecutive days to the customer that may appear to exceed Bank’s lending limit absent the participation, and the participant bank is required to advance funds to Bank before the end of the next business day after each advance made by Bank. I conclude that the arrangement described in your letter falls within 12 C.F.R. § 32.2(l)(1), which incorporates the participation exception in the context of loan commitments.

The Proposal

You state that Bank will act as lead bank in the provision of a revolving loan. Pursuant to a valid and unconditional participation agreement, a national bank will commit to purchase from Bank any portions of any loan advances in excess of Bank’s legal lending limit.

The loan will be administered on a zero balance basis. Net deposits of the borrower with the Bank on any given day will be applied against the outstanding balance under the terms of the loan and any withdrawals in excess of deposits on any given day will result in an advance to the borrower under the revolving loan. Any required advance to the borrower will be made as

of the close of the business day, and in the event that such advance requires an advance to Bank by the participant bank, that bank is notified on the following business day and the required funds are transferred by the participant bank to Bank by the close of that business day.

### Legal Analysis

The lending limit statute, 12 U.S.C. § 84, defines “loans and extensions of credit” as “all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or ... any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment ....” 12 U.S.C. § 84(b)(1). The inclusion of loan commitments in this definition is reflected in the implementing regulation, 12 C.F.R. Part 32. See 12 C.F.R. § 32.2(j)(1)(i). Thus, the lending limit will apply, absent an exception, if there is either an actual advance of funds or a contractual commitment to advance funds.

A revolving line of credit is one type of contractual commitment to advance funds. A revolving line of credit is a contractual commitment to lend up to a predetermined amount to a borrower (“credit limit”). The funds may be drawn against the credit limit, repaid and redrawn at any time consistent with the terms of the agreement. Interest is calculated on the outstanding balance.

Under the participation exception, the amount of a valid loan participation may be deducted from the amount of the loan in calculating the lending limit provided certain requirements are met. See 12 C.F.R. §§ 32.2(j)(2)(vi) and 32.2(l)(1). You state that the participation described in your letter complies with all the requirements of the participation exception, subject to your question with regard to the funding of the participation.

If the loan commitment in question was a commitment to advance a single sum, the amount of credit committed in excess of Bank’s lending limit would be deducted in calculating the amount of the commitment for lending limit purposes since the excess amount would be received from the participant bank before the close of the business day after the amount was extended to the borrower. See 12 C.F.R. §§ 32.2(l)(1) and 32.2(j)(2)(vi). The position is no different for a multiple advance loan such as a line of credit despite the fact that the Bank may appear to be in an excess position at the end of consecutive days on which advances have been made. On each day, the Bank’s credit risk is reduced by a valid participation that requires next business day funding with respect to that part of each advance made to the customer on each day that otherwise would exceed the lending limit.

The obligation of the participant bank to participate in the advance by the close of the following business day is not invalidated by the fact that another advance is made to the borrower on that day, since the participant is obligated to participate in that new advance by the end of the next day. The purpose of the next day funding requirement is to ensure prompt

funding by participants in loans and commitments and not to proscribe validly participated-out loans or advances being made on consecutive days. I therefore conclude that the arrangement described in your letter is legal assuming the participation complies in all other respects with the participation exception as stated in your letter.

I trust that this has been responsive to your inquiry. If you have any questions, please contact me or Jonathan Fink, an attorney on my staff, at (202) 874-5300.

Sincerely,

/s/

Peter Liebesman  
Assistant Director  
Bank Activities & Structure Division