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

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Washington, DC 20219

November 14, 1996

**Interpretive Letter #760  
January 1997  
12 U.S.C. 24(7)**

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Re: PNC Bank, N.A., Pittsburgh, Pennsylvania ("Bank") -- "Late Day" Program

Dear [     ]:

This letter is in response to your letter dated October 4, 1996, and subsequent telephone conversations, requesting an interpretation that the "late day" program proposed by the Bank, as described below, is a permissible activity for a national bank. The Bank also seeks to modify a condition imposed in the OCC's conditional approval of the Bank's acquisition of BlackRock Financial Management, L.P. The condition prohibits the Bank's purchase of shares of mutual funds advised by the Bank or any of its subsidiaries. *See* OCC Conditional Approval 164 (December 9, 1994) at 10. For the reasons set forth below, I find that the "late day" program is permissible for national banks. In addition, the Bank's request for modification is granted.

The Bank's Proposal

The Bank seeks to establish a "late day" program to accommodate corporate money managers' purchase of Bank proprietary money market mutual funds ("Funds") as late as possible in the day. The Bank represents that the supply of suitable investments for the Fund becomes very limited after 3:00 p.m., and therefore the Fund generally does not sell shares after 1:30 p.m. Under this program, the Bank will commit early in the day to purchase shares of a Fund in amounts necessary to satisfy orders of customers that prefer to purchase shares after 1:30 p.m. The Fund will purchase suitable bank-eligible investments with the proceeds. Cash managers will place orders with the Bank for "late day" shares and wire cash to the Fund as late as 5:00 p.m. After 5:00 p.m., the Fund will deliver unsold shares, if any, to the Bank. The Bank will hold the shares overnight and sell them back to the Fund the next morning.

The Bank represents that it will purchase Fund shares solely in connection with the “late day” program and, if systems can be integrated, its sweep program. The Bank further represents that it will not act as a dealer, underwriter, or distributor of the shares. The Bank represents that the Fund involved in the “late day” program will invest solely in assets that a national bank may own as principal. Fund shares, as shares in money market mutual funds, maintain a constant unit value and, therefore, the value of Fund shares that the Bank holds overnight will not vary. *See* SEC Investment Company Act Rule 2a-7, 17 C.F.R. § 270.2a-7. The Bank represents that it will limit its purchase of Fund shares to the anticipated volume of “late day” purchases by cash managers, or some lesser amount that the Bank believes is consistent with principles of safety and soundness.

The OCC previously approved the Bank’s acquisition of BlackRock Financial Management, L.P. *See* OCC Conditional Approval 164, *supra*. In that approval, the OCC imposed a condition prohibiting the Bank from purchasing for its own account shares of proprietary mutual funds. The OCC recently modified that condition to permit the Bank to facilitate its sweep program by purchasing shares of a proprietary mutual fund consisting solely of bank-eligible instruments for sale later in the day. Letter from David Bomgaars, District Administrator, to William F. Strome (January 26, 1996) (“January 26 letter”). The “late day” program differs from the sweep program approved in the January 26 letter by serving persons who may not otherwise be customers of the Bank. The Bank seeks to modify the condition to permit it to purchase Fund shares solely in amounts necessary to facilitate the “late day” program.

### Analysis

The Bank’s proposal essentially involves brokerage activity on behalf of Bank customers as permitted by 12 U.S.C. § 24(Seventh). The OCC has previously concluded that national banks may act as agents for their customers in buying and selling securities, including the purchase and sale of mutual fund shares. *E.g.*, Decision of the Comptroller of the Currency on the Application by Security Pacific National Bank to Establish an Operating Subsidiary to Be Known as Security Pacific Discount Brokerage Services, Inc. (August 26, 1982); Letter from Dean E. Miller, Deputy Comptroller for Specialized Examinations, to Ms. Sandra H. Leess (May 22, 1980). The proposed purchase of securities is an integral part of this brokerage activity, since this purchase will allow the Bank to provide brokerage services and meet customers’ brokerage needs. The limited proposed purchases are also “convenient and useful” to the provision of established banking activities because they facilitate the Bank’s ability to provide brokerage services when customers want such services.

The Bank’s proposal is similar to the proposal approved in the January 26 letter. Both proposals involved well established banking activities. The earlier proposal was a sweep program offered to the Bank’s deposit customers; the current proposal involves the sale of securities. 12 U.S.C. § 24(Seventh); *see also Securities Industry Ass’n v. Comptroller of the Currency*, 758 F.2d 739 (D.C. Cir. 1985) (per curiam), *aff’d sub nom. Clarke v. Securities*

*Industry Ass'n*, 479 U.S. 388 (1987), and OCC Interpretive Letter No. 688 (May 31, 1995). Under both programs, the Bank purchases mutual fund shares to meet anticipated customer demand and provide well established banking services.<sup>1</sup>

Bank funds will at all times only be invested in money market mutual funds whose portfolios consist solely of bank-eligible securities. Bank investments in such mutual funds are permitted as described in Banking Circular 220 (November 21, 1986), pursuant to authorization in 12 U.S.C. § 24(Seventh). Because the Fund must maintain a constant unit value for its shares and the value of Fund shares that the Bank holds overnight will not vary, the Bank's activity involves no market risk to the Bank. Accordingly, the Bank's proposal does not present the types of risks involved in underwriting or dealing in securities.

In the January 26 letter, the Bank agreed to limit its investment in any proprietary fund to 25 percent of the outstanding shares of the fund. I understand that, in a separate letter, the Bank has asked the OCC's Northeastern District Office to clarify that this limit only applies to shares that the Bank owns as principal, and not to shares held by the Bank for the accounts of specific customers. Pending a full response by the Northeastern District, the 25 percent limit will apply to combined purchases of any Bank-advised mutual fund under the sweep program and the "late day" program.

Sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. §§ 371c and 371c-1, impose a number of restrictions on transactions between member banks and their affiliates. Section 23A imposes numerical aggregate and qualitative restrictions. Section 23B imposes various safeguards, including arm's-length requirements in such transactions. The Bank recognizes that the 10 percent individual and 20 percent aggregate restrictions on affiliate transactions imposed by Section 23A of the Federal Reserve Act apply to the Bank's purchases of shares in Bank-advised funds that are not sold to customers each day. Investment by the Bank in the Fund will be within the authority of permissible bank investments under 12 U.S.C. § 24(Seventh) because the Fund will consist solely of bank-eligible securities.

Based upon the representations provided in your letter and subsequent telephone conversations, the OCC has no objection to the requested limited modification of the condition that currently prohibits the Bank and its operating subsidiaries from purchasing, for

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<sup>1</sup>The earlier program was a sweep program offered to the Bank's deposit customers, while the Bank's current proposal involves the sale of shares to persons who may not otherwise be customers of the Bank. It is well established that a bank may sell securities in its capacity as a broker to persons who are not otherwise customers. *Securities Industry Ass'n v. Board of Governors of the Federal Reserve System*, 807 F.2d 1052, 1059-60 (D.C. Cir. 1986), cert. denied 483 U.S. 1005 (1987); *Securities Industry Ass'n v. Comptroller of the Currency*, 577 F. Supp. 252, 255 (D.D.C. 1983), aff'd per curiam 758 F.2d 739 (D.C. Cir. 1985), aff'd on other grounds sub nom. *Clarke v. Securities Industry Ass'n*, 479 U.S. 388 (1987).

their own accounts, shares of any investment company advised by the Bank or its subsidiaries. Accordingly, the condition is revised to read as follows:

5. Subject to the other limitations stated in this letter, the Bank and its subsidiaries will not purchase, for their own accounts, the shares of any investment company advised by the Bank, or the Bank's subsidiaries, except (1) for the purpose of providing initial capital for closed end investment companies in an amount not to exceed the limitation provided in condition #3 above; (2) to allow the Bank to facilitate daily sweep transactions for its customers involving shares of money market mutual funds advised by the Bank or its subsidiaries, as described in the letter dated December 15, 1995 from William Strome to David Bomgaars, OCC; and (3) to accommodate corporate money managers' purchases of proprietary mutual funds advised by the Bank or its subsidiaries, as described in the letter dated October 4, 1996 from David F. Freeman, Arnold & Porter, to Ellen Broadman, OCC.

If you have any questions concerning this matter, please contact Frederick G. Petrick, Jr., Senior Attorney, Securities and Corporate Practices Division at 202-874-5210.

Very truly yours,

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Julie L. Williams  
Chief Counsel