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

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Washington, DC 20219

**No-Objection Letter #97-02**

May 21, 1997

**June 1997**

**15 U.S.C. 78**

**12 U.S.C. 24(7)61**

**12 C.F.R. 12**

Mr. Thomas A. Volz  
First National Bank of Commerce  
201 St. Charles Avenue  
P.O. Box 60279  
New Orleans, Louisiana 70130

Re: Riskless Principal Transactions in Municipal Revenue Bonds

Dear Mr. Volz:

This is in response to your letter of December 5, 1996, requesting that the Office of the Comptroller of the Currency ("OCC") not object to proposed remuneration disclosures on customer confirmations by First National Bank of Commerce, New Orleans, Louisiana ("Bank") for riskless principal transactions in tax-exempt municipal revenue bonds. Subject to the conditions discussed below, the OCC will not object to the proposed disclosure.

You represent that the transactions will be conducted as contemporaneous purchases and sales consistent with Securities Exchange Act ("Exchange Act") Rule 10b-10, 17 C.F.R. § 240.10b-10, and would be further limited to investment grade municipal securities in secondary market transactions. The Bank proposes to confirm the transactions as "principal," with a further statement of the Bank's role as "riskless principal" in a footnote on the confirmation.<sup>1</sup>

You note that in a letter of July 7, 1993 (the "1993 Letter"), the OCC expressed no objection to a bank's proposed disclosures for riskless principal transactions in certain investment grade-rated debt securities. To avoid customer confusion concerning the bank's capacity, the

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<sup>1</sup> The OCC has previously determined that brokerage activity conducted as a riskless principal is authorized for national banks and does not violate the Glass-Steagall Act restriction on bank underwriting and dealing contained in 12 U.S.C. § 24(7). OCC Interpretive Letter No. 371, reprinted in [1985-87 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,541 (June 13, 1986). The Federal Reserve Board also has determined that such activity is bank-eligible under the Glass-Steagall Act. Bankers Trust New York Corporation, 75 Federal Reserve Bulletin 829, 831-33 (1989).

1993 Letter required that all customer confirmations refer to the transactions as “riskless principal” transactions. The 1993 Letter also expressed no objection to the bank’s non-compliance with the remuneration and counterparty disclosure requirements of 12 C.F.R. Part 12, stating that they did not appear necessary to ensure the safe and sound conduct of riskless principal operations by the bank.

The municipal revenue bond transactions involved in the present request are not subject to 12 C.F.R. Part 12. See 12 C.F.R. § 12.1(c)(iii) (December 31, 1996) (requirements of Part 12 do not apply to transactions in municipal securities conducted by a national bank registered with the Securities and Exchange Commission as a “municipal securities dealer,” as defined in 15 U.S.C. § 78c(a)(30)). The current transactions are instead subject to the rules of the Municipal Securities Rulemaking Board (“MSRB”). The MSRB does not specifically provide for disclosure in the capacity of “riskless principal.” The MSRB’s confirmation rule, Rule G-15, provides for disclosing a bank’s capacity on customer confirmations as either agent or principal. To achieve similar goals as in the 1993 Letter while complying with MSRB rules, the Bank has proposed to confirm the transactions as principal, with the statement “riskless principal” in a footnote to the confirmation.

The Bank has noted that the absence of a specific “riskless principal” designation as an option in the MSRB’s confirmation rules is a reflection of the fact that national banks’ competitors in this market would typically disclose that they act as principal in the transactions at issue. Because national banks are restricted by 12 U.S.C. § 24(7) from dealing in municipal revenue bonds, the Bank must act either as riskless principal or as agent in effecting these transactions. In those transactions where the Bank acts as riskless principal, it promotes competitive equity to permit the Bank the option of disclosing its role in the manner you have described.

You are advised that the OCC staff does not object to the Bank’s proposal to confirm transactions in municipal securities, in the manner described above. Our non-objection position is conditioned on the Bank ensuring that the MSRB has no objection to the proposed disclosures under MSRB rules. I note that the Federal Reserve Board’s staff has advised OCC staff that they would not object to this form of disclosure by a state member bank, subject to state law.

If you have any additional questions on this matter, please contact me, at (202) 874-5210, or Joe W. Malott, NBE, Treasury and Market Risk, at (202) 874-5670.

Sincerely,

/s/

Michael C. Dugas

Senior Attorney

Securities & Corporate

Practices Division

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