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Comptroller of the Currency  
Administrator of National Banks

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Washington, D.C. 20219

**Interpretive Letter #876**  
**January 2000**  
**12 USC 24(7)**

December 8, 1999

Dear [ ]:

This letter responds to your request on behalf of [ ], a federally licensed branch (“”) of [ ] Corporation (“Bank”), an [ ] Bank. [ ] proposes to act as agent in brokering certain securities that are held by the Bank as principal. Based on the representations made by [ ] and the undertakings described below, we have no objection to the proposed activities.

[ ] is a federally licensed institution located in [ *State* ] that is supervised by the Office of the Comptroller of the Currency (“OCC”). The Bank, through [ ], currently markets, and sells, derivative, foreign exchange, and fixed income products to banks, nonbank financial institutions, US corporations, and money managers. [ ] also provides financing to US corporations with some connection to Australia, New Zealand, or Asia. [ ] believes the ability to act as agent to provide U.S. based institutional clients with the full range of Australian and New Zealand corporate and government debt securities is necessary to compete, and will also serve to provide U.S. institutional investors with better pricing and greater depth of investment choices.

Under the proposal, the Bank (through its offshore offices and affiliates) will act as an initial purchaser of Australian and New Zealand corporate and government debt securities, which will be resold pursuant to Rule 144A under the Securities Act of 1933.<sup>1</sup> [ ] will sell these securities as agent

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<sup>1</sup> In a Rule 144A offering, the issuer sells to one or more initial purchasers. Rule 144A permits the initial purchasers to sell securities to qualified institutional buyers (“QIBs”). The definition of QIB includes: (1) certain institutions (e.g. an insurance company, a registered investment company, an employee benefit plan, a registered investment advisor) that own or have under management on a discretionary basis at least \$100 million in securities of unaffiliated issuers, (2) a registered dealer that owns and invests at least \$10 million of securities not affiliated with the issuer, or a registered dealer acting in a riskless principal transaction on behalf of a QIB, and (3) a bank or savings association that owns and invests on a discretionary basis at least \$100 million in securities not affiliated with the issuer and has a net worth of at least \$25 million. If resales by the initial purchasers are in compliance with Rule 144A, the initial purchasers are deemed not to be engaged in a distribution of securities and not to be underwriters under the Securities Act of 1933. 17 C.F.R. § 230.144A.

within the requirements of Rule 144A (“the proposed securities activities”). [ ] intends to engage in a full range of permissible brokerage activities in the promotion of Rule 144A transactions in the United States, including road shows to QIBs. The QIBs will pay an amount that includes a commission to [ ]. The Bank will receive these payments and remit the commission amount to [ ]. [ ] represents that it will comply with all applicable laws and regulations.<sup>2</sup>

[ ] will engage in permissible brokerage activities under this proposal. Brokerage activity is permissible for national banks pursuant to 12 U.S.C. § 24 (Seventh), and it is therefore a permissible activity for [ ] under the International Banking Act pursuant to 12 U.S.C. § 3101 *et seq.*<sup>3</sup> [ ] will conduct the proposed securities activities in conformance with the following undertakings:

- C** [ ]’s activities will be limited to brokerage as agent in the sale of 144A securities.
- C** The securities operations of the Bank’s offshore offices and affiliates will be limited to transactions that do not constitute impermissible dealing in securities in the United States.
- C** [ ] will disclose in writing to each purchaser of a security placed in reliance on Rule 144A the fact that the Bank, through its offshore offices or affiliates, is acting as “initial purchaser.” Such disclosure will be made before any order from a QIB is accepted.
- C** [ ] represents that it will comply with 12 C.F.R. Part 12 by providing customer confirmations, maintaining the required records, and following all applicable Part 12 requirements.
- C** All notices, tickets, advice, confirmations, correspondence and similar documentation generated in connection with the proposed securities activities will be clearly imprinted so as to avoid confusion between [ ]’s business and any other entity.
- C** [ ] will limit its sales activities in connection with the proposed securities activities to contacts with QIBs, a class of investors considerably more sophisticated than the “accredited investors” to whom private placements generally may be marketed.

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<sup>2</sup> This letter does not express any opinion on the applicability of the federal securities laws to any part of the proposed activity. [ ] has represented that the proposed activities will be structured to comply with all applicable securities laws.

<sup>3</sup> The fact that the securities brokered by [ ] will be held by the Bank as principal does not affect the characterization of [ ]’s role as a permissible brokerage activity. This is the case because, under the International Banking Act, [ ] may be deemed as distinct from the Bank for purposes of the proposed activity.

C The proposed securities activities will in no case involve marketing activities aimed at retail investors or the public at large.

C [ ] will not purchase for its own account any security with respect to which any of the Bank's offshore offices or affiliates have acted as initial purchaser in a Rule 144A placement.

Based on the representations made by [ ] and subject to the undertakings described above, we do not object to [ ] engaging in the proposed activities.

If you have any questions, please do not hesitate to contact Lee Walzer, Senior Attorney, International Activities, at (202) 874-4487, or Nancy Worth, Senior Attorney, Securities and Corporate Practices Division, at (202) 874-5210.

Sincerely,

Julie L. Williams  
First Senior Deputy Comptroller and Chief Counsel