



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #924
February 2002
12 USC 24(7)

January 2, 2002

Re: Applying Five Percent Limit on Holding Equity Securities for Hedging Purposes

Dear []:

This is in response to your inquiry regarding the holding of equity securities by [] (the "Bank") and its direct Edge corporation subsidiary, [] (the "Edge Corporation"). Specifically, you inquired whether the OCC's five percent limit on a national bank's holdings of equity securities for hedging purposes includes securities held by the Edge Corporation. For the reasons set forth below, we do not apply our policy regarding the five percent limit to securities held by the Edge Corporation.

We have previously determined that it is legally permissible for a national bank to purchase and hold equity securities to hedge customer-driven, bank permissible equity derivative transactions, subject to certain conditions.¹ In connection with this determination, the OCC also decided, as a policy matter, that a national bank should not acquire equity securities that constitute more than five percent of a class of stock of any issuer.

The OCC's conclusion that such holdings were permissible for a national bank was based on the National Bank Act, 12 U.S.C. § 24(Seventh), which broadly authorizes a national bank to engage in activities that are part of or incidental to, the business of banking. We have concluded that equity derivative transactions are authorized as part of the business of banking under § 24(Seventh). Further, we determined that national banks may purchase equity securities to hedge customer-driven equity derivative transactions as an activity that is incidental to the

¹ See Interpretive Letter No. 892 (September 13, 2000), reprinted in [2000-2001 Transfer Binder] Fed. Banking Law Rep. (CCH) ¶ 81-411.

business of banking.² Edge corporations are not authorized under the National Bank Act, but rather under the Federal Reserve Act.³ Under the Federal Reserve Act, Edge corporations may engage in a broad range of international banking and financial activities.⁴ Because the authority for an Edge corporation to invest in companies is distinct and separate from the authority of a national bank to acquire equity securities under its incidental powers under the National Bank Act, we do not apply our policy imposing a five percent limit on holding equity securities for the bank's hedging purposes to securities that are held by an Edge corporation pursuant to a separate authority under the Federal Reserve Act.

If you have any questions, please do not hesitate to contact Donald N. Lamson, Assistant Director, or Paul Vogel, Counsel, Securities & Corporate Practices Division at 202-874-5210.

Sincerely,

/s/

Julie L. Williams
First Senior Deputy Comptroller & Chief Counsel

² See Interpretive Letter No. 892, *supra*.

³ 12 U.S.C. § 611.

⁴ 12 U.S.C. § 615.