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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

February 27, 2006

John H. McGuckin, Jr.  
Executive Vice President,  
General Counsel, and Secretary  
Union Bank of California, N.A.  
400 California Street, 16<sup>th</sup> Floor  
San Francisco, California 94104

**Interpretive Letter #1048a**  
**March 2006**  
**12 USC 29**

Subject: Interpretive Letter No. 1048 (“IL 1048”)

Dear Mr. McGuckin:

In light of questions that have been raised regarding the details, limits, and scope of the financing transaction addressed in IL 1048, and because our previous communications were with outside counsel to the bank, we are writing directly to you to make sure that there is a clear understanding of the restrictions and limitations associated with the financing transaction. Our legal opinion was premised upon the following characteristics of the financing and the bank’s role in the financing transaction as represented to us:

- Before advancing funds, the bank would determine creditworthiness of project.
- The creditworthiness review and determination would be made pursuant to the bank’s standard loan underwriting criteria.
- Structuring the financing as a membership investment would be essential to the availability of tax credits to the bank and thereby integral to material terms of the financing provided by the bank.
- The project’s agreement would contain many of the same terms, conditions, and covenants typically found in lending and lease financing transactions to protect the bank’s interests.
- The bank would not participate in operation of the wind energy company, production of the wind energy, nor the sale of the wind energy.
- The bank would acquire approximately 70% of the equity interest in the company, and would look to distributions of revenue from the sale of electricity and the receipt of tax credits and depreciation expense for repayment of the funds advanced and its return on those funds.
- The bank would not share in any appreciation in value of its interest in the wind energy company or any of the company’s real property or personal property assets.
- In the event the energy company does not perform as projected (which would enable the bank to obtain repayment of the funds advanced, plus a calculated return), the bank may sell its interest in the wind energy company to minimize or avoid loss on the financing.

- Alternatively, in the event the energy company does not perform as projected, the bank would have the ability to force a vote to liquidate the wind energy company to minimize or avoid loss on the financing.
- At the end of the ten-year holding period, the bank would sell at book value its ownership interest in the wind energy company. It is projected that this value would be a small percentage of the bank's original investment.

We wanted to restate these characteristics so that it is clear that there is no misunderstanding on the bases for our conclusion. As IL 1048 states, our conclusion was based on the information and representations provided to us. A material change could result in a different conclusion.

Sincerely,

Julie L. Williams  
First Senior Deputy Comptroller  
and Chief Counsel