



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

June 16, 2011

Interpretive Letter #1133
September 2011
12 USC 24(7)

Re: Resecuritization of Certain Residential Mortgage-Backed Securities

Dear []:

This letter responds to your request for a determination regarding the permissibility and other regulatory treatment of the re-REMIC transaction described herein involving the resecuritization of certain residential mortgage-backed securities held by [] (the “Bank”). For the reasons discussed herein and based on the Bank’s representations and undertakings, we conclude that the transaction is permissible, subject to the conditions set forth below.

I. Background

As of September 30, 2010, the Bank held a portfolio of non-agency residential mortgage-backed securities (“RMBS”) with a book value of approximately \$[] billion. The RMBS were all rated investment grade at issuance and acquisition, and thus were lawfully acquired under 12 C.F.R. Part 1. Currently, approximately \$[] billion of the RMBS have non-investment-grade ratings and are consequently reported as criticized assets.

The Bank proposes to consummate a so-called re-REMIC transaction¹ with a subset of the RMBS portfolio valued at approximately \$[] billion (book value)² (the “Re-REMIC Transaction”) in order to enhance the marketability of the underlying interests and the Bank’s

¹ A real estate mortgage investment conduit (“REMIC”) is one type of vehicle used for securitizing mortgage loans. A REMIC is subject to a specialized set of tax rules. *See* 26 U.S.C. § 860A. A re-REMIC transaction involves the resecuritization of the RMBS issued by the REMIC. Re-REMIC transactions can have structural differences. *See* MARTY ROSENBLATT, DELOITTE & TOUCHE LLP, SPEAKING OF SECURITIZATION: THE RE-REMIC PHENOMENON 1-2 (June 2009).

² This subset contains approximately [] CUSIPs.

liquidity position, and to address regulatory concerns relating to the Bank's exposure to non-investment grade securities. The Re-REMIC Transaction would involve the Bank transferring the RMBS to a limited purpose subsidiary of the Bank. The Bank intends for the limited purpose subsidiary to form several trusts, and to transfer several RMBS to each trust. Each trust would then issue new securities backed by the RMBS (the "Re-REMIC Securities") to the limited purpose subsidiary.

The Bank, through the limited purpose subsidiary, would hold the Re-REMIC Securities to maturity, but would have the ability to sell them if market conditions improve. The Bank believes that the Re-REMIC Securities, on the whole, would be more marketable and liquid than the original RMBS.³

The Bank represents that neither its holding company nor the Bank is required to change its consolidated public disclosures (including SEC filings and call reports) as a result of the Re-REMIC Transaction until the Bank removes the RMBS from its balance sheet and adds the Re-REMIC Securities to its balance sheet under generally accepted accounting principles ("GAAP"), or as needed to comply with future changes in accounting standards, capital rules, or disclosure requirements. The Bank also represents that the Re-REMIC Transaction is not being entered into for the purpose of obtaining capital relief under the current OCC capital rules at 12 C.F.R. Part 3, and, accordingly, the Bank intends to continue to hold capital against the RMBS (rather than the Re-REMIC Securities) for so long as the RMBS remain on the Bank's balance sheet in accordance with GAAP. If changes in required reporting under GAAP necessitate that the RMBS be removed from the Bank's balance sheet and the Re-REMIC Securities be added to the Bank's balance sheet, then the Bank will hold capital against the Re-REMIC Securities that remain on its balance sheet. If GAAP and/or capital rules applicable to national banks should change at any time following commencement of the Re-REMIC Transaction, the Bank will comply with the then-applicable GAAP and/or capital rules, and will consult with the OCC regarding its actions.

The Bank represents that it will adhere to the prudential requirements as specifically set forth in 12 C.F.R. § 1.5 and other supervisory guidance on safe and sound banking practices.⁴ In addition, the Bank represents that it will establish and maintain, to the OCC's satisfaction, an adequate and effective risk measurement and management program for the Re-REMIC Transaction.

³ The Bank represents that [], a nationally-recognized statistical rating organization, would rate the Re-REMIC Securities based on a credit and cash flow analysis of the underlying loans, rather than based on the RMBS. Based on a preliminary analysis, the Bank expects that: (a) approximately 65 percent of the Re-REMIC Securities will be investment grade, approximately 15 percent will be unrated, and approximately 20 percent will be rated non-investment grade; and (b) immediately after consummating the Re-REMIC Transaction, the aggregate book value of the non-investment-grade Re-REMIC Securities will be substantially less than the aggregate book value of the investment-grade Re-REMIC Securities.

⁴ See, e.g., OCC Bulletin 2004-20, *Risk Management of New, Expanded, or Modified Bank Products and Services* (May 10, 2004); OCC Bulletin 2002-19, *Unsafe and Unsound Investment Portfolio Practices* (May 22, 2002); OCC Bulletin 99-46, *Interagency Guidance on Asset Securitization Activities* (Dec. 13, 1999); OCC, COMPTROLLER'S HANDBOOK: ASSET SECURITIZATION (1997).

II. Discussion

In our opinion, subject to the conditions discussed herein, the Bank may consummate the Re-REMIC Transaction and hold the Re-REMIC Securities resulting from the Re-REMIC Transaction.

A. The Re-REMIC Transaction

The Bank's authority to securitize assets it holds includes the authority to securitize assets, including assets that are securities. As 12 C.F.R. § 1.3(g) provides, "[a] national bank may securitize and sell assets that it holds, as a part of its banking business." By its plain terms, section 1.3(g) does not make a distinction between securitizing securities and securitizing other assets; if a national bank permissibly holds an asset, it may securitize and sell it.

The plain language of section 1.3(g) also does not suggest a distinction between securitizing assets that a bank has generated internally and assets that a bank has permissibly acquired as part of its banking business. Nothing in the adopting release or proposal of section 1.3(g) indicates a distinction between securitizing internally-generated assets and securitizing other permissibly held assets.⁵ The OCC approved of securitizing assets that a bank had permissibly acquired from third parties prior to adopting section 1.3(g),⁶ and the preamble to the final rule stated that section 1.3(g) codifies existing OCC interpretations.⁷

B. Retention of the Re-REMIC Securities

In our opinion, the Bank also may hold the Re-REMIC Securities resulting from the Re-REMIC Transaction. The Bank may hold the investment-grade Re-REMIC Securities under 12 C.F.R. Part 1 as Type V securities.⁸ A Type V security is a security that is: rated investment grade; marketable; not a Type IV security; and fully secured by interests in a pool of loans to numerous obligors in which a national bank could invest directly. Under Part 1, the aggregate par value of Type V securities held by the bank that are issued by any one issuer may not exceed 25 percent of the bank's capital and surplus.⁹

⁵ See *Investment Securities*, 61 Fed. Reg. 63972, 63977 (Dec. 2, 1996) (final rule); 60 Fed. Reg. 66152, 66155 (Dec. 21, 1995) (proposed rule).

⁶ OCC Interpretive Letter No. 540 (Dec. 12, 1990) (allowing securitization of "credit card receivables that the Bank has originated or purchased from other credit card issuers in accordance with its usual credit standards"); OCC Interpretive Letter No. 418 (Feb. 17, 1988) (approving a collateralized mortgage obligation consisting of 50% mortgage loans originated by the bank and 50% mortgage loans originated by unrelated parties).

⁷ See 61 Fed. Reg. at 63977 ("[Section 1.3(g)] reflects the OCC's long standing treatment of national banks' securitization activities as affirmed by case law.") (citing, among other authorities, OCC Interpretive Letter No. 540).

⁸ 12 C.F.R. § 1.2(n).

⁹ 12 C.F.R. § 1.4(f).

The Bank's creation and immediate retention of the non-investment-grade Re-REMIC Securities in connection with the Re-REMIC Transaction is a consequence of the benefits achieved through the Re-REMIC Transaction and under these circumstances is also permissible. By restructuring its assets in the Re-REMIC Transaction, the Bank is enhancing the marketability of the underlying assets, improving its liquidity position, and reducing its amount of non-conforming assets. Thus, the Re-REMIC Transaction is a modern variation of the type of asset restructuring long recognized as permissible for national banks,¹⁰ and the Bank's retention of the small portion of non-investment-grade Re-REMIC Securities is permissible as a necessary incident to such restructuring.

III. Conclusion

In consideration of the foregoing analysis, and based upon the facts and representations provided by the Bank, we conclude that the Bank may securitize the RMBS through the Re-REMIC Transaction and hold the resultant Re-REMIC Securities. The views expressed in this letter are based specifically on the Bank's representations and written and oral submissions describing the facts and circumstances of the Re-REMIC Transaction. Specifically, the Bank has made the following representations:

1. The Bank acquired the RMBS lawfully under 12 C.F.R. Part 1.
2. The Re-REMIC Transaction is intended to allow for a better reflection of the true economic value of the nonperforming and nonconforming RMBS as economic conditions improve, and to thereby enhance the marketability of the RMBS assets and the Bank's liquidity position.
3. The Bank does not plan to change its public disclosures as a result of the Re-REMIC Transaction, including but not limited to securities filings and call reports, until such time as the Bank is required to recognize the Re-REMIC Securities, rather than the RMBS, under GAAP, or as needed to comply with changes in capital rules or applicable disclosure requirements.
4. The Re-REMIC Transaction is not being entered into for the purpose of obtaining capital relief under the current OCC capital rules at 12 C.F.R. Part 3, and, accordingly, the Bank intends to continue to hold capital against the RMBS (rather than the Re-REMIC Securities) for so long as the RMBS remain on the Bank's balance sheet in accordance with GAAP. If changes in required reporting under GAAP necessitate that the RMBS be removed from the Bank's balance sheet and the Re-REMIC Securities be added to the Bank's balance sheet, then the Bank will hold capital against the Re-REMIC Securities that remain on its balance sheet. If GAAP and/or capital rules applicable to national banks should change at any time following commencement of the Re-REMIC Transaction, the Bank will comply with the then-applicable GAAP and/or capital rules, and will consult with the OCC regarding its actions.

¹⁰ See, e.g., *First National Bank of Charlotte v. National Exchange Bank of Baltimore*, 92 U.S. 122, 127–28 (1876); *Atherton v. Anderson*, 86 F.2d 518, 525 (6th Cir. 1936); *Cockrill v. Abeles*, 86 F. 505, 511 (8th Cir. 1898); OCC Interpretive Letter No. 1118 (July 2, 2009); OCC Interpretive Letter No. 643 (July 1, 1992).

5. The Bank believes, based upon previous discussions with nationally recognized debt rating agencies, that the aggregate book value of the non-investment grade Re-REMIC Securities will be substantially less than the aggregate book value of the investment-grade Re-REMIC Securities at the commencement of the Re-REMIC Transaction.

6. The Bank will adhere to the prudential requirements as specifically set forth in 12 C.F.R. § 1.5 and other supervisory guidance on safe and sound banking practices, as appropriate. In addition, the Bank will establish and maintain, to the OCC's satisfaction, an adequate and effective risk measurement and management program for the Re-REMIC Transaction.

Any change in the facts or circumstances could result in different conclusions. If you have any questions concerning this letter, please contact Roman Goldstein, Attorney, Securities & Corporate Practices Division, at 202-874-5210.

Sincerely,

/s/

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel