

**MEMO# 8412**

November 22, 1996

## **OCC ADOPTS RULE AMENDMENTS REGARDING OPERATING SUBSIDIARIES**

1 The amendments were proposed in November 1994. See Memorandum to Bank Investment Management Members No. 36-94 and Board of Governors No. 122-94, dated December 12, 1994. November 22, 1996 TO: BANK INVESTMENT MANAGEMENT MEMBERS No. 30-96 BOARD OF GOVERNORS No. 61-96 RE: OCC ADOPTS RULE AMENDMENTS REGARDING OPERATING SUBSIDIARIES

\_\_\_\_\_ The Office of the Comptroller of the Currency recently adopted rule amendments that would, among other things, authorize the OCC to consider applications for bank operating subsidiaries to engage in activities that a national bank could not engage in directly "that are part of or incidental to the business of banking, as determined by the Comptroller of the Currency, pursuant to 12 U.S.C. 24 (Seventh), and other activities permissible for national banks or their subsidiaries under other statutory authority." The amendments provide that if the OCC has not previously approved a proposed activity for a subsidiary that a national bank can not engage in directly, the OCC first will provide public notice and opportunity for comment on the application. The amendments will be effective as of December 31, 1996.<sup>1</sup> The release accompanying the rule amendments states that the OCC, in considering on a case-by-case basis proposed new activities for subsidiaries that are not permissible for the parent bank, will consider the particular activity at issue and weigh: (1) the form and specificity of the restriction applicable to the parent bank; (2) why the restriction applies to the parent bank; and (3) whether it would frustrate the purpose underlying the restriction on the parent bank to permit a subsidiary of the bank to engage in a particular activity. The release further states that the OCC's evaluation of all these factors also will take into account, among other things, safety and soundness implications of the activity, the regulatory safeguards that apply to the operating subsidiary and to the activity itself, and any conditions that may be imposed in conjunction with approval of an application. A subsidiary engaging in such an activity also would be subject to certain requirements, including maintaining a board of directors at least one-third of whom are not directors of the bank, and having a name that is not the same as its parent bank. (A subsidiary with a name similar to the bank will be required to take appropriate steps to minimize the risks of customer confusion.) In addition, the standards of Sections 23A and 23B of the Federal Reserve Act will be made applicable to transactions between the bank and its subsidiary.

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should not be considered a substitute for, legal advice.