



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Conditional Approval 595
July 2003

June 5, 2003

Ms. Courtney D. Allison
Assistant General Counsel
Wachovia Bank, National Association
301 South College Street, NC0630
Charlotte, NC 28288-0630

Re: Application by Wachovia Bank, N.A. to establish an operating subsidiary
Control Nr: 2003-ML-08-0006

Dear Ms. Allison:

On February 25, 2003, you submitted an application, pursuant to 12 C.F.R. 5.34(e)(5)(i), on behalf of Wachovia Bank, National Association (the Bank¹), to establish an operating subsidiary in which a financial services company chartered and operating in the United Kingdom (“UKCo”) will also have an interest. The subsidiary (“InvestCo”) would be a Delaware chartered limited liability company.² You supplemented this application with additional information provided in letters dated March 19, 2003, and April 16, 2003.

The Bank, through two of its existing operating subsidiaries, will purchase and hold two classes of membership units, designated as Class C units and Class D units. As a result of holding the Class C units, the Bank will control 49% of the voting rights and be the first in the order of priority to receive a quarterly preferred distribution out of the profits of InvestCo. UKCo will purchase and hold two classes of membership units, the Class A and Class B units. As a result of holding these units, UKCo will control 51% of the voting rights but will have no preferred distribution rights that take priority over the Class C and D membership units.³

¹ For purposes of this decision, “the Bank” refers to Wachovia Bank, N.A. and any applicable subsidiaries.

² InvestCo will have two offices, one in the United States and one in the United Kingdom. Meetings of its board of managers will occur in the UK and the managers will be residents of the UK. All relevant activities will occur in the UK, except that the U.S. office will hold a duplicate set of books and records; maintain the original “membership register,” which will record the owners of the various units; and monitor adherence to the requirement that all InvestCo investments must be bank eligible.

³ UKCo will also control about 1% of the Class D units.

In addition, under a call option arrangement with UKCo, one of the Bank subsidiaries will have the right at any time and for any reason, upon 10 days' notice, to require UKCo to transfer the Class A units to the Bank. Under certain circumstances, following an "acceleration event" as defined for purposes of this transaction, a shorter notice period could be required.⁴ Upon the transfer of the Class A units to the Bank, the Bank would control 100% of the voting units of InvestCo and can then cause the Class C and Class D units to be redeemed after it has acquired the Class A units.

UKCo, as holder of the Class A units, will have the right at any time, upon giving one day's notice to the holders of the Class C and Class D units to cause InvestCo to redeem the Class C units and Class D units. The effect of this will be to terminate the Bank's ownership of InvestCo. In the event that this happens, the Bank as Class C holder will receive its initial investment back in InvestCo in cash or, if InvestCo's portfolio cannot be liquidated promptly, by a distribution of assets having a fair market value equal to its original investment. Next, the Class D units would be redeemed based on the amount of the Bank's investment in the Class D units.

With funds received through the sale of the various membership units to the Bank and UKCo, InvestCo will purchase various mortgage-backed securities from the Bank⁵ and notes arising from various UKCo interaffiliate loans. The Bank represents that UKCo is an investment grade company that will guarantee the debt obligations of its subsidiaries to InvestCo and will collateralize its own debt obligation to InvestCo with investment grade OECD government securities.⁶ The investment enables the Bank, through its ownership of the Class C and D units, to earn a return on its investment that is higher than available on alternative investments with similar risks. The Bank represents that the structure of the transaction provides UKCo with certain tax benefits under United Kingdom law.⁷

⁴ If an "acceleration event" occurs, the Bank also will have the right following notice to cause InvestCo to redeem the Class C units and Class D units without first acquiring the Class A units; cause InvestCo to be liquidated and wound up; or appoint two additional managers to InvestCo's board of managers, which would give the Bank control of the board.

⁵ As these mortgages mature, are pre-paid, or sold, it is expected that InvestCo will reinvest the proceeds in additional debt securities that also constitute investments eligible to be held by a national bank.

⁶ The Bank represents that InvestCo will take possession of the collateral and monitor its fair market value on a daily basis. UKCo will be required to post additional debt securities as may be required to assure that the value of the collateral will always equal its initial value. The Bank also represents that InvestCo will enter into certain long-term interest rate, currency and other swap arrangements to hedge its foreign currency, interest rate and prepayment risks related to the mortgage backed securities and the payment of UK taxes in pounds sterling because InvestCo's functional currency will be U.S. dollars. An indirect subsidiary of the Bank, First International Advisors, LLC (FIA), a Delaware limited liability company resident in the UK, will act as investment manager for InvestCo. FIA will manage InvestCo's portfolio under an arm's length investment management agreement and subject to guidelines that will limit InvestCo to investments eligible for national banks.

⁷ The Bank, in connection with this transaction with UKCo, represents that in the formal course of risk management, it will evaluate the purpose of the transaction to assess whether UKCo has attempted to achieve a financial statement objective that could be construed as materially misrepresenting its financial condition, even if in conformance with generally accepted accounting principles (GAAP). If it is determined that the proposed transaction, or any subsequent modification or amendment to the proposed transaction, may result in materially

The activities of the proposed subsidiary are clearly permissible. National banks may hold, purchase and sell loans and other extensions of credit as well as interests in loans and other extensions of credit and undertake activities that are incidental to those activities. 12 U.S.C. 24(7th); 12 C.F.R. 5.35(e)(5)(v)(A), (D). Moreover, banks may enter into swaps to hedge interest rate, cross-currency and other risks. *See, e.g.* OCC Interpretive Letter No. 725, *reprinted in* [1995-96 Transfer Binder] Fed. Banking L. Rep. (CCH) para. 81,040 (May 10, 1996)

The ownership structure also is consistent with InvestCo's status as an operating subsidiary. Under OCC's regulation, an operating subsidiary in which a national bank may invest includes a corporation or other entity "if the parent bank owns more than 50 percent of the voting (*or similar type of controlling*) interest of the operating subsidiary; or the parent bank otherwise controls the operating subsidiary and no other party controls more than 50 percent of the voting (*or similar type of controlling*) interest in the operating subsidiary." 12 C.F.R. 5.34(e)(2) (emphasis added). The Bank will hold 49% of the ordinary vote of the company, and UKCo will hold 51%. However, the Bank has the right to require InvestCo to redeem UKCo's shares, thus making the Bank the 100% owner. This gives the Bank control over whether the other 51% can be voted at all. Under these circumstances, and particularly where the subsidiary will engage in the limited types of activities provided for here, the OCC has determined that this gives the parent bank more than 50% of the "similar type of controlling interest" of a subsidiary for purposes of section 5.34(e)(2). *See* OCC Conditional Approval No. 536 (June 21, 2002).⁸

Thus, we believe that the Bank is legally authorized to establish InvestCo as an operating subsidiary under 12 U.S.C. 24(7th) and 12 C.F.R. 5.34 subject to OCC examination, supervision, and regulation to the same extent as the Bank's other operating subsidiaries.

Based upon a thorough review of the information and representations contained in your letters, we conclude that the Bank may establish InvestCo, subject to the following conditions that are consistent with the Bank's representations in the application:

1. That InvestCo will engage only in those activities specifically described in the application and in accordance with the representations made in connection with the application;
2. That the books and records of InvestCo will be located at facilities of the Bank or one of its subsidiaries in the United States; that the Bank and InvestCo will maintain at facilities of the

misleading financial statements, the Bank has represented that it will decline the transaction, condition approval upon UKCo making express disclosures regarding the nature and financial impact of the transaction on UKCo's financial position, or take other steps to assure that the role of the Bank is appropriate. In addition, the Bank will have an appropriate process for verifying that UKCo has satisfied any conditions that the Bank established concerning disclosures. As part of the process to determine appropriateness, the Bank may seek representations and warranties from UKCo stating the purpose of the transaction, how UKCo will account for the transaction, and that UKCo will account for the transaction in accordance with GAAP, consistently applied.

⁸ Consequently, we agree with the Bank's conclusion that it is appropriate to consolidate the book figures of the subsidiary with its own. 12 C.F.R. 5.34(e)(4)(i).

Bank or one of its subsidiaries in the United States duplicate copies of any items required to be maintained in the United Kingdom; and that the Bank and InvestCo will ensure prompt OCC access to all books and records;

3. If any impediments arise to satisfactory OCC access to InvestCo's books and records, or to OCC examination, supervision and regulation, the OCC may direct the Bank to cease operations through InvestCo and the Bank will do so within a time period specified by the OCC; and

4. If the Bank plans to establish or acquire additional subsidiaries in the future to engage in activities similar to InvestCo, the Bank will file an operating subsidiary application with the OCC under 12 C.F.R. 5.34, notwithstanding the provisions of section 5.34(e)(5)(vi).

The conditions of this approval are conditions imposed in writing by the agency in connection with the granting of any application or other request within the meaning of 12 U.S.C. 1818. As such, the conditions are enforceable under 12 U.S.C. 1818.

This approval, and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

In the event of questions, please contact Richard T. Erb, Licensing manager, at (202) 874-5060 or by email: largebanks@occ.treas.gov.

Sincerely,

/s/ Julie L. Williams

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel