



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

September 19, 2008

Interpretive Letter #1119
August 2009
12 CFR 9.18

Subject: Request by [] under Regulation 9 Related to
[*ABC*]

Dear []:

This is in response to your request for confirmation that it is permissible for the Bank to continue to rely on the OCC's determination set forth in OCC Interpretive Letter 919 (November 9, 2001) for a ninety day period following the proposed acquisition of the U.S. and Canadian banking and capital markets business of [*ABC*] by [] ("*Affiliate*"), an affiliate of the Bank. Based on the Bank's representations and for the reasons set forth below, the OCC will deem the Bank to be in compliance with the terms of OCC Interpretive Letter 919 for the ninety day period following [*ABC*]'s acquisition.

The Bank is the trustee for index collective investment funds and model-driven collective funds established pursuant to 12 C.F.R.9.18. Index funds are collective investment funds that seek to replicate the performance of a specified index, such as the Standard and Poor's 500 Index. Model-driven funds are collective investment funds that seek to outperform a specified index or benchmark based on pre-determined investment strategy. Currently, a substantial percentage of the Bank's fixed income index and model-driven funds are indexed and benchmarked to [*ABC*]' indices. [*Affiliate*] has agreed to acquire certain assets of the U.S. and Canadian investment banking and capital markets business of [*ABC*] including the business unit that maintains the various [*ABC*]' indices.

OCC Interpretive Letter 919 confirmed that it is permissible for the Bank to allocate costs to individual participants being admitted to or withdrawing from model-driven funds in the same manner and to the same extent as section 9.18 index funds. One of the provisions set forth in OCC IL 919 is that the index the model-driven fund seeks to outperform must be established and maintained by an independent third party. Specifically, footnote 3 states that:

[t]he index or benchmark must be established and maintained by an independent organization that is in the business of providing financial information or brokerage services

to institutional clients, a publisher of financial news or information or a public stock exchange or association of securities dealers. The index or benchmark must be a standardized index of securities that is not specifically tailored for the use of the manager.

Further, the letter provides that the model will be based on objective criteria, using independent third party data that is not within the control of the fund manager. The acquisition of [*ABC*]'s index business unit by an affiliate of the Bank raises the issue of whether the Bank will continue comply with these provisions in the OCC letter.

The purpose of those provisions in OCC IL 919 was to ensure that the indices the Bank's model-driven funds seek to outperform are not within the control of fund managers. The Bank represents that there are substantial information barriers in place between the Bank and [*Affiliate*] that will remain in place after the acquisition. The Bank commits that it will continue to operate in a manner completely separate from the index business following the acquisition. The Bank also notes that the [*ABC*] fixed income indices are widely followed benchmarks in the global debt market and have not been specifically tailored for the use of the Bank. The Bank fully expects that these indices will continue to be maintained in a manner that meets the overall needs of the marketplace generally. For these reasons, the Bank contends that the index business to be acquired by [*Affiliate*] should continue to be considered an independent organization and that the models maintained by the Bank will continue to use data not within the Bank's control for the purposes of OCC IL 919.

Based on the Bank's representations, the OCC will deem the Bank's activities not to be inconsistent with Interpretive Letter 919 for the ninety day period following [*ABC*]'s acquisition. After further review, the OCC will determine whether the Bank may continue these activities after the ninety day period.

Sincerely,

signed

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel
Comptroller of the Currency