reliable estimates;'' 1.6, ''Type II securities; authority to deal in and underwrite;'' and 1.7, ''Types II and III securities; limitations on holdings.'' Current § 1.7(c), ''Limitations prescribed in eligibility rulings,'' has been removed as unnecessary. Current references to ''prudent banking judgment'' have been changed to ''safe and sound banking practices.'' The latter change is consistent with the OCC's implementation of this requirement and is not intended to change the applicable standard. Most of the limitations on Type I, II, III, and IV securities reflected in this section are derived from 12 U.S.C. 24 (Seventh).

In the proposal, the limitations with respect to Types II, III, and V securities are expressed in terms of ''the aggregate par value of the obligations of any one obligor,'' which is essentially the current approach. The OCC requests comments on whether this is an appropriate measure and, if not, whether alternative measures would be preferable.

Type II and III securities; other investment securities limitations (Section 1.3(d))

As in current § 1.7, the proposal provides that a national bank may not hold Type II and III securities of any one obligor that have a combined aggregate par value exceeding 10 percent of the bank's capital and surplus. However, aggregation is not required with respect to industrial development bonds. Instead, the 10 percent limitation applies separately to each security issue of a single obligor when the proceeds of that issuance are to be used to acquire and lease real estate and related facilities to economically and legally separate industrial tenants, and the issuance is payable solely from and secured by a first lien on the revenues to be derived from rentals paid by the lessee under net noncancellable leases. This provision incorporates the substance of the interpretation that currently appears at 12 CFR 7.7570. The OCC proposes to remove § 7.7570 in conjunction with this change.

Type IV securities (Section 1.3.(e))

The new section describing eligible Type IV securities confirms the authority granted to national banks by SMMEA and the RCDRI Act to purchase and sell certain mortgage- and small business-related securities. The section also reflects OCC interpretations concerning the authority of a national bank to deal in obligations that are fully secured by Type I securities, in which national banks may deal.[5] These interpretations reflect the OCC's consistent approach of looking to the substance of an instrument, and not just its form, to determine the activities a bank may conduct in connection with the instrument. In the case of Type IV securities that are fully secured by Type I securities, the ultimate source of repayment is Type I securities. The proposal does not limit the categories of Type IV securities in which banks may deal, provided that the securities are collateralized by Type I securities. Thus, a bank's authority to deal in the securities under this part would be determined with reference to the standards that apply to Type I securities. (The ability of a bank to securitize and sell its loans, including loans that qualify as collateral for Type IV securities, is addressed in § 1.3(g).)

Type V securities (Section 1.3(f))

The proposal establishes a quantitative concentration limitation of 15 percent of a bank's capital and surplus for purchases and sales of Type V securities of any one obligor (or certain related obligors), rather than the 10 percent limit that the OCC currently applies to asset-backed securities that qualify as Type III securities. The OCC believes this approach is appropriate because: (1) The 15 percent standard is the same level used for the basic lending limit threshold; (2) the qualitative standards for a Type V security have been tightened, so that Type V securities are a high quality type of asset-backed security; and (3) under certain circumstances set forth in § 1.4(c), holdings of Type V securities of different issuers will be aggregated for purposes of calculating compliance with the 15 percent limitation. Therefore, the OCC believes an investment limitation of 15 percent of a bank's capital and surplus should not present undue investment or concentration risk.

The OCC solicits comments on whether a higher investment limitation, such as 25 percent of a bank's capital and surplus, would be sufficient to prevent excessive concentration.

Asset securitization (Section 1.3(g))

This new section reflects the OCC's established position that national banks may securitize and sell their loan assets. The ability of banks to sell conventional bank assets through the issuance and sale of certificates evidencing interests in pools of the assets provides flexibility that can enhance banks' safety and soundness.[6] Asset securitization provides an important source of liquidity by allowing banks to convert relatively illiquid assets into instruments with maturities and other features that investors are readily willing to purchase. Another important benefit is the increased credit available, due to the fact that a bank may make more loans with a given level of capital (when the assets are removed from the bank's balance sheet) and may diversify its lending into new markets without incurring undue risk. Also, a bank is less dependent on deposits to fund its loans, improving bank profitability, with positive implications for reducing bank failure rates and minimizing draws on the deposit insurance funds. The treatment described in the proposal reflects the OCC's long-standing treatment of national banks' asset sales activities as affirmed by case law.[7]

[5] See Interpretive Letter No. 514 (May 5, 1990), reprinted in [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,218; Interpretive Letter No. 362 (May 22, 1986), reprinted in [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,532.

[6] See, e.g., Remarks by Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System before the American Bankers Association (October 8, 1994). See also Statement by Donald G. Coonley, Chief National Bank Examiner, OCC, Asset Securitization and Secondary Markets: Hearings Before the Subcomm. on Policy, Research, and Insurance of the Comm. on Banking, Finance and Urban Affairs, 102d Cong., 1st Sess. 2–4 (1991), reprinted in OCC Quarterly Journal (December 1991); and Joint Statement by Richard Spillenkothen, Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, and Donald H. Wilson, Financial Markets Officer, Federal Reserve Bank of Chicago, Secondary Market for Commercial Real Estate Loans: Hearings Before the Subcomm. on Policy, Research, and Insurance of the Comm. on Banking, Finance and Urban Affairs, 102d Cong., 2d Sess. 16–19 (1992), reprinted in 78 Fed. Res. Bull. 492 (1992).

[7] See, e.g., Interpretive Letter No. 585 (June 8, 1992), reprinted in [1992–1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,406 (securitized motor vehicle retail installment sales contracts purchased from automobile dealers); Interpretive Letter No. 540 (December 12, 1990), reprinted in [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,252 (securitized credit card receivables originated by bank or purchased from others); Interpretive Letter No. 514 (May 5, 1990), reprinted in [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,218 (securitized mortgages); Interpretive Letter No. 416 (February 16, 1988), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,640 (securitized automobile loans); Interpretive Letter No. 388 (June 16, 1987), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,612 (sale of mortgage-backed pass-through certificates); No Objection Letter No. 87–9 (December 16, 1987), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 84,038(securitization of commercial loans originated by the bank); Interpretive Letter No. 362 (May 22, 1986), reprinted in [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,532 (sales of bonds collateralized by mortgages). Regarding sales of participations in pools of loans, see Letter from Billy C. Wood, Deputy Comptroller, Multinational Banking (May 29, 1981), reprinted in [1981–82 Transfer Binder] Fed. Banking L. Rep. (CCH)

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