Investment company shares (Section 1.3(h))

The proposal permits a national bank to purchase and sell for its own account shares of a registered investment company, subject to two requirements: First, the investment company's portfolio must be comprised entirely of assets in which the bank could invest directly. Second, the amount of the bank's investment in shares of any one investment company is subject to the most stringent investment limitations applicable to the underlying securities and loans that comprise that investment company's portfolio. This provision incorporates OCC interpretations concerning the authority of a national bank to hold instruments representing indirect interests in assets that the bank could invest in directly. See Banking Circular 220 (November 21, 1986); An Examiner's Guide to Investment Products and Practices at 23 (December 1992).[8]

The OCC seeks comments on whether the definition of ''investment company'' should be revised to include limited partnerships with fewer than 100 investors, i.e., a partnership that would not qualify as an investment company within the meaning of section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1), provided that the partnerships' portfolios consist solely of Type I securities that the bank may purchase and sell for its own account.

Securities held based on estimates of obligor's performance (Section 1.3(i))

Notwithstanding the general definition of an investment security (§ 1.2(e)), the proposal retains the flexibility contained in the current rule, for a bank to treat certain debt securities as investment securities when the bank concludes, on the basis of estimates that the bank reasonably believes are reliable, that the obligor will be able to meet its obligations under that security. The bank may not hold securities classified as investment securities solely in reliance on projections of an obligor's future performance that in the aggregate exceed 5 percent of the bank's capital and surplus. The bank must also believe that the security may be sold with reasonable promptness at a price which corresponds reasonably to its fair value. This approach is modeled upon the OCC's current rule, which allows banks an additional degree of flexibility to determine the quality of debt obligations, for a limited portion of the bank's investment portfolio. The OCC notes that securities representing interests in loans made for community development purposes are one type of security that could, depending upon their characteristics, be eligible for investment by national banks under this standard.

The OCC requests comments as to whether it should provide further clarification of the standards applicable to securities held based on estimates of obligor's performance and, if so, in what respects clarification is needed.

Calculation of limits (Section1.4)

Proposed § 1.4 is new. Paragraphs (a) and (b), relating to the calculation date and authority to require more frequent calculations, are modeled on provisions contained in the OCC's new lending limit regulation. As explained in connection with the lending limit rule, the provision reduces regulatory burden by allowing banks to rely on information they already collect for their Call Reports to calculate compliance with their lending limits. The same reasoning applies to calculating limits of banks' securities holdings, and the proposal achieves a consistent approach in those two areas.

Calculation of Type III and Type V securities holdings (Section 1.4(c))

This proposed paragraph is a new approach to investment securities limitations designed to address situations where a bank's investments in securities of different issuers present similar sources of risk, and, therefore, warrant aggregation. In calculating the amount of its investment in Type III or Type V securities, the proposal requires a bank to combine obligations of issuers that are related directly or indirectly through common control and securities that are credit-enhanced by the same entity. These aggregation rules, which result in a bank being treated as if it has a greater investment in the securities of one obligor than would otherwise be the case, apply separately to Type III and Type V securities held by a bank. Current OCC policies already apply comparable standards for aggregation of Type III securities. As applied to Type V securities, the aggregation rules provide important safeguards in connection with the 15 percent limit provided for investments in Type V securities. Thus, banks are given more investment flexibility with Type V securities, but the increased investment authority is subject to explicit safeguards to address risk concentrations.

Comment is invited regarding other bases upon which a bank should combine its holdings when calculating its investment in Type III or Type V securities of any one obligor. Specifically, the OCC seeks comments as to whether a bank should combine obligations that are predominately collateralized by loans made by the same originator or by originators that are related directly or indirectly through common control. In addition, commenters are asked to address whether and under what circumstances an issuer or affiliate of the issuer would provide a guarantee or other form of credit enhancement for Type V securities that could be a source of credit exposure of the investing bank to the issuer or its affiliate. Comment is also invited on whether the 15 percent investment limitation or a lower limitation is appropriate under these circumstances.

The OCC is not at this time proposing to apply an aggregate limit to a bank's combined holdings of Type III and Type V securities, but requests commenters to address whether some form of an aggregate limitation should apply to a bank's exposure to a single obligor, regardless of the type of the obligation. For example, under the proposal, a bank could invest in Type V securities of any one obligor in an amount not exceeding 15 percent of the bank's capital and surplus, and Type III securities of the same obligor in an amount not exceeding 10 percent of the bank's capital and surplus. In addition, under the lending limit rules, the bank could also make loans to the same obligor in an amount up to 15 percent—or 25 percent depending upon the collateral—of the bank's capital and surplus. Of course, the OCC retains the ability to take action in connection with concentrations inconsistent with safe and sound banking practices.

¶ 85,275; Letter from Paul M. Homan, Senior Deputy Comptroller for Bank Supervision (February 1, 1980), reprinted in [1981–82 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,213; Letter from John M. Miller, Deputy Chief Counsel (July 31, 1979), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,182; Letter from Paul M. Homan, Senior Deputy Comptroller for Bank Supervision (April 20, 1979), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,167; Letter from H. Joe Selby, Deputy Comptroller for Operations (October 17, 1978), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,144; Letter from John G. Heimann, Comptroller of the Currency (May 18, 1978), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,116; Letter from Charles B. Hall, Deputy Comptroller for Banking Operations (February 14, 1978), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,100; Letter from Robert Bloom, Acting Comptroller of the Currency (March 30, 1977), reprinted in [1973–78 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 97,093. Regarding national bank authority to securitize assets, see Security Pacific v. Clarke, 885 F.2d 1034 (2d Cir. 1989), cert. denied, 493 U.S. 1070 (1990).

[8] The Federal Reserve Board has adopted a similar interpretation relating to state member banks' investments in mutual funds that invest only in eligible securities. See 12 CFR 208.124.