



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #835
August 1998
12 U.S.C. 24(7)

July 31, 1998

Joseph T. Green, Esquire
General Counsel
TCF Financial Corporation
801 Marquette Avenue
Minneapolis, Minnesota 55402-3475

Re: Proposed Mortgage Life Reinsurance Activities

Dear Mr. Green:

On February 24, 1997, the OCC approved the application of TCF Financial Corporation, Minneapolis, Minnesota ("TCF"), to convert its federal savings bank to a national bank, Great Lakes National Bank ("Bank"). Pursuant to the OCC's approval, the OCC permitted Lakeland Group Insurance Agency, Inc. ("Lakeland"), a subsidiary of the Bank, to retain its non-controlling minority interest in MIMLIC Life Insurance Company ("MIMLIC") for up to two years pending the OCC's determination of the permissibility of MIMLIC's credit-related reinsurance activities under the National Bank Act. See OCC Corporate Decision No. 97-13 (February 24, 1997) at 32. MIMLIC is an Arizona insurance company that reinsures mortgage life, mortgage accidental death, and mortgage disability insurance¹ (collectively, "credit life insurance")² on loans originated by lenders with an ownership interest in MIMLIC. For the reasons set forth below, we conclude that Lakeland is legally permitted to retain its non-controlling minority interest in MIMLIC, subject to certain conditions.

¹ Although MIMLIC is authorized under its Articles of Incorporation to reinsure mortgage disability insurance, MIMLIC does not presently engage in this activity.

² See generally 12 C.F.R. § 2.2(b) (Credit life insurance includes credit health, accident, disability and mortgage life insurance.)

I. BACKGROUND

A. Credit-related Insurance Generally

National banks may sell, underwrite and reinsure credit-related insurance products, including credit life insurance, that assist bank customers in meeting loan obligations when unfortunate circumstances, such as death, disability or unemployment, occur. These credit-related products may be purchased by customers to mitigate risks arising from credit obligations, and thus constitute an important component of outstanding credit relationships.

B. Parties

MIMLIC is an Arizona insurance company that reinsures mortgage life, mortgage accidental death, and mortgage disability insurance issued by Minnesota Mutual Life Insurance Company (“Minnesota Mutual”) on loans originated by lenders with an ownership interest in MIMLIC. The lenders with an ownership interest in MIMLIC include the Bank (which holds its ownership through its subsidiary, Lakeland) and service corporations of federal savings associations (collectively, “other depository institutions”).

C. Each Lender’s Interest in MIMLIC

The Bank’s subsidiary, Lakeland, holds approximately a 2.9% interest in MIMLIC. Minnesota Mutual holds approximately a 79% interest in MIMLIC, and the remaining shares are owned by other depository institutions.

There are three classes of MIMLIC stock outstanding: Class A stock, which is entirely owned by Minnesota Mutual; Class B stock, which is held by Lakeland and other depository institutions that participate in Minnesota Mutual’s mortgage life insurance plan; and Class C stock, which is held by Lakeland and other depository institutions that participate in Minnesota Mutual’s mortgage accidental death insurance plan. The number of shares of Class B and Class C stock and the value of shares held by Lakeland and the other investors reflect the relative amounts of mortgage life and mortgage accidental death insurance, respectively, in force with Minnesota Mutual on the mortgage borrowers of each lending institution. In order to maintain this relative distribution, MIMLIC may adjust the amount of stock each investor holds in MIMLIC, and has made such adjustments in April or May of each year based on the insurance in force with Minnesota Mutual on the mortgage borrowers of each lending institution as of December 31 of the prior year. The annual reallocation of shares produces share ownership among investors in each class of MIMLIC’s stock in direct proportion to the total insurance written on the borrowers of the lending institution for each type of insurance during the prior calendar year.

D. MIMLIC's Reinsurance Activities

MIMLIC is authorized under Arizona law to reinsure life, accidental death, health, and disability insurance. Pursuant to MIMLIC's Articles of Incorporation, as amended, MIMLIC's reinsurance activities are limited to the reinsurance of risks ceded to it from Minnesota Mutual, which assumes such risks under group life, accidental death and disability insurance policies related to borrowers of mortgage loans from the Bank and the other depository institutions that have an interest in MIMLIC.³

Under MIMLIC's Articles of Incorporation, Lakeland and each of the other depository institutions with an interest in MIMLIC assume their pro-rata share of MIMLIC's total reinsurance risk. Net income received by MIMLIC from its credit life reinsurance operations is distributed pro-rata, and losses are assessed on a pro-rata basis.

E. Reserve Requirements and Capitalization

MIMLIC will comply with all capital and reserve requirements under Arizona law applicable to reinsurers of mortgage life, mortgage accidental death and mortgage disability insurance.

F. Limitations on the Liability of Each Lender

Neither Lakeland, the other depository institutions, nor the Bank, will be liable for any of the activities of MIMLIC. MIMLIC is a corporation incorporated under the laws of the state of Arizona. Arizona law provides that a shareholder of a corporation is not personally liable for the acts or debts of the corporation. A.R.S. § 10-622 (1996). Therefore, Lakeland and the other depository institutions are not liable for MIMLIC's obligations. Lakeland's potential loss exposure would be limited to the amount of Lakeland's investment, *i.e.*, its 2.9% ownership interest in MIMLIC.⁴ The potential collective loss exposure of the other depository institutions would also be limited to the amount of their collective investment in MIMLIC. Additionally, the Bank and the other depository institutions hold their interest in MIMLIC through their subsidiaries, which provides the lending institutions further insulation from MIMLIC's obligations. Provided that each lending institution's respective subsidiary is operated with appropriate corporate separateness, the Bank and the other depository institutions should have no direct loss exposures for MIMLIC's obligations. With respect to the Bank, its indirect exposure will be limited to losses suffered by Lakeland, which are limited to its 2.9% ownership interest in MIMLIC. Thus, the Bank's loss exposure for the liabilities of MIMLIC will be limited from a legal standpoint.

³ As noted under footnote 1, *supra.*, MIMLIC does not presently reinsure mortgage disability insurance.

⁴ As of June 30, 1998, Lakeland's 2.9% ownership interest in MIMLIC represented approximately .05% of the Bank's total equity capital.

G. Consumer Provisions

The Bank does not require borrowers to obtain credit life insurance in order to obtain a mortgage.⁵ If, however, a borrower chooses to obtain credit life insurance sold by the Bank, the Bank complies with, and makes the disclosures required under, 12 C.F.R. §§ 226.4(d) and 226.18(n). Specifically, the Bank (i) discloses in writing to the borrower that the credit life insurance coverage is not required by the Bank; (ii) discloses the premium for the term of the insurance coverage; (iii) discloses that the credit life insurance may be obtained from a person of the borrower's choice; and (iv) requires the borrower to sign or initial an affirmative written request for the insurance.

H. Safety and Soundness Considerations

As noted above, neither Lakeland, the other depository institutions, nor the Bank, will be liable for any of the activities of MIMLIC. The authorized activities of MIMLIC consist solely of reinsuring mortgage life, mortgage accidental death insurance, and mortgage disability insurance on the mortgage loans of borrowers from the Bank and the other depository institutions that have an interest in MIMLIC.⁶ MIMLIC does not reinsure the life, accident, or disability insurance for other mortgage loans. All reinsured mortgages have to meet Minnesota Mutual's insurance criteria, which will provide minimal, uniform requirements.

Moreover, as a licensed reinsurer in the state of Arizona, MIMLIC is subject to ongoing supervision and regulation by the Arizona Commissioner. In return for accepting the risk associated with its reinsurance activities, MIMLIC receives insurance premiums, as well as investment income from its cash flow, providing a potentially important source of revenue for lenders that have an ownership interest in MIMLIC.

II. ANALYSIS

The Bank's 2.9% interest (which is held by the Bank's subsidiary Lakeland) in MIMLIC raises the issue of the authority of a national bank to make a non-controlling investment in an enterprise.⁷ A number of recent OCC Interpretive Letters have analyzed the authority of

⁵ The Bank generally does require that borrowers obtain mortgage insurance from third-party mortgage insurers on a loan with a down payment of less than 20 percent of the property's value, or a loan with a loan-to-value ratio in excess of 80 percent. Mortgage insurance protects an investor holding a mortgage loan against default by the mortgagor.

⁶ See footnote 1, *supra*.

⁷ The OCC recently amended its operating subsidiary rule, 12 C.F.R. § 5.34, as part of a general revision of Part 5 under the OCC's Regulation Review Program. Operating subsidiaries in which a national bank may invest

national banks, either directly or through their subsidiaries, to own a non-controlling interest in an enterprise.⁸ These letters each concluded that the ownership of such an interest is permissible provided four standards, drawn from OCC precedents, are satisfied.⁹ They are:

1. The activities of the entity or enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking;
2. The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment;
3. The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise; and
4. The investment must be convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to *that bank's* banking business.

Based upon the facts presented, the Bank's proposal satisfies these four standards.

A. The activities of the entity or enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking.

1. The "Business of Banking" Analysis

The OCC previously has determined that selling, underwriting, and reinsuring credit life insurance is generally permissible under the National Bank Act.¹⁰ The OCC concluded that, in

include corporations, limited liability companies, or similar entities if the parent owns (1) more than 50 percent of the voting (or similar type of controlling) interest, or (2) 50 percent or less so long as the bank "controls" the subsidiary and no other party controls more than 50 percent. 12 C.F.R. § 5.34(d)(2). Here, MIMLIC will not be considered an operating subsidiary since the Bank will not "control" MIMLIC.

⁸ See, e.g., Interpretive Letter No. 697, reprinted in [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-012 (November 15, 1995); Interpretive Letter No. 732, reprinted in [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-049 (May 10, 1996).

⁹ See also 12 C.F.R. § 5.36(b). National banks are permitted to make various types of equity investments pursuant to 12 U.S.C. § 24(Seventh) and other statutes.

¹⁰ See, e.g., OCC letter dated May 11, 1998, responding to an operating subsidiary application filed by Fleet National Bank (the "*Fleet letter*") (authorizing underwriting and reinsurance of credit-related life, disability and unemployment insurance); Corporate Decision No. 97-92 (November 1997) (authorizing underwriting and

general, these insurance activities are part of the business of banking because credit-related insurance products are an integral part of credit transactions. Credit-related insurance products assist bank customers in meeting loan obligations when unfortunate circumstances, such as death, disability or unemployment, occur. These credit-related products may be purchased by customers to mitigate risks arising from credit obligations, and thus constitute an important component of outstanding credit relationships. Such credit-related insurance products involve the assumption by banks of risks that are inherent in the lending business. Bank lenders necessarily must assume the risk that loan borrowers will experience adverse circumstances that may interfere with their ability to repay loan obligations. Reinsurance of credit-related insurance products similarly involves the assumption of the risk that customers may experience such adverse circumstances.

In the *Fleet letter*,¹¹ the OCC concluded that credit life insurance benefits bank customers because it enables those customers to ensure repayment of their loans in the event of adverse circumstances such as death. The OCC also concluded that credit life underwriting and reinsurance activities benefitted national banks because they enable a national bank to obtain new sources of income in connection with credit risks that the bank already assumes in connection with its lending relationship with a customer. Banks' involvement in underwriting and reinsuring credit life insurance may promote competition between underwriters of credit-related insurance products, and expand consumer choices. Finally, the OCC concluded that the risks assumed by banks when they underwrite and reinsure credit-related insurance products are not new to national banks. These risks are similar for all borrowers with the same risk characteristics, regardless of the identity of the lender. The OCC thus concluded that the underwriting and reinsurance activities are part of the business of banking. Alternatively, the OCC concluded that underwriting and reinsuring credit life insurance would be permissible as an activity incidental to banking, particularly to a national bank's express power to make loans, because it enhances a lender's ability to receive repayment for its loans; and promotes the lending business by making available a credit-related product useful to borrowers. To determine the permissibility of MIMLIC's credit life reinsurance activities, we will discuss each of the "business of banking" factors analyzed in the *Fleet letter*, and apply them to the specific facts of MIMLIC's case.

reinsurance of credit-related disability and involuntary unemployment insurance); Interpretive Letter No. 277, reprinted in [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,441 (December 13, 1983) (authorizing underwriting and reinsurance of credit-related life insurance); 12 C.F.R. Part 2 (Sales of Credit Life Insurance); and IBAA v. Heimann, 613 F.2d 1164 (D.C. Cir. 1979), cert. denied, 449 U.S. 823 (1980) (confirming the OCC's authority to adopt its credit life insurance regulation at 12 C.F.R. Part 2).

¹¹ OCC letter dated May 11, 1998.

a. Functionally Equivalent to or a Logical Outgrowth of Recognized Banking Functions.

MIMLIC reinsures credit-related insurance risks that arise from insurance policies written in connection with mortgage loans made by the Bank and other depository institutions that have an interest in MIMLIC. As noted above, each lender will assume (indirectly through a subsidiary) its pro-rata share of the reinsurance risk and receive its pro-rata share of the insurance premium based on the amount of mortgage insurance issued by Minnesota Mutual to mortgage customers of the Bank. Thus lenders, including the Bank, are using this arrangement as a means to reinsure credit-related life insurance, an activity the OCC has found permissible for national banks.

The proposed arrangement is similar to reinsurance activities previously approved by the OCC where a bank assumes risks arising from a pool of mortgages that includes loans originated or held by the bank and other lenders. See Interpretive Letter No. 828 (April 6, 1998) (authorizing reinsurance of private mortgage insurance on mortgage loans originated or purchased by lenders participating in a reciprocal mortgage reinsurance exchange). Similar to the arrangement described in Interpretive Letter No. 828, all the loans reinsured by MIMLIC must meet Minnesota Mutual's underwriting criteria to be accepted for coverage. Thus, Minnesota Mutual's underwriting criteria will assure a level of consistency and uniformity. Those underwriting criteria will assure that each lender's subsidiary with an ownership interest in MIMLIC assumes a pro-rata share of reinsurance liability on an essentially homogenous mortgage pool issued under the same general insurance underwriting guidelines. Accordingly, MIMLIC's reinsurance of credit life insurance on loans originated by lenders with an ownership interest in MIMLIC, is functionally equivalent to, or a logical outgrowth of, previously approved credit life insurance reinsurance activities.

In addition, through its reinsurance activities, MIMLIC assumes credit-related risks that are inherent in the lending business. Lenders necessarily must assume the risk that loan borrowers will experience adverse circumstances that may interfere with their ability to repay loan obligations. Credit-related insurance products involve the assumption of the risk of losses when customers experience such unfortunate, adverse circumstances. See Fleet letter. The activity of reinsuring credit life insurance thus is directly related to or a logical outgrowth of a bank's lending authority and is a permissible banking activity under 12 U.S.C. § 24(Seventh).

The proposal is also consistent with our precedents that hold that national banks may pool their resources to engage in banking activities collectively.¹² As with other collective ventures

¹² See Letter from James M. Kane, District Counsel dated June 8, 1988 (unpublished) (national banks permitted to purchase preferred stock in captive insurance company where stock purchase was a prerequisite to obtaining directors' and officers' ("D&O") liability insurance); Interpretive Letter No. 554, reprinted in [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶83,301 (May 7, 1990) (captive insurer similar to Kane situation);

permitted by the OCC, MIMLIC offers the opportunity to engage in banking services more efficiently and effectively. Participating lenders can realize an overall cost savings through economies of scale offered by MIMLIC that will reduce transaction costs. Participating lenders also can achieve greater diversification through reinsuring in a larger, more diverse, portfolio of loans. This will be particularly helpful to community and mid-size banks, which, individually, may lack the resources and loan volume to achieve the level of diversification or economies of scale, offered by MIMLIC.

b. Respond to Customer Needs or Otherwise Benefit the Bank or Its Customers.

MIMLIC offers benefits for the Bank and its customers. Credit life insurance benefits the Bank's customers because these products enable those customers to ensure repayment of their loans in the event of death, disability, or involuntary unemployment. The Bank's involvement in this activity will do nothing to diminish customers' ability to obtain optional credit life insurance. MIMLIC also benefits the Bank by providing flexibility in structuring its activities to obtain new sources of credit-related income. MIMLIC offers the Bank a potentially more cost-effective and attractive vehicle for reinsuring credit life insurance. By joining forces with other financial institutions through MIMLIC, the Bank benefits from the economies of scale and diversification offered by MIMLIC.

c. Risks Similar in Nature to Those Already Assumed by National Banks.

The risks assumed by MIMLIC when it reinsures credit life insurance are similar to risks national banks may assume through the reinsurance of credit life insurance on their own loans. MIMLIC merely assumes the risk that the loan borrowers may experience adverse circumstances that interfere with their ability to repay loans.

The risks assumed by the Bank, by using MIMLIC to reinsure credit life insurance, also are similar to the risks the Bank would assume if it conducted the reinsurance activities directly. The Bank, by owning an interest in MIMLIC, assumes risks commensurate with the risks arising from reinsuring credit life insurance on the Bank's loans and receives a return based on the premiums attributed to credit life insurance coverage on those loans. Thus, the Bank is subject to similar risks when it reinsures credit life insurance directly, or indirectly through its ownership of MIMLIC.

Interpretive Letter No. 427, reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶85,651 (May 9, 1988) (bank purchases of stock in the Federal Agricultural Mortgage Corporation ("Farmer Mac") where stock purchases were necessary for participation in the agricultural mortgage secondary market promoted by Farmer Mac; Letter of James J. Saxon, Comptroller of the currency (October 12, 1966) (banks may purchase minority interests in a corporation that operated a credit card clearinghouse for the benefit of the owner banks); and Letter of Robert B. Serino, Deputy Chief Counsel (November 9, 1992) (equity investment to join an ATM network).

2. Incidental To the Business of Banking Analysis

The OCC also determined in the *Fleet letter* that even if selling, underwriting and reinsuring credit-related insurance were not viewed as a part of the business of banking, those activities would be generally permissible as incidental to a national bank's express power to make loans. Similarly, a national bank's reinsurance of credit life insurance through MIMLIC is incidental to the business of banking.

In NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co., 513 U.S. 251 (1995) ("VALIC"), the Supreme Court expressly held that the "business of banking" is not limited to the enumerated powers in 12 U.S.C. § 24(Seventh), but encompasses more broadly activities that are part of the business of banking. VALIC at 258, n.2. The VALIC decision further established that banks may engage in activities that are incidental to the enumerated powers as well as the broader "business of banking."

Prior to VALIC, the standard that was often considered in determining whether an activity was incidental to banking was the one advanced by the First Circuit Court of Appeals in Arnold Tours, Inc. v. Camp, 472 F.2d 427 (1st Cir. 1972) ("Arnold Tours"). The Arnold Tours standard defined an incidental power as one that is "convenient or useful in connection with the performance of one of the bank's established activities pursuant to its **express** powers under the National Bank Act." Arnold Tours at 432 (emphasis added). Even prior to VALIC, the Arnold Tours formula represented the narrow interpretation of the "incidental powers" provision of the National Bank Act. Interpretive Letter 494 (December 20, 1989), reprinted in [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,083 (December 20, 1989). The VALIC decision, however, has established that the Arnold Tours formula provides that an incidental power includes one that is convenient and useful to the "business of banking," as well as a power incidental to the express powers specifically enumerated in 12 U.S.C. § 24(Seventh).

Reinsuring credit life insurance through MIMLIC is incidental to the business of banking under the Arnold Tours standard. Reinsuring credit life insurance in the manner proposed through the Bank's non-controlling interest in MIMLIC is incidental to a national bank's express power to make loans. This activity is "convenient" and "useful" to the Bank because it will provide the Bank an alternative structure for reinsuring credit life insurance on the Bank's loans. This flexibility is convenient and useful to the Bank in determining how to structure its credit life reinsurance activities in the most efficient and profitable manner.

B. The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment.

The activities of the enterprise in which a national bank may invest must be part of, or incidental to, the business of banking, not only at the time the bank first acquires its

ownership, but for as long as the bank has an ownership interest. This standard may be met if the bank is able to exercise a veto power over the activities of the enterprise, or is able to dispose of its interest. See, e.g., Interpretive Letter No. 711, reprinted in [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-026 (February 3, 1996); Interpretive Letter No. 625, reprinted in [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,507 (July 1, 1993). This ensures that the bank will not become involved in impermissible activities.

Lakeland holds only a 2.9% voting stock interest in MIMLIC and thus, does not possess the power to control the activities of MIMLIC. However, the Bank is able to withdraw from its investment, and TCF has represented that Lakeland would agree to dispose of its stock in MIMLIC promptly if MIMLIC were to begin to engage in impermissible activities. Therefore, the second standard is satisfied.

C. The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise.

1. Loss Exposure From A Legal Standpoint.

A primary concern of the OCC is that national banks should not be subjected to undue risk. Where an investing bank will not control the operations of the entity in which the bank holds an interest, it is important that the national bank's investment not expose it to unlimited liability. Normally, this is not a concern when investing in a corporation, for it is generally accepted that a corporation is an entity distinct from its shareholders or members, with its own separate rights and liabilities. 1 Fletcher, Cyclopaedia of the Law of Private Corporations § 25 (rev. perm. ed. 1990).

Here, MIMLIC is a corporation incorporated under the laws of the state of Arizona. Arizona law provides that a shareholder of a corporation is not personally liable for the acts or debts of the corporation. A.R.S. § 10-622 (1996). Therefore, Lakeland is not liable for MIMLIC's obligations. Lakeland's potential loss exposure would be limited to the amount of Lakeland's investment, i.e., its 2.9% ownership interest in MIMLIC. Additionally, the Bank holds its minority interest in MIMLIC through Lakeland, its subsidiary, which provides further insulation from MIMLIC's obligations. Provided that Lakeland is operated with appropriate corporate separateness, the Bank should have no direct loss exposure for MIMLIC's obligations. The Bank's indirect exposure will be limited to losses suffered by Lakeland, which are limited to its 2.9% ownership interest in MIMLIC. Thus, the Bank's loss exposure for the liabilities of MIMLIC will be limited from a legal standpoint.

2. Loss Exposure From An Accounting Standpoint.

From an accounting standpoint, the loss exposure of the Bank will also be limited. The Bank has advised that the accounting treatment for its investment in MIMLIC is under the cost method of accounting. This treatment is used for equity interests of less than 20 percent in corporations. Under this method, losses recognized by the investor will not exceed the amount of the investment (including extensions of credit or guarantees, if any) shown on the investor's books. See generally, Accounting Principles Board, Op. 18 § 19 (1971) (cost method of accounting for investments in common stock). Under these circumstances, the loss exposure of the Bank should be limited, since Lakeland owns only 2.9% of MIMLIC. Therefore, for both legal and accounting purposes, the Bank's potential loss exposure relative to MIMLIC should be limited to the amount of its investment. Since that exposure will be quantifiable and controllable, the third standard is satisfied.

D. The investment must be convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.

Twelve U.S.C. § 24 (Seventh) gives national banks incidental powers that are "necessary" to carry on the business of banking. "Necessary" has been judicially construed to mean "convenient or useful." See Arnold Tours, Inc. v. Camp, 472 F.2d 427, 432 (1st Cir. 1972). Our precedents on bank non-controlling investments have indicated that the investment must be convenient or useful to the bank in conducting that bank's business. The investment must benefit or facilitate that business and cannot be a mere passive or speculative investment. See, e.g., Interpretive Letter No. 697, supra; Interpretive Letter No. 543, reprinted in [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,255 (February 13, 1991); Interpretive Letter No. 427, reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,651 (May 9, 1988); Interpretive Letter No. 421, reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,645 (March 14, 1988); Interpretive Letter No. 380, reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,604 (December 29, 1986).

The Bank's investment is neither passive nor speculative. The Bank's investment in MIMLIC provides the Bank a more cost-effective and attractive vehicle for reinsuring credit life insurance on the Bank's loans. The investment in MIMLIC also benefits the Bank because it provides the Bank flexibility in obtaining new sources of credit-related income. For these reasons, the Bank's investment in MIMLIC is convenient and useful to the Bank in carrying out its business and is not a mere passive investment. Thus, the fourth standard is satisfied.

III. CONCLUSION

Based upon the information and representations provided by the Bank, and for the reasons discussed above, it is our opinion that Lakeland is legally permitted to retain its 2.9% non-controlling minority interest in MIMLIC in the manner and as described herein, subject to the following conditions:

1. MIMLIC will engage only in activities that are part of, or incidental to, the business of banking;
2. Lakeland will withdraw from MIMLIC by disposing of its stock in MIMLIC promptly if MIMLIC engages in an activity that is inconsistent with condition number one;
3. The Bank will account for its investment in MIMLIC under the cost method of accounting; and
4. MIMLIC will be subject to OCC examination.

These conditions are conditions imposed in writing by the OCC in connection with its action on the request for a legal opinion confirming that Lakeland's investment is permissible under 12 U.S.C. § 24(Seventh) and, as such, may be enforced in proceedings under applicable law.

Sincerely,

/s/

Raymond Natter
Acting Chief Counsel