Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

April 25, 1996

Michael W. Briggs, Esq.
Regulatory Relations Attorney
Barnett Banks, Inc.
50 North Laura Street
Jacksonville, Florida 32202-3638

Re: Operating Subsidiary Notification of Barnett Bank of Jacksonville, N.A. - Control No. 96-SE-08-0002

Dear Mr. Briggs:

This is in response to your operating subsidiary notification dated March 14, 1996, filed in the OCC's Southeastern District Office. The notification was forwarded to Washington for review. We have completed our review and the notification is hereby approved, subject to the conditions set forth herein.

PROPOSAL

The notification was filed by Barnett Banks, Inc. ("Barnett") on behalf of its subsidiary, Barnett Bank of Jacksonville, N.A., Jacksonville, Florida ("the Bank"),[1] as part of a general restructuring of Barnett's mortgage-related business. Currently, Barnett engages in mortgage lending activities through its 32 subsidiary banks and a wholly-owned, nonbank subsidiary, Barnett Mortgage Company ("Barnett Mortgage"). Barnett Mortgage, in turn, has three wholly-owned subsidiaries that engage in retail and wholesale mortgage origination, lending, and servicing. These subsidiaries are BancPLUS Mortgage Corporation ("BancPLUS"), Loan America Financial Corporation ("LAFC"), and EquiCredit Corporation of New York ("EQCNY").

[1] There is currently pending with the OCC an application to merge 28 bank subsidiaries and several nonbank subsidiaries of Barnett with and into the Bank, with the Bank as the resulting institution. Upon consummation of this proposed merger, the Bank will change its name to Barnett Bank, N.A.

Barnett Mortgage operates approximately 57 offices in 25 states and is one of the largest mortgage banking operations in the country for both origination and servicing. Most of the loans that it originates or purchases are sold in the secondary market. Loans that are not sold are booked in affiliate banks based on respective liquidity positions and needs.

To better maximize profitability opportunities in the mortgage lending business, Barnett plans to focus its resources on loan origination, while continuing to have a role in loan servicing. To accomplish this, it will transfer its mortgage servicing business to a joint venture with unaffiliated investors, while moving its mortgage origination activities into an operating subsidiary of the Bank. This will be accomplished as follows.

In a cash transaction, Barnett will sell all of the outstanding stock of Barnett Mortgage to HomeAmerica Capital, Inc. ("HomeAmerica"), a Delaware corporation formed for the purpose of serving as a holding company for Barnett Mortgage.[2] However, prior to the sale Barnett will segregate and retain all Barnett Mortgage assets relating to mortgage loan origination.[3] These constitute approximately five percent of Barnett Mortgage's total assets. EQCNY will also be retained in its entirety. Thus, HomeAmerica will acquire all of the stock of Barnett Mortgage and its subsidiaries BancPLUS and LAFC, together with their mortgage servicing assets. These constitute approximately 95 percent of the present total assets of Barnett Mortgage.

Once the sale of Barnett Mortgage is complete, and upon OCC approval of the present notification, Barnett will contribute the stock of its subsidiary Barnett Residential Lending Corporation ("BRLC") to the Bank at book value. BRLC was formed to facilitate this transaction and is presently a nonoperating company. Barnett will also contribute to BRLC at fair market value the origination-related assets previously owned by Barnett Mortgage, including the stock of EQCNY, which will become a wholly-owned subsidiary of BRLC.

After these contributions BRLC will be an operating subsidiary of the Bank, engaged in all aspects of arranging, making, purchasing, and selling extensions of credit secured by liens on or interests in real estate. Its assets will include all real or personal property interests formerly held by Barnett Mortgage and its subsidiaries related to these activities, including the associated emp'oyees. It will operate retail and wholesale mortgage loan production offices in 24 states, as well as four regional processing or underwriting centers.

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[2] HomeAmerica will also hold all of the outstanding stock of BancBoston Mortgage Corporation, Jacksonville, Florida, an operating subsidiary of First National Bank of Boston that is being sold by that bank as part of a similar corporate restructuring. *See* Interpretive Letter No. 711, February 23, 1996.

[3] However, the origination assets of a BancPLUS subsidiary in Hawaii will not be retained.

In addition to these assets, BRLC also will acquire and hold a one-third equity interest in HomeAmerica,[4] thus maintaining a stake in the mortgage servicing business that is being transferred to that company. In connection with this investment, the Bank and the other investors in HomeAmerica have entered into a Stockholder Agreement that includes the following provisions:

- Neither HomeAmerica nor any of its subsidiaries will undertake any new activities that are not legally permissible for a corporation having a national bank as a shareholder owning the portion of HomeAmerica's stock that the Bank then holds.

- HomeAmerica and its subsidiaries will submit themselves to the extent legally required to the jurisdiction, supervision, and examining authority of the OCC and all other appropriate agencies.

- The HomeAmerica board of directors will have eleven members. The Bank, the other national bank investor, and the nonbank investors collectively will each designate three directors, and the remaining two will be members of management of HomeAmerica or its subsidiaries, selected jointly by at least five of the other directors.[5]

- Supermajority voting provisions will afford the Bank a veto power over certain major corporate actions, including changes in senior management of HomeAmerica and any merger or sale of HomeAmerica for less than book value, or for consideration that would include securities that are not permissible for a national bank to hold. The designated types of actions must be approved by at least a majority of the directors appointed by each shareholder, thus requiring the approval of at least two of the three directors designated by the Bank.

The proposed restructuring will create a multilevel organization consisting of the Bank, an operating subsidiary (BRLC), and indirect subsidiaries (HomeAmerica and its subsidiaries). Various legal issues are raised at each level. Our analysis will begin with the first tier or operating subsidiary level, and then proceed to the indirect subsidiaries.

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[4] The First National Bank of Boston will also own a one-third interest in HomeAmerica, and the final one-third will be owned by several nonbank investors.

[5] The Bank's board representation can be reduced or eliminated if its share ownership falls below certain minimal levels.

ANALYSIS

I. OPERATING SUBSIDIARY (BRLC)

A. Activities

BRLC will engage in the business of making mortgage loans and selling such loans in the secondary market. National banks may perform activities that are part of or incidental to banking through operating subsidiaries, 12 C.F.R. § 5.34(c), and national banks are specifically authorized by 12 U.S.C. § 371 to arrange, make, purchase, or sell real estate loans. National banks are also authorized to negotiate "evidences of debt" under 12 U.S.C. § 24(Seventh). Thus, there is no question that the proposed activities of BRLC are permissible.

B. Branching

After the restructuring, BRLC will operate a network of 39 retail loan origination offices in 24 states, 14 wholesale mortgage origination offices, and four regional processing centers ("RPCs") that will process and approve or deny loan applications. None of these facilities will be located at a branch of the Bank. The retail origination offices will be operated in accordance with the OCC's interpretive rulings and letters on loan production offices ("LPOs"), that is, they will provide loan information, assist customers with loan applications, and perform other origination-related activities, but no loan proceeds will be delivered at these offices. The four RPCs will be "back room" facilities, not open to the public. Loans will be funded from a central location in Jacksonville, with proceeds being delivered to borrowers through a variety of channels including independent third parties such as attorneys, escrow agents, and title companies, and via automated clearinghouse transfers. Thus, no loan proceeds will be disbursed at either LPOs or RPCs.

The OCC has previously concluded that such a mortgage lending structure -- utilizing loan production offices, loan approval performed at back offices not located at the main office or a branch of the bank, and disbursement of loans by independent third parties on their own premises -- is permissible and does not cause any of the locations to be branches under the McFadden Act, 12 U.S.C. § 36. For a complete discussion, *see generally* Interpretive Letter No. 634, [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,518 (July 23, 1993).

In addition, the OCC has recently issued two new interpretive rulings to make it clear that the geographic restrictions of 12 U.S.C. §§ 36 and 81 do not apply to the type of structure that BRLC will use. Interpretive Ruling 7.1005, 12 C.F.R. § 7.1005, provides that credit decisions may be made at locations other than the main office or a branch of the lending bank, as long as money is not loaned at those locations. Interpretive Ruling 7.1003, 12 C.F.R. § 7.1003, states that loan proceeds may be delivered to borrowers by a third party at

a place that is not established by the lending bank or its operating subsidiary. A "third party" includes one who customarily delivers loan proceeds to borrowers under accepted industry practice, such as an attorney or escrow agent at a real estate closing.[6]

Three of the RPCs will be in separate, nonpublic areas of the same building in which a retail loan origination office is located, while the fourth will be a nonpublic facility at a separate location. The OCC has also previously addressed this situation, finding that the combination of LPOs and separate, nonpublic loan approval offices in the same building does not cause such a location to be a branch. Interpretive Letter No. 667, [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,615 (October 12, 1994).

According to your letter, the 14 wholesale mortgage origination offices will have no direct contact with customers, but will work through a network of independent mortgage brokers who will perform all customer contact at their own offices. Since these wholesale offices will have no public access they (as well as the fourth RPC, above) will be simply back offices, and back offices are not branches under the McFadden Act. Interpretive Letter No. 634, *supra*. Thus, the proposed operations of BRLC are compatible with the McFadden Act and will not cause any location of BRLC to be considered a branch of the Bank.

C. Affiliate Transactions

Barnett will contribute the origination assets of Barnett Mortgage (including its subsidiary, EQCNY) to the Bank at fair market value. Barnett Mortgage currently has outstanding a line of credit with Barnett, which serves as a warehouse facility for Barnett Mortgage's funding needs. This extension of credit will be repaid prior to the transaction, and will not be assumed by the Bank or BRLC. Barnett Mortgage leases some of its premises, and after the transfer all new or renewal leases will be entered into in the name of BRLC. The lessors are all unaffiliated third parties, and no premises are leased from Barnett. In addition, no liabilities of EQCNY will be assumed. Since the origination assets of Barnett Mortgage and EQCNY will be contributed to the Bank and the Bank will not assume any liabilities of these entities, the transaction will not constitute a purchase of assets within the meaning of section 23A of the Federal Reserve Act, 12 U.S.C. § 371c. Following the transaction, the Bank will provide funding to BRLC for its mortgage origination activities. However, extensions of credit from a member bank to its operating subsidiary are exempt from covered transaction restrictions, *see* 12 U.S.C. § 371c(b)(2)(A).

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[6] The OCC issued three interpretive rulings on LPOs and related facilities. Interpretive Rulings 7.1003-1005, 12 C.F.R. §§ 7.1003-1005, 61 Fed. Reg. 4849, 4863 (1996). In addition to the two rulings cited in the text, Interpretive Ruling 7.1004, 12 C.F.R. § 7.1004, is a recodification of former Interpretive Ruling 7.7380 on LPOs, without substantive change. While Interpretive Rulings 7.1003 and 7.1005 are new, they reflect existing OCC interpretive letters.

II. INVESTMENT IN HOMEAMERICA

A. National Bank Incidental Powers (12 U.S.C. § 24(Seventh)

The OCC has long permitted national banks to own stock in operating subsidiary corporations. Under the OCC's current regulations, a national bank must own at least 80 percent of the voting shares of an operating subsidiary. 12 C.F.R. § 5.34(c). While this requirement will be satisfied with respect to BRLC, which will be wholly-owned, the Bank's indirect interest in HomeAmerica will be only 33 percent. Therefore, the issue presented by your notification concerns the authority of a national bank to hold -- directly, or indirectly through an operating subsidiary -- a minority equity interest in an enterprise such as HomeAmerica.

Recent OCC interpretive letters have extensively analyzed the authority of national banks under 12 U.S.C. § 24(Seventh) to own stock, and reviewed OCC precedents on the ownership of stock in amounts less than that required for an operating subsidiary. Interpretive Letter No. 711, (February 23, 1996); Conditional Approval No. 194, (January 26, 1996); Interpretive Letter No. 697, [Current] Fed. Banking L. Rep. (CCH) ¶ 81-013 (November 15, 1995). Those letters concluded that such ownership is permissible provided that four standards, drawn from OCC precedents, are satisfied. They are:

> 1) The activities of the 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 or useful to the bank in carrying out its business and not a mere passive investment unrelated to *that bank's* banking business.

Each of these factors is discussed below, and applied to your proposal.

> *1. The activities of the enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking.*

Our precedents on minority stock ownership have recognized that the enterprise in which the bank takes an equity interest must confine its activities to those that are part of or incidental to the conduct of the banking business. *See, e.g.*, Interpretive Letter No. 380, [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,604 n.8 (December 29, 1986) (since a

national bank can provide options clearing services to customers, it can purchase stock in a corporation providing options clearing services); letter of Robert B. Serino, Deputy Chief Counsel (November 9, 1992) ("Serino Letter") (since the operation of an ATM network is "a fundamental part of the basic business of banking," an equity investment in a corporation operating such a network is permissible).

HomeAmerica will engage, through its two subsidiaries, in both mortgage origination and mortgage servicing. It is clear that these mortgage banking activities are permissible for national banks. As discussed previously, national banks are specifically authorized by 12 U.S.C. § 371 to make, arrange, purchase, and sell loans or extensions of credit secured by liens on interests in real estate. Mortgage servicing can be considered either an activity that is incidental to this specific real estate lending authority, or an activity that is incidental to banking in general under 12 U.S.C. § 24(Seventh). In either case, it is something that has long been recognized as permissible for national banks.[7] Therefore, this standard is satisfied.

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.

The activities of an enterprise in which a national bank invests must be part of or incidental to the business of banking at the time the bank initially purchases stock, and they must remain so for as long as the bank has an ownership interest. However, minority shareholders in a corporation do not possess a veto power as a matter of corporate law. One way to address this problem is for the corporation's articles of incorporation or bylaws to limit its activities to those that are permissible for national banks. *See, e.g.*, Letters of Peter Liebesman, Assistant Director, Legal Advisory Services Division (January 26, 1981 and January 4, 1983).

Contractual solutions are also feasible. In the present case, the Bank and the other investors will enter into an Amended and Restated Shareholder Agreement ("Shareholder Agreement") to address this concern. You submitted a draft of the Shareholder Agreement and it provides that, as long as the Bank, the other national bank investor, or any of their respective affiliates, are owners of HomeAmerica stock, neither HomeAmerica nor any of its subsidiaries will undertake any new activities that are not legally permissible for a corporation having a national bank owning such amount of stock at that time. Shareholder Agreement, art. 2. In addition, as described earlier, board of directors supermajority voting provisions will give the Bank a veto power over certain major corporate actions. *Id.* § 3.4. The provisions governing the transfer of shares are complex but, in general, the only

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[7] The OCC's former Interpretive Ruling 7.7379 on mortgage servicing was recently removed because the authority of national banks to perform this function is well established and a specific interpretive ruling is no longer needed. 61 Fed. Reg. 4860 (1996).

restriction on the right to sell shares appears to be a prohibition of sales to certain "direct competitors of one or more of the Shareholders." Transfers to other parties appear to be permissible. *See generally, id.* art. 5.

These provisions assure that HomeAmerica and its subsidiaries will not engage in any activities that are not permissible for a corporation having a national bank shareholder, for as long as the Bank owns shares in HomeAmerica. Further, it appears that the Bank will be able to withdraw its investment if necessary. Therefore, this standard is also satisfied.

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.

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 a national bank's investment not expose it to unlimited liability. Normally, this is not a concern when investing in a corporation, for shareholders are protected by the "corporate veil" from liability for the debts of the corporation. 1 William M. Fletcher, Fletcher Cyclopedia of the Law of Private Corporations § 25 (perm. ed. rev. vol. 1990).

In the present case, the Bank will not hold the investment directly but through BRLC, a separately incorporated operating subsidiary. HomeAmerica and its subsidiaries also will be separate corporations, with their own capital, directors, and officers. All operations will be conducted at the third tier level, by subsidiaries of HomeAmerica, and you represent that corporate formalities will be properly observed so as to minimize the possibility that the Bank could be subjected to liability for the obligations HomeAmerica or its subsidiaries. Thus, the Bank will have several layers of protection.

Further, the Bank has been advised by its independent auditors that the appropriate accounting treatment for its interest in HomeAmerica will be to report it as an investment in an unconsolidated subsidiary under the equity method of accounting. Under this method, which is used for equity interests of 20 to 50 percent in corporations, 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) (equity method of accounting for investments in common stock).

Therefore, for both legal and accounting purposes, the Bank's potential loss exposure should be limited to the amount of its investment (plus, potentially, the amount of any extensions of credit to HomeAmerica). Since that exposure will be quantifiable and controllable, this standard is satisfied.

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

Twelve 12 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." *Arnold Tours, Inc. v. Camp,* 472 F.2d 427, 432 (1st Cir. 1972). The provision in section 24(Seventh) relating to the purchase of stock, derived from section 16 of the Glass-Steagall Act, was only intended to make it clear that section 16 did not authorize speculative investments in stock. Interpretive Letter No. 697, *supra.* Therefore, a consistent thread running through our precedents concerning stock ownership is that such ownership must be convenient or useful to the investing bank in conducting its banking business. The investment must benefit or facilitate that business, and cannot be a mere passive or speculative investment. *See, e.g.,* Interpretive Letter No. 543, [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,255 (February 13, 1991); Interpretive Letter No. 427, [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,651 (May 9, 1988); Interpretive Letter No. 421, [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,645 (March 14, 1988).

The mortgage banking business is an intensely competitive, technology-driven industry that requires high volumes to produce economies of scale and acceptable profit levels. In view of this, the Bank believes its best course is to concentrate its resources on loan origination, since it will not be able to achieve the economies of scale necessary for success in loan servicing. However, HomeAmerica will be able to do this, and having an ownership interest in HomeAmerica will provide the Bank with a way to participate in the loan servicing side of the business.

The transaction will not result in a mere passive investment, for the Bank will play an active part in HomeAmerica's business. It will own one-third of the shares of the company, and there will be only four other major shareholders.[8] This, in itself, tends to negate the suggestion that it will be a passive investment.

The Bank will hold seats on HomeAmerica's board of directors. The supermajority voting provisions previously described will give the Bank a veto in such matters as any merger of HomeAmerica or sale of its assets at less than book value, and the hiring of senior executive officers of HomeAmerica. Shareholder Agreement, § 3.4. In addition, as long as the Bank has the right to designate any director of HomeAmerica, it will have at least two members on HomeAmerica's risk management committee, which will monitor the implementation of interest rate and hedging policies set by the board of directors. *Id.* § 3.3. The Bank, either directly or through BRLC, also will participate in product development initiatives for HomeAmerica.

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[8] In addition, a small number of shares will be owned by officers and employees of HomeAmerica.

The OCC focuses its examination efforts on the levels of risk in the national banks that it supervises. By reducing its financial commitment to the mortgage banking business, the Bank will be able to diversify its use of funds and thereby reduce its level of risk. These factors demonstrate that the Bank's investment in the restructured Mortgage Company will provide a benefit that is convenient or useful to the Bank in carrying out its banking businesses, and the fourth standard is therefore satisfied.

B. Branching

The Bank's proposal also raises the issue of whether loans made by HomeAmerica[9] should be attributed to the Bank, and locations of the Mortgage Company treated as Bank locations, for purposes of applying the branching restrictions applicable to national banks under the McFadden Act, 12 U.S.C. § 36. For several reasons, we conclude that they should not.

It is axiomatic that, with respect to loans, the McFadden Act is not invoked unless a loan is made by a national bank. If a borrower does not receive bank funds, we generally conclude that the bank has not made a loan. That is the case here. After the restructuring, no Bank funds will be loaned to borrowers. Nor are loans made by HomeAmerica equivalent to loans made by the Bank. HomeAmerica will rely on outside sources of funding for its loans[10] and will deal with the Bank on an arm's-length basis. Moreover, as an accounting matter, loans made by HomeAmerica will not appear as assets on the Bank's financial statements. Thus, for financial reporting purposes, the Bank will not be making the loans. Since the Bank will not be making loans at HomeAmerica locations, the McFadden Act simply will not apply to those offices.

Corporate structure considerations reinforce the conclusion that the McFadden Act will not be applicable to HomeAmerica's activities. HomeAmerica will be an autonomous business, not part of the Bank. It will have its own customers and its own offices that are not located in branches of the Bank. Although the Bank will, as previously mentioned, have seats on HomeAmerica's board of directors and risk management committee, no Bank employees will participate in its day-to-day operations.

HomeAmerica also will be treated as an entity distinct from the Bank for supervisory purposes. Since HomeAmerica will not be an operating subsidiary, any extensions of credit from the Bank to HomeAmerica will be subject to the usual lending limits and loans to one borrower rules established by 12 U.S.C. § 84 and OCC regulations. *See* 12 C.F.R. § 32.1(c). As noted above, any such extensions of credit from the Bank to HomeAmerica would be on an arm's length basis. Thus, in the event that HomeAmerica receives any loans

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[9] Since operations will be conducted at the subsidiary level, for purposes of this branching analysis "HomeAmerica" includes its subsidiaries.

[10] The Bank may provide bridge financing for an interim period until HomeAmerica establishes unaffiliated sources of funding.

from the Bank, it will be treated as an entity distinct from the Bank, subject to the same lending limit rules as any other borrower unrelated to the Bank.

The operations of an entity or instrumentality are not attributed to a national bank for branching purposes merely because the bank conducts some of its core banking business through that entity. Serino Letter, *supra*. National banks frequently use affiliates, third parties, or instrumentalities controlled by third parties, to facilitate their banking business, yet these entities are not considered to be branches of the bank.

For example, a bank customer may obtain a cash advance loan from his or her bank at an ATM owned by a different bank, or even a nonbank company. Despite the fact that the ATM has performed a core banking activity and the lending bank's business has been facilitated, the machine is not a branch of that bank. *Independent Bankers Association of New York v. Marine Midland Bank,* 757 F.2d 453 (2d Cir. 1985), *cert. denied,* 476 U.S. 1186 (1986). Under the concept of facility banking, a depositor may make a deposit at Bank A for credit to an account at affiliate Bank B, yet Bank A is not a branch of Bank B. 12 U.S.C. § 1828(r); Interpretive Letter No. 610, [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,448 (October 8, 1992). Yet another example is an independent messenger service. A national bank and its customers may contract with an independent service to pick up or deliver items (such as deposits) relating to branching functions but, if certain requirements are satisfied, the messenger service will not be a branch of the bank. Interpretive Ruling 7.1012, 12 C.F.R. § 7.1012, 61 Fed. Reg. 4849, 4864 (1996).

C. Affiliate Transactions

Sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. §§ 371c and 371c-1, place restrictions on extensions of credit from member banks to nonbank affiliates, but these restrictions will not apply to extensions of credit from the Bank to HomeAmerica or its subsidiaries after the restructuring. The Bank's indirect 33 percent ownership of HomeAmerica will qualify HomeAmerica as a subsidiary of the Bank for purposes of section 23A,[11] but nonbank subsidiaries of member banks are excluded from the definition of "affiliate," 12 U.S.C. § 371c(b)(2)(A). Thus, nonbank subsidiaries are not subject to the restrictions on transactions with affiliates. Section 23B incorporates the same definition of "affiliate." 12 U.S.C. § 371c-1(d)(1). On the other hand, as previously mentioned, any extensions of credit from the Bank to HomeAmerica or its subsidiaries will be subject to the usual lending limits established by 12 U.S.C. § 84 and OCC regulations. *See* 12 C.F.R. § 32.1(c).

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[11] With respect to a specified company, a "subsidiary" is a company that is controlled by the specified company, 12 U.S.C. § 371c(b)(4); and a company is deemed to control another company if it has the power to vote 25 percent or more of any class of voting securities of that company, 12 U.S.C. § 371c(b)(3)(A)(I).

Sections 23A and 23B also place restrictions on purchases of assets by member banks and their subsidiaries from nonbank affiliates such as parent bank holding companies. These restrictions will not apply to HomeAmerica's purchase of Barnett Mortgage and its servicing assets from Barnett because the purchase will be made before HomeAmerica becomes a subsidiary of the Bank. BRLC will not acquire its ownership interest in HomeAmerica until after the purchase of Barnett Mortgage by HomeAmerica is consummated. At the time of the purchase, HomeAmerica will be an independent company, unrelated to the Bank.

D. Supervision

The OCC requires that entities in which national banks invest be subject to OCC examination and supervision. Accordingly, you represent that the Bank is prepared to proceed with establishment of BRLC as an operating subsidiary and the proposed investment in HomeAmerica subject to such conditions as the OCC deems proper. The Shareholder Agreement that will be entered into by the Bank and the other investors provides that HomeAmerica and its subsidiaries will submit themselves to the jurisdiction, supervision, and examining authority of the OCC. Shareholder Agreement, art. 2. Therefore, this supervisory condition is satisfied.

CONCLUSION

For the reasons outlined above, it is our conclusion that the Bank may establish BRLC as an operating subsidiary, and may legally hold a 33 percent equity interest in HomeAmerica as proposed in your letter. We also conclude that the restrictions of the McFadden Act, 12 U.S.C. § 36, will not apply to HomeAmerica or its subsidiaries following your proposed restructuring.

Our conclusion is conditioned upon compliance with the commitments made in your notification and with the conditions listed below:

1) HomeAmerica and its subsidiaries may engage only in activities that are part of, or incidental to, the business of banking;

2) the Bank will have veto power over any activities and major decisions of HomeAmerica and its subsidiaries that are inconsistent with condition number one, or the Bank will withdraw its investment from HomeAmerica if HomeAmerica or any of its subsidiaries proposes to engage in an activity that is inconsistent with condition number one;

3) HomeAmerica and its subsidiaries will be subject to OCC supervision and examination; and

4) the Bank will not account for its investment in HomeAmerica under the consolidated method of accounting.

Please be advised that the conditions of this approval are deemed to be "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. If you have any questions, please contact John Stein, Licensing Manager, Southeastern District, at (404) 588-4525.

Sincerely,

Julie L. Williams
Chief Counsel