Office of the
Comptroller of the Currency

Interpretive Letter #1185
June 2025

June 12, 2025

Subject: National Bank Use of Certain Debt Securities Acquired for Investment and Equity Securities Acquired as Hedges as Collateral for Repurchase Agreement Transactions (Repo)

Dear [ ]:

This responds to your request dated December 19, 2024, concerning whether [ ] and [ ] (individually, [ ] and [ ] and collectively, the Banks) may use securities acquired under 12 C.F.R. part 1 and equity securities acquired to hedge customer-driven equity derivatives as collateral in repo transactions. Specifically, you requested confirmation that the proposed activity would not constitute impermissible dealing under 12 U.S.C. §§ 24(7) and 378. Your request also raised the question of whether the proposed activity is not inconsistent with the requirements of the OCC's derivatives regulation at 12 C.F.R. § 7.1030. We confirm, based on the Banks' representations and subject to the limitations described below, that the activity (1) would not be impermissible dealing and (2) would not be inconsistent with the OCC's derivatives regulation at 12 C.F.R. § 7.1030.[1]

I. Background

The Banks propose to use (a) securities in the Banks' investment portfolio and (b) equity securities acquired to hedge [ ]'s customer-driven equity derivative transactions as collateral for tri-party repos.[2] Under the proposal, the Banks would act as borrowers in the repo. They would sell the collateral securities to a repo counterparty with an agreement to repurchase the securities at a predetermined time and price. The difference between the sale price and the purchase price would reflect the interest that the Banks would pay on the repo. The purpose of the proposed activity is to help meet the Banks' liquidity needs by allowing the Banks to access funds more quickly in times of stress.

[1] This letter does not express any opinion on the applicability of the federal securities laws to any part of the proposed activity. The Banks have represented that the proposed activities will be structured to comply with all applicable securities laws.

[2] In a tri-party repo, an independent custodian bank, clearing house, or securities depository is responsible for ensuring that the collateral's value remains adequate during the life of the transaction. *See* OCC, *Comptroller's Handbook: Custody Services* (Jan. 2002), p. 89. In this case, an unaffiliated bank would serve as the collateral agent and custodian for the collateral.

Transaction Overview

The Banks represent the following:

- The Banks would use Type I, II, III, IV, and V securities acquired under 12 C.F.R. part 1 and, in the case of [ ], equity securities acquired to hedge customer-driven equity derivative transactions as collateral. The securities would be liquid and readily marketable for the purposes of applicable capital rules.[3]
- With respect to the securities that the Banks cannot deal in, the Banks would not purchase the securities for the purpose of serving as repo collateral. Rather, the Banks would purchase the securities either as investments pursuant to 12 C.F.R. part 1 or, in the case of [ ], as a hedge pursuant to the physical hedging provisions of 12 C.F.R. § 7.1030. The Banks would not run a matched book between the initial purchase of the securities and their use as collateral (i.e., the purchase of the securities would be wholly unconnected to the later use of the securities for the repo transactions). The Banks would not hold themselves out as making a market in the purchase and sale (via repo) of the securities, would not make a market in securities, would not hold an inventory of securities for the purpose of making a market or dealing in the securities, and would not solicit transactions for the purpose of being able to purchase and then sell (via repo) the securities.
- The securities are currently held on the Banks' balance sheets. The securities would continue to be reflected on the Banks' balance sheets once they are used as collateral for repos.
- The Banks would retain credit and market risk with respect to the securities.[4] The Banks would take on additional credit risk with respect to the repo counterparty but would not be subject to any additional market risk because the repo would entail selling and repurchasing the collateral at a predetermined price.
- The Banks' repo counterparties could not rehypothecate or otherwise re-use the collateral.
- If a repo counterparty defaulted and failed to return the collateral, the Banks would have the right to net and set off their obligation to return cash to the counterparty against the value of the unreturned collateral. If the Banks needed to replace the unreturned collateral (e.g., to maintain a hedge), the Banks would generally be able to purchase or borrow the securities at the same price as the most recent daily mark-to-market valuation of the unreturned securities.
- The Banks would have the right to substitute government securities as collateral in all the repo transactions.
- If a customer-driven equity derivative terminated early, [ ] would substitute collateral to reacquire the equity security and then promptly sell the equity security.
- The Banks state that, because of the protections afforded by tri-party repo, there is minimal risk of delays or failure to deliver.

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[3] To qualify as a repo-style transaction under 12 C.F.R. part 3, a transaction must meet certain requirements including that the transaction must be based solely on liquid and readily marketable securities, cash, or gold. *See* 12 C.F.R. § 3.2.

[4] In the case of the equity securities, the market risk should be offset by the derivative transactions that the securities hedge.

II. Analysis

National banks have broad authority to engage in repos, including as borrowers.[5] However, using certain debt securities and equities as collateral raises two issues:

a. Whether the activity amounts to impermissible dealing under 12 U.S.C. §§ 24(7) and 378; and
b. Whether re-using equities as collateral complies with the limitations on physical hedging provided under 12 C.F.R. § 7.1030(e).

a. *Dealing Prohibition*

Under 12 U.S.C. § 378(a)(1), a national bank generally may not accept deposits and also engage in securities dealing.[6] However, this general prohibition does not apply to "dealing in . . . investment securities . . . to the extent permitted" by 12 U.S.C. § 24.[7]

Twelve U.S.C. § 24(Seventh) likewise provides that a national bank generally may not deal in securities.[8] Notwithstanding this general prohibition, the statute goes on to provide that a national bank may purchase for its own account "investment securities," subject to such limitations and restrictions as the OCC may prescribe by regulation, and that limitations and restrictions on dealing in investment securities under the statute do not apply to a national bank dealing in certain government securities.[9]

Twelve C.F.R. part 1 implements 12 U.S.C. § 24(Seventh)'s provisions concerning dealing in securities. Under 12 C.F.R. part 1, a national bank may deal in Type I and II securities (generally comprising certain United States and Canadian government securities and similar investment securities) but may only purchase and sell (but not deal in) Type III, IV, or V securities (comprising other types of debt obligations that meet certain requirements).

In this case, the Banks propose to use a variety of securities acquired under 12 C.F.R. part 1 and equity securities acquired under 12 C.F.R. § 7.1030 as collateral for repo transactions.[10] Since the Banks may deal in Type I and II securities, the key question is whether using the other types of securities acquired under part 1 or equities acquired under 12 C.F.R. § 7.1030 violates the dealing prohibition.

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[5] *See, e.g.,* OCC, *Comptroller's Handbook: Bank Dealer Activities* (Mar. 1990), p. 7 ("Banks employ repos of government securities as borrowing substitutes . . ."); OCC, *Comptroller's Handbook: Investment Securities* (Mar. 1990), p. 29; FFIEC, Policy Statement: Repurchase Agreements of Depository Institutions with Securities Dealers and Others, 63 Fed. Reg. 6935 (Feb. 11, 1998).
[6] More specifically, "in the business of issuing, underwriting, selling, or distributing, at wholesale or retail, or through syndicate participation, stocks, bonds, debentures, notes, or other securities." 12 U.S.C. § 378(a)(1).
[7] *Id*.
[8] "The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock." 12 U.S.C. § 24(Seventh).
[9] *See id.* The relevant provisions of 12 U.S.C. §§ 24(Seventh) and 378 were enacted by the Glass-Steagall Act.
[10] The OCC has determined that a national bank may purchase equity securities to hedge customer-driven derivative transactions without violating the prohibition against underwriting or dealing in securities. *See, e.g.,* 12 C.F.R. § 7.1030(e); OCC Interpretive Letter 892 (Sept. 13, 2000).

The OCC stated that "dealing" in securities under 12 U.S.C. §§ 24(Seventh) and 378 "is generally understood to encompass the purchase of securities as principal for resale to others."[11] The OCC further noted that "[d]ealing is buying and selling as part of a regular business. A dealer typically maintains an inventory of securities and holds itself out to the public as willing to purchase and sell and continuously quote prices."[12] In addition, although the definitions of dealer and underwriter in federal securities laws do not control "for purposes of the Glass-Steagall Act, these statutes were enacted during the same time period, and the Supreme Court has previously sought guidance from the securities laws in understanding the ordinary meaning of terms that also appear in Glass-Steagall."[13] Although the definitions in the federal securities laws are not determinative, activities outside the scope of the federal securities laws are unlikely to be subject to the Glass-Steagall Act.[14]

In sum, the Banks would not purchase securities principally for resale to others, would not maintain an inventory of securities for resale, and would not hold themselves out as being in the business of dealing or making a market in the securities at issue. Based on the foregoing, the proposed activities would not constitute impermissible dealing.

b. *Limitations on Physical Hedging*

The OCC's derivatives regulation provides that "[a] national bank engaging in physical hedging activities . . . must hold the underlying *solely* to hedge risks arising from derivatives transactions originated by customers for the customers' valid and independent business purposes."[15] Similar language appears in 12 C.F.R. § 7.1030(b)(4), which defines physical hedging to mean "holding title to or acquiring ownership of an asset (for example, by warehouse receipt or book-entry) solely to manage the risks arising out of permissible customer-driven derivatives transactions." The question is whether the Banks' proposed use of the securities as collateral complies with the requirement to hold an asset *solely* to hedge risks. As discussed below, the proposed activities, as described by the Banks, comply with this requirement.

The language cited above addresses a national bank holding or acquiring an underlying asset solely "*to* hedge" or "*to* manage" the risks of the derivative activity. The key consideration is the bank's purpose in acquiring or holding an asset. Moreover, the primary purpose of the

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[11]OCC Interpretive Letter 892. *See also* OCC Interpretive Letter 804 (Sept. 30, 1997) ("[D]ealing in securities generally encompasses purchase and sale activities as principal with respect to the securities of other issuers.").
[12] OCC Interpretive Letter 892.
[13] OCC Interpretive Letter 388 (Jun. 16, 1987) (citing *Sec. Indus. Ass'n v. Bd. of Governors of Fed. Rsrv. Sys*., 468 U.S. 137, 150-52 (1984) and *Sec. Indus. Ass'n v. Bd. of Governors of Fed. Rsrv. Sys*., 807 F.2d 1052, 1062-64 (D.C. Cir. 1986)).
[14] OCC Interpretive Letter 388 ("We do not believe, however, that activities not subject to the federal securities laws could ever be subject to Glass-Steagall."). In addition, in Interpretive Letter 804, the OCC determined that a bank was not engaged in dealing because it would not (1) purchase securities in the transaction, (2) have principal risk, (3) have the potential for market gain with respect to the securities at issue, nor (4) have indicia of ownership of record or beneficial ownership. In this case, the Banks would purchase the securities, would have principal risk, would have the potential for market gains and losses, and would have indicia of ownership. Nevertheless, the Banks would not exhibit any of these factors as a result of the proposed repo activities. Rather, they would exhibit these factors either as a result of initially purchasing (1) debt obligations as permissible investments under 12 C.F.R. part 1 or (2) equity securities as hedges to customer-driven derivative transactions—an activity which does not violate the prohibition against banks dealing in securities. *See supra* note 10. Nor would the Banks exhibit any of these factors as a result of any effort to purchase securities principally for resale to others, maintain an inventory, or make a market.
[15] 12 C.F.R. § 7.1030(e)(1) (emphasis added).

limiting language in 12 C.F.R. § 7.1030(e)(1) and (b)(4) is to ensure that national banks do not misuse their physical hedging authority to acquire securities that national banks could not otherwise hold as principal.[16]

In this case, [ ] would acquire or hold equity securities as a hedge to customer-driven derivative activities and would not purchase equities for the purpose of serving as collateral. The use as collateral is secondary and subordinate to bona fide hedging of customer-driven derivatives activities. If a derivative terminated early, [ ] represents that it would promptly substitute collateral and sell the equity securities.[17] Throughout the repo transaction, [ ] would retain the market risk associated with the equity securities and reflect the securities on its balance sheet. The securities would thereby continue to serve as an effective hedge while serving as collateral. In light of the foregoing, the proposed use of the equity securities as collateral is not inconsistent with the requirements of 12 C.F.R. § 7.1030(e).

III. Conclusion

Based on the Banks' representations as described above, the proposed activity would not amount to impermissible dealing under 12 U.S.C. §§ 24(7) and 378 and would not be inconsistent with the requirements of 12 C.F.R. § 7.1030. It is incumbent on each Bank to ensure that it appropriately monitors the activity and prevents it from evolving into impermissible dealing or activity that would violate the requirements of 12 C.F.R. § 7.1030.[18] This conclusion is based on the facts and circumstances as represented in your request. Different facts and circumstances or different applicable laws and regulations could result in a different conclusion.

We trust that this is responsive to your inquiry.

Sincerely,

/s/

Stuart Feldstein
Acting Principal Deputy Chief Counsel

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[16] The regulation's definition of "customer-driven" emphasizes this purpose: "Customer-driven means a transaction is entered into for a customer's valid and independent business purpose (and a customer-driven transaction does not include a transaction the principal purpose of which is to deliver to a national bank assets that the national bank could not invest in directly)." 12 C.F.R. § 7.1030(b)(1). *See also* Activities and Operations of National Banks and Federal Savings Associations, 85 Fed. Reg. 40794, 40808 n.100 (Jul.7, 2020) ("In addition, several interpretive letters have also specified that a bank may not engage in physical hedging activities for the purpose of speculating in security or commodity prices. As described above, customer-driven financial intermediation as defined in the proposal would not include activities entered into for the purpose of speculation.").

[17] Under 12 C.F.R. § 7.1030(e)(3), a national bank may not take anticipatory or maintain residual positions in an underlying except as necessary for the orderly establishment or unwinding of a hedging position.

[18] *See, e.g.*, 12 C.F.R. §§ 1.5 (safe and sound banking practices under part 1); 7.1030(f) (safe and sound banking practices under derivatives regulation).