



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

July 12, 2006

Corporate Decision #2006-06
August 2006

Ms. Sheila Srna
Assistant Vice President
Sunflower Bank, National Association
2090 South Ohio
Salina, Kansas 67402-0800

Re: Application by Sunflower Bank, National Association, Salina, Kansas, to Establish an
Operating Subsidiary
OCC Application Number: 2005-WE-08-020

Dear Ms. Srna:

This is in response to the operating subsidiary application submitted by Sunflower Bank, National Association, Salina, Kansas (“Bank”), to the Office of the Comptroller of the Currency (“OCC”) for approval to establish an operating subsidiary pursuant to 12 C.F.R. § 5.34(e)(5). For the reasons and subject to the limitations discussed below, the application is approved.

Proposal and Discussion

The Bank proposes to establish Community Investment, LLC (“Community”), as a single member Kansas limited liability company that would be wholly-owned by the Bank. The Bank proposes to establish Community to facilitate the purchase of Kansas State Rehabilitation Tax Credits.¹ The Bank would make loans to Community in order to enable Community to purchase the tax credits. In turn, Community would make a distribution of the tax credits to its sole member, the Bank. The Bank either would use the tax credits to reduce its own tax liability or would sell the tax credits to individuals and businesses able to use the credits to reduce their tax liabilities. As tax credits are purchased and used or sold, the Bank would make additional loans to Community, and Community would purchase additional tax credits and distribute them to the Bank.

¹ “There shall be allowed a tax credit against . . . the privilege tax imposed upon any national banking association . . . in an amount equal to 25% of qualified expenditures incurred in the restoration and preservation of a qualified historic structure pursuant to a qualified rehabilitation plan by a qualified taxpayer if the total amount of such expenditures equal \$5,000 or more.” Kan. Stat. Ann. § 79-32,211. These tax credits are fully transferable.

State historic property rehabilitation programs promote economic development and foster the restoration and preservation of historic places that give cities, towns, and other communities their unique character. The availability of state rehabilitation tax credits is an important factor in making many restoration projects realistic and feasible.² The Bank's role in purchasing and selling the tax credits, thereby facilitating the flow of funding to rehabilitation projects, promotes the goals of the Kansas historic property rehabilitation program.

You represent that these tax credits are fully transferable and, as a result, the purchase and transfer of tax credits generally is a non-complex and fairly rapid process. The parties complete the appropriate tax credit transfer applications and then submit the documentation to the designated government authority. Once the transfer is approved, the governmental authority issues a certificate to the new owner evidencing the purchaser's right to claim the tax credits.

The OCC previously has concluded that the purchasing, holding, and subsequent reselling of transferable state tax credits is a permissible activity for national banks.³ Tax credits offset a tax liability dollar-for-dollar and thus function like a limited substitute for money. By purchasing and selling tax credits, a national bank is engaging in both a permissible role – that of financial intermediary – and a permissible activity – facilitating the flow of money. Therefore, purchasing, holding, and subsequently reselling transferable state tax credits is a permissible activity for national banks pursuant to 12 U.S.C. § 24(Seventh). Any activity that is permissible for a national bank is also permissible for an operating subsidiary of a national bank. 12 C.F.R. § 5.34(e)(1).

On occasion, the developer undertaking the rehabilitation project may, in order to reduce its taxes in connection with the sale of the tax credits, require that Community acquire an interest in the limited partnership that manages the project in order to receive the tax credits.⁴ In such cases, Community would purchase the tax credits by acquiring a limited partnership interest and receiving the tax credits as a distribution.⁵ Community's role would be limited to procuring the tax credits. It would have no rights or responsibility to control, direct, or manage the rehabilitation project. In addition to its receipt of the tax credits, it would also receive a

² "Kansas Sees Growth in Federal and State Tax Credit Programs," *Kansas Preservation* (Kansas State Historical Society, Topeka, Kansas), March – April 2006, at p. 9, available at http://www.kshs.org/resource/ks_preservation/kpmarapr06.pdf.

³ Interpretive Letter No. 948, reprinted in [2003-2004 Transfer Binder] Fed. Banking L. Rep. ¶ 81-473 (Oct. 23, 2002).

⁴ The decision to make the tax credits available only to limited partners in the rehabilitation project is driven by the developer undertaking the rehabilitation project (and not the Bank) and is motivated by tax considerations. If the partnership sells the tax credits to the Bank, then that sale may be subject to taxation. On the other hand, if the Bank is a limited partner in the rehabilitation project, then the Bank could receive the tax credits as a partnership distribution – an event that is not taxable to the partnership.

⁵ From the Bank's perspective, the cost of acquiring the limited partnership interest would be identical to the cost of acquiring the tax credits in a purchase-sale transaction. In both instances, Community would pay eighty-five cents for each one dollar of tax credits attributable to the rehabilitation project.

secondary allocation of .01% of certain profits and losses of the partnership. The Bank represents that this token or de minimus allocation is necessary for tax purposes. In no cases would Community acquire an interest in real estate as part of its acquisition of a limited partnership interest in order to procure the tax credits.⁶ The limited partnership agreement would state “under no circumstances shall there be a distribution of real estate interests to [Community].”

This severely circumscribed limited partnership interest would be acquired by Community when needed to facilitate the Bank’s participation in the permissible financial intermediary activities and, therefore, is incidental to the business of banking.⁷ As discussed above, the restrictions on and limitations of Community’s limited partnership interest make clear that the acquisition of this interest is premised upon the facilitation of permissible financial intermediary activities and not upon any speculative or investment purpose.

Conclusion

Based upon a thorough review of the information and representations contained in your letters, and for the reasons previously stated, the Bank’s application to establish Community as an operating subsidiary pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34 is hereby approved. This determination is based upon the representations made with respect to the proposed subsidiary and the understanding that the subsidiary will be operated within the constraints of all national banking laws, rulings, and regulations. Any material difference or deviation from the facts as described above could result in a different conclusion.

This approval, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have any questions, please contact Louis Gittleman, Senior Licensing Analyst, at (720) 475-7650, or Steven Key, Counsel, at (202) 874-5300.

Sincerely,

signed

Lawrence E. Beard

Deputy Comptroller for Licensing

⁶ State law provides that a “partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.” Kan. Stat. Ann. §§ 56a-203, 56a-501, and 56-1a604.

⁷ *E.g.*, Interpretive Letter No. 992, *reprinted in* [2003-2004 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-518 (May 10, 2004); Interpretive Letter No. 965, *reprinted in* [2003-2004 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-488 (Feb. 24, 2003); Corporate Decision No. 97-13 (Feb. 24, 1997); Interpretive Letter No. 427, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,651 (May 9, 1988).