



NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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March 3, 2006

Dear Representative:

As you may know, the Office of the Comptroller of the Currency (the OCC) recently issued three interpretive letters that expanded the authority for large banking conglomerates to engage in commercial real estate development that includes hotels, residential condos, and windmill energy farms.

NAR has just learned that the OCC is considering a fourth interpretive letter for yet another large banking conglomerate, J.P. Morgan Chase & Co., in its bid to directly invest in an oil and natural gas reserve. Attached please find an article in the March 3rd edition of the *American Banker* on this issue.

These OCC rulings are inconsistent with the national policy against mixing banking and commerce. Please let me know if you would like to meet to discuss this issue further.

Sincerely,

A handwritten signature in cursive script that reads "Jerry Giovaniello".

Jerry Giovaniello
Sr. Vice President, Government Affairs
National Association of REALTORS®

OCC Weighs JPMorgan Bid to Invest in Oil, Gas; Senate Banking seeks documents related to application

American Banker

Friday, March 3, 2006

By Rob Blackwell and Barbara A. Rehm

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WASHINGTON - The Office of the Comptroller of the Currency is reviewing whether to let JPMorgan Chase & Co. invest in oil and natural gas reserves, sources said Thursday.

The issue is likely to be the fourth log on the fire over the agency's recent moves to let national banks make equity investments in real estate.

Strictly speaking, the JPMorgan Chase application does not fit the bill. In the middle of last year the New York banking giant asked the OCC to allow it to directly own a royalty stream stemming from an oil or natural gas reserve, a knowledgeable source said. The company would not own the land on which the reserve was located.

Still, the prospect of a major banking company directly investing in energy projects is related to the debate over the mixing of banking and commerce - a link repeatedly made by the OCC's most vocal critic, the National Association of Realtors.

The OCC has yet to approve the JPMorgan Chase deal and is still reviewing it, sources said. It is not clear if the agency will seek to avoid further controversy by nixing the deal or shelving it indefinitely.

The proposal is unique in other ways, the source said; JPMorgan Chase can already indirectly invest in oil and natural gas reserves through special-purpose financing vehicles, but that avenue adds costs, as well as regulatory scrutiny.

Neither the OCC nor JPMorgan Chase would discuss the matter for this article.

The Senate Banking Committee is already interested in finding out more about the application. It has made two document requests to the OCC on its recent approvals, and it is seeking more data about a large banking company's application to engage in "volumetric production payments" - the technical term for a host of transactions, including what JPMorgan Chase is seeking.

In separate letters, both dated Dec. 5, the OCC gave Bank of America Corp. and PNC Financial Services Group Inc. the green light to own and develop real estate projects. B of A will own a 150-room Ritz Carlton hotel in Charlotte, while PNC is expanding its Pittsburgh headquarters to include a third office building with ground-floor retail and restaurant space, as well as a 158-room hotel and 32 residential condos.

A letter dated Dec. 21 gave Union Bank of California (which is majority owned by Mitsubishi UFJ Financial Group Inc.) permission to own 70% of a wind farm. The rationale for the first two letters - expanding a bank's premises - differs from the one in the Union Bank deal, in which the OCC argued that the investment was tantamount to a financing arrangement.

However, critics saw all three projects as a potentially dangerous mixing of banking and commerce, and they promptly took their concerns to Capitol Hill. Leading the charge is the Realtors, which hopes to use the issue to gain a permanent ban on banks' selling real estate. The trade group has gotten one-year bans from Congress in each of the last five years, and it would like to make that injunction permanent.

The Realtors plan to ask Congress to bar the OCC from permitting national banks to make equity investments in real estate or to broker real estate. The preferred vehicle: legislation that would prevent Wal-Mart Stores Inc. from chartering an industrial loan company. The link between the two issues, the Realtors argue, is preventing the mixing of banking and commerce.

The agency is clearly on the defensive. On Monday it sent Union Bank a letter reiterating the limits of its approval.

"In light of the questions that have been raised regarding details, limits, and scope of the financing transaction ... and because our previous communications were with outside counsel to the bank, we are writing directly to you to make sure there is a clear understanding of the restrictions and limitations," OCC Chief Counsel Julie L. Williams wrote to Union Bank executive vice president and general counsel John H. McGuckin Jr.

In a brief interview Thursday, Mr. McGuckin said, "The letter stands by itself, and we don't have any comment beyond the letter."

The two-page letter includes 10 bullet points meticulously outlining the conditions of the agency's approval. It's a handy cheat-sheet for any lawmaker looking to argue on the OCC's behalf. House Financial Services Committee Chairman Mike Oxley has come to the agency's defense several times in the past week or so.

On Thursday, Ms. Williams wrote the Realtors once more to say the three approval letters were all within established precedent. The letter included a full-page explanation of Union Bank's wind-energy farm approval.

"The bank would not participate in operation of the wind energy company, production of the wind energy, and sale of the wind energy," Ms. Williams wrote.