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**Thomas M. Stevens, CRB, CRS, GRI**  
*President*

March 3, 2006

Julie L. Williams, Esq.  
First Senior Deputy Comptroller  
and Chief Counsel  
Office of the Comptroller of the Currency  
250 E Street, SW  
Washington, DC 20219

Dear Ms. Williams:

On February 27, 2006, you wrote to Union Bank of California, N.A., to make sure that there is a clear understanding of the restrictions and limitations associated with the bank's investment in a 70 percent interest in a wind energy project, which the Office of the Comptroller of the Currency (OCC) approved in December 2005.<sup>1</sup> In your February 27<sup>th</sup> letter you indicate that the OCC's December letter was premised upon certain characteristics of the transaction. Among the characteristics you specified in the February 27<sup>th</sup> letter is the following:

- The bank would acquire approximately 70% of the equity interest in the company, and would look to distributions of revenue from the sale of electricity and the receipt of tax credits and depreciation expense for repayment of the funds advanced and its return on those funds.

However, in the OCC's December Windmill Letter, the OCC indicated that "[t]he Bank would be repaid in regular installments consisting of income provided by the revenues produced by the Project and the Section 45 Tax Credits."<sup>2</sup> Importantly, the December letter makes no mention that the bank's return will depend in part on the receipt of depreciation expense, which of course is an indicia of ownership, not a financing. In fact, the December Windmill Letter indicates that the bank "would not share in the appreciation or depreciation in value of the land or turbines."<sup>3</sup> [emphasis added]

We find it difficult to reconcile this aspect of your February letter with the conditions set forth in the December Windmill Letter. We believe that permitting the bank to now rely upon

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<sup>1</sup> OCC Interpretive Letter No. 1048 (December 21, 2005) (Windmill Letter).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.* at 7.

depreciation expense as part of its return reinforces our conclusion that the transaction represents a speculative investment prohibited by the National Bank Act.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Stevens". The signature is fluid and cursive, with a large initial "T" and a long, sweeping underline.

Thomas M. Stevens, CRB, CRS, GRI  
2006 President, National Association of REALTORS®