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October 17, 2001

VIA ELECTRONIC TRANSMISSION AND OVERNIGHT DELIVERY

Office of the Comptroller
of the Currency
Communications Division,
Public Information Room, Mail Stop 1-5
250 E Street, NW
Washington, D. C. 20219
Attention: Docket No. 00-16

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429
Attention: Comments/OES

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
Attention: Docket No. R-1112

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G. Street, NW
Washington, D.C. 20552
Docket No. 2001-49

Re: Advance Notice of Ruling Making on Community Reinvestment Act Regulations

Ladies and Gentlemen:

BANK ONE CORPORATION is writing to comment on the Advance Notice of Ruling Making on the Community Reinvestment Act Regulations ("Advance Notice") issued jointly by the Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "Federal Reserve"), the Federal Deposit Insurance Corporation (the "FDIC"), and the Office of Thrift Supervision (the "OTS") (together, the "Agencies").

BANK ONE CORPORATION ("BANK ONE") is a multi-bank holding company headquartered in Chicago, Illinois, with offices located in Arizona, Colorado, Delaware, Illinois, Indiana, Florida, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Texas, Utah, West Virginia and Wisconsin. BANK ONE also operates numerous non-bank subsidiaries that engage in credit card and merchant processing, consumer finance, mortgage banking, insurance, trust and investment management, brokerage, investment and merchant banking, venture capital, equipment leasing and data processing. First USA, N.A., the largest VISA issuer in the United States, is a subsidiary of BANK ONE.

Thank you for the invitation to comment on the Community Reinvestment Act ("CRA") regulations. We welcome the opportunity to respond to the various questions posed in the Advance Notice. As CRA has become part of the fabric connecting banks and their

communities, BANK ONE has committed itself to make CRA goals a centerpiece of its business and community strategy. This commitment has enabled BANK ONE to develop certain opinions regarding the implementing regulations of CRA and the relationship of the regulations to the overall goals of CRA. Accordingly, we appreciate the chance to have a role in shaping the next phase in promoting the values of CRA and measuring the success in achieving the CRA goals.

BANK ONE believes that the general framework of the current regulation, emphasizing performance, works reasonably well and therefore there is no need for any major revision of the regulations. There is an opportunity, however, to fine-tune the regulations in a way that truly would benefit both the communities the banks serve and the banks themselves. We believe that building additional flexibility into the regulations, so that (i) banks could better align their community reinvestment responsibilities with their business models, (ii) a secondary market in CRA loans and investments is encouraged, and (iii) costly data collection activities would be reduced, would improve the effectiveness of the regulation in attaining the goals of CRA.

Adopting market practices and reducing inefficiencies created by the interpretation of the current regulations is the best way to achieve long term sustainability for CRA. Banks would be both more motivated and better able to increase their CRA activities with such changes. Communities would benefit from the increased services, loans, and investments that would result from such a change. Banks would benefit from the strengthened communities in which they operate as well as from the increased recognition they would receive from attaining better CRA ratings.

We would urge regulators to take banks seriously when we suggest that the regulations should be made more flexible so that we may align our CRA responsibilities with our business models. Banks have committed a tremendous amount of resources to CRA and the results have been quite substantial. Banks want to serve the needs of the community, and want to have a strong image in the community. Banks also need to earn an adequate return for their shareholders. There is nothing incompatible with these multiple goals. Changing the regulations so that CRA activities are less costly or more profitable for the banks will result in more of these activities.

Below we suggest certain changes or refinements to the existing tests and definitions, and do so in response to the specific questions presented in the Advanced Notice. The statutory references following are to 12 CFR Part 228.

1. Do the regulations strike the appropriate balance between quantitative and qualitative measures:

We are concerned that the lending and investment tests not become just a "numbers game". While the regulation contemplates that the quality of lending and investment activities be considered, the standard used to evaluate them is whether they are "innovative and complex". We believe that this standard hampers a proper evaluation of the quality of the activity. We believe that a qualitative analysis based on whether, and to

what extent, a loan is meaningful to a community and responsive to its needs is a preferable standard.

2. Do the regulations strike an appropriate balance among lending, investments and services?

While the level of lending in a community is a critical component in assessing an institution's success in meeting the credit needs of a community, it is equally possible that investments in a particular community may be of equal importance. In addition, activities measured by the service test reflect not only the availability of products to meet the credit needs of the entire community, but the extent to which those products are designed and distributed to reach and benefit the entire community. While we believe that lending, investments, and services are appropriate criteria upon which to evaluate a bank, we believe there should be some flexibility in the regulations that would allow the weights to be compatible with a bank's business model.

We think that additional flexibility with respect to the type and amount of each product or service delivered to a given community would allow a bank to tailor delivery to individual markets in such a way that the products and services are both more meaningful to each community and more cost effective for the bank to deliver.

We would like to illustrate why increased flexibility in the regulations is needed regarding the lending and investment tests. Currently, it is widely understood that both loans and investments contribute to the economic well being of a community. Indeed, that is one of the reasons there is both a lending test and an investment test. Yet in some communities there may be a greater need for loans while another community may benefit more from a key investment. Similarly, while most financial institutions are capable of making both loans and investments, many have marketing and other strengths more suited for one product than the other. There often can be a mismatch between the needs of the community and the strengths of the bank. Suppose a community has a high demand for loans but a low demand for investments. Under the current rules a bank might need to find an investment to make, or try to fashion a loan into an investment in order to "hit the numbers" on both tests. It is also possible that a bank is simply better at making investments than loans.

Moreover, it has been our experience that there are some markets in which, despite the needs of the community, there is often no opportunity for us to make an investment. In other markets, the investment opportunities are so few and the number of institutions competing for them so large that the return on the investment is driven below what is an acceptable standard for a prudent investment.

There are several ways to address the problem posed by the investment test, but further analysis is necessary in order to identify the best approach. One approach may be simply to allow the weights between the lending and investment test to be specific to each bank, based on each bank's business model.

Another approach we feel is worthy of consideration is to fashion a new Community Development Test that would be the same as the current Community Development Test for wholesale and limited-purpose banks. It would include community development lending, community development investments and community development services.

A combined Community Development Test would eliminate the artificial distinction between loans and investments and would permit institutions to have the flexibility to develop expertise in one or the other or use a balanced approach. In addition, including community development services with community development loans and investments would recognize the central role they play in assuring the financial health of a community and in supporting the development of future lending and investment opportunities.

However, if such an approach is adopted, the regulatory language must assure that flexibility is preserved. Specifically, it would be critical that the collapse of community development loan, investment and service criteria into one test give banks and communities a choice of which products and initiatives are most meaningful and that the regulations do not result in a bank being required to provide all three in every community.

In addition, we think the regulations should be modified so that the Board specifically considers the impact that an investment has on the community when evaluating the investment performance of a bank. We think the concept of impact on the community is more important to consider when assessing investment performance than some of the criteria currently considered such as innovativeness or complexity. We would argue that an investment made in an underserved market should count for more than an investment in well or over-served market.

3. Does the lending test effectively assess an institution's record of helping to meet the credit needs of its entire community?

We believe that the regulation as presently in effect, which gives equal weight to originations and purchases of loans, uses an appropriate standard. We have seen no evidence of "loan swapping" among large institutions, as some commentators seem to suggest. Further, as the assessment areas of large national financial institutions increase, it is more likely that large institutions will be purchasing loans from local community institutions which might be better situated than a large regional institution to reach certain discrete geographic areas. In effect, the purchasing capacity of a larger institution creates a secondary market for loans originated by smaller institutions thus assuring their continued ability to make loans in targeted areas.

The development of a secondary market with increased liquidity will provide several benefits. It will increase the number of participants, it will bring deals up to market standards, and most importantly it will increase originations. Not every bank offers or is equally good at originating mortgage related, consumer and small business loans, the core loan products related to CRA. Those institutions that excel in origination of particular types of loans could increase originations if there was a ready market for their loans.

Selling loans frees up the balance sheet capacity for additional originations. Most large banks today operate under the philosophy of increasing the velocity of their balance sheet.

With the absence of an active secondary market for community development loans or investments, banks generally have had to hold all the loans or investments they have originated to maturity thus tying up capital for the life of the loan or investment. Yet under the current regulations banks only receive credit for loans originated during the evaluation period. Some mechanism should be found so that banks receive credit for the total balances held in the portfolio.

Finally, we oppose adding an evaluation of the "appropriateness" of lending activity. Lending activity is presently evaluated in the context of its success in meeting the credit needs of the community. In addition, the fair lending examinations that take place for all regulated institutions already include a review for any "harmful or abusive" terms in lending activity. We believe this to be sufficient, and to add an additional review as part of the CRA evaluation would be not only redundant, but also inefficient and potentially inconsistent.

4. Does the investment test effectively assess an institution's record of helping to meet the credit needs of its entire community?

As stated earlier, we believe the standard of "innovativeness and complexity" is not helpful in assessing responsiveness to community needs. We suggest, therefore that it be deleted from the regulations. Further the criteria expressed in Item (e) 4 of Section 228.23 that investment performance be evaluated based on whether or not investments are routinely provided by private investors is somewhat misplaced in today's market. For example, at one time, the low income tax credit investments were "not routinely provided" and therefore received credit under (e) 4. Now these investments are routinely provided but they are still difficult to do in the sense that they are far less profitable than they previously were. They are still extremely helpful to the community and there is no reason why banks shouldn't receive as much credit for them now as when they were "not routinely" provided. In and of itself whether something is innovative or complex or not routinely provided is of little relevance to the community. What really matters is how meaningful the investment was to the community. On the other hand, there are still transactions that do not interest the private market generally. We support an acknowledgement of the added value provided by financial institutions in making the smaller, riskier and more difficult investments.

5. Does the service test effectively assess an institutions record of helping to meet the credit needs of its entire community?

The service test is intended to assess an institution's recording of helping to meet credit needs of its entire community. It has been the experience of this institution, however, that often the evaluation of the effectiveness of alternative delivery systems, such as telephone services or automated teller machines, has been in the context of deposit taking

services. We believe a clarification that alternative systems for delivering retail banking services means credit services would be helpful.

We also believe that under the service test the relative weight that is currently given to program delivery, home buyer training, board participation, etc., as compared to the number of banking centers, should be increased.

The alternative distribution systems are evaluated not only by the availability to low and moderate income people, but also the effectiveness in distribution. At the same time, efforts by financial institutions to promote use of alternative systems through neighborhood workshops, for example, are seemingly given little weight in the evaluation. We believe that the availability, in real and not theoretical terms, of the alternative delivery systems and not the effectiveness of the delivery, should be the measure. Moreover, we agree with those commentators who observe that community development services are not adequately valued.

6. Are the definitions of "community development" and related terms appropriate?

We believe that the current definition of "community development", though intended to be broad, should be expanded especially as it relates to identifying qualified investments. At present, community development includes activities that promote economic development of small businesses or farms, but the activities must be themselves financing activities. Elsewhere in the "definition" section, Section 228.12(h)(4) and (j)(3), the activities themselves are considered, or can be considered if related to the provision of financial services.

Specifically, we suggest that Section 228.12(h)(3) be amended by deleting the words "by financing" and substituting the word "of". We believe that community development should include any activity that promotes the economic development of small businesses or farms. Further we believe that community development activities should be evaluated regardless of location of the activity. An institution will continue to be evaluated within its assessment area, but we think it should be given credit for community development activities wherever they may occur.

We also believe that the definition of "community development" should be expanded to include activities that revitalize and stabilize areas that have been devastated by natural disasters such as floods, tornadoes, earthquakes, as well as acts of terrorism regardless of whether the area is a low/moderate income ("LMI") area or whether the individual benefiting from the bank's product is an LMI individual.

7. Does the strategic plan option provide an effective alternative method of evaluation for financial institutions?

While most institutions have chosen not to use the strategic plan option to achieve a predetermined rating, if established properly, the plan would take the "guess" work out of the bank's CRA plan.

The public comment requirement should be removed from the strategic plan process and should be permitted as in the rest of the regulation: during the examination period.

A strategic plan, particularly in times of economic downturn, would enable the institution to develop a course of action with consideration to income projections for the period covered. Whether most banks choose to use this option or not, a strategic plan does offer an alternative to help an institution meet the credit needs of its community, and should be retained.

8. Are the provisions on performance context effective in appropriately shaping the quantitative and qualitative evaluation of an institution's need of helping to meet the needs of its entire community?

We believe that the provisions on performance context are effective in shaping the evaluation. We particularly support the existing acknowledgement that the financial institution itself is best situated to provide the data and information for the various elements enumerated within the performance context to be used.

9. Do the provisions on assessment areas, which are tie to geographies surrounding physical deposit gathering facilities, provide a reasonable and sufficient standard for designating the communities within which the institution will be evaluated during an examination?

We think the concept that a bank can receive credit for community development activities outside of its assessment area provided that it has done an adequate job within its assessment area will prove a powerful stimulus to additional development activity. We would expand this concept even further. In particular, we think retail banks should be encouraged to take advantage of the rules allowing community development lending and investments to qualify regardless of the geographical location where an institution has adequately met the needs of the communities within its assessment areas. . One of the unintended consequences of the intense focus on assessment areas as *the* areas of concern has been that banks tend to chase limited community development loans and investments in their assessment areas while in some highly distressed areas outside of the banks' assessment areas projects go begging for loan and investment dollars. In addition, encouraging retail banks to focus on distressed communities in greater statewide or regional areas would improve pricing by increasing the supply of projects toward which dollars can flow. All else being equal the better the pricing on investment deals, the greater the amount of money banks will lend and invest and the more the communities will benefit.

In addition, we support the continued approach that the regulated financial institution identifies its assessment areas.

10. Are the provisions on affiliate activities, which permit consideration of an institution's affiliates activities at the option of the institution, effective in evaluating the performance of the institution in helping meet the credit needs of the entire community and consistent with the CRA statute?

We believe the provisions on affiliate activities are effective and consistent with the CRA statute. Institutions like BANK ONE pursue lending, investment and service strategies in different ways and through different legal entities. We believe that an emphasis on performance suggests that looking at the outcome, rather than its origin, is the better measure. In response to commentators concerned about targeted lending, we note that we are also evaluated on the basis of our fair lending performance, which is included in the CRA rating.

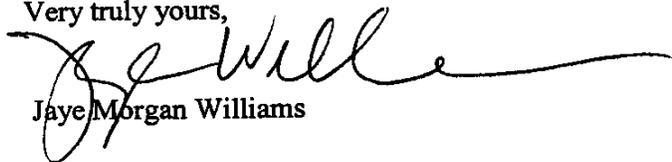
11. Are the data collection and reporting and public file requirements effective and efficient approaches for assessing an institution's CRA performance while minimizing burden?

There is probably a more efficient way to make CRA information available to the public than to have physical files in numerous locations. We suggest that information available electronically would be more effective and efficient. In addition, rather than making information available in every state, we suggest that one location that an interested party could contact for information would be a more efficient and equally effective method of response.

We consider the overall burden of collecting the data needed for assessing CRA performance to be quite burdensome, if not excessive. For further information on this matter we refer you to a comment letter submitted by the Consumer Bankers Association to OMB.

Thank you for the opportunity to comment on the Advance Notice. If you have any questions concerning these comments, please contact Jaye Morgan Williams, at 312 732 6920.

Very truly yours,



Jaye Morgan Williams