



November 21, 2017

**Interpretive Letter #1159
December 2017**

Brian Volkman, Regulatory Counsel
John Gausepohl, Executive Director
Bayerische Landesbank, New York Branch
560 Lexington Avenue
New York, NY 10022

Subject: Request to Exclude Liabilities from Repurchase Agreements from Capital
Equivalency Deposit Calculation

Dear Messrs. Volkman and Gausepohl:

Pursuant to 12 CFR 28.15(a)(3), the Office of the Comptroller of the Currency (OCC) approves the request by Bayerische Landesbank, New York Branch (Branch) to exclude liabilities consisting of repurchase agreements collateralized by U.S. Treasury and U.S. Agency securities from the Branch's capital equivalency deposit (CED) calculation, subject to the limitations described below.

Twelve CFR 28.15(a)(3) provides that in determining the amount of a Federal branch or agency's CED,¹ the OCC may exclude liabilities from repurchase agreements on a case-by-case basis. The OCC applies the following standards in making these case-by-case determinations:

- The Federal branch or agency must have a ROCA² composite rating of 1 or 2 for the prior two exams;
- The Federal branch or agency must have an Asset Quality rating of 1 or 2 for the prior two exams;
- The Federal branch or agency must not be subject to any formal enforcement action;
- The foreign bank is an "eligible foreign bank," as defined in 12 CFR 28.12(f), *i.e.*, whether all other U.S. branches and agencies of the foreign bank, including any state-licensed branches and agencies, have ROCA composite ratings of 1 or 2 and none is subject to any formal enforcement action; and

¹ See 12 USC 3102(g)(2) (requiring the aggregate amount of a foreign bank's CED to be not less than the greater of: (1) the amount of capital (but not surplus) which would be required of a national bank being organized at the Federal branch or agency's location; or (2) five percent (5%) of the total liabilities of such branch or agency, including acceptances, but excluding: (A) accrued expenses; and (B) amounts due and other liabilities to offices, branches, agencies, and subsidiaries of such foreign bank.

² ROCA is an interagency uniform supervisory rating system for branches and agencies of foreign banks, and assesses risk management, operational controls, compliance, and asset quality. The composite and component ROCA ratings employ a 1 to 5 scale, with 1 considered the least supervisory concern and 5 the greatest.

- The foreign bank’s home country must not be listed as “noncooperative” by the Financial Action Task Force and must not be on the Office of Foreign Assets Control sanctions list.

The OCC finds that the Branch’s request to exclude liabilities consisting of repurchase agreements collateralized by U.S. Treasury and U.S. Agency securities from the Branch’s CED is consistent with the standards set out above. The OCC’s approval is based on a thorough review of all information available and is provided in reliance upon representations made in the Branch’s request and by its representatives.

The Branch may only exclude from its CED calculation liabilities consisting of repurchase agreements collateralized by U.S. Treasury and U.S. Agency securities that total no more than 20 percent of all of the Branch’s third-party liabilities. The Branch must monitor the excluded repurchase agreements and ensure that they are always fully secured by the market value of the pledged securities. The Branch’s CED shall continue to be maintained in a U.S. member bank, consistent with 12 USC 3102(g) and 12 CFR 28.15, and pursuant to an agreement in such form and containing such limitations and conditions prescribed by 12 CFR 28.15.

The OCC will rescind or suspend this approval if the Branch at any time fails to satisfy the standards set forth above. The OCC may rescind, suspend, or modify this approval if the OCC determines that any representation, submission, or information provided by the Branch is not accurate, or is incomplete, or for any other material supervisory reason. If the approval is rescinded, suspended, or modified, the Branch must recalculate its CED, including all repurchase agreement liabilities, and increase its CED as necessary.

The above-listed conditions of this approval are conditions “imposed in writing by the OCC in connection with any action on any application, notice, or other request” within the meaning of 12 USC 1818 and, as such, are enforceable under 12 USC 1818.

This approval and the activities and communications by OCC employees in connection with this determination 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, contact Mark Shields, Director for International Banking Supervision at (917) 344-4419 or Mark.Shields@occ.treas.gov.

Sincerely,

/s/

Vance S. Price
Deputy Comptroller
International Banking Supervision