Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Conditional Approval #264
December 1997

December 29, 1997

Mr. Stephen J. Antal, Esq.
First Union National Bank
301 South College Street
31st Floor, LEG-0630
Charlotte, North Carolina 28288-0630

Re: Application by First Union National Bank, Charlotte, North Carolina to Establish and Invest in a Limited Partnership Through an Operating Subsidiary which will Engage in Purchasing, Selling, Servicing and Warehousing of Home Mortgage Loans and Home Equity Loans - Application Control Number 97-ML-08-0030

Dear Mr. Antal:

This is in response to the above-referenced application filed by First Union National Bank, Charlotte, North Carolina with the OCC pursuant to 12 C.F.R. § 5.34. For the reasons given below, the application is approved, subject to the conditions set forth herein.

Background

First Union National Bank, Charlotte, North Carolina, ("FUNB" or "the Bank") seeks to establish a partnership with Household Finance Corporation ("HFC"), a Delaware corporation that, among other things, engages in originating, servicing and securitizing home mortgage loans and home equity lines of credit. FUNB and HFC plan to form a Delaware limited partnership, First Union/HFC, L.P. ("the Partnership") to engage in purchasing, selling, servicing, and warehousing of home mortgage loans and home equity loans for the account of the Partnership as authorized by 12 C.F.R. § 5.34(e)(2)(ii)(L). The general partner of the Partnership will be First Union/HFC Investment Corporation, a Delaware corporation, 50% of the stock of which will be owned by Ironbrand Capital, L.L.C. ("Ironbrand"), an indirect operating subsidiary of FUNB (or by another operating subsidiary of FUNB), and 50% by an HFC affiliate.[1] It is contemplated that the First Union/HFC Investment Corporation will own

[1] As proposed, Ironbrand and the HFC entity will each subscribe to 50% of the stock of the First Union/HFC Investment Corporation by a cash payment of $120,000.

1% of the Partnership. Ironbrand will also initially own a 49.5% limited partnership interest in the Partnership and an HFC affiliate will initially own the remaining 49.5% interest in the Partnership.[2]

FUNB, through Ironbrand as shareholder of First Union/HFC Investment Corporation, will make an initial cash contribution of $12 million to the Partnership. (The HFC affiliate will make an identical capital contribution). Additional capital may be contributed by First Union/HFC Investment Corporation and the other Limited Partners in the form of partner loans. Partner loans will be subordinated to any third party debt financing (including any warehousing lines of credit) and will be subject to such other terms and conditions set forth in the Partnership Agreement or established by First Union/HFC Investment Corporation.[3]

FUNB, by itself or through First Union Home Equity Bank, N.A., a limited purpose national bank affiliate of FUNB engaged in home equity lending, will sell to the Partnership a minimum monthly dollar volume of mortgage loans. HFC and any other Limited Partners will be subject to similar minimum monthly dollar mortgage loan volume requirements. Failure to meet the minimum periodic quotas will subject the failing party to redemption of its interest in the discretion of First Union/HFC Investment Corporation.

The Partnership will purchase first and second home mortgage loans (that are rated B or C) from affiliates of FUNB, including First Union Home Equity Bank, N.A., and HFC and from any Limited Partners. These loans will be serviced by HFC or its affiliate (including, as applicable, "master servicing", "sub-servicing" and "special servicing"). These loans will meet the underwriting criteria of the Partnership, which will be substantially similar to the underwriting criteria currently employed by FUNB and its affiliates. Generally, the loans will be purchased within 30 days from origination. The acquisition of these loans will be financed

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[2] As part of the business plan, it is anticipated that certain mortgage banking companies will be solicited by the Partnership in a private placement following the initial closing whereby ownership interests of no more than 20% in the aggregate will be made available to these companies. As such, FUNB's indirect limited partnership interest could fall to 40% of the Partnership plus its .5% interest through First Union/HFC Investment Corporation.

[3] In addition to the Agreement of Limited Partnership of First Union/HFC, L.P. ("the Partnership Agreement") to be executed in substantially the form submitted with the application, ("the Draft Partnership Agreement"), Ironbrand and the HFC affiliate intend to enter into an Equity Holders Agreement providing for the relationship of Ironbrand and the HFC affiliate as holders of equity interests in First Union/HFC Investment Corporation and the Partnership.

by warehousing lines of credit made available by FUNB or unrelated third parties.[4] It is also intended that these loans ultimately will be sold either through whole loan sales or pooled together and securitized. It is anticipated that FUNB will provide warehouse financing to the Partnership and that securitization-related services will be provided by First Union Capital Markets Corp. ("FUCMC"), a nonbank affiliate of FUNB, as the Partnership accumulates and pools mortgages for securitization or whole loan sales.

The Draft Partnership Agreement provides that the Partnership will engage in the following activities:

> (a) purchasing Mortgage Loans, holding Mortgage Loans, selling Mortgage Loans in the secondary market in whole loan form or as participations, sell[ing] or pledg[ing] such loans in the form of pay-through or pass-through securities or derivative securities thereof and servicing (either directly as sub-servicer, master servicer or special servicer) such Mortgage Loans and the formation of one or more special purpose entities as may be necessary to affect the issuance or holding of any such securities;
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> (b) acquiring by purchase, lease or otherwise any personal or any real property which may be necessary, convenient or incidental to the accomplishment of the purposes of the Partnership;
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> (c) operating, maintaining, financing, improving, owning, granting options with respect to, selling, conveying, assigning, mortgaging, or leasing personal or real property necessary, convenient or incidental to the accomplishment of the purposes of the Partnership;

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[4] Purchases of loans by the Partnership from FUNB and extensions of credit by FUNB to the Partnership are not "covered transactions" under 12 U.S.C. § 371c as the Partnership is a subsidiary of FUNB for the purposes of that section and therefore not an affiliate. 12 U.S.C. § 371c(b)(2)(A). For the same reason, those transactions are also not subject to 12 U.S.C.
§ 371c-1. Purchases of loans by the Partnership from First Union Home Equity Bank, N.A. are subject to 12 U.S.C. § 371c-1 and are "covered transactions" under section 371c. However, the so-called 'sister bank' exemption in 12 U.S.C. § 371c(d)(1) exempts these transactions from the requirements of section 371c except the requirement that terms and conditions be consistent with safe and sound banking practices and that they not constitute the purchase of low-quality assets. 12 U.S.C. § 371c(a)(3), (4). In a letter dated December 3, 1997, FUNB has represented that the Partnership will not purchase low-quality assets from an affiliate and that all transactions between the Partnership and affiliates will be in accordance with 12 U.S.C. §§ 371c and 371c-1. No loans will be purchased from non-bank affiliates of FUNB.

> (d) borrowing money and executing notes and other evidences of indebtedness;
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> (e) mortgaging, pledging or otherwise encumbering the Partnership property and revenues therefrom for any Partnership purpose; placing record title to all or any portion of the Partnership property in the name of a trustee to facilitate any debt financing; and modifying, amending, recasting, refinancing, renewing, extending, consolidating, increasing or prepaying, in whole or in part, such debt at any time;
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> (f) incurring all reasonable expenditures; employing and dismissing from employment any and all agents, employees, independent contractors, attorneys and accountants; obtaining insurance for the proper protection of the Partnership; and entering into, performing and carrying out other agreements and contracts, incurring and discharging obligations and engaging in other activities which may be necessary and proper for the protection and benefit of the Partnership;
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> (g) liquidating the Partnership. . .;
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> (h) entering into such other agreements as [First Union/HFC Investment Corporation] may determine to be in the best interests of the Partnership; and
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> (i) taking any and all such other actions and entering into such activities as are incidental to any of the foregoing. . . .

Draft Partnership Agreement, Article 3, section 3.2

The Draft Partnership Agreement provides further that:

> [S]o long as any units of the Partnership are held directly or indirectly by the First Union Partner and the First Union Partner is owned, directly or indirectly by or is affiliated with FUNB or another national bank (not including such interests pledged to secure indebtedness or held as a result of debts previously contracted), (a) the business and operations of the Partnership shall be subject to the regulation, supervision and examination of the Office of the Comptroller of the Currency; and (b) the Partnership shall engage solely in activities that are permissible for national banks as determined by applicable statutes, regulations and regulatory interpretations as in effect from time to time. The Partners further agree that, if in the exercise of the First Union Partner's or FUNB's reasonable judgment, based upon the advice of counsel, the First Union Partner or FUNB determines that the Partnership is proposing to engage in activities that are impermissible for national banks, then the First Union Partner…shall have the right to veto any such proposed activities and otherwise bar the Partnership from allowing such activities to occur. . . .

Draft Partnership Agreement, Article 2, section 2.6

The management, operation, and control of the Partnership will be vested in First Union/HFC Investment Corporation. First Union/HFC Investment Corporation will be managed by a six person board of directors comprised of three directors appointed by Ironbrand and three directors appointed by the HFC entity. A majority vote will be required for all actions of the board of directors. Pursuant to Delaware law, the Board will delegate its rights and powers to officers of First Union/HFC Investment Corporation to manage and control the business and affairs of the Partnership. Certain back office administrative and other services will be performed by affiliates of HFC pursuant to a service agreement. All decisions relating to third party services and matters will require a majority vote by the board of directors of First Union/HFC Investment Corporation. The Limited Partners will have no role in the management of the Partnership and will vote only on those matters for which a vote of the Limited Partners is required under applicable law, *e.g.*, dissolution of the Partnership.

Discussion

The Bank's application raises the issue about the authority of a national bank to hold, through an operating subsidiary organized as a limited liability company (Ironbrand), a non-controlling 50% interest in a corporation (First Union/HFC Investment Corporation) whose activity is being general partner of a limited partnership (First Union/HFC, L.P.) that will engage in purchasing, selling, servicing and warehousing of home mortgage loans and home equity loans for the account of the Partnership.[5] The Bank will also hold, through Ironbrand, a non-controlling 49.5% interest in the Partnership. A number of recent OCC Interpretive Letters have analyzed the authority of national banks, either directly or through their subsidiaries, to own a non-controlling interest in an enterprise. *See e.g.*, Interpretive Letter No. 697, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-013 (November 15, 1995); Interpretive Letter No. 732, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-049 (May 10, 1996); Interpretive Letter No. 705, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,020 (October 25, 1995). These letters each concluded that the ownership of such an interest is permissible provided four standards,

[5] The OCC recently revised its rules governing national bank corporate activities and transactions in 12 C.F.R. Part 5. Operating subsidiaries in which a national bank may invest include corporations, limited liability companies, or similar entities if the parent owns more than 50% of the voting interest. A national bank may own less than 50% of the voting interest in the subsidiary, so long as the national bank "controls" the subsidiary, and no other party controls more than 50%. 12 C.F.R. § 5.34(d)(2). Here, First Union will not "control" either First Union/HFC Investment Corporation or the Partnership and they would not be considered operating subsidiaries of the Bank.

drawn from OCC precedents, are satisfied.[6] They are:

> (1) The activities of the entity or enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking;
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> (2) The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment;
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> (3) The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise; and
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> (4) The investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to *that bank's* banking business.

Each of these four factors is discussed below and applied to your proposal.

> (1) *The activities of the entity or enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking.*

Our precedents on non-controlling stock ownership have recognized that the enterprise in which the bank takes an equity interest must confine its activities to those that are part of or incidental to the business of banking. *See e.g.*, Interpretive Letter No. 380 (December 29, 1986), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,604 n.8 (since a national bank can provide options clearing services to customers, it can purchase stock in a corporation providing options clearing services); Letter of Robert B. Serino, Deputy Chief Counsel (November 9, 1992) (since the operation of an ATM network is a "fundamental part of the basic business of banking", an equity investment in a corporation operating such a network is permissible).

It is clear that the proposed activities of the Partnership -- purchasing, selling, servicing, and warehousing of home mortgage loans and home equity loans for the account of the Partnership -- are part of, or incidental to, the business of banking. *See, e.g.*, 12 U.S.C. § 24(Seventh) (ability of national banks to generally make loans); 12 U.S.C. § 371 (ability of national banks to make, arrange, purchase or sell loans secured by liens on interests in real estate); Interpretive Letter No. 645, *reprinted in* [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,554 (April 29, 1994) (national bank can take a controlling interest in a LLC to originate and service residential real estate mortgage loans); Interpretive Letter No. 423, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,647 (April 11, 1988) (national bank operating subsidiary authorized to act as a managing general partner of a limited

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[6] *See also* 12 C.F.R. § 5.36(b). National banks are permitted to make various types of equity investments pursuant to 12 U.S.C. § 24(Seventh) and other statutes.

partnership investing in real estate mortgage-related assets); Interpretive Letter No. 668, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,616 (October 14, 1994) (national bank permitted 50% ownership of LLC which acquires and services mortgage loans); Interpretive Letter No. 669, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,617 (October 14, 1994) (national bank has controlling interest in LLC to originate, acquire, service and resell secured loans); Interpretive Letter No. 694, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-009 (December 13, 1995) (national bank permitted to take a non-controlling minority interest in LLC that purchases secured home improvement loans and resells them in the secondary market); Interpretive Letter No. 711, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-026 (February 23, 1996) (national bank to take a minority equity interest in mortgage banking company); Conditional Approval No. 243 (May 9, 1997) (national bank permitted to participate through one or more operating subsidiaries in joint ventures conducting residential mortgage lending services).

Thus, it is clear from the precedents cited herein that the proposed activities of First Union/HFC Investment Corporation and, in turn, the Partnership, are part of, or incidental to the business of banking and permissible activities for the entities in which the Bank's investments are to be made. FUNB currently engages in these activities and is seeking to enter into the Partnership in order to utilize the strengths of HFC's servicing capabilities and the combined volume of loan production to be contributed by FUNB, HFC, and any other Limited Partners.[7] Thus, the first standard is satisfied.

> (2) *The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment.*

The activities of the enterprise in which a national bank may invest must be part of or incidental to the business of banking not only at the time the bank first acquires its ownership, but for as long as the bank has an ownership interest. This standard may be met in different ways, depending upon the type of entity in which the investment is made. Ordinarily, in the absence of agreement otherwise, each partner in a general partnership has equal rights in the management and conduct of the partnership business, regardless of the level of "ownership." Uniform Partnership Act § 401(f)(1994). In addition, partners can allocate control among

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[7] The Partnership will conduct its business via the telephone on a nationwide basis from an office located in Prospect Heights, Illinois. This office will not be open to the public and will provide back office and other servicing functions. The Partnership will not originate home mortgage and home equity loans. In addition, the operations of an entity in which a national bank has a non-controlling, minority interest are not ordinarily attributed to the bank for branching purposes. *See* Interpretive Letter No. 711, *supra*. Thus, the Partnership's activities at this office do not constitute branches of the Bank within the meaning of the McFadden Act, at 12 U.S.C.§ 36(j).

themselves through a partnership agreement. *Id*. § 103(a). Such agreements commonly require a unanimous vote on matters deemed to be fundamental, thus giving each partner a veto power. Therefore, when a national bank invests (through an operating subsidiary) in a general partnership, the OCC requires that the bank be able to exercise a veto power over the activities of the partnership, or be able to dispose of its interest. *See, e.g.,* Interpretive Letter No. 625, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,507 (July 1, 1993). This ensures that the bank will not become involved in impermissible activities.

However, minority shareholders in a corporation do not possess a veto power over corporate activities as a matter of corporate law. One way to assure continuing compliance with the first standard is for the corporation's articles of incorporation or bylaws to limit its activities to those that are permissible for national banks. *See e.g.*, Letters from Peter Liebesman, Assistant Director, Legal Advisory Services Division (January 26, 1981 and January 4, 1983).

The terms of the Draft Partnership Agreement and bylaws of First Union/HFC Investment Corporation will enable the Bank, through Ironbrand, to limit the Partnership and First Union/HFC Investment Corporation's actions as general partner thereof, to activities that are permissible for national banks. FUNB (through Ironbrand) will have the right to veto any proposed activities of the Partnership or First Union/HFC Investment Corporation that it considers to be impermissible for national banks. These provisions assure that the Bank will effectively be able to prevent First Union/HFC Investment Corporation and the Partnership from engaging in any impermissible activity as long as it continues to own shares in them. Thus, the second standard is satisfied.

(3) *The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise*.

a. *Loss exposure from a legal standpoint*

A primary concern of the OCC is that national banks should not be subjected to undue risk. Where an investing bank will not control the operations of the entity in which the bank holds an interest, it is important that the national bank's investment not expose it to unlimited liability. Normally, this is not a concern when a national bank invests in a corporation, such as First Union/HFC Investment Corporation, for it is generally accepted that a corporation is an entity distinct from its shareholders, with its own separate rights and liabilities, provided proper corporate separateness is maintained. 1 W. Fletcher, Cyclopedia of the Law of Private Corporations § 25 (rev. perm. ed. 1990). The same is generally true when a national bank invests in a limited partnership. Under Delaware law, the corporate veil of First Union/HFC Investment Corporation will protect FUNB from the potentially open-ended exposure associated with a direct investment in the general partner of a limited partnership. Delaware law also provides that Ironbrand, as a Limited Partner in the Partnership, is liable only up to

the amount of its interest in the Partnership. Del. Code Ann. tit. 6, § 17-303 (Mitchie 1996). In addition, the Draft Partnership Agreement provides that the Limited Partners are not liable for the obligations of the Partnership over the amount of their investment and limits the total amount of capital contributions that the Limited Partners may be required to make. Article 7, section 7.1, Draft Partnership Agreement.

National banks are not permitted to be partners in general partnerships due to the potential unlimited liability for the acts of other partners within the scope of the partnerships. *See Merchants National Bank v. Wehrmann*, 202 U.S. 295 (1906). However, the OCC permits operating subsidiaries of national banks to enter into general partnerships that engage in permissible activities because the corporate veil of the subsidiary corporation protects the bank from the potentially open-ended exposure associated with a direct partnership investment. Interpretive Letter No. 289, *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,453 (May 15, 1984) (national bank's operating subsidiary permitted to act as general partner in banking-related venture--joint ATM network). Such is the case here, where the general partner of First Union/HFC, L.P. is First Union/HFC Investment Corporation, a corporation that is 50% owned by Ironbrand, an operating subsidiary of the Bank.[8]

b. *Loss exposure from an accounting standpoint*

From an accounting standpoint, the loss exposure of the Bank will also be limited. The Bank states that its investments in both First Union/HFC Investment Corporation and the Partnership will be accounted for as unconsolidated subsidiaries of FUNB under the equity method of accounting. Under this method, losses recognized by the investor will not exceed the amount of its investment (including extensions of credit or guarantees, if any) shown on the investor's books. *See generally*, Accounting Principles Board, Op. 18 ¶ 19 (1971). In assessing a bank's loss exposure as an accounting matter, the OCC has previously recognized that the appropriate accounting treatment for a bank's 20-50% ownership share in an entity is to report it as an unconsolidated entity under the equity method of accounting.

Therefore, for both legal and accounting purposes, the Bank's potential loss exposure relative to First Union/HFC Investment Corporation and the Partnership should be limited to the amount of its investment in those entities. Since that exposure will be quantifiable and controllable, the third standard is satisfied.

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[8] FUNB owns 100% of the stock of First Union Commercial Corporation ("FUCC") which in turn owns 100% of the stock of First Union Rail Corporation ("FURC"). FURC engages in financing related to the railroad car leasing business and incidental lease management activities. FUCC and FURC are the only members of Ironbrand Capital L.L.C. As a legal matter, FUNB will not incur liability with respect to the liabilities or obligations of the LLC solely by being a member, even it actively participates in the management or control of the business.

(4) *The investment must be convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.*

A national bank's investment in an enterprise or entity must also satisfy the requirement that the investment have a beneficial connection to the *bank's* business, *i.e.*, be convenient or useful to the investing bank's business activities, and not constitute a mere passive investment unrelated to that bank's banking business. Twelve U.S.C. § 24(Seventh) gives national banks incidental powers that are "necessary" to carry on the business of banking. "Necessary" has been judicially construed to mean "convenient or useful". *See Arnold Tours, Inc. v. Camp,* 472 F.2d 427, 432 (1st Cir. 1972). The provision in 12 U.S.C. § 24(Seventh) relating to the purchase of stock, derived from section 16 of the Glass-Steagall Act, was intended to make it clear that section 16 did not authorize speculative investment banking activities in connection with stock. Therefore, a consistent thread running through our precedents concerning stock ownership is that it must be convenient or useful to the bank in conducting *that bank's* banking business. The investment must benefit or facilitate that business and cannot be a mere passive or speculative investment. *See, e.g.*, Interpretive Letter No. 543, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,255 (February 13, 1991) (national bank authorized to acquire nominal stockholding for membership in corporation of primary dealers in government securities); Interpretive Letter No. 427, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,651 (May 9, 1988) (national bank permitted to buy Farmer Mac stock in nominal amounts); Interpretive Letter No. 421, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,645 (March 14, 1988) (national bank permitted to invest in the Government Securities Clearing Corporation).

FUNB is currently engaging in the same activities that will be conducted by the Partnership. In June 1994, FUNB initiated a lending program designed to integrate the origination, underwriting, securitization, and servicing of home mortgage and home equity loan products. FUNB and its affiliates currently originate and acquire closed-end fixed rate home equity loans that are either purchase money first mortgages or non-purchase money first or second mortgages. Investment in the Partnership will allow FUNB to enjoy returns associated with a higher volume of loans sales and securitizations than FUNB could generate on its own. The formation of the Partnership will facilitate FUNB's current business because the Partnership will have access to loans originated by HFC and, in the future, the loans originated by the other Limited Partners.

The Partnership will utilize the servicing expertise of HFC and the securitization expertise of First Union Capital Markets Corporation, a nonbank affiliate of FUNB. Excess back office and other support capacities of FUNB, HFC and their affiliates, will also be utilized to support the Partnership's business. The Bank believes that by combining its existing resources and expertise with the Limited Partners it will become a more effective competitor.

The fact that the Bank will be a 50% owner of First Union/HFC Investment Corporation is evidence of its intention to remain actively involved in these lines of business. The management and control of the Partnership will be vested in First Union/HFC Investment Corporation and First Union/HFC Investment Corporation will be managed by its board of directors, comprised of three directors appointed by Ironbrand and three directors appointed by the HFC entity. Approval of a majority of the board of directors of First Union/HFC Investment Corporation will be required, so that FUNB, in effect, will have a veto power with respect to decisions of First Union/HFC Investment Corporation and the Partnership. Far from being a passive or speculative investment, the subsidiary's 50% ownership interest will enable the Bank to continue to be an active provider of mortgage banking and related services.

For these reasons, the proposed investments are convenient and useful to the Bank in carrying out its business and is not a mere passive investment. Thus, the fourth standard is satisfied.

Conclusion

Based upon a thorough review of all information available, including the representations and commitments made in the application and by the Bank's representatives, we conclude that the Bank, through its operating subsidiary, Ironbrand Capital, L.L.C., may make a 50% non-controlling investment in First Union/HFC Investment Corporation and a 49.5% non-controlling investment in First Union/HFC, L.P. First Union/HFC, L.P. may engage in purchasing, selling, servicing, and warehousing of home mortgage and home equity loans for the account of the Partnership in the manner and as described herein, subject to the following conditions:

(1) Ironbrand Capital, L.L.C., First Union/HFC Investment Corporation, and First Union/HFC/L.P. will engage only in activities that are part of, or incidental to, the business of banking;

(2) the Bank, through Ironbrand Capital, L.L.C., will have effective veto power over any activities and major decisions of First Union/HFC Investment Corporation and First Union/HFC/L.P. that are inconsistent with condition number one, or will withdraw from either entity in the event they engage in an activity that is inconsistent with condition number one;

(3) the Bank will account for the investments in First Union/HFC Investment Corporation and First Union/HFC/L.P. under the equity method of accounting; and

(4) Ironbrand Capital, L.L.C., First Union/HFC Investment Corporation, and First Union/HFC/L.P. will be subject to OCC supervision, regulation, and examination.

Please be advised that the conditions of this approval are deemed to be "conditions imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 U.S.C. § 1818.

If you have any questions, please contact Richard Erb, Licensing Manager, at (202) 874-4610.

Sincerely,

/s/

Julie L. Williams
Chief Counsel