INTERPRETIVE LETTER 93-2 (FEBRUARY 9, 1993)

State bank using push down accounting should not subtract value of unamortized fixed assets and investments from surplus in calculating lending limits.

Your letter to *, dated *, has been referred to me for response. In it you requested a written response from this Agency addressing the proper method of calculating the lending limits of [Bank] following its use of push down accounting.

[Bank's] use of push down accounting resulted from the * acquisition of 100% of the voting stock of * Corporation, [Bank's] parent holding company in *. [Bank's] surplus account presently contains value equal to the unamortized portions of goodwill, fixed assets and investments that were affected by its use of push down accounting. You would like to know whether the value amounting to the unamortized fixed assets and the investments should be subtracted with the unamortized goodwill for the purpose of calculating [Bank's] lending limits. The position of this Agency is that the value amounting to the unamortized fixed assets and the investments should not be subtracted from surplus in calculating [Bank's] lending limits.

Our position is consistent with the position of the Office of the Comptroller of the Currency ("OCC"), the regulator of national banks. According to OCC Regulation Section 3.100(c)(1), 12 C.F.R. Section 3.100(c)(1), intangible assets are to be subtracted from surplus for the purpose of calculating statutory limits that are based on capital and surplus. Section 3.100(e)(3) defines "intangible assets" by referring to the reporting of intangible assets in the Call Report. The Call Report Instructions promulgated by the Federal Financial Institutions Examination Council provide examples of intangible assets that include goodwill. See Federal Financial Institutions Examination Council, Instructions - Consolidated Reports of Condition and Income, p. RC-52. Those examples do not include investments or fixed assets. Consequently, inventory and fixed assets are not subtracted from a national bank's surplus for the purpose of calculating lending limits.