

FEDERAL DEPOSIT INSURANCE CORPORATION

IN RE: Citibank (Delaware)
New Castle, Delaware

Application Pursuant to Section 24 of the
Federal Deposit Insurance Act for Consent to Continue
to Indirectly Engage as Principal in Real Estate
Investment Activities which May Not Be Permissible for
a Subsidiary of a National Bank

ORDER

The Board of Directors of the Federal Deposit Insurance Corporation ("FDIC") has fully considered all available facts and information relevant to Section 24 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831a, and Part 362 of the FDIC's Rules and Regulations relating to an application by Citibank (Delaware), New Castle, Delaware ("Bank"), for consent to continue to indirectly engage as principal through its wholly-owned subsidiary, Citicorp Del-Lease, Inc., and one or more other majority-owned subsidiaries (defined collectively as the "Subsidiaries") in real estate investment activities that may not be permissible for a subsidiary of a national bank. The Board of Directors, having found that the Bank is in compliance with applicable capital standards and that the activity to be continued does not appear to pose a significant risk, with certain conditions imposed, to the applicable deposit insurance fund, has concluded the application should be approved subject to certain conditions.

Accordingly, it is hereby **ORDERED**, for the reasons set forth in the attached Statement, and for the reasons set forth in the Statement attached to the previous Order issued by the Board of Directors in connection with this application on December 7, 1995 ("December Order"), that the application submitted by the Bank for consent to engage as principal through the Subsidiaries in real estate investment activities that may not be permissible for a subsidiary of a national bank be and the same hereby is approved subject to the following conditions, and that this Order modifies and supersedes the December Order:

1. That the Bank and the Subsidiaries shall take the necessary actions to establish, and the Subsidiaries shall operate in a manner so as to ensure, a separate corporate existence as a majority-owned subsidiary which:
 - (a) is adequately capitalized,
 - (b) is physically separate and distinct in its operations from the operations of the Bank,

- (c) maintains separate accounting and other corporate records,
 - (d) observes separate formalities such as separate board of directors' meetings,
 - (e) maintains a board of directors with one or more independent, knowledgeable outside directors (which, for purposes of this Order, shall not preclude an individual employed by an affiliate of the Bank's parent company other than the Bank or Subsidiary, provided the Regional Director of the FDIC's Division of Supervision does not object to the Bank's outside director selection) and management expertise capable of conducting activities in a safe and sound manner,
 - (f) contracts with the Bank for any service on terms and conditions comparable to those available to or from independent entities, and
 - (g) conducts business pursuant to separate policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the Bank, including the placement of specific language on any debt instrument or contract with a third party disclosing that the Bank itself is not responsible for payment or performance;
2. That, except for loans by the Bank to finance bona fide sales of assets which meet the requirements of paragraph 11(b) below, the Bank's indirect real estate investment in any subsidiary, including equity interests, debt obligations of the subsidiary held by the Bank, Bank guarantees of debt obligations issued by the subsidiary, extensions of credit or commitments of credit from the Bank to the subsidiary, and any extensions of credit to any third parties for the purpose of making a direct investment in the subsidiary or making an investment in a real estate investment or any other investment in which the real estate investment subsidiary has an interest (defined collectively as "Real Estate Investment"), shall be limited to those which are currently held, and the Bank shall not make any additional Real Estate Investment in any subsidiary unless:
- (a) the Bank provides an investment plan to the Regional Director of the FDIC's Division of Supervision, on an annual basis, indicating the extent of the Bank's planned investment in the Subsidiary, and the manner in which concentration and diversification of risk issues within the Subsidiary will be addressed. If the Regional

- Director has not objected to the plan within 45 days, the Bank may proceed within the parameters of the other applicable conditions in the Order;
or
- (b) after an objection by the Regional Director, the Bank submits, an application pursuant to Part 362 of the FDIC's Rules and Regulations and obtains approval by the FDIC's Board of Directors;
3. That the Bank's aggregate Real Estate Investment in all subsidiaries, including the proposed additional investment, shall not represent more than 15 percent of Tier 1 capital and that a separate subsidiary must be established for any proposed investment that exceeds 10 percent of Tier 1 capital in a particular project;
 4. That the Bank's capital level, after deducting all Real Estate Investments in all the Subsidiaries, shall equal or exceed the level required for a "well capitalized" institution pursuant to Section 325.103(b)(1) of the FDIC's Rules and Regulations;
 5. That the Bank shall, on a quarterly basis, perform the capital adequacy calculations described in paragraph 4 above for the purpose of ascertaining its capital level, and that, in the event the Bank falls below the level required for a "well capitalized" institution pursuant to Section 325.103(b)(1) of the FDIC's Rules and Regulations, the Bank shall notify the FDIC within 15 days and submit to the FDIC an acceptable plan for restoring capital to a level required for a "well capitalized" institution;
 6. That, henceforth, notwithstanding Parts 325 and 327 of the FDIC's Rules and Regulations, 12 C.F.R. Parts 325 and 327, the Bank's capital category for purposes of prompt corrective action and risk adjusted deposit insurance premium shall be calculated based on the Bank's capital after deducting all Real Estate Investments, except that such deductions shall not be made when determining whether the Bank is "critically undercapitalized" as defined under Part 325;
 7. That the Bank shall continue to meet all applicable capital standards;
 8. That any extensions of credit to any third parties for the purpose of making a direct investment in any subsidiary, or making an investment in a real estate investment or any other investment in which any subsidiary has an interest, or any acceptance of any

debt obligation of or equity interest in any subsidiary as collateral security for a loan or extension of credit to any third party by the Bank shall be clearly disclosed to the Bank's board of directors prior to approval of the extension of credit and documented in the board's minutes;

9. That, prior to the consummation of a transaction between any real estate investment subsidiary and any of the Bank's customers, any potential conflicts of interest shall be identified, be appropriately resolved, and be clearly disclosed to the board of directors and documented in the board's minutes;
10. That the Bank shall not engage directly or indirectly through any subsidiary in any real estate investment activity or other transaction with insiders or their related interests without the prior written consent of the Regional Director of the FDIC's Division of Supervision;
11. That the Bank shall:
 - (a) not condition any loan on the purchase or rental of real estate from any subsidiary, and
 - (b) not extend credit to any borrower to acquire real estate from any subsidiary unless it is consistent with safe and sound banking practices and does not involve more than the normal degree of risk of repayment and the credit is extended on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the Bank, as those prevailing at the time for comparable transactions;
12. That transactions between the Bank and any real estate investment activity subsidiary shall be made in accordance with the restrictions of Sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. § 371c and § 371c-1, to the same extent as though the subsidiary were an affiliate of the Bank as defined under Section 23A and shall not apply to loans made by the Bank to finance bona fide sales of assets to third parties consistent with safe and sound underwriting requirements contained in paragraph 11(b) above; and

13. That the consent granted herein is based on the facts and circumstances presented or otherwise known to the FDIC in connection with this request. The Bank shall notify the FDIC of any significant change in facts or circumstances. If the facts and circumstances change significantly, the FDIC shall have the right to alter, suspend, or withdraw its approval.

Dated at Washington, D. C., this 5th day of March, 1996.

BY ORDER OF THE BOARD OF DIRECTORS

/s/

Robert E. Feldman
Deputy Executive Secretary

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STATEMENT

Pursuant to the provisions of Section 303.6(e) of the Federal Deposit Insurance Corporation's ("FDIC") Rules and Regulations, Citibank (Delaware), New Castle, Delaware ("Bank"), has requested modification of certain provisions of an order of approval by the Board of Directors ("Board"), dated December 7, 1995 ("Order"), consenting to the Bank's request, pursuant to section 24, to continue through its subsidiary, Citicorp Del-Lease, Inc., and one or more subsidiaries (collectively, the "Subsidiary"), to engage in real estate investment activities that may not be permissible for a subsidiary of a national bank. The Bank has also requested that the FDIC interpret the Order as applying solely to the high residual value leases held by Citicorp Del-Lease, Inc.

The Bank requests that the FDIC modify or eliminate the condition in the Order requiring 45 days' written notice to the Regional Director of the FDIC's Division of Supervision ("DOS") before undertaking additional "real estate investment" as defined in the Order. The Bank maintains that the 45-day notice requirement places a substantial burden on its ability to engage in future high residual value lease transactions. The Bank believes that such a restrictive advance notice condition effectively requires the Bank to notify the FDIC of all potential high residual lease transactions, regardless of whether a transaction is finally consummated.

The Bank also requests that the FDIC allow, that for purposes of the Order only, an officer of a subsidiary of Citicorp Del-Lease, Inc. (the Bank's holding company), other than the Bank or its subsidiaries, with substantial credit or commercial lending experience will qualify as an outside, independent director. The Bank believes it is impossible to attract an independent, knowledgeable outside director, except at a level of compensation that would be substantial in relation to the limited volume of real estate investment.

The 45-day notice period may in fact be too burdensome, given the specific activity in question is different in several respects from that of more typical real estate investment activities where a transaction is normally initiated by the "investing" party. However, the risks of real estate investment

are such that in order to prevent undue risks to the Bank, and potentially to the deposit insurance fund, advance notice to the FDIC of the Subsidiary's plans in regard to real estate investment activities is believed warranted. It is recognized that the Bank and Subsidiary possess the financial resources, the management expertise, and the history of favorable performance that may allow a less restrictive notice requirement.

As such, modification of the Order is approved, and the Bank shall henceforth be required to provide an investment plan to the FDIC's Regional Director (DOS) on an annual basis that indicates the extent of the Bank's planned investment in the Subsidiary, and the manner in which concentration and diversification of risk issues within the Subsidiary will be addressed. If the Regional Director has not objected to the plan within 45 days, the Bank may proceed within the parameters of the other applicable conditions in the attached Order.

In regard to the Bank's request for modification of the requirement for an independent, outside director, the Board believes the Bank has a sufficient volume of high residual value real estate leases that the compensation costs involved may not be so prohibitive as to warrant the requested modification. The condition was initially recommended because it was believed an outside director could potentially deter insider abuse and add diversity, expertise, and counterbalancing perspective. The issue of the "corporate veil" must also be considered. While one independent, outside director does not provide the same level of separateness as a majority of independent, outside directors (as in the case of a bona fide subsidiary), it may be viewed as an incremental step towards separateness.

Nonetheless, the Bank's proposal appears a reasonable alternative to the existing condition, provided the proposed director is found to possess the necessary experience and integrity, and such a director does indeed take an active role on the real estate investment subsidiary's board of directors. An officer or director employed by an affiliate of the Bank's parent company, other than the Bank or Subsidiary, and has sufficient real estate investment knowledge would likely achieve similar results relating to the deterrence of insider abuse and the addition of diversity, expertise, and counterbalancing perspective. In addition, the presence of one independent, outside director does not in itself assure corporate separateness. The subsidiary would still possess numerous other indicia of corporate separateness, and no one factor can be considered dispositive in a corporate veil-piercing analysis.

As such, the modification of the Order is approved, and after such time as the Subsidiary is formed, the Subsidiary shall maintain a board of directors with one or more independent, knowledgeable outside directors, which, for purposes of the

attached Order, shall not preclude an individual employed by an affiliate of the Bank's parent company other than the Bank or Subsidiary, provided the FDIC's Regional Director (DOS) does not object to the Bank's outside director selection.

In considering the Bank's requests, the Board recognizes that the real estate investment subsidiary structure will be different than that presented in the initial application. In the Bank's initial application, the Bank maintained that taxes and other expenses of transferring existing high residual value leasing activities from Citicorp Del-Lease, Inc., to a separate subsidiary were so substantial as to make such a transfer economically unfeasible. The Bank has since found that such expenses are significantly less than originally estimated. As such, the Bank now intends to form one or more separate subsidiaries in which any future high residual value real estate lease activities will be conducted. The Bank also intends to transfer existing high residual value lease transactions to the Subsidiary.

The Board agrees to the Bank's interpretation that the Order, in this specific case, was intended to apply to real estate investment activities. The Board notes that its initial action was premised on the representations of the Bank that the existing real estate investments could not, without substantial costs, be transferred to a separate subsidiary, and that if it had been believed otherwise, the Bank may have been required to transfer the real estate investments to such a subsidiary. Pending the prompt formation of a separate "real estate investment" subsidiary by the Bank and the transfer of the existing high residual value leases to such subsidiary, with the Bank's agreement not to enter in to additional high residual value real estate leases until such subsidiary is established, the Board intends to apply the Order to investments relating to the existing high residual value real estate leases. After such time as existing high residual value real estate leases are transferred to the newly formed subsidiary, the Board intends to apply the Order only to that subsidiary and to any other subsidiaries engaged in high residual value lease transactions.

The Board has taken the above actions based on the facts and circumstances of this specific case. In cases where the Bank, through a majority-owned real estate investment subsidiary, is more active in the acquisition, construction, or development of real estate investment property or where a significant role exists in the management of income producing property, the Board's action may be different.

**THE BOARD OF DIRECTORS
FEDERAL DEPOSIT INSURANCE CORPORATION**