



## Ohio Department of Commerce

Division of Financial Institutions  
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**Bob Taft**  
Governor

**Doug White**  
Director

May 16, 2005

Robert E. Feldman, Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW.  
Washington, D.C. 20429

RE: Public Hearing on the Financial Services Roundtable's Petition for Rulemaking to Preempt Certain State Laws

Dear Mr. Feldman:

The Division of Financial Institutions of the Ohio Department of Commerce is pleased to submit this letter as its written statement in lieu of an appearance at the Federal Deposit Insurance Corporation's public hearing on the Financial Services Roundtable's petition for rulemaking. The Roundtable has raised important concerns, and we appreciate the F.D.I.C.'s willingness to explore them.

The issue here is the differentiation the Office of the Comptroller of the Currency apparently has created between the national bank charter and the state bank charter through rules and interpretations regarding the applicability of state laws to national banks and those with and through whom national banks do business. We believe that Congress has provided for competitive equality for state and national bank charters over the years, along with establishing equally applicable national standards.

However, the O.C.C. in its preemption rules and interpretations has approached preemption on the basis of activities and organizational structure, rather than the Congressional approach of specific types of laws and geo-political boundaries. By doing so, the O.C.C. has gone much further, drawing into question whether some Uniform Commercial Code provisions might be preempted and appearing to trump some federal statutes that otherwise seem to preserve the applicability of state laws. In light of the O.C.C.'s preemption standard of "incidental impact" versus the standard of "substantial interference" established by the Supreme Court of the United States, we are not certain all of the O.C.C.'s efforts will survive constitutional preemption analysis.

Even if the O.C.C.'s preemption rules are not upheld in their entirety, they do something for national banks that is not yet available to state banks...they bring together these various laws, interpretations, and analyses in one place as an integrated resource. In the past the F.D.I.C. has responded to a call from the states to publish an interpretation of federal law that state banks

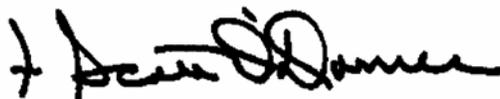
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could rely on; in this instance we are asking the F.D.I.C. to undertake this role for state banks, so they, like national banks have the full benefit of the applicable federal laws. Administrative rules presenting the effects of Section 27 of the Federal Deposit Insurance Act and the Riegle-Neal amendments would be more accessible and more effective in conveying the circumstance of state-chartered banks. Second, the F.D.I.C. could enhance the understanding of the position of insured state banks, and provide guidance to those insured state banks, by identifying the other areas where Congress has explicitly acted, and then adopting administrative rules or using some other vehicle to set forth the applicability and non-applicability of state law to insured state banks. Third, the F.D.I.C. could take on the role of identifying when specific preemption for national banks becomes well established, then adopt rules or recommend congressional action as appropriate.

You have asked whether what the Petitioner has requested is necessary to preserve the dual banking system. We think there will be state banks so long as the state charter option is available; but, without competitive equality, we think the stimulating impact the dual banking system has had on the development of the nature of banks and their role in local, state, and national economies may be lost.

Thank you again for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Scott O'Donnell". The signature is fluid and cursive, with a large initial "F" and "O".

F. Scott O'Donnell  
Superintendent  
Division of Financial Institutions

FSO/pjg/rly