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April 3, 2006

Mr. Robert E. Feldman, Executive Secretary,
Federal Deposit Insurance Corporation,
550 17th Street, N.W.,
Washington, DC 20429.

Attention: Comments/Legal ESS
Docket No. 05-20582

Re: Proposal on Preemption of State Law with respect to Interstate
Banking and Interest Rate Authority of State-chartered Banks

Ladies and Gentlemen:

The Clearing House Association L.L.C. (the “*Clearing House*”)¹ appreciates the opportunity to comment on the notice of proposed rulemaking (the “*Proposal*”) issued by the Federal Deposit Insurance Corporation (the “*FDIC*”) to add Part 331 and amend Part 362 of the FDIC’s regulations to clarify the applicability of state law to state-chartered banks.²

The Clearing House endorses the FDIC’s intention, as embodied in the Proposal, to clarify both the applicability of state law to the interstate activities of state banks and the scope of state banks’ interest rate authority under federal law. We laud the FDIC’s efforts to establish regulations under Sections 24 and 27 of the Federal Deposit Insurance Act (the “*FDI Act*”) and are hopeful that these regulations will foster a transparent and predictable regulatory

¹ The members of The Clearing House are: Bank of America, National Association; The Bank of New York; Citibank, N.A.; Deutsche Bank Trust Company Americas; HSBC Bank USA, National Association; JPMorgan Chase Bank, National Association; LaSalle Bank National Association; UBS AG; U.S. Bank, National Association; Wachovia Bank, National Association; and Wells Fargo Bank, National Association.

² See 70 Fed. Reg. 60019 (Oct. 14, 2005) (proposed rule).

environment in which state banks may conduct interstate activities. We believe that reducing the costs and risks of subjecting state banks with interstate operations to comprehensive regulation by each individual state in which they conduct banking operations will promote the continued success of state banks in our dual banking system, and we welcome the FDIC's rulemaking in furtherance of that goal.

1. Amendment of Part 362: Activities of Insured Bank and Insured Savings Associations

The Proposal's amendment to Part 362 of the FDIC's regulations provides valuable clarity to state banks with respect to their interstate branch operations. We support the Proposal's objective of implementing specific regulatory guidance under the general provisions of Section 24(j) of the FDI Act by providing definitions of terms, specifying the precise extent to which host state law applies to the branches of state banks in states other than their home state, and resolving potential ambiguity as to the extent to which the activities of a state bank branch in a host state receive the benefit of preemption under Section 24(j).

In addition, we support the general aim of proposed Section 362.19(c) of the FDIC's regulations, which would specifically provide that host state laws are preempted with respect to branches of an out-of-state, state bank to the same extent that such laws are preempted with respect to branches of an out-of-state national bank. In light of recent developments affecting the preemption of state laws as they apply to national banks, we welcome the FDIC's efforts to implement rulemaking that brings state banks closer to parity with national banks in interstate operations.

However, we believe that, as a practical matter, limiting the scope of preemption under proposed Section 362.19(c) to matters that “a Federal court or the Office of the Comptroller of the Currency has determined in writing” is both unnecessarily restrictive and administratively burdensome.³ Such a provision needlessly would require state banks to make formal requests to the Office of the Comptroller of the Currency (the “OCC”) or the federal courts to obtain comfort in cases in which the preemption of state laws is, notwithstanding any lack of written OCC guidance, clear and unambiguous. This provision is likely to undermine the utility of Section 362.19(c) in light of the proven reluctance of the OCC to respond to requests by state banks for rulings under Section 24 of the Federal Deposit Insurance Act (12 U.S.C. § 1831a) that particular activities are permissible for national banks, and, therefore, for the requesting state bank. Accordingly, we urge the FDIC to revise its Proposal to remove the requirement that the OCC must determine in writing that a particular host state law is inapplicable to national banks and implement a less burdensome process (e.g., by permitting state banks to rely on the advice of counsel with respect to the preemption of a particular state law).⁴ In addition, we further urge the FDIC to address, either in the Proposal or in other regulatory contexts, the preemption of host state law with respect to the activities of out-of-state, state banks conducted outside of a branch.

³ See 70 Fed. Reg. 60019, 60031.

2. Proposed Part 331: Federal Interest Rate Authority

For similar reasons, we fully support the Proposal's provisions with respect to the interest rate authority of state banks under federal law. Again, we believe the Proposal improves the current regulatory framework applicable to state banks by providing clear guidance as to state banks' interest rate authority under Section 27 of the FDI Act. Moreover, we particularly support the FDIC's stated position that the Proposal's provisions "will allow section 27 to be utilized by insured state bank subsidiaries to the same extent as section 85 can be utilized by subsidiaries of national banks."⁵ Such a result is an important as a matter of competitive equality and parity, and we urge the FDIC to reiterate and make clear, either in the text of its final rulemaking release or the text of the final regulation itself, that the federal interest rate authority of state banks extends to their subsidiaries to the same extent that national banks' interest rate authority extends to their subsidiaries.

3. Conclusion

The Proposal would provide clarity to the preemption of certain state laws as they affect some of the interstate operations of state banks and, in doing so, help preserve parity among state and national banks and foster a more uniform regulatory environment in which state banks may operate.

⁴ In the absence of a ruling from the OCC, a state would remain free to challenge a state bank's claim of preemption with the OCC or in court.

⁵ 70 Fed. Reg. 60019, 60029.

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The Clearing House appreciates this opportunity to comment on the Proposal, and would be pleased to discuss any of the points made in this letter in more detail. Should you have any questions, please contact Norman R. Nelson, General Counsel of The Clearing House, at (212) 612-9205.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. Heath", with a horizontal line underneath the name.