

May 16, 2005

Mr. Robert E. Feldman  
Executive Secretary  
Attention: Comments/Legal ESS, Room 3060  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429

VIA E-MAIL

Subject: Petition for Rulemaking to Preempt Certain State Laws

Dear Mr. Feldman:

Thank you for the opportunity to comment on the petition by the Financial Services Roundtable (FSRT) requesting that the Federal Deposit Insurance Corporation (FDIC) issue rules pursuant to Section 24(j) and Section 27 of the Federal Deposit Insurance Act and Section 104(d) of the Gramm-Leach-Bliley Act addressing the interstate operations of state banks (the "Petition"). The undersigned represent the views of the seven Northeastern states of Connecticut, Delaware, Maine, Massachusetts, New Jersey, Rhode Island, and Vermont (the "Northeastern States"). For the reasons listed below, the Northeastern States urge the FDIC to deny the entire Petition.

Each of the Northeastern States is a member of the Conference of State Bank Supervisors (CSBS), an association which represents the interests of 54 state bank regulatory agencies. The Northeastern States strongly support the efforts of CSBS to advocate for the dual banking system and to challenge federal preemption of state laws. Many individual states continue to challenge efforts by the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervisions (OTS) to preempt state consumer protection laws; laws which CSBS and the states, including the Northeastern States, believe Congress intended to apply to federally-chartered financial institutions and their subsidiaries operating on an interstate basis.

The Northeastern States believe the broad preemption of state consumer protection laws by the OCC and the OTS has created an imbalance in the dual banking system, especially with respect to banks with multi-state operations. The Petition requests that the FDIC adopt rules concerning the interstate activities of insured state banks and their subsidiaries that are intended to provide parity between state banks and national banks. Generally, the Petition would provide that home state law would govern the interstate activities of state banks and their subsidiaries to the same extent that applicable federal law and rulemaking governs the activities of a national bank and its subsidiaries on an interstate basis.

The Northeastern States support the intent of the Petition to the extent it relates to returning balance to the dual banking system by ensuring a state charter is a viable option for banks with multi-state operations. However, the Northeastern States are concerned by the consequences of the Petition as it relates to the ability of host states to enforce state consumer protection laws with respect to host state branches of interstate state banks as contemplated under Sections 10(h) and 24(j) of the Federal Deposit Insurance Act. Moreover, the Northeastern States believe that the Petition could have the effect of placing in-state state-chartered community banks at a competitive disadvantage relative to both out-of-state national banks and out-of-state state-chartered banks and their subsidiaries. Therefore, the Northeastern States conclude that the Petition is not the appropriate means to address the existing imbalance in the dual banking system and could, if adopted, undermine the ability of states to ensure adequate consumer protection, thereby having a negative impact on consumers.

The Northeastern States continue to believe that it is inappropriate for the OCC and the OTS to make sweeping preemption determinations of state consumer protection laws. The Northeastern States hold that State Legislatures have a legitimate interest relative to how the business of banking is conducted within their states, especially as it relates to matters of consumer protection. Under Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994<sup>1</sup>, Congress specifically applied state laws in the areas of community reinvestment, consumer protection, and fair lending to interstate branches of both state and federally-chartered banks. If there is a compelling need to preempt state law, it should be Congress, not a federal regulatory agency, that makes that determination. For these reasons, the Northeastern States do not believe that such authority should be extended to the FDIC. The Northeastern States contend that this is especially true in light of the fact that the status of preemptive rulemaking by other federal regulatory agencies remains unsettled<sup>2</sup>. Furthermore, should the FDIC implement the Petition as a rule, the result could be a race to the bottom, pitting the interests of one state against another with the FDIC acting as the arbitrator of what state laws have been preempted. The Northeastern States believe that it is not appropriate for the FDIC to serve this role.

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<sup>1</sup> Public Law 103-328, 108 Stat. 2338 (1994)

<sup>2</sup> The Connecticut and Michigan cases against Wachovia Bank, N.A. and Wachovia Mortgage that challenge the OCC's preemption of state law as it relates to operating subsidiaries of national banks remain on appeal.

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Therefore, the Northeastern States respectfully urge that the FDIC deny the entire Petition.

Sincerely,

John P. Burke  
Banking Commissioner  
State of Connecticut

Robert A. Glen  
State Bank Commissioner  
State of Delaware

Lloyd P. LaFountain, III  
Superintendent of Financial Institutions  
State of Maine

Steven L. Antonakes  
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