



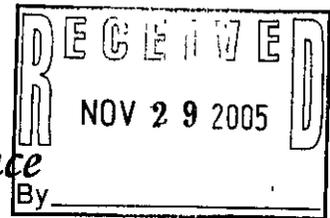
Department of Banking and Finance

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Sonny Perdue
Governor

David G. Sorrell
Commissioner

November 22, 2005

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

RE: Notice of Proposed Rulemaking regarding the petition by the Financial Services Roundtable concerning interstate activities of insured state chartered banks and their subsidiaries

Dear Mr. Feldman:

The Georgia Department of Banking and Finance appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR) by the Board of the Federal Deposit Insurance Corporation in response to the petition by the Financial Services Roundtable related to the activities of insured state chartered banks and their subsidiaries. The Department shares the concerns of the petitioner that there is an imbalance between the national and state chartered banks as a result of federal preemption of state laws that threatens the viability of the dual chartering system if not addressed in a meaningful and timely manner.

We appreciate the positive momentum that the Notice of Proposed Rulemaking represents in the effort to address this imbalance between the national and state charter but respectfully note several concerns regarding the notice of proposed rulemaking.

Activities Conducted Outside Branches

A primary concern discussed by several speakers at the public hearing on the NPR was that many activities that are banking or related to banking are increasingly conducted in facilities that are not branches. While the NPR clarifies issues related to interest rate exportation by bank subsidiaries, it doesn't address the application of host state law to activities conducted outside of branches in states where a state chartered bank may have or may not have a branch facility. This area represents a serious continued imbalance between the national and state charter. The provisions proposed provide some additional parity provided that some part of the activities are performed in a branch location. Concerns regarding the activities of operating subsidiaries of state banks, however, have not been fully addressed in the NPR. This is an area of significant inequity between the state and national charter and represents an increasing volume of banking and bank related activity.

Mr. Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
November 22, 2005
Page 2

Section 24(j)(1) of the FDI Act states that host state law "shall apply to any branch of the host state of an out-of-state State bank to the same extent as such State laws apply to a branch in the host state of an out-of-state national bank." The Department supports the broad interpretation of such activities conducted at a branch to mean an activity of, by, through, in, from or substantially involving a branch. We concur that this interpretation is consistent with the legislative intent of Riegle-Neal II, as discussed in the NPR. We believe this interpretation could provide some additional partial relief for state chartered banks that are active, with branches, on an interstate basis.

Interest Rate Exportation

Regarding the provisions of the Petition regarding Section 27 and the codification of GC-10 and GC-11, the Department strongly supports provisions that would ensure that Section 27 is interpreted in the same manner as Section 85 is interpreted for national banks. The equal treatment of state bank subsidiaries in this area is warranted.

Application of Host State Law

The Department has serious concern that the language in Sec 362.19(c) may narrow the intent of the law from which it gains its authority. The Riegle-Neal Amendments Act of 1997 provided clearly that any branch of an out-of-state state bank should be in the same position as a national bank branch in that state. Determination of the applicability of host state law should rest with the state bank's regulator(s). The OCC is not the regulator for state banks, nor should a state bank be forced to rely on an OCC writing regarding applicability of host state law.

Activities of state banks, again according to Riegle-Neal II, are permissible if they are permissible for national banks. Both 12 USC 1831(j)(1) and 1831(j)(2) are stated as enabling legislation. No mention is made of writings being required. A national bank branch could be ignoring a particular state law due to a blanket preemption by the OCC. No "particular" writing may exist with regard to that situation. A state bank, then, should be able to rely on the national bank's ability to ignore the law without a requirement for a writing that may not exist and because of that, prevent the state bank from being on par with the national bank.

We have concerns that there will be instances where activities are permitted by the OCC, reflected in a writing or not, but no formal finding that a host state law has been preempted exists. This will result in an inequity for a state bank that sought a precise conformance with the rule, since in that instance, no writing existed. And in addition, it makes the state bank a hostage to the writings of the OCC, when not all states have had their laws specifically preempted, but rather the OCC blanket preemption covers many of those state laws. This puts the state bank in a position that is more detrimental to it than it was before the rule.

Mr. Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
November 22, 2005
Page 3

To remedy this inequity, the department suggests the following clarifications be made to the proposed rulemaking. Two alternative clarifications are suggested:

(c) A host state law does not apply to an activity conducted at a branch in the host state of an out-of-state, state bank to the same extent that a federal court or the Office of the Comptroller of the Currency has determined that the host state law does not apply to an activity conducted at a branch in the host state of an out-of-state, national bank. If a particular host state law does not apply to such activity of an out-of-state, state bank because of the preceding sentence, the home state law of the out-of-state, state bank applies.

Or, Alternatively

(c) A host state law does not apply to an activity conducted at a branch in the host state of an out-of-state, state bank to the same extent that a federal court or the Office of the Comptroller of the Currency has determined in writing that the particular host state law does not apply to an activity conducted at a branch in the host state of an out-of-state, national bank, or, after the issue of non compliance with host state law has been submitted in writing to the FDIC and the Office of the Comptroller, no objection to the activity is raised by either regulator within 30 days, thereby determining host state law is inapplicable to the national bank and therefore inapplicable to state banks. If a particular host state law does not apply to such activity of an out-of-state, state bank because of the preceding sentence, the home state law of the out-of-state, state bank applies.

If the OCC is allowed to be the decision makers in this process, there should be consideration given to establishing a process and framework for such decision-making that is timely and not burdensome upon state chartered banks. There is discussion in the proposed rulemaking of similarities with the consultations that occur with regard to Section 24 activities. Our observation is that the processing time for Section 24 activities, based on our experience, has at times been protracted. A timely and efficient process needs to be established to assure reasonable balance between state and national bank branch activities. The most effective method of providing timely processing would be to maintain the decision making regarding these activities of state chartered banks with the FDIC, with notification to OCC regarding the proposed activities. Any involvement of the OCC should occur on an exception basis, if the agency disagrees with the FDIC's conclusion regarding the applicability of host state law. In short, there needs to be balance not only in results but also in process between state and national banks.

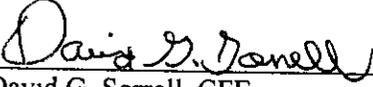
The FDIC requested comment regarding whether disclosure should be required, as discussed in GC-11, of whether the interest to be charged on a loan is governed by applicable federal law and the law of the relevant state which will govern the transaction. Our view is that the disclosure requirements that are required should be consistent with the disclosure requirements for national banks. While such disclosures could be helpful to consumers, there should be uniformity in such requirements so that state banks are not disadvantaged by requirements that are not applicable to national banks.

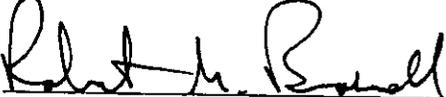
Mr. Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
November 22, 2005
Page 4

While the Department appreciates the actions taken by the FDIC Board to address the imbalance between state and national charters, the NPR will not fully address these concerns, specifically related to activities outside of the branch structure and through operating subsidiaries. We would urge further consideration of these issues or if it is determined that these activities are outside of the FDIC's rulemaking authority we would urge the FDIC Board to ask Congress to propose federal legislation to address these areas of continued imbalance between the charters.

We believe that an active and competitive dual chartering system is needed to maintain the strength and dynamism of the nations banking system. We appreciate the opportunity to comment on the NPR and we appreciate the cooperative working relationship that we have with the Federal Deposit Insurance Corporation.

Sincerely,


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cc: Mr. Neil Milner, President and CEO
Conference of State Bank Supervisors