

December 13, 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: Notice of Proposed Rulemaking to Preempt Certain State Laws

Dear Mr. Feldman:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (Proposal) by the Federal Deposit Insurance Corporation (FDIC) to amend the FDIC's regulations at 12 CFR Part 331 and Part 362. The Proposal was issued in response to a petition by the Financial Services Roundtable (FSRT) to 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 Proposal by the FDIC would implement federal statutory provisions addressing interest charged by FDIC-insured state banks and U.S. branches of foreign banks. In addition, the Proposal would implement provisions of section 24 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, as amended. 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 reject the Proposal.

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 do not believe that the Proposal reflects the comments by CSBS on May 24 and the subsequent vote by the Board of the FDIC to “codify” existing FDIC General Counsel opinions 10 and 11 with respect to banks (as opposed to operating subsidiaries of banks) and to highlight “current applicable law” with respect to the activities of state-chartered banks 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 Proposal would amend the 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 Proposal 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 Proposal 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 Proposal 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 Proposal could have the effect of placing in-state state-chartered community banks at a competitive disadvantage relative to both out-of-state federally-chartered banks and out-of-state state-chartered banks and their subsidiaries. In addition, the Northeastern States are concerned that the Proposal, if adopted, may reduce their regulatory authority over the operating subsidiaries of out-of-state banks and, thereby, reduce their ability to protect consumers who have complaints against those entities. Therefore, the Northeastern States conclude that the Proposal 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. Congress also has not specifically preempted, by statute, state authority over the operating subsidiaries of out-of-state 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

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

Northeastern States do not believe that the FDIC should now begin to preempt state laws. (In the absence of clear Congressional intent, the FDIC's authority to preempt state laws remains questionable.) 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 adopt the Proposal, the result could be a race to the bottom, pitting the interests of one state against another with both the FDIC and the OCC acting as arbitrators of what state laws have been preempted. The Northeastern States believe that it is not appropriate for either the FDIC or the OCC to serve this role.

Therefore, the Northeastern States respectfully urge that the FDIC reject the entire Proposal.

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  
Commissioner of Banks  
Commonwealth of Massachusetts

Donald Bryan  
Acting Commissioner  
Department of Banking & Insurance  
State of New Jersey

Dennis F. Ziroli  
Superintendent of Banking  
State of Rhode Island

John P. Crowley  
Commissioner of Banking, Insurance,  
Securities & Health Care Administration  
State of Vermont

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<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.