APPENDIX: Petition for FDIC Rulemaking Providing Interstate Banking Parity for Insured State Banks, by Letter from the Financial Services Roundtable, 1001 Pennsylvania Ave., NW, Suite 500 South, Washington, DC 20004, TEL 202-289-4322, FAX 202-628-2507, dated March 4, 2005.

March 4, 2005

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 Seventeenth Street, NW
Washington, D.C. 20429

Re: Petition for FDIC Rulemaking Providing Interstate Banking Parity for Insured State Banks

Dear Mr. Feldman:

The Financial Services Roundtable[1] ("Roundtable") respectfully petitions the Federal Deposit Insurance Corporation ("FDIC") to promulgate rules under the Federal Deposit Insurance ("FDI") Act and Section 104(d) of the Gramm-Leach-Bliley ("GLB") Act, 15 U.S.C. § 6701, to provide parity for state banks and national banks. Specifically, the proposed rule would provide that a state bank's home state law governs the interstate activities of insured state banks and their subsidiaries to the same extent that the National Bank Act governs a national bank's interstate business.

The FDIC has ample authority to take each of the requested actions pursuant to the broad delegation of authority in the FDI Act. It is now clear that FDIC action is required to achieve the result that Congress sought in the 1997 amendment to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal I"), Pub. L. 103-328, 108 Stat. 238. See Riegle-Neal Amendments Act of 1997, Pub. L. 105-24 (1997) (amending 12 U.S.C. § 1831a(j)) ("Riegle-Neal II"). The requested rulemaking would implement the historic decision of Congress in 1997 to provide competitive equality for state banks and national banks in interstate banking.

The Roundtable submits that it is both necessary and timely for the FDIC to adopt rules making clear the ability of state banks operating interstate to be governed by a single framework of law and regulation to the same extent as national banks. Such an

[1] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Roundtable member companies provide fuel for America's economic engine accounting directly for $18.3 trillion in managed assets, $678 billion in revenue, and 2.1 million jobs.

action would ensure the continued vitality of the dual banking system. Accordingly, the Roundtable requests that the FDIC promulgate rules that:

1. Clarify that the governing law applicable to activities conducted in a host state by a state bank that has an interstate branch in that state is its home state law to the same extent that host state law is preempted by the National Bank Act. The FDIC should make clear that "home" state law applies to an out-of-state state bank in a "host" state to the same extent as the National Bank Act applies to an out-of-state national bank, whether the business of the bank is conducted by the bank through the host state branch, by or through an operating subsidiary, or by any other lawful means.

2. Clarify that the governing law applicable to activities conducted by a state bank in a state in which the state bank does not have a branch is its home state law to the same extent that host state law is preempted by the National Bank Act. The FDIC should make clear that a state bank may operate under home state law in any other state to the same extent that an out-of-state national bank may operate under the National Bank Act or under rules promulgated by the Comptroller of the Currency ("OCC"). Such a rule would give effect to the policy underlying Riegle-Neal II and the preemption of discriminatory state law provided in Section 104(d) of the Gramm-Leach-Bliley ("GLB") Act ("Section 104(d)"), 15 U.S.C. § 6701(d).

3. Clarify that the law applicable to activities conducted by an operating subsidiary of a state bank is the same law applicable to the bank itself. The FDIC should clarify that when a state bank has established an "operating subsidiary" pursuant to its home state law, that subsidiary will be treated under FDIC rules as if it were the state bank itself. Thus, the operating subsidiary will be subject to state law outside its home state in the same manner as its bank parent is subject to such state law. Such rules would allow state bank operating subsidiaries to engage in interstate business under the same uniform rules as its parent bank, just as national bank operating subsidiaries operate under uniform OCC rules.

4. Adopt rules construing the scope and application of Section 104(d) to make clear that a state law or action is expressly preempted under Section 104(d) when it imposes a requirement, limitation, or burden on a state bank, or its affiliate, that does not also apply to an out-of-state national bank or in-state bank. Section 104(d) expressly preempts state laws or actions that discriminate against "insured depository institutions"," or their affiliates, as defined in the FDI Act. Accordingly, Section 104(d) provides independent basis and support for each of the above requests. Moreover, through implementing rules, the FDIC would provide greater certainty to insured state banks with respect to the scope of this express federal preemption in general. This provision is not well understood and we believe that a rulemaking, not litigation, is the appropriate means to carry out Congressional intent and achieve needed clarity.

5. Implement Section 27 of the FDI Act by adopting a rule parallel to the rules promulgated by the OCC and Office of Thrift Supervision ("OTS"). The scope and implementation of the express preemption for the "interest rate" charged in interstate lending transactions by state and national banks under Section 27 of the FDI Act and

Section 85 of the National Bank Act has been authoritatively addressed by the courts and in agency interpretations. The OCC and OTS have adopted rules codifying the scope of the respective statutory provisions for federal institutions. The FDIC should adopt a parallel rule for insured state banks and thus codify existing agency interpretations.

In this letter, we will address (A) the urgent need for the requested rulemaking and the real costs of inaction, (B) the FDIC's authority to promulgate rules of the scope requested, (C) the legislative history demonstrating that Congress specifically intended in Riegle-Neal II to prevent erosion of the dual banking system and in Section 104(d) to prevent disparate treatment and ensure that all banks could compete on relatively equal terms in today's interstate financial services marketplace, and (D) the scope of the proposed rule provisions in greater detail. The Roundtable appreciates the FDIC's consideration of this petition.

A. A Rulemaking Is Necessary And The Costs Of Inaction Will Be Significant

The requested FDIC action in this petition is necessary to complete the task of restoring balance in the dual banking system that Congress sought to achieve in 1997. Riegle-Neal II reversed a decision in 1994 to treat state and national banks differently with respect to "applicable law." In Riegle-Neal I, state and national banks were under the same rules for the establishment of interstate branches. However, Riegle-Neal I provided that when a national bank branched interstate into a host state, it was in effect generally subject to the National Bank Act,[2] while the state bank in a parallel case was made subject to host state law. While interstate national banks could operate under a single law, interstate state banks were subjected to multiple state laws.

That disparity led Congress in 1997 to amend Riegle-Neal to adopt an applicable law provision for state banks that closely tracked the national bank provision in Section 36(f) of the National Bank Act.[3] The purpose of the 1997 amendment, which was stated repeatedly by its sponsors, was to provide parity between state banks and national banks with respect to interstate banking.[4] By "parity," they plainly meant the ability of state

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[2] The Riegle-Neal applicable law provision for national banks states: "(A) In general The laws of the host State regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches shall apply to any branch in the host State of an out-of-State national bank to the same extent as such State laws apply to a branch of a bank chartered by that State, except - (i) when Federal law preempts the application of such State laws to a national bank; or (ii) when the Comptroller of the Currency determines that the application of such State laws would have a discriminatory effect on the branch in comparison with the effect the application of such State laws would have with respect to branches of a bank chartered by the host State." 12 U.S.C. § 36(f)(1)(A). The effect of this provision is that any host state law, including a community reinvestment, consumer protection, fair housing, or intrastate branching law, that is preempted under the National Bank Act does not apply to the national bank branch (or the bank) in the host state.

[3] Compare 12 U.S.C. § 1831a(j)(1) (text in footnote 9) with 12 U.S.C. § 36(f)(1)(A) (text in footnote 2).

[4] As stated by the lead sponsor in the House, Rep. Roukema: "The essence of this legislation is to provide parity between state-chartered banks and national banks." 143 Cong. Rec. H3088 (daily ed. May 21, 1997).

banks to do business interstate under a uniform law (home state law) just as national banks were authorized to do under Riegle-Neal.[5]

Over the last decade, the federal charters for national banks and federal thrifts have been correctly interpreted by the OCC and OTS, with the repeated support of the federal courts, to provide broad federal preemption of state laws that might appear to apply to the activities or operations of a banking institution in that state. The result is that, in general, national banks and federal thrifts now can do business across the country under a single set of federal rules. This framework is appropriate for these federal entities in a national financial marketplace. At the same time, in this marketplace a uniform national bank system based on preemption and interstate banking undoubtedly presents a major challenge to the dual banking system and state banks.

In contrast to the general certainty enjoyed by federal institutions, there is widespread confusion and uncertainty with respect to applicable law governing state banks engaged in interstate banking activities. The current uncertainty governing the interstate activities of state banks has had, and will continue to have, several significant adverse effects. Uncertainty carries the potential for litigation and enforcement actions arising from disagreements between regulators, or between a host state regulator and a state bank engaged in interstate activity. Regulatory uncertainty deters state banks from pursuing profitable business opportunities. When a state bank converts to a national charter to gain greater legal certainty, it incurs substantial expense. Each of these consequences has economic significance for state banks and direct implications for the FDIC's enforcement and safety-and-soundness responsibilities.

Moreover, a series of recent major merger and conversion transactions has resulted in an unprecedented migration of assets to the national banking system. It is now apparent that, absent a more certain federal regulatory environment, the state charter will continue to be perceived as less competitive than a national bank charter.

This is the very result that Congress intended to prevent.[6] In 1994, 1997 and 1999 Congress took bold and historic actions to provide uniform federal rules to govern all interstate banking and to ensure that individual state laws could not disfavor any type of depository institution in the multistate financial services marketplace. It is now apparent

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[5] See, e.g., statements by the principal sponsors of the 1997 Amendment, Rep. Roukema (". . . we have . . . with this action, protected the dual banking system while at the same time gaining the advantages of interstate banking"), 143 Cong. Rec. H4231 (daily ed. June 24, 1997), and Chairman D'Amato ("Enactment of H.R. 1306 also would bolster efforts of New York and other states to make sure that State[-]chartered banks have the powers they need to compete efficiently and effectively in an interstate environment"), 143 Cong. Rec. S5637 (daily ed. June 12, 1997).

[6] The statement by Rep. LaFalce before final House passage of the 1997 amendments captures the purpose to redress the negative effects of the 1994 Riegle-Neal applicable provision for state banks: "Why [must we act now]? Well, it is due to the fact that the national bank regulator has the authority to permit national banks to conduct operations in all the states with some level of consistency. In contrast, under the existing interstate legislation, state banks branching outside their home state must comply with a multitude of different state banking laws in each and every state in which they operate." 143 Cong. Rec. H3094 (daily ed. May 27, 1997). See the discussion of the legislative history in the next section.

that the express terms of these statutes have not on their own force been able to ensure, as Congress intended in enacting Riegle-Neal II, that state banks can participate in interstate banking business on a par with national banks and that state banks face significant state law obstacles when they seek to do business outside their home state. As a consequence, the state banking system, as we have known it, is fundamentally threatened.

In the national financial services marketplace, consumers and providers benefit when banks can provide products and services under a single legal framework applicable across state lines. At the same time, bank customers and the economy also benefit from the diversity, innovation and checks provided by a strong and dynamic dual banking system involving large, regional, and small banks. From the perspective of all parties — consumers, financial institutions, and regulators — further development of a framework of state bank regulation and supervision that is effective, efficient, and seamless across state lines is the right goal. In today's multistate system, that is an essential goal. A banking system in which virtually all interstate banks have national charters and state banks are overwhelmingly local is not the dual banking system this country has historically enjoyed. The dual banking system will retain the dynamic vitality that has made it a mainspring for progress and strength in banking only if it can provide meaningful interstate competitive parity for all interstate state banks, whether cross-border, regional, or national. Significant and unacceptable disparity exists today.

The FDIC has the authority, tools, and responsibility under the FDI Act to correct this imbalance. To implement Congressional intentions it now must promptly provide a uniform interstate applicable law regime for state banks and give practical reality to the express preemption of discriminatory state laws.

B. The FDIC Has Authority To Adopt The Requested Rules

The FDIC has ample rulemaking authority to address each of the Roundtable's requests. Section 9 of the FDI Act vests the FDIC with broad authority to adopt rules "it may deem necessary to carry out the provisions of this Act or of any other law which it has the responsibility of administering or enforcing." 12 U.S.C. 1819.[7]

The FDIC is vested with responsibility for administering Sections 24 and 27 of the Act to accomplish what Congress intended. Congress, through Section 9, has vested the FDIC with authority to carry out Sections 24 and 27. Moreover, under basic principles of administrative law, agency rules that fill or address a statutory gap generally are afforded considerable deference by courts. See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 865 (1984) ("*Chevron*"). Section 9's "generally conferred authority" makes it apparent "that Congress would expect the

[7] The FDIC's rulemaking authority parallels the OCC's authority. *See* 12 U.S.C. § 93(a) ("the Comptroller of the Currency is authorized to prescribe rules and regulations to carry out the responsibilities of the office"). The statutory provision authorizing the OCC to issue rules is directly analogous to Section 9 of the FDI Act. *Compare* 12 U.S.C. §1819 (FDIC vested with authority "to prescribe . . . such rules and regulations as it may deem necessary to carry out the provisions of this chapter or of any other law which it has the responsibility of administering or enforcing . . .").

agency to be able to speak with the force of law when it addresses ambiguity in the statute or fills a space in the enacted law, even one about which 'Congress did not actually have an intent' as to a particular result." United States v. Mead, 533 U.S. 218, 229 (2001) (quoting *Chevron*, 467 U.S. at 845).

Riegle-Neal I and II fundamentally changed federal law for state and national banks by authorizing banks to engage fully in banking transactions in other states through interstate branching.[8] As a corollary, Riegle-Neal I provided federal "applicable law" statutes to govern the new interstate banking regime. As originally enacted, the respective applicable law provisions treated national and state banks differently. Riegle-Neal II sought to redress that disparity and provided substantively the same rule for state banks as was originally provided for national banks.[9] The FDIC plainly has authority to implement Riegle-Neal II.

The FDIC also has the authority to implement the nondiscrimination provisions of Section 104(d) insofar as the GLB Act addresses state insured depository institutions and to construe the express preemption of discriminatory state law provided in Section 104(d). Section 9 vests the FDIC with authority to promulgate rules to carry out any statute the FDIC is responsible for administering or enforcing. The provisions of the

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[8] Prior to enactment of Riegle-Neal, neither state nor national banks could establish branches outside their home state. Moreover, except with respect to interest charges under 12 U.S.C. § 85 and 12 U.S.C. § 1831d, federal law did not provide guidance to either state banks or national banks regarding the law applicable to transactions that banks made with customers outside their home states.

[9] See generally Section 24(j):

(j) ACTIVITIES OF BRANCHES OF OUT-OF-STATE BANKS.--

(1) APPLICATION OF HOST STATE LAW.--The laws of a host State, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in 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. To the extent host State law is inapplicable to a branch of an out-of-State State bank in such host State pursuant to the preceding sentence, home State law shall apply to such branch.

(2) ACTIVITIES OF BRANCHES.--An insured State bank that establishes a branch in a host State may conduct any activity at such branch that is permissible under the laws of the home State of such bank, to the extent such activity is permissible either for a bank chartered by the host State (subject to the restrictions in this section) or for a branch in the host State of an out-of-State national bank.

(3) SAVINGS PROVISION.--No provision of this subsection shall be construed as affecting the applicability of--

(A) any State law of any home State under subsection (b), (c), or (d) of section 44; or

(B) Federal law to State banks and State bank branches in the home State or the host State.

(4) DEFINITIONS.--The terms "host State", "home State", and "out-of-State bank" have the same meanings as in section 44(f). 12 U.S.C. 1831a(j).

GLB Act that touch upon state depository institutions fall within the regulatory ambit of the FDIC.

A statutory gap, or a clarification of a statute to effect Congressional intent, can be – and should be – addressed by an agency rule. Where, as here, a statute is ambiguous regarding its application to "a particular result" (Mead, 533 U.S. at 229), courts have long recognized that agencies with rule-making authority must be permitted to address the statutory gap as "necessary for the orderly conduct of its business." United States v. Storer Broadcasting Co., 351 U.S. 192, 202-03 (1956) (finding also that the statute "must be read as a whole and with appreciation of the responsibilities of the body charged with its fair and efficient operation"), National Petroleum Refiners Ass'n, 482 F.2d at 681. ("[T]here is little question that the availability of substantive rule-making gives any agency an invaluable resource-saving flexibility in carrying out its task of regulating parties subject to its statutory mandate."). Courts have consistently applied these administrative law principles – and extended *Chevron* deference – to rules and regulations issued by the FDIC under its broad rulemaking authority.[10] There can be little doubt that Section 9 of the FDI Act vests the FDIC with authority to address these issues.[11]

There is no reason that a rulemaking by the FDIC similar to ones conducted by the OCC should be analyzed any differently. The National Bank Act does not expressly address the law applicable to a national bank outside states where it has branches. Prior to the adoption of the OCC rules, a number of courts determined that national banks were subject to state laws that did not conflict with the provisions of the National Bank Act.[12] Nonetheless, the courts have upheld the OCC rules and determinations that make clear that national banks and their operating subsidiaries are governed by the National Bank

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[10] See, e.g., National Council of Savings Institutions v. FDIC, 664 F.Supp. 572 (D. D.C. 1987) (sustaining FDIC regulation governing the proper relationship between FDIC-insured banks and their securities-dealing "subsidiaries" or "affiliates") See also Wells Fargo Bank, N.A. v. FDIC, 310 F.3d 202, 208 (D.C. Cir. 2002) (affording *Chevron* deference to FDIC rule for "second generation" transactions, because statute was silent as to treatment of these transactions and rule would "implement Congressional intent because it prevents financial institutions from manipulating the system"); America's Community Bankers v. FDIC, 200 F.3d 822, 834 (D.C. Cir. 2000) (upholding FDIC denial of refund assessment under *Chevron*, where statute merely stated that FDIC could utilize "any other factors" to "set" the assessment amount and thus was "facially ambiguous"); Federal Deposit Ins. Corp. v. Sumner Financial Corp., 451 F.2d 898, 902-903 (5th Cir. 1971) (affording "great deference" to FDIC interpretation of FDI Act through regulation concerning advertising by regulated banks).

[11] Riegle-Neal I and II provide express ability for a state bank to establish a branch in a host state, to thus gain the ability to engage in any or all of its permitted activities in that host state, and to apply its home state law (unless a national bank, and thus the state bank, must apply host state law) to that branch. But the statutory text does not directly address the governing law applicable to the state bank's activities permitted in the host state under the authority provided by Riegle-Neal, but conducted by the bank outside of its branch, by an operating subsidiary or another means. An ordinary task of a regulatory agency is to construe such a statutory provision in a rule.

[12] See National State Bank v. Long, 630 F.2d 981 (3d Cir. 1980); Perdue v. Crocker National Bank, 702 P.2d 503 (Cal. 1985); Best v. U.S. National Bank, 739 P.2d 554 (Or. 1987).

Act wherever they do business. These OCC rules have generally received *Chevron* deference.[13]

Further, under Section 8 of the FDI Act, an insured bank may be subject to an enforcement action of the FDIC if "in the opinion of the appropriate Federal banking agency, any insured depository institution, depository institution which has insured deposits, or any institution-affiliated party is engaging or has engaged, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of such depository institution, or is violating or has violated, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to violate, a law, rule, or regulation." 12 U.S.C. § 1818(b)(1). The FDIC has authority to adopt rules with respect to legal compliance by insured banks that provide guidance to those banks and agency staff charged with making supervisory, enforcement and examination decisions. That can be accomplished by using authority under Section 9 to address issues of compliance with state law, including the meaning and scope of Section 104.[14]

C. The Requested Rulemakings Would Advance The Congressional Purpose To Prevent Erosion Of The Dual Banking System By Maintaining Parity Between State And National Banks

Beginning with the enactment of Section 27, Congress has taken bold and historic action on more than one occasion to preempt a wide range of state laws so that state banks can operate on a par with national banks in the multistate financial services marketplace that has come into existence in recent decades. The broad sweep of what Congress intended to accomplish is evident in the terms and legislative history of Riegle-Neal II and Section 104(d). Those statutes further the decades-old principle of competitive equality embodied in federal law and repeatedly recognized by the courts and the FDIC.[15] The requested FDIC rule would implement these Congressional purposes.

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[13] See, e.g., NationsBank of N.C. v. VALIC, 513 U.S. 251 (1995); Barnett Bank of Marion County v. Nelson, 517 U.S. 25, 33 (1996); Wachovia Bank, N.A. v. Watters, 334 F. Supp. 2d, 957, 963-65 (W.D. Mich. 2004); Wachovia v. Burke, 319 F. Supp. 2d 275 (D. Conn. 2004).

[14] The FDIC previously has engaged in a rulemaking in comparable circumstances. In 1982, the FDIC adopted a Statement of Policy addressing the applicability of the Glass-Steagall Act to securities activities of subsidiaries of insured nonmember banks. 47 Fed. Reg. 38984, September 3, 1982. That Statement of Policy construed Section 20 of the Glass-Steagall Act and concluded that the restrictions in that section on securities affiliates of insured banks did not prevent insured nonmember banks subject to the FDIC's regulation and supervision from having "bona fide" securities affiliates or subsidiaries. The provisions of Glass-Steagall construed in the Statement of Policy (like the provisions of GLB at issue here) were not part of the FDI Act, but the FDIC issued a rule to provide clear guidance to insured state banks, and the exercise of the FDIC's rulemaking authority in that case was upheld. See National Council of Savings Institutions v. FDIC, 664 F.Supp. 572 (D. D.C. 1987). Issuing guidance to state insured banks concerning the scope of Section 104 of the GLB Act is a necessary and appropriate exercise of the FDIC's authority to carry out its regulatory mandate.

[15] See First Nat'l Bank v. Walker Bank & Trust Co., 385 U.S. 252 (1966); First Nat'l Bank in Plant City v. Dickinson, 396 U.S. 122 (1969); FDIC Advisory Letter 00-5.

The principle of fundamental competitive parity has been woven by Congress and the courts into the very fabric of the dual banking system. The dual system was created when Congress created the national bank system alongside the state banking system. In the Federal Reserve Act, Congress expressly provided for state banks, as well as national banks, to be member banks. The McFadden Act as passed and as amended in the 1930s embodied a federal policy of competitive equality in branching. In the FDI Act, deposit insurance was made available to all state and national banks.

Since 1980, Congress has amended the FDI Act to ensure state-national bank parity, to ensure a strong and balanced dual banking system, and to prevent discriminatory state laws from favoring one type of charter over another. In 1980, in response to the challenges presented by the 1978 Marquette case, Congress provided interstate usury parity for state banks in Section 27 of the FDI Act.[16] See 12 U.S.C. 1831d(a). In 1991, Congress addressed state laws providing state banks more expansive powers than national banks, a disparity in favor of state banks that Congress believed had implications for safety-and-soundness, bank competitiveness, and the dynamic for change in the dual banking system. That enactment provided that state bank activities would be limited to activities permissible for national banks, unless the FDIC determined that for a state bank to engage in an otherwise impermissible activity would not pose a significant risk to the deposit insurance fund. See 12 U.S.C. § 1831a(a)-(e). This policy of parity was continued in Riegle-Neal and the GLB Act.

1. The legislative history of Riegle-Neal amendments demonstrates Congressional purpose to provide parity between national banks and state banks

In Riegle-Neal, Congress reversed more than 150 years of federal policy and enacted comprehensive federal laws governing interstate banking for all banks. Except for the applicable law provisions, Riegle-Neal as originally enacted gave parallel treatment to state and national banks. In 1997, Congress recognized that the original state bank applicable law provision was placing state banks at a substantial disadvantage and was undermining the state system. It acted swiftly to redress the state-national bank balance in Riegle-Neal II. The specific drafting approach, the underlying policy and the express purpose of that 1997 statute all sought to ensure that state banks would operate under a uniform interstate "applicable law" regime based on home state law parallel to the national bank regime. It sought to ensure parity in the dynamic interstate banking environment.

The legislative history of Riegle-Neal II makes clear that Congress' goal was to facilitate competitive equality for state banks and national banks in interstate banking. The 1997 amendments originated in the House Banking Committee. At final passage, the principal sponsor of the bill, Rep. Marge Roukema (R-NJ), chair of the Subcommittee on Financial Institutions, and senior members of the House Banking Committee, on a bipartisan basis, expressed the intent to provide a level playing field, not narrowly in

[16] See Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp., 439 U.S. 299 (1978).

terms of competition between state and national bank branches, but broadly in terms of the ability of state banks to match national banks in doing business across the country.

As Rep. Roukema stated when introducing the bill for vote on the House floor: "The essence of this legislation is to provide parity between state-chartered banks and national banks. . . .This legislation is critical to the survival of the dual banking system. . . . [A] strong state banking system is necessary for the economic well-being of the individual States and for innovation in financial institutions." In her final statement before final passage, she repeated the necessity and purpose of the bill: "[W]e have . . . with this action, protected the dual banking system while at the same time gaining the advantages of interstate banking."[17] No contrary statement was made by any House or Senate member during the floor debates preceding final passage.

Representative Roukema's statements were echoed and reinforced by senior members from each political party. On the Republican side, Rep. Mike Castle (R-DEL) addressed state bank's competitive needs "across the Nation": "As we enter the age of interstate banking and branching, it is necessary to ensure that state banks can compete fairly with national banks as more banking is done between States and across the Nation. This legislation will ensure that there is a level playing field between state and national banks."[18] Rep. Doug Bereuter (R-NEB) emphasized the benefits for the state system, "This Member was intimately involved in the original Riegle-Neal Act and was concerned at that time that States' rights were protected. . . . This Member believes that this measure actually reinforces States' rights by maintaining the viability of the state charter by ensuring parity with the national bank charter . . . [and] urges his colleagues to join him in approving this important protection of the dual banking system."[19]

A senior Democrat, Rep John LaFalce (D-NY), articulated the purpose clearly: ". . . I do believe [the bill's] passage is vital to maintain the dual banking system. It is the dual banking system that by giving banks a choice of Federal or state charters has helped to ensure that our U.S. banking industry has remained strong and competitive. . . .[In 1994, Congress did not adequately anticipate the negative impact the interstate law would have on state banks.] Why so? Well, it is due to the fact that the national bank regulator has the authority to permit national banks to conduct operations in all the states with some level of consistency. In contrast, under the existing interstate legislation, state banks branching outside their home state must comply with a multitude of different state banking laws in each and every state in which they operate."[20]

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[17] See 143 Cong. Rec. H3088 (daily ed. May 21, 1997), H4231 (daily ed. June 24, 1997).

[18] 143 Cong. Rec. H3095 (daily ed. May 27, 1997)

[19] Id. at H3094. Rep. Spencer Bacchus (R-ALA) similarly stated: " . . . we have heard almost unanimous testimony that the unfortunate and unintended consequences of our failure to make these clarifications will be the devaluation of state banking charters in favor of national charters and the gradual decline of the state banking system . . ."Id. at H3095.

[20] Id. at H3094. Rep. Bruce Vento (D-MN) similarly stated: "The legislation will maintain the dynamic balance between the chartering of national and state banks and banking systems. This is a necessary

When the Riegle-Neal II bill was considered in the Senate, concern also was expressed about the erosion of the dual banking system caused by the disparity in applicable law enacted in Riegle-Neal. In his floor statement preceding final Senate passage, Senate Banking Committee Chairman Alphonse D'Amato (R-NY) stated the importance of Riegle-Neal II for the continued vitality of the dual banking system:

> [T]he trigger date for nationwide interstate branching has passed—June 1, 1997. This important legislation will preserve the benefits of the dual banking system and keep the state banking charter competitive in an interstate environment. . . .
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> The bill is necessary to preserve confidence in a state banking charter for banks with such a charter that wish to operate in more than one state. In addition, it will curtail incentives for unnecessary Federal preemption of State laws. Finally, the bill will restore balance to the dual banking system by ensuring that neither charter operates at an unfair advantage in this new interstate environment. . . .
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> New York has more than 90 State[-]chartered banks . . . . Without this legislation, the largest of these institutions may be tempted to convert to a national charter in order to operate in more than one State. . . .
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> The current law may be unclear as to whether consistent rules are used to determine what laws and powers apply to the out-of-state branches of state and federally chartered banks . . . .[Summary of the bill's terms omitted]
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> Enactment of H.R. 1306 also would bolster efforts of New York and other states to make sure that State[-]chartered banks have the powers they need to compete efficiently and effectively in an interstate environment.[21]

2. Section 104 of the GLB Act reflects Congress' intent to preempt discriminatory state laws adversely affecting any depository institution

Congress enacted Section 104 as part of the GLB Act in 1999 to address state laws providing competitive inequalities among entities offering the same financial products and services. Section 104 originated as a provision intended to sweep away a variety of state laws that had blocked or imposed special requirements or conditions on banks seeking to engage in insurance activities permitted under their charter law. During the legislative process, the section was expanded to provide express preemption of not just state insurance laws, but any state law that placed impediments or burdens on any insured depository institution seeking to provide financial services across the country.

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measure. It must be enacted to clarify and ensure the viability of America's dual banking system." Id. at H3093.

[21] 143 Cong. Rec. S5637 (daily ed. June 12, 1997).

Even though the non-insurance provisions of Section 104(d) are far less detailed than the insurance provisions of Section 104, the Congressional purpose and breadth of preemption with respect to non-insurance activities are express in the nature and scope of the words used.

Congress determined that in a national financial services marketplace individual states should not be able to impose burdens or requirements adversely affecting any depository institution, or its affiliates. As enacted, Section 104(d) provides broad preemption of discriminatory state laws adversely affecting any type of depository institution or any affiliate of a depository institution. It was enacted for the purpose of ensuring that no insured depository institution — including a state bank and its financial affiliates — would be disadvantaged competitively by the operation of state law when it engages in a financial activity, whether on its own, with an affiliate or with "any other person."

The legislative history of Section 104(d), and particularly the paragraph (4) nondiscrimination provisions, is sparse, and thus its purpose and intent are best drawn from its terms. It is important to note that Section 104 addresses how banking organizations conduct the full range of permitted financial activities, whether by the depository institution itself or by an affiliate, including both "traditional" affiliates such as mortgage or finance companies and the new affiliations permitted under the GLB Act. It focuses on state laws that affect how depository institutions or its affiliates engage in any of their permitted activities. This focus is evident in the Senate Banking Committee report in 1999. That Committee had taken the lead role in fashioning Section 104 in the form ultimately enacted. Its report expressly addressed the section's broad, preemptive purpose with respect to state laws that impinge on how financial activities are conducted: "[T]he Committee is aware that some States have used their regulatory authority to discriminate against insured depository institutions, their subsidiaries and affiliates. The Committee has no desire to have State regulation prevent or otherwise frustrate the affiliations and activities authorized or permitted by this bill. Thus, Section 104 clarifies the application of State law to the affiliations and *activities* authorized or *permitted by the bill (or other Federal law)*, and ensures that applicable State law cannot prevent, discriminate against, or otherwise frustrate such affiliations or activities."[22]

Section 104(d) has a purpose parallel to Riegle-Neal II — to ensure that depository institutions will be able to compete across the country on equal terms and to prevent state laws or actions from providing disparate treatment that would disadvantage any bank vis-à-vis its competitors. When an out-of-state state bank is subject to a state law imposing any requirement, limitation, or burden to which a national bank or in-state bank is not subject, Section 104(d) by its literal terms preempts that state law.

D. In The Requested Rulemaking, The FDIC Should Clarify The Applicable Law Governing The Interstate Activities Of State Banks To Provide Parallel Uniformity For State Banks With National Banks

[22] S. Rept. 106-44 (April 28, 1999) at 11 [Senate Banking Committee] (emphasis added).

In light of the FDIC's authority under its statute and the express purposes and policies of Congress enacted in recent statutes, the Roundtable believes that the FDIC can, and should, adopt rules so that state banks can operate interstate under uniform rules based on home state law and thus parallel to national banks. We now address in turn the specific parts of the requested rulemaking.

1. The FDIC should clarify that in general home state law is the governing law applicable to all activities conducted in a host state by a state bank that has an interstate branch in that state to the same extent that host state law is preempted by the National Bank Act

This petition seeks a rule addressing the appropriate applicable law to govern the activities of a state bank when it has entered a host state with a branch as permitted by Riegle-Neal and thus has a federal law authorization to transact all its legally permissible activities within that host state. The requested rule would expressly permit a state bank to apply home state law uniformly to all its business done in a host state parallel to the ability of national banks to apply the National Bank Act under OCC rules. Riegle-Neal II plainly provides that if the National Bank Act preempts host state law for national banks, home state law is the applicable law when the out-of-state bank engages in any or all of its permissible activities in or through its host state branch. The Riegle-Neal applicable law provisions for both state and national banks are silent, however, with respect to the governing law applicable to a transaction that the bank could conduct through its branch, but is effecting without any involvement by the host state branch.

Riegle-Neal I authorized *the bank* to engage in any or all of its permitted activities in the host state once it has a single branch there and to apply its home state law. The only question under Riegle-Neal II is whether Congress intended different law to apply depending on the means used by the bank to conduct its permitted business in the host state or the structure of the transaction (that is, whether use of home state law as the applicable law depends on some actual branch involvement in the bank's transaction).[23] The legislative purpose is clear: Congress was focused on the bank's interstate activities, not the means used by the bank. By adopting the requested rule, the FDIC will achieve the result Congress intended.

The FDIC should fill the statutory gap and clarify the application of home state law to host state activities by adopting a rule for state banks that provides for uniform application of home state law whenever a national bank can apply the National Bank Act. The FDIC rule should make it clear that the state bank's home state law will apply to all of the bank's activities in a host state whenever a host state law would be preempted by OCC rules for a national bank.

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[23] For example, although the statutory text directly addresses the law applicable to a Tennessee bank with a branch in Oklahoma that makes a loan to an Oklahoma resident through its Oklahoma branch (Tennessee law applies), the text does not speak directly to the governing law applicable to the identical loan originated by the Tennessee bank from its home office in Tennessee (or through an operating subsidiary).

Specifically, the rule should make it plain that any host state statute, rule, order, etc., that would be preempted under the terms of the OCC preemption rule, or an OCC interpretive letter, would also be preempted for a state bank. If there is any uncertainty about the application of the OCC rules in any case, the rule might allow the home state regulator, or the FDIC, to determine in writing whether OCC rules would provide preemption for national banks. The FDIC should reserve the ability to make any final determination (with consultation with the OCC as needed). In parallel fashion, the rule should provide that if home state statute law is silent, the home state regulator can determine by rule, order, or interpretative statement/letter what applicable home state law is. In general, the home state regulator's written determinations, whether by rule, order, or interpretative statement/letter, should govern, but could be subject to review by the FDIC, upon request of the host state regulator or upon the FDIC's own initiative.

The rule might also address another Riegle-Neal provision addressing the home-host state relationship. Section 10(h)(3) of the FDI Act expressly provides that the "State bank supervisors from 2 or more States may enter into cooperative agreements to facilitate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations." The state regulators, through the Conference of State Bank Supervisors, have entered into a landmark nationwide cooperative agreement, as well as agreements involving a specific bank by the states where that bank has branches. The FDIC rule could provide guidance on the effect of Section 10(h)(3).

2. The FDIC should clarify that home state law is the governing law applicable to activities conducted by a state bank in a state in which the state bank does not have a branch to the same extent that state law is preempted by the National Bank Act

The Roundtable requests that the FDIC adopt parallel rules under its Section 9 authority to provide that the home state law of a state bank will apply to its activities in other states to the same extent as the National Bank Act applies to the activities of national banks. The rule should provide that whenever a state law is preempted by the National Bank Act or OCC rules, it also would not apply to an out-of-state insured bank, which would be governed by its home state charter law. The requested rule thus would implement the terms and policies of Section 104(d) and the policies of Riegle-Neal II and address gaps in existing law. Like the parallel OCC rules, the requested rules would reduce legal risk, guide legal compliance by insured banks, and aid the FDIC in making enforcement decisions under Section 8 of the FDI Act. Further, by promoting operating efficiency and competitiveness in interstate banking and by reducing the real costs arising from legal uncertainty and risk, the proposed rule would contribute to the safe and sound operation of state banks.

To a large extent, the Riegle-Neal and GLB legislation confirmed the existence of a robust interstate marketplace for financial services and provided a federal legal framework for the conduct of this interstate commerce. Although the express purpose of Riegle-Neal II was to provide state banks competitive equality with national banks in interstate banking, it did not by its terms address the law applicable to banks outside

states where they maintain a branch. The GLB Act addressed the entire financial services marketplace and, like Riegle-Neal I and II, adopted broad federal rules to implement the goal of a "level playing field". In Section 104(d) Congress plainly recognized the need for financial services providers, including insured depository institutions, that operate across the country to do so under uniform rules and not to be subject to individual state rules or actions that would disadvantage some or all depository institutions. Accordingly, Congress provided the very broad express preemption stated in Section 104(d) to address this perceived need.

As is often the case, Congress did not address in those acts every issue presented by the developments and problems it was considering, nor did it address future developments. Under established principles of administrative law, as discussed above, the federal agencies that administer and implement statutory grants of authority have an important role in adopting rules that implement Congressional purposes, reasonably fill in statutory gaps and address the application of existing laws to new developments and contexts.

The policy of Section 104 has a similar goal as Riegle-Neal II, but plainly addresses a different aspect of the same problem — discriminatory state laws that disadvantage depository institutions, including state banks, seeking to compete in interstate financial service markets. Section 104(d) thus directly informs and supports this requested rule. Under Section 104(d), when state law provides for a different result for out-of-state state banks compared to national and in-state state banks, that law is preempted. Given Section 104(d) and the FDIC's authority to address compliance with law under FDI Act Section 8, the FDIC can adopt a rule consistent with the logic and policy of Riegle-Neal II that will provide state banks competitive equality in every state so that no insured state bank will be required to comply with a state law unless a national bank also would be subject to that law.

OCC rules have provided national banks substantial certainty and clarity concerning the law governing national bank activities across the country.[24] These OCC actions have had the effect of making national banks more competitive and efficient in

[24] The Comptroller has addressed the reality of multistate banking by adopting rules that provide that a national bank and its operating subsidiaries operate solely under the National Bank Act and OCC rules wherever they do business across the country. The OCC rules expressly provide that the National Bank Act, not state law, governs the deposit, lending, and other activities of national banks, except as specifically provided in the OCC rules. See 12 C.F.R. §§ 7.4007-7.4009. The National Bank Act does not expressly address the law applicable to a national bank outside states where it has branches. Indeed, prior to the adoption of OCC rules addressing these issues in recent years, a number of courts determined that national banks were subject to state laws that did not conflict with the provisions of the National Bank Act. E.g., National State Bank v. Long, 630 F.2d 981 (3d Cir. 1980); Perdue v. Crocker National Bank, 702 P.2d 503 (Cal. 1985); Best v. U.S. National Bank, 739 P.2d 554 (Or. 1987). Nevertheless, the courts, including the U.S. Supreme Court, have upheld OCC rules and determinations since 1994 that flesh out the National Bank Act and spell out the ability of national banks and their operating subsidiaries to apply the National Bank Act wherever they do business. These OCC determinations have generally received *Chevron* deference. E.g., NationsBank of N.C. v. VALIC, 513 U.S. 251 (1995), Barnett Bank of Marion County v. Nelson, 517 U.S. 25, 33 (1996), Wachovia Bank, N.A. v. Watters, 334 F. Supp. 2d, 957, 963-65 (W.D. Mich. 2004).

interstate banking and have reduced legal risk. These rules, as supplemented by interpretations and guidance issued by the OCC, also have clarified the scope of the OCC's compliance and enforcement responsibilities and standards with respect to the safe and sound operation of national banks. The FDIC has authority to provide a parallel result for state banks in its rules.

3. The FDIC should clarify that home state law governs the activities of an operating subsidiary of a state bank to the same extent as home state law applies to the parent bank

In a 1996 rulemaking, which codified existing interpretations, and in subsequent modifications, the OCC has adopted comprehensive rules concerning the establishment and operation of operating subsidiaries. See 12 C.F.R. § 5.34; 69 Fed. Reg. 64478 (Nov. 5, 2004). The OCC rules as amended in 2001 further specify that state law applies to a national bank operating subsidiary to the same extent state law would apply to the national bank itself. See 12 C.F.R. § 7.4006. The FDIC should similarly make clear that an operating subsidiary established by a state bank under its home state law, like the operating subsidiary of a national bank, will be governed by the same law as would its insured state bank parent, except when a state law would apply to the activities of a national bank operating subsidiary.

The Roundtable recognizes that the authority of an insured state bank to establish an operating subsidiary must arise under its charter law. Whether a state bank can have an "operating subsidiary" will be determined by appropriate home state authorities under the bank's charter law. Nevertheless, the FDIC plainly has authority to determine that a state bank operating subsidiary that is treated for all purposes as if it were a division of the bank will be subject to the FDI Act and FDIC rules in the same way as its insured bank parent, parallel to a national bank operating subsidiary. The OCC rules concerning operating subsidiaries were adopted without the existence of any express provision in the National Bank Act.[25]

The FDIC has discretion under Section 9 and Section 24(f) to determine by rule that a subsidiary that is an operating subsidiary under home state law will be treated under the FDI Act as if it were a division or branch of the state bank.[26] This rule provision would thus allow a state bank operating subsidiary to engage in interstate

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[25] When the authority for a national bank to establish a financial subsidiary was authorized under the GLB Act in 1999, new Section 24a in the National Bank Act implicitly confirmed the existing OCC approach to establishing operating subsidiaries. See 66 Fed. Reg. 34784, 34788 (July 2, 2001).

[26] The FDIC has recognized in Advisory Letter 99-5 that a state bank operating subsidiary may be treated the same as a state bank branch if the operating subsidiary engages in activities that would require a branch designation. Advisory Letter 99-5 recognizes that because a bank established and controls its operating subsidiary, the offices of an operating subsidiary are similarly "established" by the bank for branching purposes. This result is also consistent with the terms of Section 1813(o) of the FDI Act, in which a "domestic branch" is defined to include any "additional office" of a bank. The FDIC thus has recognized the concept underlying the "operating subsidiary" and thus can apply it more uniformly to all state bank activities by rule.

banking activities in host states and other states on the same terms on which its state bank parent operates.

4. The FDIC should adopt rules construing the scope and application of Section 104(d) to make clear that state laws, rules, or actions are preempted under Section 104(d) when they provide for disparate treatment between an out-of-state national bank or in-state bank and an out-of-state state bank, or an affiliate thereof

The Roundtable also requests that the FDIC provide greater clarity and certainty to insured state banks with respect to the scope of the federal preemption provided in Section 104(d) of the GLB Act. In view of the complexity of Section 104(d) and the general lack of understanding of its provisions, FDIC rules are needed. Moreover, a rulemaking is a preferable means for providing needed clarity than either litigation or an enforcement proceeding.

Section 104(d) provides express federal preemption of certain state laws that affect "insured depository institutions", as defined in the FDI Act. Insured state banks subject to FDIC regulation are the intended beneficiaries of the Section 104(d) preemption. Yet state banks today are not utilizing this preemption, because the statute is relatively new and complex and the relevant provisions have not been construed by any agency or court. Given the complexity of the Section 104(d) provisions, FDIC guidance would provide much needed clarity and certainty. Accordingly, we request the FDIC to exercise its authority under FDI Act Sections 8 and 9 to adopt rules that specify the scope of the express preemption provided under Section 104(d) for insured state banks. Alternatively, the FDIC might adopt a statement of policy addressing the scope and effect of Section 104(d) for state banks.

The breadth of the Section 104(d) preemption and its purpose to reach state law or actions that would provide disparate treatment for any type of depository institution, including the distinct class of out-of-state state banks, vis-à-vis its competitors are evident in the language of the statute. Section 104(d)(4)(D) provides four distinct nondiscrimination tests for any state law or action that "restricts" any depository institution or any affiliate.[27] These provisions of Section 104 were carefully drafted and

[27] The pertinent portions of Section 104(d) are as follows:

(d) Activities.

(1) In general. Except as provided in paragraph (3), and except with respect to insurance sales, solicitation, and cross marketing activities, which shall be governed by paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution or an affiliate thereof from engaging directly or indirectly, either by itself or in conjunction with an affiliate, or any other person, in any activity authorized or permitted under this Act and the amendments made by this Act. * * *

(4) Financial activities other than insurance. No State statute, regulation, order, interpretation, or other action shall be preempted under paragraph (1) to the extent that--

the text demonstrates that Congress made careful distinctions when determining whether state discrimination between competitors should be impermissible, and thus and preempted, under federal law.[28] The distinctions in the statutory language permit the FDIC to address the meaning of Section 104(d) for a state bank confronting state laws outside its home state that disadvantage it by putting it in a different legal or competitive position than its national bank or in-state state bank competitors.

The following specific items might be covered in an FDIC rule or statement of policy:

- The rule should state that the Section 104(d) preemption applies to insured banks, and to their subsidiaries, affiliates and associated persons.

- The rule should define a "person" to include a depository institution, subsidiary, affiliate, and associated person.

- The rule should state that in view of the breadth of the nondiscrimination requirements stated in Section 104(d) the word "restrict" in Section 104(d)(1) is to be read broadly to include any state law, rule, interpretation or action that calls for any limitation or requirement. Any state law that "restricts" but is

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(A) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities covered under paragraph (2);

(B) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, the business of insurance activities other than sales, solicitations, or cross marketing activities, covered under paragraph (3);

(C) it does not relate to securities investigations or enforcement actions referred to in subsection (f); and
(D) it--

(i) does not distinguish by its terms between depository institutions, and affiliates thereof, engaged in the activity at issue and other persons engaged in the same activity in a manner that is in any way adverse with respect to the conduct of the activity by any such depository institution or affiliate engaged in the activity at issue;

(ii) as interpreted or applied, does not have, and will not have, an impact on depository institutions, or affiliates thereof, engaged in the activity at issue, or any person who has an association with any such depository institution or affiliate, that is substantially more adverse than its impact on other persons engaged in the same activity that are not depository institutions or affiliates thereof, or persons who do not have an association with any such depository institution or affiliate;

(iii) does not effectively prevent a depository institution or affiliate thereof from engaging in activities authorized or permitted by this Act or any other provision of Federal law; and

(iv) does not conflict with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law. 15 U.S.C. § 6701(d).

[28] Compare the "other person" language in subparagraphs (i) and (ii). Subparagraph (i) addresses " other persons engaged in the same activity", while Subparagraph (ii) addresses "other persons engaged in the same activity that are not depository institutions or affiliates thereof".

nondiscriminatory under Section 104(d)(4) is not preempted under Section 104(d). By the same token, any state law that "restricts" and is discriminatory under Section 104(d)(4) is preempted under Section 104(d).

- The rule should address each of the four nondiscrimination provisions in Section 104(d)(4) to confirm that each is a distinct test and that any state law or action that fails any one test is preempted.

- The rule should address the scope of "actions" in Section 104(d)(4) to include all types of formal or informal administrative actions by any state or local governmental entity, including decisions with respect to civil enforcement of state rules.

- The rule should address Section 104(d)(4)(D)(i) in light of the terms used in subparagraph (ii) to specify that subparagraph (i) addresses treatment under state law of an out-of-state insured state bank, which is plainly an "insured depository institution," that is different from the treatment of any national bank or in-state state bank and banks, which is an "other person engaged in the same activity" under these provisions. It should also specify that this discrimination can take various forms, including state laws, rules, or "actions" that treat out-of-state state banks or their subsidiaries differently from in-state or federal institutions, whether expressly (*e.g.*, through a state law exemption for federal institutions, but not out-of-state state banks insured institutions), by operation of law (*e.g.*, when state law is preempted for national banks or federal thrifts, and federal credit unions, but not for out-of-state state banks), or by an administrative determination to enforce a state rule against an out-of-state state bank or affiliate, but not against a federal entity. The rule could give examples.

- The rule should define "state law" to include laws, ordinances, rules, etc. of political subdivisions (including any county, municipality, etc.).

5. The FDIC should implement Section 27 of the FDI Act by adopting a rule parallel to the rules promulgated by the OCC and OTS

The scope and implementation of the express preemption for the "interest rate" charged in interstate lending transactions by state and national banks under Section 27 of the FDI Act and Section 85 of the National Bank Act have been authoritatively addressed by the courts[29] and in agency interpretations.[30] Nevertheless, both the OCC and OTS have adopted rules codifying the scope of the respective statutory provisions. We request that the FDIC adopt parallel provisions by rule so that state banks will operate in a matching legal framework under these parallel statutes.

[29] Greenwood Trust Co. v. Mass., 971 F.2d 818 (1st Cir. 1992), Smiley v. Citibank, 517 U.S. 735 (1996).

[30] See FDIC General Counsel Opinions 10 and 11.

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The Roundtable appreciates the FDIC's consideration of this petition. We recognize that it is very broad and asks the FDIC to undertake a major rulemaking. We believe that such an effort is urgently needed to preserve a strong dual banking system, to maintain safety and soundness, and to ensure that it is attractive to both large and small banks. Such a system is an integral, essential part of the framework for banking in the United States. While we strongly support the development of interstate banking and federal preemption over the last decade, we believe that the modernization of American banking requires a parallel modernization of the state half of the dual banking system. Since the issues concern interstate business and preemption, the needed actions must come at the federal level. As discussed above, we believe that Congress has given the FDIC both the tools and responsibility to address these needs.

The Roundtable and its members stand ready to work with the FDIC and its staff to achieve these important objectives. If you have any further questions or comments, please do not hesitate to contact me or John Beccia at (202) 289-4322.

Sincerely,

Richard M. Whiting

Richard M. Whiting
Executive Director and General Counsel

cc: Chairman Donald E. Powell
William F. Kroener III, Esq.