Preemption Final Rule
Questions and Answers
January 7, 2004

I. INTRODUCTION

What action is the OCC taking today?

The OCC is issuing a final rule (Final Rule) amending its regulations to add provisions clarifying the applicability of state law to national banks' lending, deposit-taking, and other operations. The Final Rule identifies types of state laws that are preempted by Federal law and therefore not applicable to national banks. Most of these laws have already been found to be preempted by a Federal court, the OCC, or the Office of Thrift Supervision in its comparable rules applicable to Federal thrifts.[1]

In addition, the Final Rule identifies types of state laws that are not preempted. These types of laws generally create the legal infrastructure that enables or facilitates the exercise of a Federal banking power.

Along with these preemption provisions, we are also adopting important new anti-predatory lending standards governing national banks' lending activities – nationwide.

What action is the OCC <u>not</u> taking today?

The OCC is not authorizing any new national bank activities or powers, such as the ability to engage in real estate brokerage.

In addition, although we believe the statute authorizing national banks' real estate lending activities (12 U.S.C. § 371) could permit the OCC to occupy the field of national bank real estate lending through regulation, we have declined to announce such a position in the Final Rule.

Finally, the Final Rule makes no changes to the OCC's rules governing the activities of operating subsidiaries. As already set out in 12 CFR 5.34, 7.4006, and 34.1(b), national bank operating subsidiaries conduct their activities subject to the same terms and conditions as apply to the parent banks. Therefore, *by virtue of regulations already in place*, the Final Rule applies equally to national banks and their operating subsidiaries.

What types of state laws will be preempted under the Final Rule?

The Final Rule sets out types of state statutes that are preempted in the areas of real estate lending, other lending, and deposit taking. For lending, they include licensing laws, laws that address the terms of credit, permissible rates of interest, escrow accounts, and disclosure and advertising. For deposit-taking (in addition to laws dealing with disclosure requirements and

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[1] See attached chart comparing the OCC's regulations with the regulations of the OTS and NCUA.

licensing and registration requirements), they include laws that address abandoned and dormant accounts, checking accounts, and funds availability. These lists reflect OCC opinions, court decisions, comparable rules applicable to Federal thrifts, and the application of traditional, judicially recognized standards of preemption. These lists are not intended to be exhaustive – the OCC may identify, and address on a case-by-case basis, other types of state laws that are preempted.

In addition, with regard to bank operations, the Final Rule states that except where made applicable by Federal law, state laws that obstruct, impair, or condition a national bank's exercise of powers granted under Federal law do not apply to national banks. This provision applies to any national bank power or aspect of a national bank's powers that is not covered by another OCC regulation specifically addressing the applicability of state law.

What types of state laws will NOT be preempted under the Final Rule?

The Final Rule also sets out examples of the types of state laws that are not preempted and would be applicable to national banks to the extent that they only incidentally affect the lending, deposit-taking, or other operations of national banks. These include laws on contracts, rights to collect debts, acquisition and transfer of property, taxation, zoning, crimes, and torts. In addition, any other law that the OCC determines to only incidentally affect national banks' lending, deposit-taking, or other operations would not be preempted under the Final Rule.

What changes have been made in the final rule that differ from the proposal?

The final rule makes several changes to the anti-predatory lending standard. First, the final rule revises the anti-predatory lending standard so that it expressly prohibits national banks from engaging in unfair and deceptive trade practices under Section 5 of the FTC Act in making any loans. In addition, the final rule revises the anti-predatory lending standard to clarify that it applies to consumer loans only (those for personal, family, and household purposes). Finally, it clarifies that the anti-predatory lending standard is not intended to prohibit legitimate collateral-based loans, such as reverse mortgages, where the borrower understands that it is likely or expected that the collateral will be used to repay the debt.

The final rule states that except where made applicable by Federal law, state laws that "obstruct, impair, or condition" a national bank's exercise of powers granted under Federal law do not apply to national banks. These terms, which are drawn directly from Supreme Court precedents, differ somewhat from the wording in the proposal, but the substantive effect – which is to encapsulate the preemption standards used by the Supreme Court – is the same.

The lists of the types of state laws that are and are not preempted in the final rule are substantially the same as the lists in the proposal.

II. REASONS AND AUTHORITY FOR THIS RULE

Why is the OCC taking this action now?

Markets for credit, deposits, and many other financial products and services are now national, if not international, in scope, as a result of technological innovations, erosions of legal barriers, and our increasingly mobile society. These changes mean that now, more than ever, the imposition of an overlay of state and local standards and requirements on top of the Federal standards to which national banks already are subject, imposes excessively costly, and unnecessary, regulatory burdens.

In recent years, this burden has been getting worse, as states and localities have increasingly tried to apply state and local laws to national bank activities that are already subject to Federal regulation, curtailing national banks' ability to conduct operations to the full extent authorized by Federal law.

These state and local laws – including laws regulating fees, disclosures, conditions on lending, and licensing – have created higher costs, potential litigation exposure, and operational challenges. As a result, national banks must absorb the costs, pass the costs on to consumers, or discontinue offering various products in jurisdictions where the costs or exposure to uncertain liabilities are prohibitive.

When national banks are unable to operate under uniform, consistent and predictable standards, their business suffers, which negatively affects their safety and soundness. This rulemaking will enable national banks to exercise fully their Federal powers pursuant to uniform standards, applied by the OCC. As a result, national banks will be able to operate with more predictability and efficiency, consistent with the national character of the national banking system, and in furtherance of the safe and sound operations of all national banks.

What authorizes the OCC to issue the Final Rule?

The OCC's authority to issue the preemption regulation comes from both 12 U.S.C. § 93a (for all activities) and 12 U.S.C. § 371 (specifically relating to real estate lending). In CSBS v. Conover, the D.C. Circuit expressly held that the Comptroller has the authority under § 93a to issue regulations preempting state laws that are inconsistent with the activities permissible under Federal law for national banks and under § 371 to issue a regulation that preempts aspects of state laws regarding real estate lending.[2]

Does the OTS have broader authority under the Home Owners' Loan Act to preempt the application of state laws to federal thrifts than the OCC has for national banks?

No. While the HOLA uses a different formulation to describe the authority of the OTS, we believe those differences are not material for purposes of our rulemaking authority.

[2] CSBS v. Conover, 710 F.2d 878 (D.C. Cir. 1983).

The HOLA directs the OTS to "provide for the examination, safe and sound operation, and regulation of savings associations," and authorizes the OTS to issue "such regulations as the Director determines to be appropriate to carry out the responsibilities of the Director or the Office." Elsewhere, the HOLA states that the Director is authorized "to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings association and to issue charters therefore, giving primary consideration of the best practices of thrift institutions in the United States."

The National Bank Act, at 12 U.S.C. § 93a, states that, "Except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to another regulatory agency, the Comptroller of the Currency is authorized to prescribe rules and regulations to carry out the responsibilities of the office, except that the authority conferred by this section does not apply to section 36 of this title [governing branching] or to securities activities of National Banks under the Act commonly known as the 'Glass-Steagall Act.'"

In addition to the general authority vested by section 93a, other statutes vest the OCC with authority to issue regulations to implement a specific statutory grant of authority. For instance, 12 U.S.C. § 371 vests the OCC with the authority to impose "restrictions and requirements" on national banks' authority to make real estate loans. The general rulemaking authority vested in the OCC by section 93a, coupled with the more specific grants of authority in section 371 and elsewhere, provide the OCC with rulemaking authority that is comparably broad to that of the OTS.

Won't the OCC's preemption rule have the effect of giving national banks a competitive advantage over state-chartered institutions?

Our actions are part of the OCC's ongoing effort to ensure that national banks are able to meet the needs of their communities in the most effective and efficient manner possible. As part of that effort, we periodically see a need to respond to attempts by states and municipalities to regulate the exercise of Federal powers permitted under the National Bank Act.

States remain free to be the laboratories of change that have led to many significant improvements in the delivery of financial products and services. Each of us is responsible for ensuring that the institutions we regulate remain financially strong and competitive. However, when the states act in a way that conflicts with the powers granted to national banks by Federal law, the Supremacy Clause of the United States Constitution dictates that the state law is preempted.

III. PREEMPTION STANDARDS

Is the OCC occupying the field with regard to national banks' real estate lending activities?

No. Part 34 of our rules implements 12 U.S.C. § 371, which provides a broad grant of authority to national banks to engage in real estate lending. The only qualification in the statute is that these Federal powers are subject "to section 1828(o) of this title [which requires the adoption of uniform Federal safety and soundness standards governing real estate lending] and such

restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order."

As originally enacted, § 371 contained a limited grant of authority to national banks to engage in real estate lending. Over the years, Congress broadened § 371, giving the OCC the wide-ranging regulatory authority it has today. While we believe the history of § 371 indicates that Congress left open the possibility that the OCC would occupy the field of national bank real estate lending through regulation, the OCC has not exercised the full authority inherent in § 371 in the Final Rule. Thus, in the proposal, we invited comment on whether it would be appropriate to assert occupation of the entire field of real estate lending.

Upon further consideration of this issue and careful review of comments submitted pertaining to this point, we have concluded that the effect of such labeling is largely immaterial, and thus we decline to attach a particular label to the approach reflected in the Final Rule. We rely on our authority under both §§ 93a and 371, and to the extent that an issue arises concerning the application of a state law not specifically addressed in the final regulation, we retain the ability to address those questions through interpretation of the regulation, issuance of orders pursuant to our authority under § 371, or, if warranted by the significance of the issue, by rulemaking to amend the regulation.

How does the preemption standard included in the Final Rule – "obstruct, impair, or condition" – fit with the United States Supreme Court precedents?

The preemption standard in the Final Rule is a distillation of the many preemption standards applied by the Supreme Court over the years. These include "obstruct," "stands as an obstacle to," "impair the efficiency of," "condition the grant of power," "interfere with," "impair," "impede," and so on. Courts have recognized that no one phrase necessarily captures the full range of conflicts that will lead to a preemption of state law. We are not applying a standard that is inconsistent with those applied by the Supreme Court. Rather, we are adopting a standard that captures the essence of the tests used in various Supreme Court decisions. The preamble to the final rule expressly states that we are not trying to create a standard different from what the Court has expressed.

Is the final rule consistent with the standards of the Riegle-Neal Act, where Congress endorsed the application of state laws to national banks?

Yes. The Riegle-Neal Act sorted out *which* state's laws – host state or home state – regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, would apply to interstate branches of national banks, and provided that the host state's laws in those areas would apply to national banks **"except when Federal law preempts the application of such State laws to a national bank."** Potential preemption of state laws thus was expressly recognized as possible in the Riegle-Neal legislation itself.

Legislative history of the Riegle-Neal Act indicates that Congress expected the OCC to apply traditional, recognized preemption standards in deciding preemption issues, which is exactly what the OCC is doing.

The Riegle-Neal Act also specifically provided that the provisions of any state law to which a branch of a national bank is subject under the Act **"shall be enforced, with respect to such branch, by the Comptroller of the Currency."**

IV. IMPACT ON THE DUAL BANKING SYSTEM

What impact will this rule have on the dual banking system?

This rule will enhance the dual banking system. This system refers to the chartering, powers, and supervision of state-chartered banks by state authorities and the chartering, powers, and supervision of national banks by Federal authority, the OCC. By its very nature, the dual banking system represents and embraces differences in national and state bank powers and in the supervision and regulation of national and state banks.

One of the key differences between national and state banks is that national banks operate pursuant to a Federal grant of national bank powers, subject to uniform national standards, administered by a Federal regulator. Preemption is a key principle that enables national banks to operate nationwide, under uniform national standards, subject to the oversight of a Federal regulator, just as Congress intended it. This distinction between national and state banks is one of the defining characteristics of the dual banking system.

The national and state charters each have their own distinct advantages. But many national banks engage in multi-state businesses that require the efficiency of a uniform, nationwide system of laws and regulations. Customers of national banks enjoy protections that are as strong as -- and in some cases stronger than -- those available to customers of state banks. But they also benefit from the efficiencies of the national banking system, which lead to lower costs and expanded product offerings. It is important to remember that the dual banking system offers American consumers a choice -- those who believe the state system offers greater protections can vote with their pocketbooks.

V. IMPACT ON CONSUMERS

Isn't federal preemption of state laws inconsistent with consumer protection?

Absolutely not. Today's action is fully consistent with the twin goals of promoting consumer protection and ensuring a safe, sound, and competitive, national banking system. Because of the Supremacy Clause of the U.S. Constitution, many state standards do not apply to national banks. The OCC's action will not leave a void, but instead promote consumer protections for customers of national banks.

Rather than being subject to varying state standards, when they exist, under the new OCC regulations, all national banks and their operating subsidiaries are made subject to uniform, consistent, and predictable rules of fair conduct wherever they do business throughout the United States. National banks and their operating subsidiaries are subject to comprehensive supervision, OCC-administered supervisory standards (for example to prevent predatory, unfair, or deceptive lending practices), and vigorous and effective enforcement of these consumer protection laws,

rules, and standards. The OCC's new regulations and supervisory approach offer real benefits to consumers. State consumer protection laws, by contrast, cannot effectively protect consumers in a similarly comprehensive, uniform, or nationwide basis.

As a result of the OCC's regulations, consumers will benefit from consistent, comprehensive protection against predatory, unfair, or deceptive lending practices, regardless of the state in which they live, *when they do business with a national bank or national bank operating subsidiary*. The OCC's recent actions also are complementary to state protection of consumers who deal with state-regulated lenders: while customers of national banks will be protected under the uniform federal consumer protections adopted by the OCC, customers of state-regulated lenders will continue to be protected to the extent that consumer protection laws exist in their home state that apply to their transactions.

Predatory lending is said by many to be an inherently local issue. Why is a national standard better in this area? Aren't states in a better position than is the OCC to understand the problems consumers encounter with abusive lending practices and, therefore, better able to fashion responses that are tailored to particular problems?

If taken to its logical conclusion, this position would lead to the regulation of abusive lending practices at the municipal level. However, many state antipredatory lending laws – such as the Georgia Fair Lending Act – prohibit municipalities from regulating in areas covered by the state law. In this way, a state is able to avoid subjecting institutions within its jurisdiction to inconsistent obligations, an objective shared by the OCC for national banks.

In the few instances where national banks have engaged in abusive lending practices, the problems have been specific to the bank in question and were not prevalent throughout a geographic region. Thus, we believe it is appropriate to focus on a given institution's lending practices to determine whether there are problems that require attention. This bank-specific focus, against the backdrop of an extensive array of Federal consumer protections, enables the OCC to identify and respond to consumer problems when they arise.

To the extent that it is a local issue, it is worth remembering that the OCC's examination staff of more than 1,800 is housed in field offices in every state in the country and on-site in our largest banks, giving us a very strong local presence.

How do the OCC's new regulations protect consumers?

First, the OCC regulations *prohibit* a national bank from making *any* consumer loan -- including any form of mortgage loan, automobile loan, and student loan – that is based predominantly on the bank's expectation that it will be repaid through foreclosure or liquidation of collateral that the consumer used to secure the loan. This rule targets a fundamental characteristic of predatory lending – lending to consumers who cannot be expected to be able to make the payments required under the terms of the loan, and will be effective in ensuring that home equity stripping, auto title lending, and other forms of abusive credit practices that injure individual consumers and communities will not occur in the national banking system.

As a result of this regulation, national banks are subject to the most comprehensive federal anti-predatory lending standard in existence today: unlike HOEPA, the OCC rules are not limited to "high cost" home mortgages, but instead apply to all types of consumer loans and mortgages made by national banks. Consequently, they will have a substantially broader reach than not only HOEPA, but also state predatory lending laws.

Second, the OCC regulations also explicitly prohibit a national bank from engaging in unfair or deceptive practices that violate the Federal Trade Commission Act (FTC Act) in connection with any consumer loan, including mortgages. While the OCC does not have the authority under the Federal Trade Commission Act to adopt rules defining particular acts or practices as unfair or deceptive under that Act (that authority is only conferred on the Federal Reserve Board), we do have authority to take enforcement action where we find unfair or deceptive practices. OCC case-by-case enforcement actions under the FTC Act have had a real and meaningful impact on correcting abuses and helping consumers by providing hundreds of millions of dollars in restitution to consumers who have been harmed by unfair, deceptive, or abusive lending practices. The OCC's new regulations provide greater clarity to the application of this prohibition to all lending by national banks and their operating subsidiaries.

What federal consumer protection standards apply to national banks and national bank operating subsidiaries in the absence of state laws?

National banks and national bank operating subsidiaries are subject to extensive federal consumer protection laws and regulations, administered and enforced by the OCC. OCC examinations of national banks and national bank operating subsidiaries are conducted to ensure and enforce compliance with these laws and regulations, and supplemental OCC supervisory standards. Federal consumer protection laws and regulations that apply to national banks and to national bank operating subsidiaries include:

- Federal Trade Commission Act
- Truth in Lending Act
- Home Ownership and Equity Protection Act
- Fair Housing Act
- Equal Credit Opportunity Act
- Real Estate Settlement Procedures Act
- Community Reinvestment Act
- Truth in Savings Act
- Electronic Fund Transfer Act
- Expedited Funds Availability Act
- Flood Disaster Protection Act
- Home Mortgage Disclosure Act
- Fair Housing Home Loan Data System
- Credit Practices Rule
- Fair Credit Reporting Act
- Federal Privacy Laws
- Fair Debt Collection Practices Act

- OCC anti-predatory lending rules in Parts 7 and 34;
- OCC rules imposing consumer protections in connection with the sales of debt cancellation and suspension agreements;
- OCC standards on unfair and deceptive practices (http://www.occ.treas.gov/ftp/advisory/2002-3.doc.); and
- OCC standards on preventing predatory and abusive practices in direct lending and brokered and purchased loan transactions (http://www.occ.treas.gov/ftp/advisory/2003-2.doc. and http://www.occ.treas.gov/ftp/advisory/2003-3.doc.).

What will protect consumers who receive real estate loans from national banks now that various state laws are preempted?

Consumers will continue to be protected by an extensive array of Federal protections, enforced by the OCC (see above). Preemption of state laws governing national banks' real estate lending certainly does not mean that such lending would be unregulated. On the contrary, national banks' real estate lending is highly regulated under Federal standards and subject to comprehensive supervision. In addition to the many standards that apply to national banks under various Federal laws, the OCC recently issued comprehensive supervisory standards to address predatory and abusive lending practices, OCC Advisory Letter 2003-2, *Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices* and OCC Advisory Letter 2003-3, *Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans*.

Moreover, the final rule adds an explicit safety and soundness-based anti-predatory lending standard to the general statement of authority concerning lending. The regulation states that a national bank shall not make a consumer loan subject to 12 CFR part 34 based predominantly on the bank's realization of the foreclosure or liquidation value of the borrower's collateral, without regard to the borrower's repayment ability, including current and expected income, current obligations, employment status, and other relevant financial resources. The regulation further provides that, in making any real estate loan, a national bank shall not engage in unfair or deceptive practices within the meaning of section 5 of the Federal Trade Commission Act and regulations promulgated thereunder. As described in the preamble to the regulation, the OCC's pioneering commitment to using the FTC Act to address consumer abuses is demonstrated by a number of recent actions against national banks that have resulted in the payment of hundreds of millions of dollars in restitution to consumers.

The new anti-predatory lending standard and the multitude of other existing Federal laws such as the Truth in Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA), and the Equal Credit Opportunity Act (ECOA), ensure that national banks are subject to consistent and uniform Federal standards, administered and enforced by the OCC, that provide strong and extensive customer protections and appropriate safety and soundness-based criteria for their real estate lending activities.

What does the rule mean for consumer protection in non-real estate loans?

The Final Rule regarding non-real estate lending contains the same safety and soundness-based anti-predatory lending standard included in the real estate lending portion of the Final Rule.

Together, this new prudential standard, and Federal laws such as TILA and the FTC Act, ensure that national banks are subject to consistent and uniform Federal standards, administered and enforced by the OCC, that provide strong and extensive customer protections and appropriate safety and soundness-based criteria for their lending activities.

How does the OCC supervise national banks and national bank operating subsidiaries for compliance with consumer protection laws and standards?

The OCC supervises national banks' compliance with consumer protection laws and anti-predatory lending standards through programs of ongoing supervision that are tailored to the size, complexity and risk profile of different types of banks, and through targeted enforcement actions. National banks and national bank operating subsidiaries are subject to comprehensive – and in the case of the largest banks, *continuous* – supervision. With a network of approximately 1,800 examiners, the OCC conducts risk-based examinations of national banks and national bank operating subsidiaries throughout the United States. Thus, for example, whether a national bank conducts its mortgage lending business in a department of the bank, in a branch, or in an operating subsidiary, OCC supervision focuses on that line of business wherever and however the bank conducts it.

The OCC's Customer Assistance Group (CAG) in Houston, Texas, also plays an important role in helping to identify potential violations of consumer protection law and unfair or deceptive practices. CAG provides immediate assistance to consumers and also collates and disseminates complaint data that help direct OCC examination resources to banks, activities, and products that present compliance risks and that require further investigation. In addition to information obtained in on-site examinations and through consumer complaints, the OCC evaluates information about abusive lending and illegal practices by national banks and their subsidiaries that it obtains from other sources, including community organizations and state enforcement agencies.

Where violations of law are found, the OCC takes appropriate action to remedy the problem and to address consumer harm. In this regard, the OCC is the first and only federal banking agency to take action to combat unfair and deceptive lending practices by enforcing the Federal Trade Commission Act. For example, the OCC recently entered into a consent agreement with a bank that the OCC concluded had engaged in predatory mortgage lending practices, including making a loan without regard to the borrower's ability to repay the loan, "equity stripping," and "fee packing." See, In the Matter of Clear Lake National Bank, San Antonio, TX, Enforcement Action 2003-135 (November 6, 2003), available at http://www.occ.treas.gov/ftp/eas/ea2003-135.pdf. No other federal banking agency has taken enforcement action to address predatory mortgage lending or deceptive marketing practices affecting subprime borrowers. The OCC's enforcement actions have provided over $300 million in restitution thus far to consumers of modest means and limited or impaired credit histories who have been harmed by abusive practices.

It also is our hope that states will cooperate with the OCC to try to maximize the protection of consumers. If the states and the OCC work together, we can leverage all of our resources to combat abusive financial providers. The OCC has adopted special procedures to expedite

referrals of consumer complaints regarding national banks from state Attorneys General and state banking departments, and we have offered to enter into formal information-sharing agreements with states to formalize these arrangements. We recently concluded the first of these arrangements and hope that other states will soon follow suit.

How can the OCC assure that customers of national bank operating subsidiaries are adequately protected if the OCC has not provided a list of those operating subsidiaries?

The OCC supervises the activities of national banks and their operating subsidiaries based on a line of business approach, not based on the corporate form in which it is conducted. For example, the OCC will apply a comprehensive approach to supervising a bank's mortgage banking activities whether they are conducted in departments of the bank, branches, or one or more operating subsidiaries. We do not maintain an aggregate count of national bank operating subsidiaries just as we do not maintain an aggregate count of the number of departments banks use to do business. Operating subsidiary information is available to OCC supervisors at the individual bank level, is included in our supervisory data system for community and Mid-Size banks, and for Large Banks, all significant subsidiaries are listed in the quarterly risk analysis prepared by each bank's examiner-in-charge.

Most national bank operating subsidiaries use names that clearly identify them with their parent bank, thus a customer with a complaint would know they are dealing with a bank-related business and could expect that he or she could lodge the complaint by contacting the OCC's Customer Assistance Group. In some instances, however, the operating subsidiary may have a name that does not readily connect it with its parent bank. In order to better address those situations, the OCC will be establishing a link from the Consumer Assistance web page to a searchable database of national bank subsidiaries that do business directly with consumers, and that are *not* functionally regulated by other regulators. We are compiling this information from our various databases and will begin with a listing of these types of subsidiaries of our Large Banks.

The OCC's traditional mission has been to audit banks for safety and soundness. How does the OCC's preemption rule further safety and soundness?

To the extent that the question implies that preemption will result in a lack of consumer protections, we would disagree. It is not a question of whether national banks will be subject to consumer protection laws, but only a question of which laws apply. National banks are subject to a comprehensive regimen of Federal consumer protection laws and regulations, including the new anti-predatory lending standard included in this rulemaking.

We examine our banks to ensure that they are complying with these protections and, where we find that a bank is not, we take appropriate action against that bank. This approach enables us to tailor the regulatory response to the problem, rather than impose a one-size-fits-all rule that prohibits all national banks from offering certain financial products. In this way, banks are free to offer products and services that meet the needs of their customers and communities, in a manner that is consistent with safe and sound banking practices.