TESTIMONY OF

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On behalf of the

CONFERENCE OF STATE BANK SUPERVISORS

On

# IMPROVING FEDERAL CONSUMER PROTECTION IN FINANCIAL SERVICES

Before the

COMMITTEE ON FINANCIAL SERVICES

UNITED STATES HOUSE OF REPRESENTATIVES

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Room 2128, Rayburn House Office Building

**Introduction**

Good morning, Chairman Frank, Ranking Member Bachus, and distinguished members of the Committee. My name is Steven L. Antonakes, and I serve as the Commissioner of Banks for the Commonwealth of Massachusetts. I am also the Chairman of the State Liaison Committee (SLC), making me the newest voting member of the Federal Financial Institutions Examination Council (FFIEC).[1] It is my pleasure to testify today on behalf of the Conference of State Bank Supervisors (CSBS).

CSBS is the professional association of state officials responsible for chartering, supervising, and regulating the nation's approximately 6,200 state-chartered commercial and savings banks. For more than a century, CSBS has given state bank supervisors a national forum to coordinate, communicate, advocate and educate on behalf of state bank regulation.

I commend you, Mr. Chairman, for calling this hearing to discuss consumer protection in financial services. As a state regulator, I am deeply committed to protecting the consumers of Massachusetts. The states have long been recognized as leaders in providing consumer protection. And while I also strive to encourage the success and competitiveness of the financial institutions my department regulates, I will not compromise my department's fundamental commitment to protect consumers and to ensure the safety and soundness of the institutions we regulate.

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[1] The Federal Financial Institutions Examination Council (FFIEC) is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) and to make recommendations to promote uniformity in the supervision of financial institutions. In accordance with the Financial Services Regulatory Relief Act of 2006, a representative state regulator was added as a member of the FFIEC in October 2006. The FFIEC website is http://www.ffiec.gov.

CSBS is committed to working with Congress and our federal counterparts to further the development of a fair and efficient system of consumer protection that serves the interests of financial services customers. At best, the current regulatory structure at both the state and federal level can be confusing to the consumer. I believe that state and federal regulators and Congress all seek to provide adequate consumer protection.

As financial institutions engage in interstate and nationwide operations, our regulatory system must reflect this evolution. However, I am concerned that in this drive toward a nationwide, multi-state system, we are losing the greatest strengths of our state-federal system and threatening the health of our community banks.

CSBS believes the evolution and increased scope of preemption of state laws threatens to result in a nationwide weakening of consumer protection provisions. In addition, the Supreme Court's decision in *Watters v. Wachovia* has arguably given support for the preemptive efforts of the Office of the Comptroller of the Currency (OCC), which provide an advantage to the federal charter over the state charter, and thereby weaken the dual banking system and the states' ability to protect its citizens.

Congress needs to clarify the role of the states concerning the application of state consumer protection laws and the enforcement of both state and federal laws in protecting the citizens of their states. As the industry continues to consolidate under the federal charters, and supervisors located in Washington, D.C. take on a greater role, the state legislatures need a clear statement as to what options they have to combat such abuses.

**History of Preemption and Congressional Intent**

Historically, the principle that governed the interaction of state and federal law over national banks has been that federal law overrides state law where the two statutes directly conflict, or where the state law significantly impairs the national bank's ability to conduct its federally-authorized business. National banks and their operating subsidiaries have traditionally been subject to a wide range of state laws, and Congress has consistently deferred to state laws in several areas.

In 1994, Congress adopted the Riegle-Neal Interstate Banking and Branching Efficiency Act (Riegle-Neal Act), which authorized national banks and state banks to establish interstate branches. The Riegle-Neal Act made possible the growth of large nationwide banking organizations and caused dramatic industry consolidation. It also made the application of multiple state laws more relevant to charter choice.

Under the Riegle-Neal Act, national banks that engaged in interstate branching were subject to state laws with respect to intra-state branching, community reinvestment, fair lending and consumer protection (known as "the big four") as if their out-of-state branches were branches of a bank chartered by the host state. In the conference report on the Riegle-Neal Act, Congress declared:

> States have a strong interest in the activities and operations of depository institutions doing business within their jurisdictions, regardless of the type of charter an institution holds. In particular, States have a legitimate interest in protecting the rights of their consumers, businesses and communities….
>
> Under well-established judicial principles, national banks are subject to State law in many significant respects….Courts generally use a rule of construction

that avoids finding a conflict between the Federal and State law where possible. The [Riegle-Neal Act] does not change these judicially established principles.[2]

These laws, however, were susceptible to preemption by Federal law or by the Comptroller's determination that the state laws were discriminatory. Any branch of an out-of-state, state-chartered bank, however, was subject to all the laws of the host state, with no exceptions. This obviously gave an edge to national banks, which could benefit from the preemption of state laws while multi-state, state-chartered banks were required to abide by multiple sets of laws.

The passage of the Riegle-Neal Amendments Act of 1997 (Riegle-Neal II) expressed the intent of Congress to rectify this competitive disadvantage. In order to restore balance by giving multi-state state banks a meaningful choice in charters, and in part to remove the use of preemption as a means to gain a competitive advantage for the national charter, Congress passed Riegle-Neal II and amended the Federal Deposit Insurance Act to declare that:

1. The laws of a host state (including community reinvestment, consumer protection, fair lending and intrastate branching) 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 of an out-of-state national bank; and
2. An insured state bank that establishes a branch in a host state may conduct any activity that is permissible under the laws of its home state, to the extent

[2] H.R. Rep. No. 103-651 (Conf. Rep.), at 53 (1994), reprinted in 1994 U.S. Code Cong. & Ad. News 2068, 2074.

such activity is permissible either for a bank chartered by the host state or for a branch of an out-of-state national bank.

Led by CSBS, the Chairman of the Federal Reserve Board, the Independent Bankers Association, and the National Governors Association all endorsed Riegle-Neal II as a way to provide competitive equality between state-chartered multi-state institutions and federally chartered multi-state institutions. Once again, Congress acted to preserve the viability of the state charter and the dual banking system as a whole and give financial institutions that wanted to operate in multiple states a meaningful choice in charters.

**States as the Laboratories of Innovation**

The traditional dynamic of the dual banking system has been that the states experiment with new products and services that Congress later enacts on a nationwide basis. The states have been innovators in the area of consumer protection. Nearly every consumer protection regulation that exists at the federal level, or that Congress is currently contemplating, has its roots at the state level. For example, the states were the first to enact fair lending statutes, and are now leading the way on predatory lending, mortgage supervision, data security, and credit card disclosures.

As a matter of fact, I will be testifying tomorrow before the Federal Reserve Board on the home equity lending market. The Federal Reserve has requested that state officials discuss the laws, regulations, and enforcement actions we have taken to supervise the mortgage industry, and provide feedback on what our first-hand experience has taught us. With federal preemption of state consumer protection laws, the Federal Reserve's rule-writing authority under the Home Ownership and Equity Protection Act (HOEPA) is the

most effective method to provide consumer protection in the mortgage lending market. Absent Congressional action, only the Federal Reserve can write consumer protection regulations that will apply to all financial institutions and other mortgage providers. Going forward, it is unclear what role the states will play in developing consumer protection standards as financial products, services, and practices evolve.

**Importance of Decentralized Supervision**

Maintaining a local role in consumer protection and a strong state banking system is more important than ever as our nation's largest financial institutions merge and the financial market continues to consolidate. These mergers make economic sense for the institutions involved, and offer the customers of these institutions a larger menu of products and services at prices that reflect economies of scale. But the strength of our banking system is its diversity—the fact that we have enough financial institutions, of enough different sizes and specialties, to meet the needs of the world's most diverse economy. Centralizing authority or financial power in one agency, or in a small group of narrowly regulated institutions, threatens the dynamic nature of our economy. As of March 31, 2007, the top 10 insured depositories control 45% of the assets in the system. Nine of these banks are federally chartered and control 44% of the assets.

As supervision of institutions becomes more centralized, institutions are no longer held accountable to local supervisors. Supervision that is centralized in Washington, D.C. is less connected to local communities and fails to involve local regulatory agencies adequately.

State supervision and regulation are essential to our decentralized and diverse banking system. State bank examiners are often the first to identify and address economic problems, including cases of consumer abuse. We are the first responders to almost any problem in the financial system, from downturns in local industry or real estate markets to the emergence of scams that prey on senior citizens. The states can and do respond to these problems much more quickly than the federal government.

Massachusetts has a long history of consumer protection. I have attached, as Exhibit A, a list of Massachusetts Consumer Protection Statutes. The federal Truth in Lending Act was modeled after the Massachusetts Truth in Lending Act. Through the express exemption provisions of the federal Truth in Lending Act, Massachusetts has had an exemption from Truth in Lending and its implementing regulations at Regulation Z for more than 30 years. The exemption provisions of the federal Truth in Lending Act and several other consumer protection laws allow for a State exemption if the State can demonstrate that its laws are as protective or are more protective than the federal law, and that the State has adequate enforcement authority and resources. Many laws in Massachusetts are actually more protective to consumers than their parallel federal counterparts, including the Massachusetts Community Reinvestment Act, the Equal Credit Opportunity Act, the Electronic Fund Transfers Act, and the Truth in Savings Act. I believe that the strength of Division's statutory authority is more than adequate to examine for not only all State consumer protection laws, but also all federal consumer protection laws applicable to the conduct of the business of each institution under our supervision.

Massachusetts also has a very active examination and enforcement program. Last year, the Division conducted more than 100 Consumer Compliance and Community

Reinvestment Act examinations of banks and credit unions. The Division also conducted more than 400 examinations of mortgage lenders and mortgage brokers for financial safety and soundness and for compliance with consumer protection laws and regulations. As a result of its examinations, the Division issued more than 100 enforcement actions against mortgage lenders and brokers, banks, and credit unions.

The Division has had long-standing productive and cooperative relationships with the federal regulators of Massachusetts-chartered banks and credit unions. In addition to existing safety and soundness programs, more than 10 years ago, the Division signed its first cooperative agreement with the Federal Deposit Insurance Corporation (FDIC) to ensure a coordinated approach to our respective CRA and Consumer Compliance examination programs. This agreement provided for an alternating examination program to avoid duplication or overlap of examinations. This agreement with the FDIC was followed by a similar agreement with the Federal Reserve Bank of Boston. These agreements have served our agencies and the banks in Massachusetts well.

As noted above, Riegle-Neal clearly stated that State branching, community reinvestment act, fair lending, and consumer protection laws apply to branches of out-of-state national banks to the same extent as a branch of a bank chartered by a host state. As I have stated, Massachusetts has an abundance of consumer protection laws, including fair lending and community reinvestment statutes. Over the years, several provisions of Massachusetts law have been preempted by the courts. However, the Division is not aware of any Massachusetts consumer protection law that has been specifically preempted by the OCC. In the case of CRA, the OCC has expressly acknowledged the laws of Massachusetts as well as those of Connecticut, New York, Rhode Island, Washington,

West Virginia, and the District of Columbia. In OCC Advisory Letter 98-17 and then in Advisory Letter 99-1, the OCC stated these states' CRA laws apply to host state branches of national banks. Advisory Letter 99-1 states:

> Since no issues have been raised with the OCC as to whether those laws would be preempted by any federal law, during our CRA evaluations of national banks, the OCC will solicit input from local banking commissioners regarding the banks' record of performance under applicable state community reinvestment laws. The OCC will contact local banking commissioners for the District of Columbia and the states that have passed their own community reinvestment laws to inform them that the OCC is scheduled to conduct CRA examinations. These contacts will coincide with the quarterly publication of the schedule of planned CRA examinations as prescribed by 12 CFR 25.45.

As you can well imagine, several large out-of-state national banks have branches operating in Massachusetts. Notwithstanding this OCC Advisory Letter, I am not aware of any communication at any time by the OCC relative to seeking input from the Division on these banks' compliance with the Massachusetts Community Reinvestment Act. Given the exclusive visitorial powers of the OCC, the Division is unable to determine either whether out-of-state national banks operating in Massachusetts are in compliance with Massachusetts CRA, fair lending, and consumer protection laws, or whether the OCC is fulfilling its mandate to examine for compliance with these provisions.

CSBS believes the process of routine examinations of financial institutions is critical to consumer protection. The importance of examinations should not be

underestimated; through this process, our examiners often uncover and address violations of consumer protection laws before large segments of the population are affected.

And while our supervisory system has evolved to accommodate the largest institutions that operate nationwide, the system must continue to evolve to ease the regulatory burden upon all financial institutions. This evolution, however, absolutely must not come at the expense of consumers, our ability to maintain and develop innovative and adequate regulations that protect consumers, or our ability to foster community banking. Through OCC, OTS and NCUA preemption of state laws, the financial system has been robbed of meaningful consumer protections. If Congress deems it appropriate to move towards a national consumer protection standard, then we ask that the nationwide standard grant enforcement authority at the state level.

**The Dual Banking System**

The United States boasts one of the most powerful and dynamic economies in the world. What sets the U.S. financial system apart from the rest of the industrialized countries is a broad-based and diverse banking industry marked by a meaningful choice in charters. Choice enables economic opportunity as well as a healthy dynamic tension among regulators, resulting in a wider range of products and services for business and consumers, along with lower regulatory costs and more effective, responsive supervision. In short, the U.S. economy flourishes because of our unique dual banking system, not in spite of it.

The dual banking system is a unique and historic characteristic of our nation. State bank supervision in the United States has been in existence since the late 1700s. My home

state of Massachusetts chartered its first bank, the Bank of Massachusetts, in 1784. The charter was signed by Governor John Hancock and Senate President Sam Adams. In 1863, Congress passed the National Bank Act, which created the national bank charter. Since the creation of our dual banking system with the passage of the National Bank Act, all banks, regardless of their charter, have been subject to a combination of federal and state laws. The balance of state and federal authority has evolved, shaped by new federal and state statutes and by a growing body of case law.

State supervisors work closely with the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve to ensure consumer protections. In addition, state Attorneys General provide independent consumer protection and enforcement oversight with respect to all state-chartered providers of financial services. These checks and balances tend to serve the public interest by keeping the focus on consumer protection along with safety and soundness concerns. Currently, however, no system of checks and balances exists for consumer protection under the federal charter. The Federal Trade Commission is specifically barred under 12 U.S.C. 45(a)(2) from bringing claims for unfair and deceptive acts and practices against banks or thrifts. In *Clearing House Ass'n v. Spitzer*, a case currently pending before the Second Circuit Court of Appeals, the OCC has asserted that its regulations preempt the authority of New York's Attorney General to bring a judicial proceeding against national banks or their operating subsidiaries in order to enforce New York's fair lending laws. Even though the OCC has conceded that the New York laws in question apply to national banks, the OCC has claimed exclusive authority to enforce such laws. Consolidating supervision and consumer protection in a single agency does not serve the public's interest.

**The Evolution of the Financial Industry**

In the years since the passage of the Riegle-Neal Act, the financial services industry has been transformed. Banks have taken advantage of their new powers under Riegle-Neal and Gramm-Leach-Bliley to offer their customers an unprecedented range of new products and services. Consistent with the states' role as the laboratory of financial innovation, many of these products and services originated at the state level. Yet as these new products and services have emerged, so too have new opportunities for consumer confusion and, in some cases, abuse.

The residential mortgage industry provides a useful case study to represent this explosion of product and service choice, with the side effects of consumer confusion and abuse. The rapid evolution of the mortgage industry created a new class of mortgage providers for borrowers, and in some cases these providers engaged in predatory and fraudulent practices.

The actions taken by the states in response to the evolving mortgage market have focused on protecting consumers through development and licensing and supervision of mortgage brokers and lenders, legislation, and enforcement of consumer protection laws. Each day state regulators take enforcement actions against mortgage lenders and brokers for abusive lending. In 2006 alone, states took 3,694 enforcement actions against mortgage lenders and brokers.[3] CSBS has also partnered with the American Association of Residential Mortgage Regulators (AARMR) to develop a nationwide mortgage licensing system to improve the efficiency and effectiveness of the U.S. mortgage market,

[3] Source: Mortgage Asset Research Institute.

to fight fraud and predatory lending, to increase accountability among mortgage professionals, and to unify and streamline state licensing processes. To my knowledge, no other regulator is developing or even contemplating such a system.

Our experience in this area shows that state financial regulation is a vital and essential dynamic for promoting new financial services while offering new approaches for consumer protection. The OCC has short-circuited this dynamic with the sweeping preemption of state laws that "condition" the activities of the institutions they supervise. States continue to seek new ways to protect their citizens, but preemption makes most of these efforts ineffectual, because the laws do not apply to the customers of most of the nation's largest institutions, which control the vast majority of the assets in the industry.

Given the OCC's broad preemption rules and the 5-3 decision of the Supreme Court, new consumer protection laws governing these institutions would have to originate at the federal level. As you know, enacting federal legislation is a long and cumbersome process, and federal laws address problems with broad strokes that may not be appropriate for both large and small institutions. The state system is much better equipped to respond quickly, and to tailor solutions to the specific needs of various communities and industry sectors. With limited resources at both federal and state levels, I believe we should be discussing sharing responsibilities among the state and federal regulators, not preempting valuable resources.

***Watters v. Wachovia***

Understandably, my fellow state bank supervisors and I are disappointed with the outcome of the *Watters* case. We do not believe that the Supreme Court will take up

another banking law case that would disturb the precedent set by the *Watters* case, but we do believe that the *Watters* case begs a variety of questions that will need to be interpreted by the state and federal regulators and possibly distinguished away by the lower courts. For example:

- What does it mean for the OCC to have an operating subsidiary regulation that the Court did not rely upon in reaching its decision that national banks can create operating subsidiaries? The Court gave no judicial deference to the OCC's regulation, so the regulation was neither upheld nor struck down. The Court had to go back to the 1864 Congress for support of its position under the National Bank Act.
- What does it mean to have an operating subsidiary that is anything other than a nondepository corporate entity? The Court said that operating subs derive their power from the national bank parent entity, but what about thrifts that are operating subs of national banks? What about state banks / ILCs / trust companies that are operating subs of national banks? These operating subs are financial institutions that are separately chartered and derive their powers from a source other than the national bank.
- What does it mean that preemption follows the activity, rather than the corporate structure of the bank? Does that mean that agents of the institution are also free to operate outside of the scope of state law and enforcement?

Given how important consumer protection is in today's financial marketplace, we are encouraged by the Committee's interest in reviewing ways to improve federal

consumer protection in financial services. In addition to its oversight of federal agency administration under present laws, Congress has its critical legislative role. When legislating, we strongly urge the Congress to retain and expressly build upon the presumption against the preemption of state law. Additionally, we strongly urge the Congress to include a clear statement if it intends to preempt state law in a particular area, or alternatively to provide an equally clear statement if Congress intends to direct a federal bank regulator to issue regulations that will preempt state law. One of the compelling points made by the dissenting justices in the *Watters* case is that the Congress is uniquely qualified to consider, evaluate, and accept or reject interests of the states in fashioning federal legislation; by contrast, the federal administrative agencies are inherently limited by their institutional role and mission, and can never be expected to consider the states' interest fairly in any agency action that might preempt state law.

The Supreme Court has spoken, but we ask Congress to consider restoring the balance of the dual banking system and to provide clarity on what state laws are preempted. We also believe that the Supreme Court has written a decision which encourages Congress to provide explicit scenarios when it intends to preempt state banking law or at least to prompt the OCC to provide more clarity as to which state laws it is enforcing as it is required to do under the statutory language of Riegle-Neal. Most importantly, we are troubled, as were the dissenting justices in the *Watters* case, that the Supreme Court's opinion made short shrift of the traditional consumer protection role played by the states.

**Cooperative Role for the States**

For close to 150 years, Congress has been careful to balance the interests of local government with the interests of a nationwide banking system. In enacting new banking laws, Congress has consistently paid deference to state laws in general and to consumer protection laws in particular. CSBS supports nationwide banking. We support interstate operations and the ability of customers to move and travel with their financial institutions, and we have worked hard to create a structure that facilitates interstate branching. We support competition in the marketplace and meaningful choice for both customers and financial institutions. We constantly seek opportunities to decrease regulatory burden and help our financial institutions develop more efficient operating systems. But this efficiency cannot come at the expense of the consumer, or at a competitive disadvantage to the thousands of community-based institutions that serve these consumers.

CSBS believes that effective supervision of the financial marketplace requires a coordinated effort among the federal agencies and the states. Ultimately, the goal for Congress and regulators should be to create an efficient supervisory structure that allows institutions to compete effectively and make their products and services available to a broad demographic, while offering effective consumer protection and recourse against fraudulent and abusive practices. If necessary, Congress should preempt state laws in an effort to achieve this goal of seamless supervision, not in an attempt to make the federal charter a more attractive option for financial institutions. CSBS is not against preemption in all cases. In fact, CSBS supports Congressional preemption in some areas, most notably with regards to the Fair Credit Reporting Act.

Recently the states, through CSBS, agreed to a framework for the sharing of consumer complaints and resolutions between the state agency and the OCC. The CSBS board of directors recently agreed to negotiate a similar arrangement with the Office of Thrift Supervision (OTS). CSBS and OCC are also working with the other agencies to develop a model consumer complaint form. These are all positive steps to improve service to consumers.

However, we believe the system has benefited from the states establishing expectations for consumer protection through laws, regulations and enforcement. Therefore, I am pleased to represent the State Liaison Committee on the FFIEC. As the newest voting member of the FFIEC, it is my responsibility to ensure that the states have meaningful input in the development of regulatory policy, regulation, and guidance. We are waiting for the federal agencies to complete their legal review and update the necessary operating agreements of the FFIEC to fully implement our role. While some believe this state-federal coordination is new, we have been coordinating quite well in supervision and enforcement over the last 10 years under the Nationwide Cooperative Agreement, signed by each state, the FDIC and the Federal Reserve. We can bring the same level of cooperation to the development of regulatory policy.

Congress created the FFIEC as an interagency body to promote uniformity and consistency in the supervision of financial institutions. With greater representation from state supervisors, we believe the FFIEC is the most suitable mechanism for the development of consumer protection standards going forward. While some of my colleagues may refer to an "interagency initiative," I would assert that the FFIEC <u>is</u> the method of interagency coordination that Congress intended. It is my belief that

institutions, consumers, and the economy as a whole will be better served as the federal agencies and the states work more closely together to provide coordinated supervision.

**Recommendations for Congress**

The states have tried to create a seamless web of supervision for multi-state state chartered banks through cooperative agreements at both the state and federal levels. We have worked with our counterparts in the State Attorneys General on supervisory actions with great success. However, with the latest interpretations over applicable state laws and enforcement authority, our hands are tied. We have almost no jurisdiction over an ever-increasing share of the industry. Only Congress can change the laws that govern the largest portion of the industry. To this end, we suggest the following.

- Congress should make it clear that the FFIEC holds authority over the development of consumer protection standards for new federal consumer protection laws.
- The Unfair and Deceptive Acts and Practices Act is a valuable tool; and Congress should consider giving the FFIEC authority to determine and prohibit unfair and deceptive acts and practices under the law.
- Congress should consider creating a centralized system for the collection and distribution of consumer complaints to the appropriate regulator. An alternative would be requiring banks to disclose who their primary regulator is and how to address consumer complaints to that regulator.
- The Riegle-Neal Interstate Branching Act stated that the OCC shall enforce applicable state consumer protection laws. While we do not believe that

meant to the exclusion of the states, it does beg the question: What state consumer protection laws is the OCC enforcing? It would be helpful to banks and state regulators to know specifically which state consumer protection laws are being enforced and which have been preempted. While the OCC rules give guidance as to what would be preempted, it is not clear what they are enforcing, if anything.

- Congress needs to make it clear that some level of accountability exists at the state level for federally chartered institutions. States need to be able to enforce both state and federal laws when a financial institution's primary federal regulator is not protecting the citizens of the state. State legislators and Attorneys General need a clear statement of their roles in protecting the citizens of their states.
- Congress should review the provisions of Riegle-Neal that define applicable law for both state and federal institutions.
- Congress should encourage federal and state coordination to develop consistent interpretation and enforcement of applicable state laws.

**Conclusion**

Consumer protection in the financial services market is of the utmost importance to state supervisors. When a consumer has a complaint, we are often the first place they turn to for guidance or relief. In conjunction with our state legislatures, our federal regulatory counterparts and state Attorneys General, state bank supervisors have created a network of statutes, supervisory procedures, and enforcement capabilities that seek to protect

consumers, ensure institutional safety and soundness, and promote competition and success in the industry.

CSBS is disappointed by the Supreme Court's ruling in *Watters v. Wachovia* because we believe the decision fails to protect consumers adequately and does substantial damage to our invaluable dual banking system by reducing the viability of the state charter. Moving forward, we now look to Congress to provide clarity on the scope of the OCC's preemptive power. I urge Congress to look carefully at the adequacy of the OCC's consumer protection provisions and consider whatever actions may be necessary to clarify the interaction of state and federal laws, restore the balance of the dual banking system, and reassert its authority over federal banking policy.

The states, through CSBS and our involvement on the FFIEC, want to be part of the solution. We want to ensure that consumers are protected, regardless of the chartering agent of their financial institution. We want to ensure the viability of both the federal and state charter options to ensure a meaningful choice in charters and the success of our dual banking system, and of our economy as a whole. We look forward to working with Congress and the federal banking agencies to build a structure that facilitates nationwide banking without harming our consumers, our institutions, or our economy.

Thank you again for inviting me here today. I look forward to answering the Committee's questions.

## Exhibit A: Massachusetts Consumer Protection Statutes

**Licensing Statutes**

- Chapter 93, sections 24 to 28 - Debt Collectors
  - Loan Servicers (Registration only)
- Chapter 140, sections 96 to 114A – Small Loan Companies (Includes Maximum Interest Rate limitations)
- Chapter 167F, section 4 – Check Sellers
- Chapter 169 – Foreign Transmittal Agencies
- Chapter 169A – Check Cashers
- Chapter 255B – Retail Installment Sales of Motor Vehicles (Includes Maximum Interest Rate limitations)
- Chapter 255C – Insurance Premium Financing (Includes Maximum Interest Rate limitations)
- Chapter 255D – Retail Installment Sales and Services (Includes Maximum Interest Rate limitations)
- Chapter 255E – Mortgage Lenders and Brokers

**Mortgages – General Provisions**

- Chapter 183, section 28C – Loan in Borrower's Interest, Suitability
- Chapter 183, section 54 – Discharge of Mortgages
- Chapter 183, section 54B – Execution of Mortgage Discharges and Related Instruments
- Chapter 183, section 54C – Recording a Discharge
- Chapter 183, section 54D – Payoff Statements
- Chapter 183, section 55 - Refusal to discharge and Filing a Substitute Affidavit
- Chapter 183, section 56 – Prepayment of Certain Mortgage Notes
  **(Presumed to be Preempted by OCC and OTS opinion rulings)**
- Chapter 183, section 59 – Late Charges
- Chapter 183, section 60 – Short-term or Balloon Mortgage Loans

- Chapter 183, section 61 – Payment of Interest on Tax Escrow Payments
  **(Pre-empted by Federal Law per Court Case)**

- Chapter 183, section 62 – Payment of Real Estate Taxes by Mortgagee

- Chapter 183, section 63 – Charging of Points and Fees in Certain Residential Mortgage Transactions

- Chapter 183, section 63A – Revision in Terms

- Chapter 183, section 63B – Good Funds at Closing

- Chapter 183, section 64 – Mortgage Discrimination on The Basis of Location of Property

- Chapter 183, section 65 – Evidence of Insurance Contracts on Mortgages

- Chapter 183, section 66 – Limiting the Amount of Fire Insurance for Certain Policies

- Chapter 183, section 67 – Reverse Mortgage Loans (See also Chapter 167E, section 7)

- Chapter 183, section 68 – Applicability of Provisions as to Sale of Insurance by Banks

- Chapter 184, section 17B – Applications for Residential Mortgage Loans

**High Cost Loans**

- Chapter 183C – Predatory Home Loan Practices

**Consumer Loans – General Provisions**

- Chapter 255, section 12C – Promissory Notes Executed in Sales of Consumer Goods Shall Not Be Negotiable Instruments; Exception

- Chapter 255, section 12F – Borrower's Defenses in Consumer Loan Transactions

- Chapter 255, section 12G – Limits on Loan Insurance Charges and Types of Insurance

- Chapter 255, section 12H – Charge Cards, Imposition of Late Charges, Notice and Assessment of Annual Fees

- Chapter 255, section 13I – Creditor's Repossession Rights

- Chapter 255, section 13J – Debtor's Rights in Repossession

- Chapter 255, section 13L – Prepayment Procedures

**Unfair or Deceptive Practices**

- Chapter 93A – Regulation of Business Practices for Protection of Consumers

- Chapter 167, sections 2A to 2G – Unfair or Deceptive Acts Involving Consumer Transactions by Banks

**CRA**

- Chapter 167, section 14 – Massachusetts Community Reinvestment Act

**Equal Credit**

- Chapter 151B – Unlawful Discrimination Because of Race, Color, Religion, National Origin, Ancestry, Sex, Sexual Orientation, Age or Handicap

**Loan Review Boards**

- Chapter 167, section 14A – Mortgage Review Boards

- Chapter 167, section 14C – Small Business Loan Review Boards

**Truth in Lending**

- Chapter 140D – Truth in Lending

**Truth in Savings**

- Chapter 140E – Truth in Savings

**Open-End Credit**

- Chapter 140, section 114B – Maximum Finance Charge for Open-End Credit

- Chapter 140, section 114C – Notice of Annual Fees and Rebate Provisions to Cardholders

**Insurance Sales**

- Chapter 167F, section 2A – Sale of Insurance by Banks

**(Certain Provisions Pre-empted by Federal Law per Court Case)**