perception that a branch facility is a separate bank. The Rule is more explicit than the statute in identifying prohibited signage and advertising and provides specific guidance in certain situations.

Comments

The comment period closed on April 10, 1995. The OCC received two comments in response to the March 10, 1995, notice. One commenter, a law firm representing certain national banks, believed that Federal law preempted the Rule because the national banking laws provide the OCC with exclusive authority over the corporate affairs of national banks and further because compliance with the Rule would be burdensome. The other commenter, an association of state bank regulatory officials, believed that Federal law did not preempt the Rule because (1) the Rule does not conflict with any provision of Federal law; (2) legislative history of the national banking laws indicates that Congress believed there to be little federal supervisory interest in national bank names; and (3) the Rule is not burdensome.

OCC Determination

The OCC, after carefully considering the comments, believes that Federal law does not preempt the application of the Rule to national banks located in Texas. As discussed in the opinion letter, not only is there no actual conflict between Federal law and the Rule, but certain amendments to the national banking laws provide evidence that Congress intended questions regarding bank names to be settled primarily by reference to State law. In addition, there is no evidence that compliance with the Rule will be burdensome such that it will frustrate the ability of national banks to exercise any of their authorized powers. The Rule therefore is applicable to national banks in Texas.

The Riegle-Neal Act requires publication of opinion letters which conclude that Federal law preempts State statutes or regulations. While the Riegle-Neal Act does not require publication of letters concluding that State law is not preempted, the OCC has decided to publish its letter in order to disseminate broadly its preemption determinations under the Riegle-Neal Act, and in this case also to provide national banks located in Texas with notice and information regarding their obligations under the Rule.

The OCC's letter appears as an appendix to this Notice.

Dated: June 9, 1995. Eugene A. Ludwig,

Comptroller of the Currency.

Appendix

June 9, 1995

- Mr. Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705– 4294.
- Re: Proposed Branch Advertising and Naming Rule/7 Tex. Admin. Code § 3.92

Dear Mr. Jobe: This is in response to your inquiry, raised in your letters of June 17, 1994, to Randall Ryskamp, and October 24, 1994, to Dean Marriott (respectively, the District Counsel and Deputy Comptroller of the OCC's Southwestern District Office), and subsequently discussed in telephone conversations with OCC legal staff, whether federal law preempts the application to national banks of a state regulation relating to the signs and advertising used to identify branch banking facilities located in Texas. In our opinion, for the reasons discussed below, we believe that the regulation in question is not preempted by federal law and is applicable to national banks.

Background

On August 19, 1994, the Texas State Finance Commission adopted Rule 3.92 ("Rule") entitled "Naming and Advertising of Branch Facilities."¹ The Rule was adopted pursuant to Texas Civil Statutes § 342-917 'Identification of Facilities," which generally provides that a bank may not use any form of advertising that implies or tends to imply that a branch facility is a separate bank.2 The preamble to the Rule states that the Texas legislature, in regulating identification of branch facilities, had two substantive purposes. One was the possibility that unfair and misleading competition could result if a failed bank is taken over by another institution which continues to represent and advertise the resulting branch as the original failed institution. The second was that depositors could exceed the limits of Federal Deposit Insurance Corporation insurance coverage by unintentionally depositing excess amounts in two branches of the same bank in the mistaken belief that they were two different banks. The Rule, which was published for public comment, states that enforcement authority with respect to national banks is vested in the OCC.

The Rule, like the statute, prohibits advertising of a branch facility in a manner

which implies or fosters the perception that a branch facility is a separate bank. However, it is longer and far more explicit than the statute in identifying prohibited signage and advertising and provides specific guidance in certain situations characterized as misleading. While the Rule applies to all state and national banks domiciled in Texas, its provisions and prohibitions would most directly affect those banks that have what might be termed a generic name followed by a geographic modifier (e.g., First National Bank of Dallas, Second State Bank of Austin), rather than what the Rule terms a "unique legal name" such as "Jones National Bank" or "Smith Bank." The principal provisions of the Rule include the following:

1. Upon acquisition of one bank to serve as a branch of another bank, use of the prior name of the extinguished bank to identify the acquired bank facility is prohibited. This prohibition applies to signs, advertising, and bank documents.

2. A sign directing the public to a branch facility must contain either the legal name of the bank or a unique logo, trademark or service mark of the bank. If a separate identifying name is used for the branch facility that either contains the word "bank" or does not contain the word "branch" and further does not identify the facility as a branch, then an additional sign at the branch facility must identify the legal name of the bank and identify the facility as a branch. This additional sign could, for example, consist of lettering on the entrance door or any other lettering visible to the public.

3. The legal name of a bank is the full bank name as reflected in its charter, except that in signs and advertising a bank may omit terms which are either indicators of corporate status (N.A., Inc., Corp., L.B.A.) or geographic modifiers. However, where a bank without a unique legal name proposes to establish a branch facility (other than one within the city of domicile) within the same city as or within a thirty-mile radius of a pre-existing facility of a bank with the same or substantially similar legal name, the bank must either include the geographic modifier on its signs, disclose the city of its domicile on all signs directing the public to the branch, or else put up a separate sign notifying the public that the facility is a branch.

For example, a bank called First National Bank of Austin could put up branches within the city of Austin with signs saying merely "First National Bank." However, if the bank wishes to open a branch in San Antonio, and another bank called First National Bank of San Antonio already exists, then the First National Bank of Austin would be required under the Rule to have signs reading either 'First National Bank of Austin'' or something like "First National Bank, San Antonio Branch." Alternatively, it could have a sign that said merely "First National Bank" provided that another sign, or lettering on the door, or anywhere visible to the public, clearly identified the facility as a branch or gave the domicile of the bank, or both. In this case, the second sign might say "San Antonio branch" or "a branch of First National Bank of Austin." However, the bank would be in violation of the Rule if it only had signs saying "First National Bank" or "First

¹Your letter to Mr. Ryskamp referred to the "revised proposed rule" that was then scheduled for publication in the June 28th issue of the *Texas Register*. Since that time, the Rule has been published and adopted by the State Finance Commission. It became effective on September 13, 1994.

²Sec. 342–917 provides: A bank may not use a form of advertising, including a sign or printed or broadcast material, that implies or tends to imply that a branch facility is a separately chartered or organized bank. A sign at a branch facility and all official bank documents, including checks, cashier's checks, loan applications, and certificates of deposit, must bear the name of the principal bank and if a separate branch name is used must identify the facility as a branch.