National Bank, San Antonio'' because there is no disclosure to the public that the facility is a branch.

4. If a bank without a unique legal name chooses not to place the signs as described in the foregoing paragraph, then the Rule requires that it provide notice to all preexisting bank facilities of other banks within the same banking market as the proposed branch location that have the same or substantially similar legal name, disregarding geographic modifiers, specifically advising the recipient of the name to be used in connection with the proposed branch facility. Banks so notified then have the opportunity to file a protest regarding the name of the proposed branch.

For example, if a bank called First National Bank of Austin did not wish to put up the requisite signs (as discussed above) for its branch in San Antonio, it would, under the Rule, be required to search the San Antonio banking market and provide notice of its proposed branch to other banks named "First National Bank" or "First National Bank of San Antonio." The banks so notified would then have the opportunity to file a protest with your office (for state banks) or with the OCC (for national banks).

You have indicated your expectation that few banks will choose the notification alternative. It is your view, and in fact the goal of the Rule, that banks in Texas will choose to put up clarifying signs to identify for the public which bank facilities are branches.

5. While banks in Texas are permitted, like other businesses, to operate under an assumed or professional name, they may not use an assumed name to evade the Rule.

The Texas Assumed Business or Professional Name Act, Texas Business and Commerce Code, Chapter 36, permits banks and other businesses to operate under a business or assumed name provided certain documents are filed with appropriate Texas authorities. However, permission to operate under an assumed name would not dispel a bank's obligation under the Rule to identify its branch facilities to the public. Therefore, even if the above-mentioned First National Bank of Austin had properly assumed the name "First National Bank," it would still, with respect to its branches, be required under the Rule to put up the signs discussed in ¶ 3, *supra*, or provide the notification described in ¶ 4, supra.

6. The Rule does not prescribe such specifics as number, size, or location of signs, size of lettering, and so on. Further, it does not require that branch names, signs, or advertising be approved by any regulatory authority. You have stated that the goal of the Rule is simply that the public be advised which bank facilities are branches, and that any signs, or combination of signs, reasonably making such identification will be permissible.

Discussion

The question of the extent to which national banks are subject to state laws has existed since the inception of the first National Bank Act in 1863. Under the dual banking system, all banks, including national banks, are subject to the laws of the state in which they are located unless those state laws are preempted by federal law or regulation. The basic premise, expressed numerous times by the United States Supreme Court, is:

that the national banks organized under the Acts of Congress are subject to state legislation, except where such legislation is in conflict with some Act of Congress, or where it tends to impair or destroy the utility of such banks, as agents or instrumentalities of the United States, or interferes with the purposes of their creation.

Ŵaite v. Dowley, 94 U.S. 527, 533 (1877). See also Davis v. Elmira Savings Bank, 161 U.S. 275 (1896); Anderson National Bank v. Luckett, 321 U.S. 233, 248 (1944). Banking is the subject of comprehensive regulation at both the federal and state level and the valid exercise of concurrent powers is the general rule unless the state law is preempted. State law applicable to national banks will generally be presumed valid unless it conflicts with federal law, frustrates the purpose for which national banks were created, or impairs their efficiency to discharge the duties imposed upon them by federal law. National State Bank, Elizabeth, N.J. v. Long, 630 F. 2d 981, 987 (3d Cir. 1980); see, generally, Michie on Banks and Banking, Vol. 7 ¶ 5 (1989 Repl.) This principle applies to substantive state regulations as well as state statutes, since it is well established that a rule or regulation of a public administrative body, duly promulgated or adopted in pursuance of properly delegated authority, has the force and effect of law. See generally, 73 C.J.S. "Public Administrative Bodies and Procedures," §97.

In this instance, neither the Texas statute (Art. 342–917) nor the Rule is in conflict with any federal law, since no provision under the national banking laws governs national bank names or requires their approval by a federal authority. On the contrary, while the national banking laws did govern this issue at one time, Congress changed the law in 1982 and left little doubt of its intent that approval of national bank names (except for registered trademarks) not be subject to federal regulation.

Prior to 1982, a national bank was required, pursuant to 12 U.S.C. §§ 22 and 30, to obtain approval from the OCC both for its initial name and for subsequent name changes. However, the Garn-St Germain Depository Institutions Act of 1982 amended Sections 22 and 30 to delete this requirement for OCC approval of bank name or name change. P.L. No. 320, 97th Cong., 2d Sess., § 405, 96 Stat. 1469, 1512 (1982). The Senate Report accompanying this change gave the following explanation:

Comptroller approval for bank name changes will no longer be required. There exists little supervisory interest in the name of a particular national bank. Federal approval procedures are to be replaced by a simple notice requirement. Any confusion between bank names shall be resolved under other laws, including the federal Lanham Act and state statutory and common law principles of unfair competition. S. Rep. No. 536, 97th Cong., 2d Sess. 28, reprinted in 1982 U.S. Code Cong. & Ad. News 3054, 3082.³

OCC regulations were amended accordingly to provide that the OCC would simply receive notice of the initial name and subsequent name changes. 12 CFR 5.42.4 The only explicit requirement remaining under the national banking laws is that bank names, whether new or revised, include the word "national." 12 U.S.C. §§ 22 and 30(a). Congress has thus made clear its intention that issues related to the names of national banks are subject to state law.

Since these 1982 amendments, the OCC's policy on this matter is that the naming of a national bank, or of a branch office of a national bank, is primarily a business decision of the bank, subject to applicable state law. However, should the OCC determine that a national bank's name or advertising is so misleading or confusing as to constitute an unsafe or unsound practice, it may initiate enforcement action under 12 U.S.C. 1818(b). Further, while there is little supervisory interest in the name of a national bank, the OCC generally does not permit branches of a bank to operate under a different bank name. To do so would not only violate the provisions of 12 U.S.C. 22 and 30, which anticipate that a bank operate under a single title, but could lead customers unwittingly to exceed FDIC insurance limits by depositing excess amounts in two bank branches in the mistaken belief that they were dealing with different banks.

In light of both the federal legislative history on this issue and judicial preemption guidelines, we conclude that the Texas Rule is not preempted with respect to national banks. Not only is there no federal statute dealing with this issue, but there is no indication that the Rule is unduly burdensome to national banks or that it impairs their ability to discharge the duties imposed by federal law. Long, supra at 987; Franklin National Bank v. New York, 347 U.S. 373 (1954). The national banking laws do not prevent state measures aimed at preventing misleading advertising, as long as the state regulations do not put national banks at a competitive disadvantage relative to state financial institutions. As stated above, the Rule does not prescribe any particular type of sign or advertising. Its principal requirements are that banks which become branches of another bank as part of an acquisition cease use of the former bank name, and that bank branches identify themselves as branches. Since it is obvious

⁴The regulations prior to the Garn-St Germain amendment provided for OCC approval of national bank names and name changes:

The [OCC] considers an application for change in corporate title to be primarily a business decision of the applicant. An application will be approved if the proposed new title is sufficiently dissimilar from that of any other existing or proposed unaffiliated bank or depository financial institution so as not to substantially confuse or mislead the public in a relevant market. 12 CFR 5.42(b) (1981).

³The Lanham Act is a common name for the Trademark Act of 1946, 15 U.S.C. § 1051 et seq., which gives federal courts jurisdiction over trademarks and trade names registered with the United States Patent Office. It has no direct relevance to the present discussion.