

1 [Bank ATM Fees.]

2 **Resolution criticizing the United States Comptroller of the Currency’s proposed**
3 **amendment to regulation 12 C.F.R. §7.4002(d), which would delete language requiring**
4 **the Comptroller of the Currency to review National Bank Act preemption of state or**
5 **local laws limiting national banks’ non-interest fees on a case-by-case basis, and**
6 **urging the Comptroller to withdraw the proposed change.**

7

8 WHEREAS, On November 2, 1999, the voters of the City and County of San Francisco
9 overwhelmingly passed Ballot Measure F, which prohibits financial institutions from assessing
10 double fees against non-customers who use the financial institutions’ ATMs to withdraw cash;
11 and,

12 WHEREAS, In 1995, the Comptroller of the Currency (“OCC”) enacted regulation 12
13 C.F.R. §7.4002, which requires the OCC to evaluate “on a case-by-case basis” whether the
14 National Bank Act preempts any state or local law “that purports to limit or prohibit” a national
15 bank’s charges or fees; and,

16 WHEREAS, The OCC’s reason for enacting §7.4002 was to respond to Congressional
17 criticism of the OCC’s previous regulation – §7.8000 – which stated that the National Bank Act
18 preempted all state or local laws limiting national banks’ fees; and,

19 WHEREAS, The California Supreme Court held in Perdue v. Crocker National Bank
20 (1985) 38 Cal.3d 913, that the OCC could not reasonably interpret the National Bank Act as
21 preempting all state or local laws limiting national banks’ fees; and,

22 WHEREAS, The United States Congress has acknowledged the California Supreme
23 Court’s holding in Perdue v. Crocker National Bank (1985) 38 Cal.3d 913, and has stated that
24 the OCC was “overly aggressive” in concluding that the National Bank Act preempted all state
25 or local laws limiting national banks’ fees; and,

1 WHEREAS, The language in §7.4002(d) stating that the OCC will evaluate preemption
2 of state or local laws that limit national banks' fees on a case-by-case basis is the only
3 regulatory language clarifying that the National Bank Act does not preempt all state or local
4 laws limiting national banks' fees; and,

5 WHEREAS, The OCC proposes in 66 Fed. Reg. 8178 (2001) to remove this language
6 from §7.4002(d); now, therefore, be it

7 RESOLVED, That the OCC should not enact its proposed amendment to §7.4002(d)
8 because deleting the only regulatory language clarifying that the National Bank Act does not
9 preempt all state or local laws limiting national banks' fees would render the preemptive effect
10 of §7.4002 less, rather than more, clear; and, be it

11 FURTHER RESOLVED, That the OCC should not change the regulatory language of
12 §7.4002 while the interpretation of that language is pending on appeal to the United States
13 Court of Appeals for the Ninth Circuit; and, be it

14 FURTHER RESOLVED, That the OCC should heed Congress' direction to avoid overly
15 aggressive preemption positions with respect to state or local laws limiting national banks'
16 non-interest fees by leaving in place the clear regulatory language of §7.4002, or by adding
17 other language clarifying that §7.4002 is not intended to preempt all state or local laws that
18 might limit or prohibit any national banks' fees; and, be it

19 FURTHER RESOLVED, That the OCC should respect the intent of Congress, as
20 expressed in legislative history to the Electronic Funds Transfer Act, 15 U.S.C. §1693 et seq.,
21 and the National Bank Act, 12 U.S.C. §21 et seq., that state and local governments retain the
22 authority to pass consumer protection measures that address ATM surcharges and national
23 banks' fees.



City and County of San Francisco

City Hall
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San Francisco, CA 94102-4689

Tails
Resolution

File Number: 010442

Date Passed:

Resolution criticizing the United States Comptroller of the Currency's proposed amendment to regulation 12 C.F.R. Section 7.4002(d), which would delete language requiring the Comptroller of the Currency to review National Bank Act preemption of state or local laws limiting national banks' non-interest fees on a case-by-case basis, and urging the Comptroller to withdraw the proposed change.

April 2, 2001 Board of Supervisors — ADOPTED

Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick,
Newsom, Peskin, Sandoval, Yee

File No. 010442

I hereby certify that the foregoing Resolution was ADOPTED on April 2, 2001 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

APR 13 2001

Date Approved

Mayor Willie L. Brown Jr.