Resolution criticizing the United States Comptroller of the Currency’s proposed amendment to regulation 12 C.F.R. §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.

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

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

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

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

WHEREAS, The United States Congress has acknowledged the California Supreme Court’s holding in Perdue v. Crocker National Bank (1985) 38 Cal.3d 913, and has stated that the OCC was “overly aggressive” in concluding that the National Bank Act preempted all state or local laws limiting national banks’ fees; and,
WHEREAS, The language in §7.4002(d) stating that the OCC will evaluate preemption of state or local laws that limit national banks’ fees on a case-by-case basis is the only regulatory language clarifying that the National Bank Act does not preempt all state or local laws limiting national banks’ fees; and,

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

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

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

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

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

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

Mayor Willie L. Brown Jr.