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TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR
THE TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION OF 2008

Tuesday, March 25, 2008
9:45 a.m.

WRITTEN COMMENTS ON H.B. NO. 2254, H.D. 2, S.D.1 - RELATING TO BANKS AND
FINANCIAL INSTITUTIONS

THE HONORABLE BRIAN T. TANIGUCHI, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nick Griffin, Commissioner of Financial Institutions, and I am submitting written comments on behalf of the Department of Commerce and Consumer Affairs ("Department") on House Bill No. 2254, H.D. 2, S.D. 1. The Department supports this bill relating to banks and financial institutions.

The purpose of this bill is to prohibit the deceptive use of the name or trademark of a financial institution or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers if such marketing materials are used without written

permission and in a manner that would lead a reasonable person to believe that the material or solicitation originated from a financial institution or its affiliates or subsidiaries. The bill further authorizes a civil penalty of up to \$10,000 for each violation.

This measure appears to be consistent with the intent of Section 412:1-104, Hawaii Revised Statutes ("HRS"), which prohibits a person from using certain restricted terms, including "financial institution" and "bank", among others, in a manner that might suggest or tend to lead others into believing that the person is a financial institution of the character indicated by the name, unless the person is authorized to engage in business as a financial institution in this State. What Section 412:1-104, HRS, and this measure would appear to have in common is the concern that the general public not be misled by any person who falsely suggests or implies that it is a financial institution of the character indicated by the name. This measure appears to extend this idea a step further by expressly prohibiting a person from using the name or trademark of a financial institution or its affiliates or subsidiaries when marketing or soliciting customers without that financial institution's written consent to do so when a reasonable person would be led to believe that the marketing material or solicitation either originated from, was endorsed by, is related to, or is the responsibility of the named financial institution, or its affiliates or subsidiaries. As such, the measure would appear to be helpful in protecting the general public from additional deceptive marketing practices, beyond

those expressly described in Section 412:1-104, HRS, and related to the name or trademark of financial institutions as defined in Section 412:1-109, HRS, as well as the affiliates and subsidiaries of such financial institutions.

We note that Section 412:2-109, HRS, already provides that "fees and fines collected by the commissioner of financial institutions shall be deposited into the compliance resolution fund established pursuant to section 26-9(o)." That provision effectively addresses the use and application of any funds collected as a civil penalty under this measure.

The Department supports this measure and asks for your favorable consideration. Thank you for the opportunity to submit written comments to the Committee on this bill.

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March 25, 2008

Senator Brian T. Taniguchi, Chair,
and members of the Senate Committee on Judiciary & Labor
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 2254, H.D. 2, S.D. 1 (Banks and Financial Institutions)**
Hearing Date/Time: Tuesday, March 25, 2008, 9:45 A.M.

I am the attorney for the **Hawaii Financial Services Association ("HFSA")**. The HFSA is the trade association for Hawaii's financial services loan companies.

The purpose of this Bill is to prohibit the deceptive use of the name or trademark of a financial institution or its affiliates or subsidiaries, and to establish a civil penalty of up to \$10,000 for each violation.

The HFSA **supports** this Bill. This Bill is necessary to prevent the all too common situation where mortgage loan customers of Hawaii financial services loan companies are deceived by mail solicitations by mainland lenders regarding refinancing that make reference to the name of the Hawaii financial services loan company to wrongly suggest that the Hawaii financial services loan company is the solicitor when in fact it is not. The name of the mainland lender does not appear in the solicitation letter or is in obscure fine print.

This Bill will require that any use of the name or trademark of a financial institution or its affiliates or subsidiaries shall be by written consent by the financial institution or its affiliates or subsidiaries, thereby ensuring the appropriate use of the name or trademark while protecting Hawaii consumers from replying to solicitations under deceptive practices.

Thank you for considering this testimony.


MARVIN S.C. DANG
Attorney for the Hawaii Financial Services Association

(MSCD/hfsa)

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