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TO THE
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,
AND AFFORDABLE HOUSING

THE TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION OF 2008

Friday, February 1, 2008
9:00 a.m.

TESTIMONY ON S.B. NO. 3008 - RELATING TO THE CODE OF
FINANCIAL INSTITUTIONS

THE HONORABLE RUSSELL S. KOKUBUN, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nick Griffin, Commissioner of Financial Institutions, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). We appreciate the opportunity to testify on Senate Bill No. 3008. The Department strongly supports this Administration bill.

The purpose of the bill is to amend the Code of Financial Institutions ("Code"), chapter 412 of the Hawaii Revised Statutes ("HRS"), to reduce regulatory burden where

significant consumer interests are not adversely affected, update the Code to recognize changes in the industry and make desirable clarifications to the statute, provide more flexibility in supervising and regulating the industry, ensure adequate protection for the consumer, and make technical amendments of a "housekeeping" nature.

Reduce Regulatory Burden

An amendment is made to place a Hawaii licensed foreign bank on equal footing with a Hawaii state-chartered financial institution with respect to relieving the foreign bank of the obligation to obtain written approval from the Commissioner of Financial Institutions ("Commissioner") before relocating a place of business less than one mile from its existing location. Consumers are seldom adversely affected by business relocations within the same neighborhood.

Update and Clarify the Statute

A clarification of how prepayment penalties are to be calculated is made to close an incorrectly perceived loophole that may be exploited by some financial services loan companies.

A provision concerning the authority of a person to serve as a trustee or trust company is clarified to focus greater emphasis on the aspect of "holding out" to the general public one's availability to serve in this fiduciary capacity.

Provide Flexible Regulation

A provision is added to address the temporary closure of a Hawaii financial institution for up to 180 days as the result of an emergency.

The provision that enables the Commissioner to examine a financial institution holding company is amended to permit such an examination without a prerequisite finding that there is cause to believe that a holding company is experiencing financial adversity. This will allow the Division of Financial Institutions ("DFI") to determine whether the condition or activities of a holding company may be jeopardizing the safety and soundness of the operations of its financial institution subsidiary even in instances where the holding company itself may not yet be experiencing financial adversity.

The application requirements in the Code for depository and nondepository Hawaii financial institutions are amended to require certain information, along with the requisite fee, necessary to conduct a criminal history record check for specified key individuals associated with an applicant for a financial institution charter or license. This requirement is consistent with, but will not duplicate, current federal requirements for employees of depository financial institutions who routinely have access to customer funds. Such background checks will help ensure that individuals with prior criminal convictions are not appointed or hired in key managerial positions at a newly formed Hawaii financial institution. A corresponding amendment to section 846-2.7, HRS, is

made to complete the formal requirements to authorize the Department to conduct a criminal history record check on the specified individuals.

Protection for Consumers

A requirement to display a financial services loan company's license(s) in a conspicuous location at each place of business is added, to enhance consumer confidence and protection.

Technical amendment

A technical correction is made to the heading of section 412:2-306, HRS, to restore the word "grounds", which was inadvertently deleted from the heading in a prior amendment of the statute.

Summary

The Department strongly supports this bill and asks for your favorable consideration. I will be happy to answer any questions the Committee members have.



Neal K. Okabayashi
Vice President & Attorney

Presentation to the
Senate Committee on Commerce, Consumer Protection, and Affordable Housing
Friday, February 1, 2008, 9:00 a.m., Room 229

SB 3008 Relating to the Code of Financial Institutions

Senator Russell Kokubun, Chair
and members of the Senate Committee on Commerce, Consumer Protection, and Affordable
Housing

My name is Neal Okabayashi and I testify for First Hawaiian Bank with respect to section 9 of SB 3008, located on pages 18-19, lines 14 – 6. We request an amendment of section 9 to read as follows:

“SECTION 9. Section 412:11-102, Hawaii Revised Statutes, is amended to read as follows:

“§412:11-102 Examination of financial institution holding company. The commissioner may from time to time conduct such reasonable examinations of any financial institution holding company that is domiciled in any state of the United States, District of Columbia, or the Territory of Guam, as may be necessary or appropriate to determine whether the condition or activities of the company are jeopardizing the safety or soundness of the operations of its financial institution subsidiary. [~~The commissioner shall not conduct such examinations of holding companies unless the commissioner has good cause to believe that a holding company is experiencing financial adversity which will have a material negative impact on the safety and soundness of its financial institution subsidiary.~~] The cost of such examinations shall be assessed against and paid by the financial institution holding company in the same manner as financial institutions under section 412:2-105.”

The purpose of this bill is to remove the precondition of good cause to an examination of a financial institution holding company and we do not object to removal of that precondition as it applies to our immediate bank holding companies, BancWest Corporation, but we have the unusual situation of having two financial institution holding company, BancWest and BNP Paribas, which is a French bank headquartered in Paris, France. Although this is unusual, there are other U.S. banks in a similar situation; for example, Union Bank is owned ultimately by a Japanese bank.

This provision made sense when enacted because at that time, the financial institution holding companies were all domiciled in Hawaii but that is no longer the case. Any concern about lack of supervision and oversight is mitigated because the Board of Governors of the Federal Reserve System does have regulatory oversight and supervision of the U.S. operation of BNP Paribas. In this case, the federal regulator does have keen motivation to ensure that any economic issues do not impact on the subsidiary U.S. bank because of the desire to protect the deposit insurance fund of the FDIC.

Thank you for this opportunity to testify and I will be happy to answer any questions you may have.

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LATE

February 1, 2008

Senator Russell S. Kokubun, Chair
and members of the Senate Committee on Commerce, Consumer Protection,
and Affordable Housing
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 3008 (Code of Financial Institutions)**
Hearing Date/Time: Friday, February 1, 2008, 9:00 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.

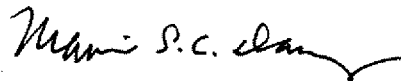
The HFSA **supports** this Bill with a proposed amendment.

The purpose of this Bill is to update Hawaii's Code of Financial Institutions by requiring licenses to be conspicuously displayed, addressing temporary closures during emergencies, clarifying how prepayment penalties are calculated, and allowing greater access to records by State inspectors.

We discussed with the Commissioner of Financial Institutions a problem with the wording in Section 1 of the Bill. He asked that we prepare a revision. We suggest the following rewording of §412:9- :

"§412:9- Display of license. Every holder of a financial services loan company license shall display it in a conspicuous place at the holder's office."

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)