Remarks by
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St. Louis is one of America's friendliest and most sophisticated cities – a city that's long made a proud contribution to America's growth and greatness. I do have one regret, though: my good friend Larry Beard and his OCC colleagues here in our Central District have been so preoccupied with organizing this conference and making sure that it's a valuable conference for you, that they've pretty much left me to my own devices after hours, and that means I've missed some of the best of what St. Louis has to offer. Larry, I'll take that rain check – and I promise you, I <u>will</u> be back to collect!

Speaking of rain checks, this is an especially fine time of the year if you happen to be a baseball fan whose team is in the playoffs, with dreams of the World Series dancing in your head. For the rest of us – and I'm speaking here as a longtime New York Mets fan, who feels your pain – it's a time to embrace a longer and more philosophical view of sports and the world. It's the test of how seriously you mean what you used to tell your kids, that what really matters is how you play the game – that the pride you take in what you do means more than the numbers you put up on the board.

Whether you think that's just another cliché -- or a rule that guides your every day -- one thing, I think, <u>is</u> beyond dispute. In any competitive business, whether it's baseball or banking, the team that's consistently successful is likely to be the team that has focused most consistently and resolutely on fundamentals. I've long believed that what separates the leaders from the followers in this industry is the degree to which they have internalized the three “Cs”: controls, customers, and culture.

I’m referring, of course, to a rigorous environment of internal controls; a strong customer service orientation; and, perhaps most important in this day and age, an organizational culture that stresses high ethical standards and accountability.

That third “C” may be the most fundamental of all. And yet there’s evidence that inadequate attention to the ethical dimensions of organizational culture has been responsible for some of the setbacks that banks have lately suffered in their external relations – setbacks that have had profound practical consequences for banking in America.

People are sometimes amazed when I tell them that it wasn’t all that long ago or all that uncommon for the average American to put the average banker on a pedestal usually reserved for the average baseball superstar. But it’s a fact. People used to look up to bankers as paragons of integrity, high moral character, and incorruptibility.

But to a considerable degree – and most regrettably -- that’s not the way it is anymore. The industry’s reputation has fallen, and pride in the banking profession has fallen with it. That concerns us at the OCC. And I know it concerns you.

One reflection of the industry’s diminished prestige is the surge in the number -- and noisiness -- of the attacks on banks. State and local legislatures around the country have enacted, or are considering enacting, new laws to regulate various aspects of the business; state law enforcement officials are making dramatic headlines announcing large dollar settlements; federal regulators are issuing regulations and guidance; consumer activists are leveling broadside barbs; and committees of Congress are holding hearings and conducting investigations aimed at determining whether new federal laws are needed to curb abusive practices.

I find this curious. Given the impressive performance of the banking system during a time of such widespread uneasiness in the general economy, this is a time when you might have expected public confidence in the industry – which has helped to prop up the economy -- to be at an all-time high. Instead, the opposite seems to be the case.

Certainly these attacks take a heavy toll. They hurt morale and make it harder to attract bright young people into the industry, thus compromising its future prospects. It hurts retention, too. We've even heard some bankers question their decision to choose the career in the first place – or, worse, to decide that the career is no longer worth the trouble. When an experienced and knowledgeable banker takes his or her talents to another line of work not because there's any great desire to leave, but because there seems to be no other way of recapturing that essential pride and self-respect, it's deeply unfortunate for all concerned.

But at worst, criticism of the sort that has lately befallen the industry can have a direct affect on your ability to run your business. It can result in new regulatory burdens and costs, new constraints on your relationship with your customers, and new limitations on the kinds of products and services you offer.

An <u>interesting</u> question is what has emboldened the industry's critics to take the offensive in this way. The <u>practical</u> question is what the industry can do to counteract this criticism -- and what it can do to bolster that important sense of pride.

I suspect that the industry's public relations problems may be partly the result of guilt by association. There are plenty of unsavory characters in the financial services business, and always have been. But increasingly they're offering products that look like those traditionally offered by banks, and vice versa. As the lines between financial services providers become blurred, it may be more difficult for financial consumers to differentiate among them, and banks are more likely to be tarred by the same unsavory reputation that has clung to their nonbank, less supervised – in some cases, unsupervised -- competitors.

Certainly the motives of the industry's critics may also be called into question, and it would be easy to conclude that bankers have merely been scapegoats or stalking horses for people with political ambitions. Of course, kicking banks around has been something of a national pastime at least since the days of Andrew Jackson, and so it would be easy to conclude that politics is what this latest round of bank bashing has largely been all about.

But we draw that conclusion at our peril, for it ignores some of the underlying problems for which banks and other financial providers bear more than a passing responsibility. History teaches that when Congress acts to pass regulatory legislation dealing with financial institutions, it's almost always in response to real abuses that have been festering over a long period of time – time that financial providers could have used productively – but didn't -- to implement remedial steps on their own. That the banking industry has sometimes been its own worst enemy in this regard is a truth that unfortunately cannot be denied.

Back in the 1960s, for example, banks and other lenders utilized so many different and incompatible methods for computing interest rates that consumers trying to comparison shop didn't stand a chance. There was plenty of public outrage – and plenty of opportunity for the industry to clean up its act – but no one was willing to take the lead. So Congress did – not because it wanted to, but again, because the industry left it with no choice. The result was the Truth in Lending Act of 1968. The industry has been living with it – and other laws like it – ever since.

Arguably, all of the consumer protection laws with which you're so familiar could have been avoided, or at least softened, with some pro-active industry self-policing. The point is, it's not too late to start – because the steps the industry takes today to demonstrate leadership – to weed out industry abuses, protect consumers from the actions of a misguided few, defend the industry's reputation, and develop standards of good practice – are the steps that might spare it from the Truth in Lending Acts of the future.

That's essentially the message Comptroller Jerry Hawke delivered last month to the ABA conference in Hawaii. Perhaps some of you were there to hear him. You have to admire Jerry -- and I would be among his biggest admirers even if he weren't my boss. He's been a leader in this industry for four decades. When it comes to bank regulation, he's pretty much seen it and done it all. In all those years, from his various positions in the government and private sector, in literally hundreds of speeches and dozens of articles, he's been exhorting the industry to clean house in its own interest. For many of those years, he was a lonely voice in the wilderness. And through it all, he never lost hope that the industry would see the light and take the steps that would set it free to better serve the banking public.

Now there are signs that his patience and persistence may at last be paying off.

At the ABA convention, he called for the creation of a new Committee on Banking Standards and Practices, to be composed of a group of the most respected people in the industry, whose job it would be to articulate and promote the adoption of principles of fair dealing and best practices. The initial reaction – not only from ABA -- has been promising. Many people have expressed interest in Jerry's idea, and we're hoping that interest is followed by action. Although we have no illusion that the path to salvation runs through any committee, this could be an important step toward reversing the tide of regulatory measures that has lately been threatening the industry.

In the final analysis, however, the responsibility for fair and ethical conduct – and for the consequences of that conduct – rests not with a trade group or with some faceless entity we call the "industry." The responsibility rests with the hundreds of thousands of individual bankers and bank employees who come to work in its offices each and every day. Their actions – your actions – will determine whether Congress, state legislators, regulators, consumer advocates, state attorneys general, and the public – turn the focus elsewhere or keep the spotlight squarely on the banking community.

Needless to say, we're delighted and encouraged by the favorable response to the Comptroller's proposal. But I can understand that there might be some skepticism about this "heal thyself" approach. Some will say that we're expecting too much of human nature; that a value system that encourages businesses to be innovative and to push the envelope cannot be reconciled with the kind of internal restraint that our approach requires; and that only a punitive remedy with teeth, imposed by government, can ever succeed in preventing and rooting out abusive practices.

Yet we also know that some financial organizations are chronic abusers while some banks have operated for decades – even tens of decades -- without ever having their reputation besmirched. What sets them apart? I believe that takes us back to our third "C' – a culture of ethics and accountability, nurtured and reinforced by senior managers over time.

As the Comptroller said in Hawaii, "the ultimate protection for all of our banks, and for the people responsible for running them, is to instill in all employees a dedication to the highest standards of fairness and ethical dealing; to make clear that no loan, no customer, no profit opportunity, is worth compromising those standards for; and to take swift and decisive corrective action where those standards are violated."

That's all any one banker can do to uphold the industry's standards – and to bolster that pride.

For me, the words "high standards and pride" have always triggered a mental association with the national bank charter, and I trust that many of you feel as strongly about that as I do -- or some of you wouldn't be here today. We keep getting unsolicited letters from bankers telling us how much the national charter means to them, and one very recently from a community banker in Indiana whose views, I think, are worth quoting at some length in the current context.

This banker said that he'd always viewed the national charter as a "value proposition." "The cost [in assessments] may be higher" and the OCC's exams were "much tougher than [those of] state regulators," but "I saw great value in having . . . highly qualified examination personnel assist[ing] by pointing out best practices and challenging my thought processes. They are a resource that we consult frequently." And as for the result, "I am certain that we would not be as successful today if we had decided to go the state charter route."

Obviously, this is one satisfied national banker.

I mention this not to toot our own horn, but because this banker's experience seems relevant to my earlier observation on history and human nature. I daresay that those who are pessimists about the human condition – who believe that people will always take the paths of quick gratification and least resistance if they're allowed to – would have trouble figuring out how the national banking system managed to survive and thrive for these past 140 years.

From their perspective, it makes no sense that capitalists would opt to pay more – twice as much, in some instances -- for the privilege of more rigorous government scrutiny when they could easily pay a lot less and avoid the inconvenience of having a government inspector looking over their shoulders. Yet at last count, 2100 national bankers were making what we might call the inexpedient choice, and many quite happily and successfully, if that Indiana community banker is to be believed.

That should give us hope that banks and the groups that represent them might yet rise to the leadership challenges spelled out in Hawaii by Comptroller Hawke.

An interesting sidebar to all this is that the congressional founders of the national banking system were themselves worried that bankers would take the expedient course every time if given the choice. Their response was to try to deny bankers the choice. That's why they considered abolishing state banks outright and then, in 1865, passed the so-called "death tax" on state bank notes, which was intended to accomplish the very same goal. Only by eliminating state banks, with their notoriously lax – and low cost – examinations, the founders believed, could a banking system built on advanced principles of safety and soundness be sustained. So much for the notion that Congress "created" the dual banking system!

It's one of those historical ironies that the national banking system succeeded, even though what the system's founders considered to be the essential condition for its success – a single high standard of bank supervision, with no options or opportunities for evasion – was never achieved. It has succeeded, in that sense, for one reason only: because national bankers have been wise enough to figure out that in bank supervision, as in all things, there's no free lunch.

The national charter offers pride of membership in a select club and it offers value that comes from rigorous examinations that assess the safety and soundness of your institution and test the quality of your systems and your judgment. But it also offers more. And no attribute of the charter has garnered more attention of late than the immunity it provides from most state laws that would interfere or prevent a national bank from engaging in an authorized activity.

I bring this up because there's been a lot of sound and fury of late from what can only be called a cabal of state supervisors and state attorneys general, suggesting that the OCC's invocation of the preemption power represents some novel and dangerous assault on the dual banking system, the separation of powers, the ability of the states to protect consumers, and who knows what else. Each of these allegations, I believe, is wholly without merit.

The charge that our actions are incompatible with the dual banking system is particularly baseless, and we'll soon be releasing a paper that will consider that argument in considerable detail. We plan to send you a copy, along with one of the Comptroller's speeches on the subject, in the very near future.

In the meantime, let me make a couple of points that our critics have conveniently overlooked about preemption. The first pertains to why the OCC occasionally preempts state laws. Preemption is simply the means by which national banks are enabled to operate under the uniform national standards that Congress intended from the very outset of the national banking system. When the states attempt to impose their legislative and enforcement authority over national banks, it's the states that are actually violating the intent of Congress.

I would couch the second point in the form of a question. Which side in the preemption controversy embodies the true spirit of the dual banking system? The essence of dual banking, after all, is choice: charter choice, choice in supervisory philosophy, regulatory approach, and so forth. When choice ceases to exist, then the system will be dual in name only.

Yet, by attempting to impose their laws on national banks, the states that do so are not only violating nearly two hundred years of constitutional precedent, which holds federal creations immune from such interference; they are also obliterating distinctions that make the dual banking system meaningful.

I cannot guarantee that these efforts on the states' part will fail. I can say that they have consistently failed in the past. Over the past seven years, in fact, only once has an OCC preemption determination been overturned in court – and that one, the Barnett decision, was itself overturned by the Supreme Court of the United States.

Of one thing I can assure you: no effort to interfere with you in the proper exercise of your authority as a national bank will go unanswered. We will challenge – with all of the resources available to us -- any attempt to interfere with your serving your customers within the limits of federal law. That is our solemn commitment to you.

So I would say again that it's a great day to be in St. Louis. And we're working to make sure that it's always a great day to be a national banker in America.