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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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THE CLEARING HOUSE :  
ASSOCIATION, L.L.C., :  
 : No. 05 Civ. \_\_\_\_\_ ( )  
 :  
Plaintiff, :  
 :  
v. :  
 :  
ELIOT SPITZER, ATTORNEY GENERAL :  
OF THE STATE OF NEW YORK, :  
 :  
Defendant. :  
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**COMPLAINT**

Plaintiff, The Clearing House Association, L.L.C. (the "Clearing House"),

alleges:

**SUMMARY OF THE ACTION**

1. The National Bank Act provides, "No national bank shall be subject to any visitorial powers except as authorized by Federal law. . . ." 12 U.S.C. § 484(a). The Office of the Comptroller of the Currency (the "OCC") has issued regulations interpreting this statute to mean that "State officials may not . . . conduct[] examinations, inspect[] or require[] the production of books or records of national banks, or prosecut[e] enforcement actions [against national banks], except in limited circumstances authorized by federal law." 12 C.F.R. § 7.4000(a)(1). Despite this clear

federal law, the Defendant has commenced inquiries into the lending activities of several national banks and threatened to subpoena or bring enforcement proceedings against these banks. In this action, the Clearing House seeks injunctive relief on behalf of its members that are federally chartered national banks, and their operating subsidiaries, against the Defendant's actions in violation of the National Bank Act and the regulations promulgated by the OCC.

2. The Clearing House does not challenge the authority of the Defendant over other companies that are not chartered by the federal government. Nor does the Clearing House assert that the Defendant has been unreasonable or unfair in his enforcement efforts against such other companies. Rather, this action presents a purely legal issue regarding the primacy of federal law with respect to national banks.

#### **JURISDICTION AND VENUE**

3. This is an action under the National Bank Act, 12 U.S.C. § 21 *et seq.* The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States.

4. Venue in this district is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred in this district. In particular, the Defendant's letters requesting documents from the national banks originated from the Defendant's executive office in this district and two of the three letters at issue were addressed to offices of banks within this district.

#### **THE PARTIES**

5. The Clearing House is an association of leading commercial banks, organized as a limited liability company under Delaware law, with its main office at 100

Broad Street, New York, New York. The Clearing House is dedicated to protecting the rights and interests of its eleven members, eight of which are federally chartered national banks, as well as advancing the broader interests of the domestic commercial banking industry. At least three of the national bank members of the Clearing House, HSBC Bank USA, National Association (“HSBC Bank”), JPMorgan Chase Bank, National Association (“JPMorgan Chase Bank”), and Wells Fargo Bank, N.A. (“Wells Fargo Bank”), are subject to the Defendant’s inquiry and requests for lending information. Accordingly, the Clearing House has associational standing to bring this action on behalf of its members.

6. Defendant Eliot Spitzer is sued in his official capacity as Attorney General for the state of New York. He maintains executive offices at The Capitol, Albany, New York and at 120 Broadway, New York, New York, the office that has been principally involved in the events or occurrences forming the subject matter of this action.

### **DEFENDANT’S VIOLATIONS OF THE NATIONAL BANK ACT**

#### **The National Banks**

7. HSBC Bank, JPMorgan Chase Bank, and Wells Fargo Bank (collectively, “the Clearing House Members”) are each chartered pursuant to the National Bank Act, 12 U.S.C. § 21 *et seq.* Pursuant to regulations promulgated by the OCC, 12 C.F.R. §§ 5.34, 34.1, 7.4006, they carry on parts of their banking businesses through separately incorporated operating subsidiaries, which are treated for regulatory purposes as divisions of the national banks.

8. Either directly or through their operating subsidiaries, the Clearing House Members each engage in residential mortgage lending. Their mortgage lending programs are designed to promote home ownership and, consistent with the Community Reinvestment Act, include mortgage lending to less creditworthy borrowers. As a matter of prudent and sound lending practice, loans to borrowers with different risk factors bear different interest rates.

9. Beginning in 2004, pursuant to Regulation C promulgated under the Federal Home Mortgage Disclosure Act (“HMDA”), large mortgage lenders have been required to report certain lending data to the OCC, the Board of Governors of the Federal Reserve System, and other federal banking agencies. For first- and second-lien loans, lenders are required to report particular information relating to loans that are 3 percentage points and 5 percentage points above the Treasury securities of comparable maturity, respectively. Lenders are required to disclose, among other things, the loan applicant’s or borrower’s race, ethnicity, sex, and income.

#### **The New York Attorney General’s Inquiry**

10. By letter from Mr. Dennis Parker, the Bureau Chief of the Civil Rights Bureau of the New York Attorney General, dated April 19, 2005, the Defendant informed Wells Fargo & Co., the ultimate parent company of Wells Fargo Bank (“Wells Fargo”) that, based on 2004 HMDA data, the Defendant had commenced a preliminary inquiry into the lending practices of Wells Fargo regarding potential violations of federal and state anti-discrimination laws. The Defendant requested that, in lieu of a formal subpoena, Wells Fargo “voluntarily” provide the Defendant with further information regarding its loans and lending practices.

11. The Defendant's request sought two categories of information. First, Defendant asked that Wells Fargo produce all data contained in Wells Fargo's HMDA Loan Application Register ("LAR") for loans and applications during 2004 related to property located in New York. Second, Defendant requested a variety of non-public material and information concerning Wells Fargo's residential real estate lending operations (the "lending information") including (1) a list and explanation of all variables that determined Annual Percentage Rates ("APRs") on 2004 HMDA-reportable loans, and related "formulas or algorithms," (2) extracts of every computer database that reflects loan conditions, pricing and "other variables" for 2004 HMDA-reportable loans, (3) all documents reflecting analysis or examination of racial or ethnic disparities in the 2004 HMDA data, (4) a list and explanation of all HMDA-reportable loan products, and (5) all policies and procedures concerning discretionary and/or exception pricing on HMDA-reportable loans.

12. By letter from Mr. Parker dated April 19, 2005, the Defendant informed HSBC Bank that he had commenced a similar inquiry concerning HSBC Bank and made substantially the same requests to HSBC Bank.

13. By letter from Mr. Parker dated April 20, 2005 to JP Morgan Chase & Co., the parent company of JPMorgan Chase Bank, Defendant stated that he had commenced a similar inquiry concerning JPMorgan Chase Bank and made substantially the same requests to JPMorgan Chase Bank.

14. Federal law obligates banks to make HMDA LAR data available to the public upon request. 12 C.F.R. § 203.5(c). Accordingly, the Clearing House Members have produced the first category of information to Defendant.

15. The second category of information sought by the Defendant is, however, nonpublic lending information that the Clearing House Members are not required to disclose to state officials. Accordingly, the Clearing House Members have not produced this information to Defendant.

16. On May 19, 2005, Wells Fargo Bank was told by Mr. Parker that Defendant was "probably" going to subpoena the lending information from Wells Fargo Bank since Wells Fargo Bank had not voluntarily provided the lending information. At that time, Mr. Parker told Wells Fargo Bank that the Defendant was in ongoing discussions with the OCC regarding jurisdictional issues with respect to the Defendant's inquiries into potential discriminatory lending.

17. On June 6, 2005, Mr. Parker told Wells Fargo Bank that the Defendant and the OCC had not been able to reach agreement on the exercise of jurisdiction, and once again asked Wells Fargo Bank to produce the lending information. Mr. Parker told Wells Fargo Bank that if it did not produce the lending information to the Defendant, the Defendant would either subpoena the lending information or file an action in New York State Court against Wells Fargo Bank regarding Wells Fargo Bank's lending practices. Mr. Parker said that the Defendant was committed to continuing its inquiry and that it would be proceeding to issue a subpoena or file an action "within the next few days" unless Wells Fargo Bank produced the lending information.

18. Mr. Parker also told Wells Fargo Bank that the documents and lending information requested in the Defendant's April 19 letter represented only the first stage of the Defendant's inquiry and that the Defendant anticipated requesting substantial additional documents and information as its inquiry continued.

19. On information and belief, the Defendant's stated intention to subpoena the requested information or file a state court action in the immediate future if the information is not produced applies equally to HSBC Bank and JPMorgan Chase Bank.

20. The Defendant has publicly declared that he intends to proceed with his investigation into the lending practices of national banks despite being told by the OCC that he is impinging on the OCC's exclusive supervisory jurisdiction over national banks.

21. Under the National Bank Act and other federal banking laws, the OCC has licensing, regulatory, supervisory, examination, and enforcement authority with respect to national banks' compliance with both federal and state laws. *See* 12 U.S.C. §§ 24(Seventh), 93(a), 481, 1818(b); *see also* 12 C.F.R. § 7.4000.

22. In furtherance of the exclusivity of this authority, a provision of the National Bank Act, now codified as 12 U.S.C § 484(a), provides:

No national bank shall be subject to any visitatorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

This provision is a cornerstone of Congress' stated intent, as demonstrated by the legislative history of the National Bank Act, to ensure that national banks were not subject to supervision by state authorities.

23. 12 U.S.C. § 484(b) was added in 1982 to provide a limited exemption to this exclusive federal regulatory, supervisory, and examination jurisdiction of national banks, but it applies only "to ensure compliance with applicable State

unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with such laws.”

24. The OCC’s regulations interpreting section 484 provide:

Only the OCC or an authorized representative of the OCC may exercise visitorial powers with respect to national banks, except as provided [in the OCC’s regulation interpreting 12 U.S.C § 484(b)]. State officials may not exercise visitorial powers with respect to national banks, such as conducting examinations, inspecting or requiring the production of books or records of national banks, or prosecuting enforcement actions, except in limited circumstances authorized by federal law.”

12 C.F.R. § 7.4000(a)(1). The OCC’s regulation defines “visitorial powers” to include “Examination of a bank”; “Inspection of a bank’s books and records”; “Regulation and supervision of activities authorized or permitted pursuant to federal banking law”; and “Enforcing compliance with any applicable federal or state laws concerning those activities.” 12 C.F.R. § 7.4000(a)(2).

25. The protections afforded to national banks from state licensing, regulation, supervision, examination, and enforcement apply equally to the operating subsidiaries of national banks. *See* 12 C.F.R. § 7.4006; *see also* 12 C.F.R. §§ 5.34 and 34.1.

26. The national bank members of the Clearing House and their operating subsidiaries commit considerable resources to ensuring their compliance with myriad applicable federal and state laws and regulations, including discrimination-in-lending laws and the Community Reinvestment Act. They undergo continuous regulation, supervision, examination, and monitoring by the OCC, and are subject to the OCC’s enforcement jurisdiction with respect to both federal and state law. They are also

subject to special targeted examinations relating to laws governing consumer protection, including discrimination-in-lending laws and the Community Reinvestment Act. By seeking to inspect the books and records of the Clearing House Members and to otherwise exercise visitorial powers over them, the Defendant threatens to increase—and if not enjoined will increase—the compliance burden faced by the Clearing House Members in a manner expressly prohibited by federal law.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, The Clearing House Association L.L.C., demands judgment against Defendant Eliot Spitzer, in his official capacity as Attorney General of the State of New York:

A. Preliminarily and permanently enjoining the Defendant, his agents, and all persons acting in concert with them from (1) investigating, requesting or issuing subpoenas for information concerning, or taking any other action to enforce federal and state discrimination-in-lending laws against, the national banks that are members of the Clearing House, or their operating subsidiaries, with respect to their mortgage lending operations, or (2) otherwise exercising visitorial powers with respect to those banks and operating subsidiaries in violation of Section 484 of the National Bank Act;

B. Granting plaintiff such other and further relief, including costs, as  
this Court may deem just and proper.

Dated: New York, New York  
June 16, 2005

SULLIVAN & CROMWELL LLP

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