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July 18, 2008

Ms. Jennifer Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington DC 20552

RE: Regulatory Proposals on Overdraft Services
Docket No. R-1314 – Regulation AA Unfair or Deceptive Acts or Practices
Docket No. R-1315 – Regulation DD Truth in Savings

Dear Ms. Johnson:

Union Bank of California, N.A. respectfully submits the following response to the Federal Reserve Board's request for public comment on the above-captioned regulatory proposals published in the May 19, 2008, *Federal Register* (collectively, the "Proposal"). Docket R-1314, as it pertains to overdraft services, would require a consumer to be given the opportunity to fully or partially "opt out" of a service in which a bank charges a fee to pay an overdraft. On a related topic, Docket R-1315 would establish content and timing requirements for a consumer overdraft "opt out" notice, and require total monthly and year-to-date overdraft fees to be reflected on the periodic account statement.

Union Bank of California, N.A. (the "Bank") is a California-based national bank with assets of \$57 billion, 334 branch offices located in California, Oregon and Washington, and approximately 11,000 employees. We appreciate the opportunity to comment on the Proposal.

Summary of Regulatory Impact

The Proposal would have a significant impact on the Bank's deposit operations. If adopted, the Proposal would necessitate complex programming modifications to the Bank's core system, platform software, online banking system, and other related automated systems. The proposed requirement to capture and total monthly and year-to-date overdraft fees for disclosure on the periodic account statement would especially require major programming changes.

Processing customer responses to the proposed "opt out" notice, particularly for initial implementation of the Proposal, would require development of an automated solution to capture customer preference, or a significant staff increase to accommodate customer response and questions regarding the notice, or both. All Bank personnel involved in consumer deposit operations would require training on the customer's right to "opt out" of the overdraft service.

The Bank's estimated cost to implement the Proposal is \$800,000 to \$1,000,000. Below are explanations of the aspects of the Proposal that would cause greatest impact to the Bank.

Overview of the Bank's Overdraft Service

The Bank currently offers, but does not promote, an overdraft service for demand accounts and money market accounts, in which overdrafts may be paid and a fee charged for paying each item or transaction that created the overdraft. For operational efficiencies and consistency, the overdraft service is administered through automated means, not manually. Eligibility for the overdraft service and the dollar limit permitted for overdraft by an individual customer are determined by use of a predictive model that considers numerous factors relevant to overdraft credit risk.

The Bank currently has approximately 850,000 consumer demand accounts and 59,000 consumer money market accounts. The predictive model is such that not all customers that maintain demand or money market accounts are eligible for the overdraft service. Further, permitted overdraft amounts vary by customer and may be adjusted for the same customer over time.

Customers eligible for the overdraft service may cancel the service upon request. The Bank has an account flag to capture at account opening a customer's request to not activate the overdraft service, or a request to discontinue the service after the account is opened. To date, the overdraft service is not activated for approximately 13,000 accounts for all types of account transactions. Another account flag is available to capture discontinuation of the overdraft service only for ATM and debit card transactions at customer request after the account is open. Operationally, the latter flag is not available for this customer choice at account opening. Approximately 3,000 accounts are flagged with the overdraft service ATM/debit card setting. The account flags are set manually on a case-by-case basis for each customer request for full or partial discontinuation of the overdraft service.

Customers eligible for the Bank's overdraft service receive an overdraft notice immediately after an overdraft occurs, describing the overdraft and fee assessed. The Bank also assists customers in avoiding overdrafts at the Bank's ATMs. When eligible customers begin a transaction at one of the Bank's ATMs that will cause an overdraft, the customer is given an onscreen notice stating that continuing with the transaction may cause the customer to incur a fee. At that point, the customer has the opportunity to continue or exit the transaction.

Proposal for Required "Opt Out" Notice

The Proposal, at §227.32, would require the Bank to give all consumers subject to the overdraft service the opportunity to "opt-out" of the service for all transaction types. The Proposal further would require that all consumers be given the opportunity to partially "opt-out" of the overdraft service only for ATM and point-of-sale transactions. Section 230.10 of the Proposal would require the "opt out" notice to be given before the imposition of a fee for paying an item, and given again on each periodic statement reflecting the overdraft or by notice sent after a bank pays an overdraft.

The Bank does not support the initial "opt out" notice required by §230.10(c)(1). Such initial notice likely would be given at account opening for new customers and delivered to existing customers by mass communication. We believe an initial "opt out" notice would have limited effectiveness, as a customer would not be focused on the ramifications of opting in or opting out of the overdraft service at that time. A customer is more likely to focus on overdrafts and overdraft fees when they occur. The Commentary to the Proposal, at page 28743, supports this

idea. Further, most customers eligible for the overdraft service never incur an overdraft. For those customers, the initial "opt out" notice would have little meaning.

In order to implement the initial "opt out" requirement of the Proposal, the Bank would need to conduct a mass communication to owners of roughly 900,000 consumer demand and money market accounts. The Bank presently does not have procedures, staff resources, or automation in place to process individual customer responses and questions resulting from such a large inquiry of this complexity. The Bank would need to develop an automated solution to capture customer preference or significantly increase staff to accommodate customer response and questions regarding the notice, or both. Further, since not all existing customers are eligible for the overdraft service at a given time, the Bank would need to initially and continually identify eligible customers for purpose of ensuring the initial "opt out" notice is given. If the proposed initial "opt out" notice requirement is adopted, we are concerned that a very large expenditure and reallocation of resources would be incurred by the Bank for relatively little consumer benefit.

We do, however, support use of an "opt out" notice that would be provided immediately after an overdraft occurs or included as part of the periodic account statement, as set forth in §230.10(c)(2). We believe the customer's awareness of the overdraft service would be heightened because of the close proximity of the notice to the actual overdraft event and any associated fee, allowing the customer to make a more informed decision about whether to continue the service. We acknowledge this procedure would not fully prevent the customer from incurring an initial overdraft fee if the Bank pays an item under the overdraft service. However, in extenuating customer circumstances, the Bank may choose to reverse the overdraft fee.

The Bank contemplates that the "opt out" notice required by §230.10(c)(2) could be included as part of the customer overdraft notice, which is mailed to the customer immediately after the overdraft occurs. Although overdraft notices to customers are currently sent by mail, we anticipate offering online alert notification of overdrafts by first quarter of 2009. Online notification would allow a customer to receive overdraft and fee notification very quickly and provide the customer opportunity to cure the overdraft and "opt out" of the overdraft service quickly. In addition to including the "opt out" notice in the overdraft notice, the Bank would be willing to incorporate the "opt out" notice into the periodic statement disclosure language. Because the "opt out" notices and responses would be spread out over more time and fewer customers, the Bank would experience considerably less impact on financial and human resources.

Content of Proposed "Opt-Out" Notice

We recommend a revision to the language of the proposed "opt out" notice, set forth in Appendix B to Part 230 of the Proposal. The notice begins:

We provide overdraft services for your account. This means that if there is a debit to your account when your account does not have sufficient funds, we may pay your overdraft.

As stated above, not every customer at the Bank is eligible for the overdraft service. Depending upon a customer's history of account management and whether the customer meets the bank's parameters for the overdraft service, the service may be added or discontinued during the life of the account. We request that the notice language be altered to take into account customer eligibility. Language might read, "You may be eligible for overdraft services for your account. . . ."

Proposed Disclosure of Overdraft Fees on Periodic Statements

Section 230.11 of the Proposal would require the Bank to disclose total overdraft fees on the periodic account statement. Specifically, the Proposal would require the statement to include:

- 1) Total dollar amount of fees imposed to pay items when there are insufficient funds *for the statement period*;
- 2) Total dollar amount of fees imposed to pay items when there are insufficient funds *for calendar year-to-date*;
- 3) Total dollar amount of fees imposed for returning items unpaid *for the statement period*; and
- 4) Total dollar amount of fees imposed for returning items unpaid *for calendar year-to-date*.

This part of the Proposal would be the most problematic and most expensive for the Bank to implement. Detailed transaction information on overdrafts and overdraft fees that would be needed to meet the new statement requirements is retained in the Bank's data bases for only several months after the transaction. Once overdraft information is reflected on the current periodic statement and used to compile summary customer overdraft history, the overdraft transaction detail is deleted. To increase the retention of overdraft transaction detail in order to create a calendar year-to-date statement summation would require significant modification to transaction data storage capability.

Additionally, there are no software routines in place to summarize overdraft fee data for the periodic statement. The Bank currently itemizes overdraft fees (and any fee reversals) as individual items on the periodic statement. The Bank's core system and other related systems would require programming modifications to capture and total overdraft transaction data (provided such historical data could be available) and present it as required on the statement. The Bank's estimated technology cost to meet the proposed statement content requirements is \$200,000-\$300,000.

The Bank does not support this section of the Proposal. As previously stated, the Bank sends an overdraft notice immediately after an overdraft occurs, and expects to soon implement online overdraft notification. The Bank's overdraft notice describes the overdraft event and the fee assessed. The periodic account statement currently itemizes overdraft fees and any fee reversals. We believe that the consumer already is provided ample information regarding overdraft fees for the statement period and, through management of personal records, could easily determine total monthly and calendar year-to-date fees. As with the initial "opt out" notice, the Bank believes the Proposal would require significant technology expenditure by the Bank without achieving meaningful consumer benefit.

In the event the statement requirements are adopted, we request clarification on one point. Please clarify whether overdraft fees described in the proposed Commentary to §230.11(a)(1), comment 2, absent any other transactions by the consumer, would trigger a monthly periodic statement. This situation might occur during a month in which the consumer had no customer-initiated transactions, but in which a fee for maintaining an overdraft status was assessed. We would appreciate guidance on this point.

Processing Sequence

Although not a proposed regulatory change, the Proposal includes a request for information about the Bank's processing sequence of items to be paid against a consumer's account.

The Bank generally pays large items first, but reserves the right to process in a different sequence depending upon the priority or category of the item. Below is an excerpt from the Bank's account disclosure and deposit agreement provided to consumers:

Order of Processing Checks and Other Items – You agree that we may pay or certify your checks and other items in any order we choose, and that we may establish different processing priorities and categories for checks and other items. Within each priority or category, we may process checks and other items in the order in which we receive them, in check number order, or in the dollar amount order, and we may change these priorities, categories, and orders at any time without notice to you. We will generally pay larger checks and transactions first. However, we are not obligated to do so. When there are not sufficient available funds in an account to cover all of the checks and other items presented on a given day, some of the priorities, categories, and orders may result in more nonsufficient available funds fees than others.

We appreciate the opportunity to provide comment on the Proposal and thank you for consideration of our concerns. If questions regarding the information in this comment letter arise, please contact me at (415) 765-2914 or at david.wittman@uboc.com.

Sincerely,



David T. Wittman
Executive Vice President
Chief Compliance Officer