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March 31, 2010

By PDF and by U.S. First Class Mail

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Regulation DD-Docket Number R-1315

Dear Ms. Johnson:

This letter is submitted on behalf of Wells Fargo & Company and its banking affiliates, including Wells Fargo Bank, N.A., Wells Fargo Financial National Bank, Wells Fargo Financial Bank (collectively, "Wells Fargo"),¹ in response to the proposed rule (the "Proposed Rule") issued by the Board of Governors of the Federal Reserve System (the "Board") to provide further clarification to the final rule² (the "Final Rule") issued by the Board on January 29, 2009, regarding a depository institution's disclosure practices related to overdraft services under Regulation DD.³

Wells Fargo is a diversified financial services company with \$1.3 trillion in assets, providing banking, insurance, investments, mortgage, and consumer financial services through more than 10,000 branch offices, over 12,000 automated teller machines, and the Internet (wellsfargo.com) across North America and the international marketplace.

Wells Fargo appreciates the opportunity to comment and respectfully requests that the Board consider adopting the suggestions set forth herein.

I. Background to the Proposed Rule. On January 29, 2009, the Board published the Final Rule amending Regulation DD. The Final Rule addressed a depository institution's

¹ Effective March 20, 2010, Wells Fargo Bank, N.A., is a successor-in-interest to Wachovia Bank, N.A., and Wachovia Bank Delaware, N.A.

² 74 Fed.Reg. 5584, January 29, 2009.

³ 12 C.F.R. Part 230.

disclosure obligations and practices related to overdraft services, including balances disclosed to consumers through automated systems. Since the publication of the Final Rule, depository institutions and others have sought clarification of certain requirements under the Final Rule. Thus, the Board has issued the Proposed Rule to clarify certain aspects of the Final Rule.

II. The Proposed Rule. When disclosing an account balance through an automated system, Regulation DD currently provides that the balance may not include additional funds a depository institution may provide to cover an item when there are insufficient or unavailable funds in the consumer's account to cover the item, whether under an arrangement to transfer funds from a line of credit or another account.⁴ The Final Rule provides that these additional funds may be disclosed at the option of the depository institution in a second balance provided to the consumer, so long as the depository institution prominently states that the second balance includes these other sources of funds.

The Board under the Proposed Rule has proposed a clarification that a depository institution does not need to exclude from the consumer's balance funds that may be transferred from transaction subaccount to a savings subaccount pursuant to a retail sweep program satisfying the following characteristics: (1) The classification of the accounts complies with Regulation D;⁵ (2) the consumer does not have direct access to the funds in the savings subaccount; and (3) the consumer's monthly account statement shows a combined balance in the two subaccounts. The Board under the Proposed Rule has also clarified that in instances in which a second balance is disclosed, it may not be disclosed as "available balance" or "available funds." It suggests, instead, that the second balance be disclosed as including "overdraft funds."⁶

III. Wells Fargo's comments. Wells Fargo hereby submits the following in response to the Proposed Rule.

⁴ Regulation DD § 230.11(c).

⁵ Regulation D, 12 C.F.R. § 204.2(d)(2).

⁶ 75 Fed.Reg. p. 9129.

A. Arrangements not addressed in the Proposed Rule. The proposed clarification by the Board through a new Comment 11(c)-2⁷ regarding retail sweep programs is helpful with respect to retail sweep arrangements set up at the insistence of a depository institution to manage and mitigate its reserve requirements under Regulation D, but it fails to recognize that some other sweep arrangements are set up at the request of a consumer in order to receive a higher rate of return through linked investment accounts offered by other brokerage or investment institutions (“investment institution”).

The latter arrangement normally involves a financial product that may link a transaction account at a depository institution to an investment account at an investment institution. Under such an arrangement, when and as a consumer views the funds in the transaction account, the consumer expects to view a single account balance, including funds in the investment account. The consumer does not expect to view a zero balance in the transaction account.

The arrangement commonly has the following terms, conditions, and features:

- The transaction account and the investment account are established contemporaneously; one account cannot be opened without the other.
- The paired transaction and investment accounts are marketed to the public as a single relationship.
- The transaction account is maintained with the depository institution; the investment account is maintained with the investment institution.
- The transaction account is established to enable the consumer to access conveniently the investment account.
- The investment institution may or may not be affiliated with the depository institution.
- Deposits and other credits to the transaction account are swept daily (or at other regular intervals) to the investment account to enable the consumer to achieve potentially a higher rate of return on the funds.
- The investment account is not established by the consumer to cover overdrafts in the transaction account.

⁷ 75 Fed.Reg. p. 9128.

- As and when checks or other items are presented for payment to the depository institution against the transaction account, funds from the investment account are automatically transferred to cover the checks or other items.
- The transfer to or from the investment account are not subject to a fee.
- The consumer may or may not have direct access to the investment account.
- In some cases, the investment account may be used and funded independently of the transaction account.
- When and as a consumer views the funds in the transaction account, the consumer reasonably expects to view a single account balance, including funds in the investment account; the consumer does not expect to view a zero balance in the transaction account.
- Because the consumer considers the paired transaction and investment accounts to be a single financial product, the consumer reasonably expects the funds in the investment account to be disclosed as “available funds” of the transaction account.

We strongly urge the Board to expand the arrangements that it excludes from its balance disclosure requirements to include “relationship accounts” involving paired accounts established by the consumer: a transaction account and an investment account.

In that connection, we suggest a new official staff interpretation to Regulation DD, Supplement I to Part 230-Official Staff Interpretations, § 230.11 Additional Disclosures Regarding the Payment of Overdrafts, (c) Disclosure of account balances, Comment 3 [following comment 2 *Retail sweep programs*], as follows:

3. *Investment sweep programs.* In an investment sweep program, a consumer establishes contemporaneously a transaction account with a depository institution and an investment account with an investment institution. One account cannot be opened without the other. The transaction account is established to enable the consumer to access conveniently the investment account. The investment institution may or may not be affiliated with the depository institution. Deposits and other credits to the transaction account are swept daily (or at other regular intervals) to the investment account to enable the consumer to achieve potentially a higher rate of return on the funds. As and when checks and other items are presented to the depository institution against the transaction account, funds from the investment account are automatically transferred to cover the checks or other items. The transfers to or from the investment account are not subject to a fee. The consumer may or may not have direct access to the investment

account. The paired transaction and investment accounts are marketed to the public as a single financial product. Section 230.11(c) does not require an institution to exclude from the consumer's transaction account balance funds that may be transferred from an investment account pursuant to an investment sweep program having the terms, conditions, and features as described.

In summary, a consumer establishing an investment sweep program as described above does not view the funds held in the investment account as "overdraft funds." Rather, the balances held in these investment accounts are considered part of a total financial product that a depository institution should be able to disclose to the consumer as a single "available balance" or as "available funds." We urge the confirmation of this view through an addition to the official staff interpretations as detailed above.

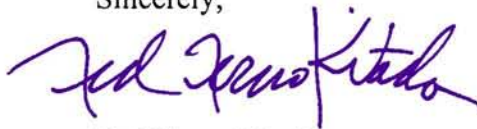
B. Promotion of overdraft programs. While the following is not directly related to the Proposed Rule, please refer to our comment letter of even date herewith submitted under Docket Number 1343 regarding the disclosure obligation of a depository institution when it promotes by telephone the payment of overdrafts through its advertisements. That letter is incorporated by reference hereby with regard to comments on Regulation DD § 230.11(b)(1).

III. Conclusion. We urge the Board to consider the adoption of the proposals set forth in this letter to provide further clarification and assistance to depository institutions seeking to satisfy the requirements under the Final Rule. Because the investment sweep programs detailed above are commonly made available to consumers premised on the banking relationship level and not on the individual account level, we urge the Board to adopt the changes to the Final Rule concerning such programs as advanced by us above. We also encourage the Board to provide further clarification on the promotion by telephone of overdrafts through advertisements.

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We express our appreciation to the Board for this opportunity to comment on the Proposed Rule.

Sincerely,



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cc: John D. Wright, Esq.
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