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September 30, 2005

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Regulation E; Docket No. R-1234

Dear Ms. Johnson:

Wells Fargo & Company (“Wells Fargo”) is a diversified financial services company providing banking, insurance, investments, mortgage, and consumer finance through over 6,000 banking facilities, the Internet (“wellsfargo.com”), and other distribution channels throughout North America, including all 50 states, and the international marketplace. Wells Fargo has over \$435 billion in assets and 150,000 employees. Wells Fargo is one of the United States’ top-40 largest employers. Wells Fargo ranked fifth in assets and fourth in market value of its stock at June 30, 2005, among its peers.

I. Background. The Board of Governors of the Federal Reserve System (the “Board”) has published for comment a proposal¹ (the “Proposal”) to amend Regulation E.² Regulation E carries out the purposes of the Electronic Funds Transfer Act (the “EFTA”).³ The EFTA establishes the basic rights, liabilities, and responsibilities of consumers using electronic fund transfer (“EFT”) services and of financial institutions offering those services.

¹ 70 Fed.Reg. 49891 (August 25, 2005).

² 12 C.F.R. Part 205

³ 15 USC §1693, *et seq.*

The Proposal would also revise the official staff commentary to Regulation E. The commentary interprets the requirements of Regulation E to facilitate compliance primarily by financial institutions offering EFT services to consumers. In general, the Proposal would revise Regulation E and the related commentary to allow the automated teller machine (“ATM”) fee disclosure signage to reflect appropriately variables within the industry as to fee imposition patterns.

II. Wells Fargo’s Comments. Wells Fargo respectfully offers the following comments to the Board in support of the Proposal.

Wells Fargo supports the Proposal amending Section 205.16 and the related commentary. The Proposal expresses the common-sense intent behind the fee-disclosure requirement, which is to inform meaningfully potential users of charges the ATM operator imposes for transactions undertaken at that machine. That disclosure is a two-part one: The placard posted “on or at” the ATM machine (12 C.F.R § 205.16(c)(1)) serves to notify consumers of the ATM operator’s general fee-imposition policy, whereas the on-screen disclosure (§ 205.16(c)(2)) serves to inform specifically ATM users (before they are committed) whether they will incur a fee in that particular transaction.

Each form of notice serves a different purpose. A placard notice, with which this Proposal is concerned, is static and therefore cannot serve the purpose of a specific disclosure. The question, then, is whether the Proposal is faithful to the purpose—notification of the ATM operator’s general fee-imposition policy—for which a placard notice was intended. We think it is.

Fee-imposition practices by ATM operators vary greatly from one operator to another, as the Supplementary Information recognizes. Furthermore, these practices vary over time even

within a single ATM operator. Given that fact, the Proposal ensures both accurate and meaningful disclosure to consumers, and at the same time is flexible enough to accommodate ATM operators' different fee practices.

Specifically, the Proposal will allow ATM operators to use applicable and correct phrasing depending on whether or not fees are imposed on every customer, or only on some customers. Clarifying the permissibility of some variation in verbiage on the signage will allow ATM operators to post signage accurately reflecting their actual fee practices.

Wells Fargo, for example, waives fees in a number of different categories or circumstances. Thus, the verb "may" charge is accurate. Moreover, at any given time, we may have different fee-imposition (and waiver) protocols applicable in different regions, depending on market forces and other circumstances. Finally, our policies about charging fees for ATM transactions (or, waiving those fees) can and do change over time. The most recent example is the informal request by some of the ATM networks asking their members to waive fees for cash withdrawals by customers affected by Hurricane Katrina.

It is relatively easy to add or delete a surcharge-waiver category, such as the "Hurricane Katrina" category. That is essentially a programming function. But a placard is static. So, an ATM operator that uses the verb "will charge" in its placard may be concerned that its signage would become suddenly inaccurate if it were to recognize a new (or temporary) waiver category. Based on prior experience, we estimate that changing existing signage costs our institution approximately \$200,000, and takes about three months to implement. Such expense and effort with no increased clarity for consumers seems wasteful at the very least, and could discourage ATM operators from responding to unexpected events.

The Proposal will also conform the regulation to what appears to be differing disclosure practices among ATM operators. For example, a recent informal survey of the ATM signage practices in downtown San Francisco revealed that 11 ATM operators used the phrase “may charge a fee,” while seven used the phrase “will charge a fee” or “charges a fee.” The Proposal recognizes that each may accurately reflect that institution’s practices.

Wells Fargo strongly supports the Proposal as consistent with the intent of EFTA § 904(d)(3)(A) and (B), in providing that an ATM operator, charging a consumer for EFT services, must provide accurate notice to such consumers. Given the further regulatory requirements of explicit on-screen fee disclosures, Wells Fargo believes that the Proposal will serve the dual purposes of providing consumers with clear, precise disclosures as to each consumer’s particular situation as well as eliminate any lack of clarity for ATM operators as regards the signage requirement.

III. Conclusion. Wells Fargo wishes to express its appreciation for the opportunity to offer its comments to the Proposal. If you have any questions to the foregoing, please do not hesitate to contact us.

Sincerely,

Ted Teruo Kitada
Vice President &
Senior Counsel

cc: John P. Nicholson
William L. Stern, Esq.