

July 24, 2008

Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th St. and Constitution Avenue, NW.
Washington, DC 20551
regs.comments@federalreserve.gov

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW.,
Washington, DC 20552
ATTN: OTS-2008-0004

Re: FRB Docket No. R-1315; Regulation DD 73 Federal Register 28739; FRB Docket No. R-1314; OTS Docket No. OTS-2008-0004; Unfair or Deceptive Acts or Practices; 73 Federal Register 28904; May 19, 2008

Dear Ms. Johnson;

Thank you for the opportunity to comment on the proposed amendments to Regulation DD and to the Unfair and Deceptive Act and Practice Rules. Morrill & Janes Bank and Trust Company is a nearly a \$500 million bank headquartered in Merriam, Kansas and operating mostly in rural Northeastern Kansas. As a small community bank we feel that the proposed changes are unnecessary and burdensome. We believe that the current provisions of Regulation DD implemented in 2005, already adequately and appropriately address the issues raised in this proposal.

Morrill & Janes has offered overdraft protection to our customers since 1999. Enrollment in our program is not automatic and new customers must have some seasoning before the program is started with account holders. We do not arbitrarily grant excessive credit limits to customers and there is not an absolute contract to pay all overdrafts. We feel that the individual review of overdrafts plus a risk based decision-making process offers customers a benefit while limiting the bank's exposure. Our program clearly discloses the fees involved in the program and provides the customer with an "opt out" from the program. Over this time period, less than 1% of our customers have chosen not to participate in the program. In addition, we have had no customer complaints or negative comments concerning our program. Our program provides a beneficial service to our customers and meets the current regulatory requirements. Any changes to the regulation would impose additional burden on the bank, which would increase costs to customers.

While we can see the concern that some banks have turned overdraft programs into a revenue enhancement tool, we feel that existing regulatory tools are available to curb this practice. We recommend not implementing any of the proposed changes for the following reasons:

Customers know overdrafts are avoidable using good account management—and they demonstrate month after month that they can do so. Many of our customers make it through the year without a single overdraft. A 2007 survey conducted by the American Bankers Association with Ipsos-Reid research showed that 80 percent of consumers paid no overdraft fees in the previous year, and - of those that did - 88 percent said they were glad the bank covered their payments. An internal review of our accounts shows that 85 percent of our account holders have not had an overdraft on their account this year. Clearly this proposal would impose additional regulatory burdens on all banks while overdraft fees only affect a small percentage of customers

While bank customers understand that it is their responsibility to balance their accounts, overdraft and insufficient fees do happen. Overdraft fees are the price for the bank to accommodate a payment choice made by the customer, rather than denying a transaction. Exactly the same amount of money would be made if the bank denied the transaction as our fee (\$22.00) is the SAME for overdrafts and insufficient fees. If we deny a transaction, merchant fees assessed to the customer outside the bank are added to the transaction (in our area these merchant fees are approximately \$40), so a customer would pay a total of \$62 (\$22 to the Bank and up to an additional \$40 to the merchant who the item was returned NSF to). Our customers see real value when the bank accommodates their payment decision and they only have to pay \$22.

The concept of providing a "partial opt-out" covering ATMs and debit cards is not feasible. Being a community bank, we are totally reliant on third party providers for our Information Technology needs including ATM and debit card processing. Currently our vendors do not have the capability of providing an opt-out on an individual customer basis. Our vendors have the capability to not allow overdrafts using ATM or debit cards; however, this can only be done on a global basis affecting 100% of our customers. We currently allow customers to access their overdraft program at ATMs and at merchants and have had ZERO complaints about this policy. The current amendments would force us to limit this availability due to system limitations or it would force the vendor to modify their current systems. This software/hardware cost would be passed along to the bank, which in turn would be passed along to customers. To provide an opt-out by access device limits customer choice and raises costs.

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In addition, our technology will not allow us to differentiate debit card Point-of-Sale transactions from debit card recurring payment (or card-not-present) transactions covering items such as cell phone bills, other utility obligations, insurance premium payments, etc. This means that a partial opt-out for debit cards will be too broad for many customers because an inadvertent overdraft caused by a recurring debit card payment would not be paid for someone who exercised a "partial opt-out." The customer educational issues related to this area would be burdensome on the bank and would cause customer confusion on which transactions conducted with their debit card would be covered and which ones would not. In addition, customer confusion could take place as the customer may feel that all overdrafts would be covered when in fact the payment of any overdraft, regardless of access device, is discretionary.

Adequate Notice and Disclosures are currently being provided to customers. Customers who overdraw their account are already aware of the consequences. Not only do we provide notices to the customer when their account is overdrawn, we also verbally contact customers. These notices are delivered within 3 days of the overdraft if not sooner. Customers do not need repeated notices that they can opt-out of a convenience that they have chosen. As stated earlier, less than 1% of all account holders have chosen to opt out. The additional cost to provide notices will again create additional software expenses, which will be passed on to the bank and then ultimately passed to the customer. We feel that a change in the notice requirement will be burdensome with no value to the customer.

Additional Comments.

Payment clearance practices should remain a decision to be made by the bank not regulators. Payment clearance practices (high to low, low to high, numeric order) are complex and vary widely across the industry. Each bank has made their own risk management decision on payment clearance. As there are many different ways to clear items, it is clear that there is not ONE best way to clear items; the regulators should avoid micro-managing business practices of the industry.

Debit Holds: The provisions concerning debit holds are confusing, hard to implement and would increase the bank's payment risks. Restricting when banks can charge fees for overdrafts caused by debit card authorizations changes the nature of the risk management decision for banks because it impacts whether banks will be properly compensated for intermediate transactions that settle "out of funds" while the

authorized transaction is in transit. This is a significant countervailing safety and soundness benefit to the assertion that overdrafts caused by holds are unfair.

Overdraft fees are calculated based on following clearance systems designed to provide payment-processing efficiencies that reflect technical capabilities and the varied risks banks face for handling different payment channels. These systems, and the clearance order they generate, change as technological advances occur, as payment channel mix alters to capture customer usage trends and as legal liabilities evolve. They are not manipulated to generate overdraft fees. It would be impossible to give individual customers the right to alter the bank's clearance process. In addition, many of these clearance processes are too complex to explain in easily understood terms in any consumer disclosure.

In conclusion, providing overdraft accommodations to our customers is not an injury but a benefit and is reasonably avoidable by customers exercising normal care. Our accommodation program is successful because the benefits outweigh the disadvantages. In Kansas, writing bad checks is a crime. Customers appreciate the bank paying an overdraft to avoid the potential embarrassment associated with legal action. Customers appreciate the bank's willingness to approve transactions that exceed their balance as it shows that we trust them to handle their account properly. While other banks may encourage overdrafts for revenue enhance, our program was modeled for customer convenience and accessibility. Our program meets the 2005 Interagency Guidance. We feel that this proposal effects very few individuals, is costly and burdensome to implement, therefore we ask the agencies to withdraw the proposal.

Sincerely,



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