

July 25, 2008

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> St. and Constitution Avenue, NW  
Washington DC 20551

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

To the Board of Governors:

This response to your request for comment on proposed regulations on overdraft protection programs is based upon Fidelity Bank's experience as a \$400 million mutual bank in central Massachusetts serving both urban and rural communities. As recently as eight years ago the Bank enforced a strict non-payment overdraft policy, and on a weekly basis we would receive criticism from customers for not allowing overdrawn balances on credit-worthy accounts. We began relaxing that policy on an account-by account basis, but that process remained arbitrary and resulted in customer dissatisfaction. Over three years ago we instituted a formal overdraft protection program based upon Strunk & Associates recommendations. Since its inception, our customers' enthusiastic acceptance of this program has demonstrated that they see true value in this service. Our Bank has a very low opt-out rate, and we receive letters of gratitude from customers for saving them the embarrassment of non-payment of transactions as well as preventing them from incurring returned check fees.

The value to the Bank of this program is in providing a clear, non-arbitrary policy and procedure for addressing an on-going need for our customers. With so many ways to access their funds, whether by check or ACH or debit card or internet payment, our customers tell us that their lifestyles makes it difficult for them to keep a daily tally of their account balances. They rely on the overdraft protection program to keep them out of trouble, and they are willing to pay the \$25 service fee for that value.

Our Bank is pro-active in ensuring that this program remains a benefit to our customers. We have adopted the 2005 interagency guidance for overdraft protection programs. If we observe that a customer is misusing the program, we counsel them on how to responsibly manage a checking account, and will terminate their participation in the program if the misuse continues. Our customer service employees are given liberal authority to rebate overdraft fees when they believe a customer has misunderstood the program. Our self-regulation has worked and we continue to receive strong support from our customers for this service.

Based upon our experience, we do not see the need for additional regulation of overdraft protection plans. We are concerned that some of the proposed regulations will not serve the interests of the consumer. The proposed partial opt-out for ATM and debit card transactions will be confusing for customers, and not readily accepted by them. For example, some debit card transactions are now being processed as ACH transactions, and consumers have no ability nor interest in making that differentiation. In fact, the payment system continues to be evolving, and it would be counter-productive to try to regulate a partial opt-out based upon a category of transaction. Better to leave it as it is, with either a universal opt-in or opt-out. The proposal for waiving overdraft fees caused by debit card holds presently cannot be done by our software, and would impose a substantial compliance cost to us. Allowing customers to choose a transaction clearing methodology does not fully take into consideration the way transactions are now posted. We process in a real-time posting environment, where most of the transactions are ACH or debit card in origin. Posting priority made sense when posting check batches, but it becomes irrelevant in an electronic transaction environment where items are posted throughout the day. It would be deceptive to tell customers to expect high items to post last, when check transactions only apply to a small percentage of their transactions. Finally, periodic disclosures should be used judiciously. Their effectiveness is diminished as they become more numerous. There is now a monthly disclosure of overdraft fee activity on our customer statements. Any additional disclosures would be redundant and ineffective.

In conclusion, our customers clearly see value in our overdraft protection service, and have continually demonstrated a willingness to compensate the Bank for that service. Our customers who do not see value in that service can easily opt-out, and have done so without any loss of the other values offered by our checking accounts. We strongly disagree with any characterization of overdraft protection plans as unfair or deceptive business practices, and do not see the need for further consumer regulation of this product.

Thank you for your consideration of our comments.

Sincerely,



Paul T. Przybyla  
Sr. Vice President/Compliance Officer

Cc: Board of Governors of the Federal Reserve System  
Federal Deposit Insurance Corporation