First National Bank
3256 Ridge Road, Lansing, Illinois 60438
Phone: 708-474-1300 Fax: 708-474-1331

July 27, 2008

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

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–1314; OTS Docket No. OTS–2008–0004; Unfair or Deceptive Acts or Practices; 73 *Federal Register* 28904; May 19, 2008

Thank you for this opportunity to provide comments on the proposed rules regarding Overdraft Services.

I am the Chief Operating Officer at a community bank in the Chicago Southland region. We follow the guidance provided for an overdraft program.

Our fee for paying an overdraft item and taking additional risk is the same as the fee we charge if the item were to be returned. We do not access any additional fees on consumer accounts while they remain overdrawn. By paying the overdraft the bank is taking on added risk of collections and loss of interest with no additional cost to the consumer. In addition by providing this service the customer is avoiding the additional costs and embarrassment that results from a returned item to the payee.

Given the benefits of an overdraft program has for the consumer, I have concern that some of the provisions may be burdensome and result in overdraft programs that benefit the consumers being eliminated.

Overdrafts avoidance is all in the control of the consumer. Consumers are encouraged to maintain good records of their account and reconcile the account monthly when the account statement is sent. I include the comment in the Registry stating that a consumer cannot reasonably avoid injury.

Injury is not reasonably avoidable. It appears that consumers cannot reasonably avoid this injury if they are automatically enrolled in an institution's overdraft service without having an opportunity to opt out. Although consumers can reduce the risk of overdrawing their accounts by carefully tracking their credits and debits, consumers often lack sufficient information about key aspects of their account.

For example, a consumer cannot know with any degree of certainty when funds from a deposit or a credit for a returned purchase will be made available.

It is stated a consumer "often lack sufficient information about key aspects of their account". I do not agree with this premise. The consumer is the one authorizing all transactions for their account and should be maintaining a registry of the account activity.

An example is given regarding the timing of when credits will be made available.

Regarding a deposited item Reg CC requires the financial institution to have a stated funds availability policy. This policy is disclosed at account opening and also posted in the bank. When the bank invokes exceptions as provided in Reg CC to the stated policy the bank must either

- provide notice of the delayed availability at the time the deposit is being made so the consumer is aware the availability timing, or
- If the delay in availability is not at the time of deposit then the bank must waive any overdraft fees resulting from the delay in the availability

Therefore the regulations already afford the protection to consumers from fees as a result in delayed availability on deposited items beyond the time that the consumer knows the funds would be available.

Regarding the credit for return of merchandise nearly all banks provide free access to obtain information on consumer accounts via 24/7 automated systems through the internet and telephone portals. Therefore a customer can obtain when the funds from a return item are available.

Therefore I do not feel the Legal Analysis is factual and Consumers do have a reasonable means to avoid the "injury" of paying a fee for a valuable service. The fee can be avoided by maintaining a positive balance in the account, maintain a checking account registry, know the funds availability policy of the institution and access account information through the 24/7 portals.

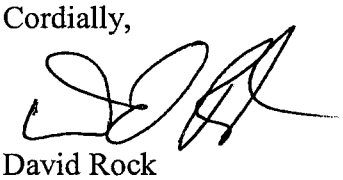
There is proposed provisions in which exceptions apply when a fee could be applied if a consumer were to opt out.

(3) *Exceptions.* Notwithstanding a consumer's election to opt out under paragraphs (a)(1) or (a)(2) of this section, you may assess a fee or charge on a consumer's account for paying a debit card transaction that overdraws an account if:
(i) There were sufficient funds in the consumer's account at the time the authorization request was received, but the actual purchase amount for that transaction exceeds the amount that had been authorized; or
(ii) The transaction is presented for payment by paper-based means, rather than electronically through a card terminal, and you have not previously authorized the transaction.

There is a third instance that should be added. There are instances when an authorization is provided on a card transaction and before the actual debit is received for the card

transaction an intervening check or ACH is received and posts to the account. As a result of the intervening debit the card transaction that was approved based on available funds post as an NSF. Therefore this fact pattern needs to be included as an additional exception for the application of a fee if a consumer were to opt out.

Cordially,



David Rock
Senior Vice President
Chief Operating Officer
Phone (708) 474-1300 x172
Fax (708) 418-2126
Email: drock@fnbiweb.com