Katahdin
Trust Company

By electronic delivery

July 28, 2008

Jennifer J. Johnson
Secretary
Board of Governors of the Federal
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Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW.,
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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

Katahdin Trust Company is pleased to submit its comments to the Federal Reserve Board, Office of Thrift Supervision, and National Credit Union Administration's jointly proposed Regulation AA, which implements the Unfair and Deceptive Practices provision of Section 18(f) of the Federal Trade Commission. 73 *Fed. Reg.* 28904 (May 19, 2008.) Specifically this Proposal:

- Proposes that banks be prohibited from charging overdraft fees unless the customer has first been given the opportunity to either fully, or partially, opt out of having fees charged for overdrafts.
- Proposes that banks be prohibited from assessing overdraft fees if the overdraft is caused solely due to a hold placed on funds in an account that does not leave enough "available funds" to cover the actual purchase amount of the transaction.

Katahdin Trust Company is a community bank organized under the State of Maine and regulated by the Federal Deposit Insurance Company (FDIC) with assets of $477 million. Katahdin Trust Company prides itself on offering outstanding customer services in a compliant, safe, and sound manner. Our comments to the Regulation AA proposal focus on the current state of overdraft accommodation services and the unnecessary, and potentially confusing, "opt out" provisions. Katahdin Trust Company joins the American Bankers Association and the industry in opposing the "debit hold" provisions of the proposal however we have no specific comments. As a further note, Katahdin Trust Company joins, and agrees, with the comments made by the American Bankers Association in regards to the related Federal Reserve Board proposal to amend Regulation DD.

Overdraft Accommodation

Overdraft accommodation is a service that is provided to customers which offers real value to the customer in return. A fee is charged for the service, as with any other service that a bank may provide, and this fee is covered in the account agreement that new customers sign when opening an account with the bank. The average customer is also aware that account management, and keeping their account balanced, is a responsibility that still lies with them. However, despite this knowledge, and the additional information received at account opening, customers are still overdrawing their accounts because they see it as a convenient service.

Katahdin Trust Company and other financial institutions are not contractually obligated to pay an overdraft on any given account. Rather, the overdraft procedures at Katahdin Trust Company utilize a risk-based discretionary process. Customer accounts are not permitted to stay open after excessive overdrafts, sustained overdrafts, or any other abuse of the overdraft process The purpose of the overdraft process is to accommodate customers who may periodically overdraw his/her account. The customer will often rather pay the fee imposed by the Bank then to face the embarrassment of having the item returned, or their transaction rejected at point of sale. In addition, the customer will often face more onerous fees from merchants for having an item returned. Finally, customers can still face legal issues when having items returned. Therefore, the customer is not "injured" by the imposition of the fee. Quite to the contrary the customer is assisted in avoiding the consequences of a returned, or rejected, item.

In addition to saving costs and potential embarrassment some customers will overdraw their account out of necessity or convenience. This is evidenced by customers who receive a notice at the ATM machine that their withdrawal will overdraw their account and that a fee will be imposed if the transaction is continued, yet continue the transaction in any event. Katahdin Trust Company current utilizes such a disclosure at its ATM machines and is aware that customers have continued with the transaction after having received the notice. Again, banks would not continue to be able to charge and collect such a fee if customers were not utilizing the service even with the knowledge that fees will be charged as a result.

The proposal, as written, would provide customers with continued notices that they could "opt out" of having future items paid as an accommodation to them. As discussed above, the process of overdrafts is not kept hidden from the customer under current practices and therefore an "opt out" notice would be unnecessary. The "opt out" notice would only serve as an additional piece of paper that a customer receives and either discards at a cost to the bank or becomes confused as to what it means.

Further, the proposal would allow for a "partial opt out" whereby the customer could choose to have checks and ACH items paid but not POS or ATM debit card transactions. This option would most likely lead to customer confusion, impose a nearly impossible operational burden on banks, and provide little, if any, benefit to the customer.

First, as noted above, Katahdin Trust Company is not contractually obligated to pay an overdraft. However, under the "partial opt out" the bank would be legally prohibited from paying certain overdrafts while maintaining the discretion to pay others. A consumer could, in good faith, believe that the bank is now actually obligated to pay any overdraft that is not included in the "opt out" provision. They could therefore conduct business in their account with a false sense of security.

Secondly, from a banking operational standpoint, differentiating between debit POS transactions and ACH items can become very complex and time consuming. The banking system in processing payments (in deciding what items to pay or not to pay) would become clogged and more time consuming. In addition, many people now utilize their debit cards for recurring payments (cell phone bills, electricity, etc ...) and it would be very difficult for the bank to parcel through the various payment processes. Further, a customer could find that a regular recurring bill that they intended to be paid, even via overdraft, does not get paid because the "partial opt out" was so broad as to cover such recurring payments. Additionally, many customers use their debit card as their primary payment method, often carrying no other payment means. Finally, overdraft fees are generally calculated following payment clearance methods that were designed to provide the greatest level of efficiency available technologically and which reflected the risk that banks face in the process. These systems change as technology and legal liability issues evolve and are not manipulated for overdraft fee generation purposes. As such, it would be impossible to allow individual customers to alter the banks clearing process. Additionally, the process is so complex that it would be impossible to convey the information to the consumer, in understandable terms, in a disclosure.

Lastly, this "opt out" provision does not convey much benefit to the customer. Rather it contains provisions that could easily confuse the customer and cause them embarrassment with returned items, while posing numerous obstacles for banks.

Customers are aware of the cost of overdrawing their account and having the bank cover the transaction. They are informed in their account agreements, they are informed when the overdraft occurs, they are aware of the issue in their every day lives and yet they continue to utilize the service. An "opt out" notice will not further the knowledge level of the consumer. Banks, however, will impose new costs in monitoring accounts for "opt outs," potentially investing in new technology to parcel through "partial opt outs," and expend human time costs in slowing the overall process down. The costs to the financial services industry thereby exceeds any real benefit that the customer might potentially receive and could actually hinder the customer since transactions will be denied and the customer will impose fees and costs through other avenues. Ironically, this provision could cause the customer to face an "injury" despite its intention to avoid just that.

In closing, Katahdin Trust Company, while it does not market an overdraft program, implemented those portions of the 2005 Interagency Guidance on overdraft programs as was applicable to its overdraft procedures. This Guidance has already made the practice of overdraft accommodation even more transparent to the customer and does not represent an unfair or deceptive act, nor does it "injure" the customer. We have never received any regulatory criticism for the operation of our overdraft process. The practice is not unfair, nor is it deceptive; rather the process we use is for the benefit of our customers who are well aware of the cost of overdrawing their account prior to doing so.

As such, Katahdin Trust Company appreciates the opportunity to comment on this important matter. We are in fundamental agreement with the 2005 Interagency Guidance and Best Practices, which among other things allowed customers the opportunity to know which kinds of transaction, would trigger an overdraft and we are committed to being transparent with our customers as to our fees for the overdraft accommodation that we provide to them. Customers should, however, understand the potential downfalls to having an item returned rather than paid and should not find themselves penalized for opting out of more than they intended to and be awarded the ability to control their own accounts, through responsible account management.

Sincerely,

Jon J. Prescott
President & CEO