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August 4, 2008

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

Chief Counsel's Office
Office of Thrift Supervision
1700 G. Street, N.W.
Washington, D.C. 20552

Re: Docket No. R-1314
Docket No. OTS-2008-0004

Dear Ms. Johnson and Chief Counsel,

Flagstar Bank, FSB (Flagstar) appreciates the opportunity to comment on this proposed rule. Flagstar is a subsidiary of Flagstar Bancorp, a bank holding company headquartered in Troy, Michigan, with more than \$15 billion in assets. As of December 31, 2007, Flagstar operated 164 banking centers in Michigan, Indiana, and Georgia and 143 home loan centers in 27 states. As of December 2007 Flagstar had approximately 300,000 deposit accounts, including checking, savings, MMB and CD accounts, representing approximately \$ 8 billion in assets.

While we share the concerns of the OTS and the Board that the practices of some in the industry with respect to overdraft protection services may mislead customers, it is our belief that this proposal will have a significant adverse impact on our ability, and the ability of other financial institutions, to provide valuable benefits to our customers. Additionally, we feel that the current regulatory framework provides customers with sufficient information to make informed choices about utilizing a financial institution's overdraft protection services.

One example of the effectiveness of the current regulatory framework is the OTS Guidance on Overdraft Protection Programs, which was issued in 2005. It includes numerous best practice processes and procedures that insure that consumers are provided with an "opt-out" provision and that they are not provided with misleading or inaccurate materials, regarding a financial institution's overdraft protection program.

We implemented this Guidance and, as such, we disclose costs and terms, regarding our overdraft programs in our account opening documentation, we make clear in that disclosure that we are not promising to pay items, we avoid encouraging customers in marketing materials, advertising, and communications to overdraw their accounts, we inform customers of other ways to handle overdrafts, such as through lines of credit and automatic transfers; and we proactively offer an "opt-out" to customers. We believe that it would be unfair to find our program to be deficient when, in fact, we have followed this Guidance.

We agree that customers should have the ability to opt-out of overdraft services prior to the time that they are charged for the service. We currently provide our customers with that opportunity. The vast majority of customers know that they can avoid these fees by managing their accounts to avoid overdrawing them and are in control of their account activity accordingly. As a result, we believe that offering that opportunity with every statement in which a fee for an overdraft service is charged, will be both costly and ineffective.



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The proposal also includes a partial opt-out, whereby a customer could opt-out of having his/her ATM and debit-card transactions covered by an overdraft program while retaining overdraft services for checks and ACH transactions. We believe that this inconsistency in the treatment of debits would prove to be confusing while not offering a true advantage to the customer. Additionally, implementing this provision would be quite costly.

We are also concerned that the operational impact of activating overdraft services on debit holds would create excessive costs and would require that we extend our processing window for items. Also, we believe that this proposal may confuse customers by giving them the impression that banks are doing more than simply acting to assure merchants that funds are available for authorized transactions.

Lastly, we believe that any regulatory requirement on processing order would be impossible to manage. Today, different types of items are presented for processing at different times, making it impractical to require reliance on a single rule. Currently, order of recognition varies across the industry to take advantage of system efficiencies. Such efficiencies would be lost if one order recognition rule was mandated.

Sincerely,

Michele K. Spear
Chief Compliance Officer