

**James G. Pierné**  
Chairman  
and Chief Executive Officer



**Susquehanna Bank**  
59 West Washington Street  
PO Box 919  
Hagerstown, MD 21741-0919  
Tel 301.714.7875  
Fax 301.790.6503  
Jim.Pierne@susquehanna.net

July 31, 2008

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave., NW  
Washington, D.C. 20551

Dear Ms. Johnson:

Re: Docket No. R-1314  
Proposed Rule Unfair or Deceptive Acts or Practices

Susquehanna Bank is a Federal Reserve member bank which serves customers in Maryland, Pennsylvania and West Virginia. We are affiliated with Susquehanna Bancshares, Inc., a bank holding company with assets of approximately \$13 billion. We appreciate the opportunity to comment upon the proposed changes to the provisions regarding overdraft services for consumer deposit accounts.

Susquehanna does not offer payment of overdrafts through a disclosed program which assures payment of overdrafts up to certain dollar amounts or frequencies. It appears that many of the concerns expressed in the proposal can only result from a disclosed program, since otherwise the customer has no reason to assume that any overdraft will be paid. Additional requirements for disclosed programs might assist customers in modifying their behavior; however without an agreement to pay overdrafts, we can not see why a customer would assume an overdraft would be paid.

Overdraft decisions at Susquehanna and many financial institutions are made through a combination of automated criteria and staff decisions. Our customers receive no assurance that any overdraft will ever be paid. The fee for payment of an item which exceeds the customer's available balance is the same as the fee for returning an item which would have overdrawn the account. Therefore, there would be no reduction in cost to these consumers by not paying overdrafts. In fact the costs to these customers would typically be higher. That is because the regulatory analysis and the alleged substantial injury to consumers from paying overdrafts disregard the fact that the customer is typically also charged a fee by the payee when a check is returned unpaid. Limiting the availability of the bank's option to pay certain small overdrafts, will result in consumers actually having more costs than if the overdrafts were paid.

For banks which do not have disclosed programs, a key concern with the proposal is the customer confusion that an opt out would cause. If there is no right to have an overdraft paid, to tell the customer that there is a right not to have checks or ACH or ATM transactions paid seems confusing. What are they opting out of, if there is no right to have an overdraft paid?

An opt out requirement also raises a potential legal issue that the bank is giving the customer some assurance that an overdraft may be paid or will be paid just by offering an opt out. State laws in some of our jurisdictions prohibit an agreement to pay an overdraft except with a written credit plan. Would an opt out put the bank at risk of a judicial or regulatory determination that an unlawful overdraft plan under state law is being offered? We believe this is an important issue that should be considered.

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
Page 2

The proposal also raises a number of concerns for financial institutions due to the limitations in current item processing technology. Many data processing systems can not distinguish a converted electronically presented check from another form of electronic payment. While the customer issues a paper check, it may be presented by ACH or by a Check 21 electronic version. The number of electronic check presentments is growing every year. To draw a payment distinction for overdrafts ignores the reality of financial services in the 21<sup>st</sup> century. Many financial institutions can not currently accommodate a customer request that checks can be paid regardless of creating an overdraft but ACH payments are to be rejected if they cause an overdraft. We strongly urge that if an opt out is adopted, banks are permitted to follow an all or none process rather than the partial opt out as proposed.

As another example, point of sale transactions are approved based on the account balance at the time of the authorization. The balance at time of presentation may have been reduced by other items presented or withdrawals made by the customer. Since the transaction was approved, the bank is required under the operating rules to honor its authorization. If a customer elects to opt out of having electronic payments create overdrafts, and the financial institution can not determine in advance that an electronic payment will be the transaction that overdraws the account, then the financial institution would be prohibited from charging for that overdraft even though when approved the transaction was within the balance available.

The proposal also seems to minimize the bank's costs of overdrafts. There is in fact extra expense to return a check. Customers must receive additional notices if the check is returned and if the check is paid, the overdraft frequently involves personnel time to collect the amount advanced. Overdraft fees do produce income; however it is not without related costs.

In summary, we believe this proposal should not be applied to payment of overdrafts except under a disclosed program. To allow an opt out where there is no disclosed program is very confusing and may be misleading to consumers.

There should be no requirement to allow consumer partial opt outs of payment of overdrafts. This does not reflect the current payment processes and the potential of totally electronic presentations in the near future.

We appreciate this opportunity to share our comments.

Very truly yours,

  
James G. Pierné  
Chief Executive Officer