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August 1, 2008

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

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

Dear Ms. Johnson and Mr. Bowman:

Thank you for the opportunity to comment on the Proposed Rule to Reform Credit Card and Overdraft Practices under Regulation AA – Unfair or Deceptive Acts or Practices. I am the Vice President of State Bank of Gibbon located in Gibbon, Minnesota.

It is my opinion that the proposed rule changes are not the most effective way to properly address concerns over the ability of consumers to understand the terms of their overdraft protection programs. Instead, this proposal could lead to serious unintended adverse consequences for industry operations, customer service value, and market innovation.

Overdraft programs are a product that benefit both banks and their customers, and therefore are a product in high demand. Through the development of a safe and sound overdraft program, we have been able to accommodate the needs of our customers. As with many products, overdraft protection is not without a fee. However, our customers recognize that this product provides a value, and the fee is the known price to pay for the protection.

Overdraft fees are easily avoidable and are not unfair when assessed without a formal advance opt-out notice. These fees are part of our account agreements and new customers are made aware of these fees as well as any maintenance and NSF fees when opening their accounts. They

have advance knowledge of the fees and costs of accessing overdraft protection on their accounts without an additional advance opt-out notice.

Our customers understand that it is their responsibility to balance their accounts, and most regularly manage their accounts to avoid overdrafts. When they choose to utilize the overdraft protection, a fee is incurred. These fees are not "injurious" as alleged in the proposal, but instead are the price paid for a valuable bank service. Furthermore, overdraft services provide many benefits to our customers that outweigh the cost of the fees. In many instances, our customers are saved from paying merchant fees for refused items. Our customers are also able to save face with merchants, avoiding the embarrassment and the possibility of criminal charges since intentionally writing bad checks in Minnesota is a crime.

The addition of a formal one-size-fits-all opt-out requirement is unnecessary, serving only as an additional compliance burden for the bank. It prohibits us from adapting our overdraft program to meet the needs of our individual customers. In addition, the opt-out carries with it the potential to create confusion for our customers. The existence of an opt-out notice suggests an entitlement to our customers that does not exist because the payment of overdrafts is always discretionary.

For the same reason, a partial opt-out notice for ATMs and debit cards is unnecessary. Again, it implies an entitlement to have check and ACH overdrafts paid even though our account agreements make it clear that paying an overdraft is always at the bank's discretion. A partial opt-out would effectively allow a customer to direct the bank to pay any checks drawn on the account but not any point-of-sale debit card transactions that overdraw the account.

As with a full opt-out, a partial opt-out is unnecessary as our customers are provided with this information as part of the account agreement. Overdraft services for ATM and debit card transactions are also viewed as a valued service by our customers. Many of our customers use debit cards as their primary payment method. In addition, they schedule recurring payments with their debit cards for personal expenses such as cell phone, electricity, and insurance payments. Again, our customers understand that by utilizing overdraft services, they will incur a fee.

Not only is partial opt-out unnecessary, but it is not feasible. Our technology will not allow us to differentiate between debit card transactions from ACH and checks at the customer account level. In addition, we cannot differentiate debit card point-of-sale transactions from debit card recurring payment transactions. For this reason, a partial opt-out would be too broad for many of our customers. If a customer exercises his right to a partial opt-out, an overdraft caused by a recurring debit card payment would not be paid due to our technology limitations. To update our technology to comply would not only require the cooperation of systems providers, but would come at a great financial cost to the bank. Even if this were possible, many exceptions would be necessary due to the complexity of the processing system.

I also disagree with the proposed restrictions on debit holds. Payment clearance practices, including debit holds, are complex and vary widely across the industry. For that reason,

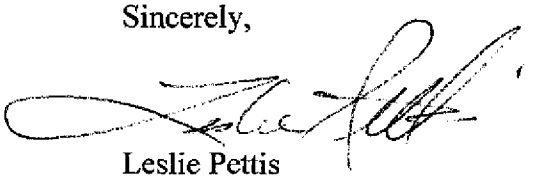
processing order varies across the industry to take advantage of system efficiencies. These systems, and the clearance order they generate, change as technological advances occur, as the payment channel mix alters to capture customer usage trends and as legal liabilities evolve. A regulation dictating the processing order would be a micro-managing disaster. Different types of items are presented for processing at different times and not always in real time, making any single rule impractical. In addition, letting the customer choose an alternative payment processing order would be absolutely impossible to manage.

Another challenge in attempting to regulate debit holds is that banks are not the only industry involved in these transactions. Merchants play a significant role in these transactions. Coordination is necessary, but introducing regulations that are only applicable to one party in the transaction is not the most effective way to achieve change. VISA and Mastercard are reviewing these issues.

The bottom line is that banks are a business. We provide services for a fee. As with any business, our goal is to provide a quality product to meet the ever-changing needs of our customers. This proposal binds our hands, preventing us from offering in-demand products without the high cost of regulatory burden. These restrictions also stifle industry innovation and creativity. If our practices were in any manner unfair or deceptive, our customers would let us know by taking their business elsewhere. This proposal is unnecessary and only serves as a setback to the industry and our customers.

Thank you for considering my input on this important proposal. If you have any questions concerning this comment letter, do not hesitate to call me at 507-834-6556.

Sincerely,



Leslie Pettis
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