

July 31, 2008

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

**Docket No. R-1315**

**RE: Proposed rulemaking regarding overdraft services**

Background: Valley State Bank is a community bank with about \$100,000,000 in total assets. The bank was founded in 1897 which makes it about 111 years old. We have been paying NSF checks for about 111 years as an accommodation to our customers. We currently charge a \$20.00 fee per item based on the lowest to highest method because this costs less for our customers. Our \$20.00 charge is less than most banks in the area. We realize that people sometimes make mistakes or errors in their checkbooks. We pay the checks based on whether or not we think we will get paid back.

**Opt Out Provisions:** I can not imagine why anyone would want to enter into an agreement for a bank NOT to pay an overdraft. I personally checked with an attorney and he confirmed that it is a CRIME in the state of Kansas in many instances to write a hot check. This adverse consequence is not listed on page 28,927 of your proposal.

**Another Opt Out comment** (from your page # 28,930): A “partial opt out” so that the consumer could request banks to pay all types of transactions except ATM and debit card transactions is a logistical nightmare. If you have an opt out, it should be universal, per customer, per account.

**Another Opt Out comment:** The chart below illustrates the comparison between opting out and choosing to enjoy a courtesy ad hoc overdraft.

Opt In  
\*Check paid: \$20.00 fee charged

Opt Out  
\*Check automatically bounces; \$20.00 return check fee charged  
\*Additional NSF fees charged by merchant  
\*Consumer embarrassed by having his hot checks displayed at merchant's check out counter  
\*Consumer arrested by local law enforcement

\*Consumer serves time in state penitentiary

I fail to understand how opting out of a traditional ad hoc overdraft protection program offers any sort of consumer protection. Perhaps you should require a disclosure on the opt out notice stating that writing a NSF check may be a crime in certain states (just a suggestion).

**Debit Holds:** To require a bank to ascertain and monitor the hold amounts placed by merchants and compare them to actual charges ultimately incurred seems to place an onerous, costly, unfathomable burden on banks. Why not require merchants to more rapidly present actual charges and make the custom of holding more than the actual purchase a deceptive practice by the merchant?

**Cost and Unintended Results of Proposed Regulation:** When formal overdraft programs became popular several years ago, we decided NOT to offer them because we believed them to be and “unethical” product that encouraged consumers to incur unnecessary and excessive charges. I have received marketing calls monthly from firms urging us to offer this service which we have steadfastly declined. Conversely, there are many consumers who see value in this type of service. They apparently choose to take advantage of it in spite of the high cost. This new regulation forces all banks into the same box. It eliminates consumer choice. Under current rules, consumers can choose to do business with a bank that offers programs that encourage overdrafts. Or they can choose to do business with a bank like us, that offers the traditional ad hoc program that pays NSF checks as an accommodation. The proposed regulation crams all banks into a new, complex, expensive, convoluted, unproductive system that seems to force us into something we don’t wish to do, i.e. offer a comprehensive overdraft program. Many of my colleagues have stated “if we have to suffer all of the additional regulatory burden, we might as well get paid for it.” The result of this regulation will be higher fees, more paper disclosures that go into the trash unread and more hassle for us all.

Sincerely,

THE VALLEY STATE BANK

Douglas M. Morley  
President

DM:jb