

Subject: Regulation AA

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Proposal: Regulation AA - Unfair or Deceptive Acts or Practices

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Comments:

1. RIGHT TO OPT OUT. We support, in principle, the substantive opt-out right established by Proposed Regulation AA. We have serious concerns about timing and content provisions found in proposed Regulation DD.

- o The timing provisions are burdensome and unnecessary. Instead of requiring a very detailed opt-out notice to be sent during every periodic statement period in which an overdraft service fee is assessed, a less frequent and more concise notice should suffice; preferably annually or semi-annually.
- o The content provisions require too much information. Instead of helping, it would probably cause information overload. For example, the model opt-out notices form would require financial institutions to disclose the following information: the fact that a fee can be assessed even if the overdraft amount is \$.01; the fact that there may be other overdraft payment services that "may" be less costly; and a definition of what an overdraft is. Given that customers are already notified of this information and in multiple ways, it seems excessive and unnecessary to require that such detailed information be provided on more than an annual or semi-annual basis.

2. PARTIAL OPT OUT. The partial opt out provision contained in the proposed amendments to Regulation AA is unnecessary and unworkable.

- o The partial opt-out would allow

consumers to retain overdraft protection services for only checks and ACH transactions, but allow them to decline protection for other types of transactions, such as “ATM withdrawals” (but not other ATM transactions?) and some but not all “POS debit card transactions”. We believe consumers will conclude that exercising a “partial” opt-out right means they will never be charged an NSF or overdraft fee. o This part of the Proposal would not only be difficult to explain in a manner that would allow it to be retained by consumers, it would be impossible to implement technologically, at least in the short run. 3. DEBIT HOLDS. o The proposal would forbid financial institutions from charging an overdraft fee for overdrafts that result from debit holds, unless the amount of the actual purchase amount (not any pre-authorized amount) for which the hold was issued would have caused an overdraft. o This is unworkable to financial institutions because the institutions (1) have always properly treated funds with a hold on them as if they were unavailable, (2) have no control over the pre-authorization amounts requested by merchants, and (3) have no technology to conduct the comprehensive, and retroactive, overdraft analysis that would be necessary to assess a fee under the Proposal.