



August 4, 2008

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

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

Dear Ms. Johnson:

Sovereign Bank appreciates the opportunity to provide comment on the joint agency proposal regarding unfair acts and practices and the treatment of overdrafts in consumer accounts. Sovereign Bank is a federal savings bank primarily regulated by the Office of Thrift Supervision. We understand any comments provided to the Federal Reserve Board on its Regulation AA proposal will be shared with the other two federal agencies participating in this rulemaking (the “Agencies”).

As we understand the proposed rule, banks would be required to provide an opt-out of what is referred to as their “overdraft services” and, in addition, regardless of whether a consumer has opted out, to waive overdraft fees in the event an excessive debit hold is placed on a consumer’s account.

The rationale behind the proposed rule with respect to the mandatory opt-out appears to be that consumers are not aware when funds in their account are available to them because they do not know when the funds from checks they deposit are available or when merchandise credits to which they are entitled are posted to their account.

We find this assertion to be somewhat puzzling in light of the Expedited Funds Availability Act and the Federal Reserve Board’s Regulation CC, which require banks to adopt an availability policy and to disclose that policy to consumers at the time they open their accounts as well as in branch locations where deposits are accepted. In our experience, consumers overdraw their accounts not because of the issues regarding the availability of their deposits but because they do not keep track of the transactions they initiate, particularly with respect to checks they write that have not yet been presented for payment.

Sovereign Bank Legal Department
75 State Street
Mail Code MA1 SST 04 01
Boston, Massachusetts 02109

We would respectfully disagree that consumers need an opt-out from the ability to overdraw their account because they do not have knowledge of the availability of funds. The most significant issue is that, despite all the means by which we do make information available—at our automated teller machines (“ATMs”), Online Banking, periodic statements, Telephone Banking, on transaction receipts—many consumers choose not to know their balance before they initiate a payment order. We assume that, to some degree, they do not check their balance because it has been their experience that the bank will often pay payment orders that will overdraw their account.

For those consumers who do not wish to overdraw their accounts, the responsible course of action is to keep track of the balance in their accounts and simply not initiate payment orders when they do not have sufficient funds in their accounts to cover their payment orders. The rule being proposed, which will entail significant programming time and expense for most financial institutions, appears to address concerns that are raised by a small number of consumers who do not track their balances, overdraw their accounts and then state that they should not have to pay the fees set forth in the fee schedules they received when they opened their accounts. We find most of our customers understand our fees and either continue to overdraw their accounts and pay the overdraft fees or they modify their behavior so they do not incur additional fees.

We, as have many financial institutions, have taken a number of steps to make sure consumers have the information they need regarding their balances. We also promptly provide overdraft notices to consumers telling them of the fees they have incurred and advising them that further fees may be incurred if the overdraft is not cleared. We monitor the number of fees our customers incur and we send letters to consumers who incur substantial numbers of fees advising them of that fact and offering other solutions, such as an overdraft line of credit or automatic transfers from another deposit account, to assist them in managing their accounts.

We also believe that whether banks are required to offer a two-tiered opt-out or simply a debit card opt-out, banks will have to spend significant resources implementing these opt-outs and that the number of consumers who will utilize these opt-outs will be very small. We also predict that many consumers who initially opt-out will discover that the options available to them in terms of the product offerings and the fees associated with those products or the inconvenience or embarrassment of declined transactions in addition to unanticipated fees from merchants will cause many of these consumers to reverse their opt-out decision.

While the bank disagrees with the need for the proposed rule, we nevertheless have specific comments on various aspects of the proposed rule, set forth below.

1. Scope of Opt-Out

In the supplemental information, the Agencies have asked for comment on whether the opt-out that is being proposed should be a two-tiered opt-out or whether banks should only be required to provide an opt-out with respect to transactions consumers initiate

using their debit card. Sovereign Bank supports the latter. To a degree, the ability of the consumer to know the balance in their account, and for the bank to be able to ensure the transaction can be paid with good funds, is much higher with respect to the payment of debit card transactions. The timing of the payment of other types of payment orders, such as checks, is beyond the consumer's control. Limiting the opt-out to debit card transactions will enable banks to make alterations in their posting order for consumers who opt-out to ensure either that there are sufficient funds to pay the order or to deny the transaction at the time it is initiated by the consumer. It also addresses the fact that the most vociferous complaints we, and we assume, other banks receive are with respect to point of sale purchases initiated by consumers with little or no balance in their account who are then assessed overdraft fees that are, in many cases, significantly higher than the actual amount of the purchase.

2. Exceptions

In addition to the exception delineated in the proposed rule, pursuant to which banks may assess overdraft fees even if a consumer has opted out of overdraft services, the Agencies seek comment on whether additional exceptions might be required, particularly for banks that process in batch and do not use a real time posting system.

We urge the Agencies to consider adding at least two additional exceptions to the list of circumstances where banks may assess overdraft fees even if the consumer has opted out. The first instance is when the consumer has deposited an item and that item is returned to the bank of first deposit unpaid. If the funds that the bank had previously made available as the result of a deposit by the consumer and that it relied upon in determining whether to authorize or pay an item are not, in fact, actually collected, the bank should be permitted to post the returned deposited item in advance of any debit card transaction. Any overdraft that then results after the debit card transactions are posted should be assessed an overdraft fee. The bank acts merely as the collection agent for any item deposited and should be permitted to assess overdraft fees when transactions are initiated by a consumer on funds that are not collected.

A second exception we would urge the Agencies to adopt would be with respect to adjustments that banks post to consumers' accounts due to customer error. For example, consumers may err in entering at the ATM the amount of their deposit and it may take one or two business days before the bank determines that an error has occurred and make an appropriate adjustment to the consumer's account. If the bank has made those funds available to the consumer based on what the consumer has erroneously entered, the bank should be permitted to post that adjustment in advance of the posting of any payment orders and then to assess overdraft fees if the payment orders overdraw the account.

3. Debit Card Holds

With respect to the waiver of any overdraft fee, regardless of whether a consumer has opted out of overdraft service, because an excessive debit card hold has caused the account to be overdrawn, we understand the delicate balancing act between the needs of

the customer to ensure his or her funds are available, of the merchant to ensure there are sufficient funds to pay for the transaction after the consumer has already utilized the merchant's goods or services, and of the banks to ensure they can meet their obligations to pay authorized transactions pursuant to network rules. The problem, as we see it, is that the consumer has no notice of the amount of the authorization amount at the time the transaction is authorized, which is when the hold is placed on the consumer's account. We understand from Visa that the issue of "excessive" debit holds not only impacts a very small percentage of debit card users but that it is in the process of implementing virtually real-time settlement process for purchases at gas stations that will virtually eliminate this issue. In light of that and the fact that, as Visa notes in its comment letter, banks would have to go through complicated analysis to determine when to waive overdraft fees, we would urge the Agencies to consider eliminating this proposal.

We thank you for providing us with the opportunity to comment on this important proposed rule. I may be reached at 617-757-5435 or at dgaudet@sovereignbank.com if there is any information I may provide or if there are any questions.

Very truly yours,

/s/ Denise A. Gaudet

Denise A. Gaudet
Assistant General Counsel