July 29, 2008

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

Re: Proposed Rules Regarding Overdraft Services
FRB Docket No. R-1314

Thank you for the opportunity to present comments on the above-stated proposal. Central Bank and Trust Co. is a community bank, with branches in Hutchinson and Wichita, Kansas. As a community bank our customer base is a wide representation of socio-economic classes.

The majority of our customers are responsible and take care of their finances. There are always those who cannot or will not balance their accounts and become habitually overdrawn. Overdraft services help the customer who would otherwise have their payment returned for insufficient funds and incur not only return item fees but also merchant fees. There are also the customers who want overdraft protection to avoid the embarrassment of having a check returned unpaid because they made a bona fide error.

Banks have always exercised discretion to cover overdrafts for good customers. Neither customers nor regulators should lose sight of the fact that overdraft programs are an accommodation based on a bank's exercise of risk-based discretion—not a contract to pay overdrafts.

Our bank implemented the 2005 Interagency Guidelines for Overdraft Protection. All new account customers are given full Truth in Savings disclosures which includes all fees for NSF and return check charges. In other words, customers know in advance what the rules and the costs are for overdrawing an account. Isn't one of the purposes of Truth in Savings Disclosures to disclose fees? Customers are also told about overdraft protection services available like ODP or opening savings accounts to automatically transfer funds in the event an account becomes overdrawn. In addition, our bank went one step further with the 2005 Interagency Guidelines: we now require new accounts to 'opt in or out' of overdraft privilege, with full understanding of the charges and knowing the service is discretionary.

In the proposal, the agencies assert that 'assessing overdraft fees before the consumer has been provided with notice and a reasonable opportunity to opt out of the institutions overdraft service appears to be an unfair act or practice and that consumers suffer monetary harm by paying a fee for a service that without an opt-out they cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or completion.' Again, all of this is addressed in Truth in Savings, Regulation DD, disclosures. All fees are disclosed to the consumer prior to account opening, including fees for return checks and overdraft fees when the check is being paid. My question is this: Is it more practical to return all checks, which would cost the customer the NSF fee and possibly also a fee from the merchant?

Customers understand that it is their responsibility to balance their accounts. The fees provide both an incentive to do so and a user charge when they fail to do so. When a customer makes a payment choice that incurs an overdraft, an overdraft fee is the price paid for bank accommodation in fulfilling the customer's choice instead of denying the transaction. In many instances, this accommodation saves our customers from paying merchant fees for refused items and avoids the embarrassment with the merchant.

Customers who overdraw periodically are aware of the consequences of their conduct and are acting in accordance with their preferences given that awareness. They do not need repeated notice that they can opt-out of the convenience they are choosing to accept—assessment of the fee is what gets their attention. We are always available (and make a point of reaching out) to work with customers who would benefit from alternative solutions to manage their transaction activity.

A partial opt-out cannot be enforced because the exercise of partial opt-out is only an election of a discretionary overdraft service and is NOT a contractual promise to pay overdrawn checks and ACH transactions. Consumers cannot effectively say, "Do not pay my POS, but pay my checks," because they have no right under law to write bad checks and compel the bank to pay them. A partial opt-out is also not practical because debit card transactions cannot be returned once approved and timing of authorization may allow the transaction but that transaction may not clear when presented for payment.

Providing overdraft accommodation to our customers is not an injury but a benefit and is reasonably avoidable by those customers exercising normal care—the kind described in Federal Reserve and Interagency consumer publications.

Sincerely,

Central Bank and Trust Co.

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