

Subject: Regulation AA

Date: Aug 04, 2008

Proposal: Regulation AA - Unfair or Deceptive Acts or Practices

Document ID: R-1314

Document

Version: 1

Release

Date: 05/02/2008

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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 Number R-1314 - Unfair or Deceptive Acts or Practices Dear Ms. Johnson: This comment letter is submitted by Associated Bank, N.A. in response to the Proposed Rule and request for public comment pertaining to Unfair or Deceptive Acts or Practices published on May 19, 2008. Our comments focus on the overdraft services setting. Associated Bank is an affiliate of Associated Banc-Corp. Associated Banc-Corp is a diversified bank holding company, headquartered in Green Bay, Wisconsin, with \$22 billion in total assets as of March 31, 2008. We feel the proposed rules relating to overdraft accommodation place an unnecessary burden on both banking customers and the banking system. The proposed rules fail to take into consideration the real adverse impact on consumer customers and the realities and complexities of the banking system. Overdraft accommodation is a customer-friendly practice that we provide as an unadvertised courtesy to benefit our customers who occasionally err and overdraft their account. It is important to point out that banks have always exercised discretion to cover or pay overdrafts. This program is based on our bank's exercise

of risk-based discretion; there is no contract to pay overdrafts. In most scenarios, returning a check or rejecting a transaction rather than paying the item as a courtesy would adversely impact our customers. Not only would the customer incur an overdraft fee for the returned item, they would also incur fees from the merchant for the returned check, often amounting to \$20-35 per item. Returning rather than paying a check could also damage our customer's relationship with the merchant and jeopardize their ability to conduct future business on favorable terms. Returning a check or rejecting a transaction for a loan or credit card payment could have a significant negative impact for our customers' credit scores, interest rates and could potentially trigger loan default terms. In addition, rejecting a point-of-sale transaction based on a general opt-out could result in embarrassment to a customer – especially if they do not have an alternate form of payment for a transaction such as a restaurant meal. Overdraft fees are fair when assessed without providing customers a formal advance notice to opt-out. That is because customers are provided with information covering all account fees, including overdraft fees when they open an account and fees are evident on statements when applicable. Customers are aware of the consequences of overdrafting their account and know that they can avoid overdrafts by monitoring their account balance. It is easy and convenient for our customers to access their account information online, via telephone banking, at the ATM or by contacting a branch. This is demonstrated by the fact that the vast majority of our customers make it through the year without a single overdraft. Even with sound account management, some of our customers occasionally do accidentally overdraft their account. Providing an opt-out may have the unintended consequence of promoting the availability of overdraft accommodation resulting in banking customers overdrafting more often as they becoming less diligent in monitoring their account. A "partial opt-out" covering ATMs and debit card overdraft transactions is neither feasible nor necessary. The complexity of our banking system can make it difficult if not impossible to differentiate a debit card transaction from an ACH or check. Many of our customers use debit cards and ACH as their primary payment means. Such customers often use their debit card or schedule ACH transactions for automatic recurring payments for everything from utility bills to loan payments. Such customers appreciate the accommodation of overdrafts on their electronic transactions. Merchant practices and disclosures on debit holds are evolving and there is no need to increase regulation in this area. Whether for debit holds or payment items, payment clearing practices are complex but driven by system efficiency and sound risk management. Such payment clearing practices do not constitute unfairness to customers. Merchants, primarily in the hospitality and car rental industries, do place holds to cover additional charges that a

customer will likely incur. Once these holds are approved, a bank is at risk for this amount and not allowing a bank to consider this hold amount when calculating available balance will place significant risks upon the banking system. In fact, customers do incur charges for food and incidentals above their standard daily hotel rate and funds must be available to cover those charges. Most merchants in the hospitality and car rental industry alert customers that a hold may be put on their account and suggest that if their customers are concerned about the amount of a hold that they should consider alternative payment options, including the use of a credit card. Additionally, card systems are evolving to address authorizations for gasoline purchases at the pump to make them virtually real-time. Rather than a prohibition on overdraft fees in this setting (which unfairly penalizes and places banks at risk for activities outside of their control), perhaps a less burdensome approach would be a basic disclosure to customers that some merchants place holds at the point-of-sale greater than the actual amount of the transaction. ATM and point-of-sale transactions present additional challenges. Customers withdrawing cash at an ATM may be lulled into depending on ATM messages regarding available funds; however, the ATM system is a network of systems under different ownerships. Banks only have the ability to control what is displayed or communicated on ATMs owned or operated by the bank. It is not feasible to expect that all systems will communicate available balances in the same way. The overdraft accommodation rules as presented really involved three separate issues: 1) the decision to pay or return an item, 2) the customer-initiated convenience of linking a deposit or line of credit account for overdraft protection purposes, and 3) appropriate use of holds and authorizations for payment of funds. Lumping these issues together is not appropriate and confuses matters. Although the intention behind the proposed rules is to protect the consumer, the rules would in fact be a detriment to not only the consumer, but to businesses and the banking system as a whole. Overdraft accommodation allows people to occasionally make mistakes with their accounts while still holding them accountable and encouraging them to manage their finances appropriately. There is no need to provide an opt-out or partial opt-out. Sincerely, Brian R Bodager Chief Administrative Officer, General Counsel and Corporate Secretary Associated Banc-Corp
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