JPMORGAN CHASE & CO.

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March 30, 2009

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

Re: Regulation E; Docket No. R-1343

Dear Ms. Johnson:

The Board of Governors of the Federal Reserve System (the "Board") has requested comments to its proposed revisions to Regulation E and the staff commentary to provide deposit account customers the right to opt out of or opt in to certain overdraft services (the "Proposal"). JPMorgan Chase & Co., on behalf of JPMorgan Chase Bank, N.A. and its other subsidiaries, appreciates the opportunity to submit this response.

JPMorgan Chase & Co. (NYSE: JPM) ("Chase") is a leading global financial services firm with assets of over $2.2 trillion and operations in more than 50 countries. The firm is a leader in investment banking, financial services for consumers, small business and commercial banking, financial transaction processing, asset management, and private equity. Under its JPMorgan, Chase and Washington Mutual brands, the firm serves millions of consumers in the United States and many of the world's most prominent corporate, institutional and government clients. Information about the firm is available on the Internet at www.jpmorganchase.com.

General Comments

Chase supports the Board's efforts to address the complex issues involved with overdrafts and associated fees. We understand that, unfortunately, consumers often are confused about these fees and how to avoid them. At Chase we want all our customers to have the tools necessary to efficiently and cost-effectively manage their finances and to have access to financial services that meet their needs. With that in mind, Chase provides free online and telephone alerts, free mobile banking, free 24x7 telephone banking support, free 24x7 online banking, and over 14,000 ATMs free to Chase customers. With these tools our customers can easily track their account balances and make knowledgeable choices about how and when to spend their money.

We recognize that consumers may overdraw their accounts on occasion so Chase offers a low cost formal overdraft protection product, where the customer's checking account is linked to her savings account or, if she prefers, a credit card account or home equity line of credit to automatically cover an overdraft. We agree with consumer advocates that formal overdraft protection products like this are the best way for a consumer to avoid the inconvenience and reduce or eliminate the unexpected expense associated with inadvertent overdrafts.

However, many customers do not sign up for our formal overdraft protection product but, of course, may still have an occasional overdraft. To accommodate these customers, consistent with long-established banking industry practice Chase may decide – in its sole discretion - to pay that customer's overdraft(s). If we do so, we charge a fee. Although Chase does not promise customers we will do this or encourage them to rely on the possibility, we believe most customers consider this accommodation a valuable service as they often would incur greater fees or inconvenience if their items were returned unpaid. Chase fully discloses to its customers that it may, but is not obligated to, cover overdrafts on a discretionary basis and the associated fees. In addition, Chase routinely waives a customer's first overdraft fee upon request.

As debit cards have become more popular, the frequency of overdraft fees arising from their use has increased. Banks, payment networks and merchants each can play an important role in helping to reduce the incidence of these fees. But, ultimately, consumers are in the best position to manage their checking accounts and avoid overdraft fees, as only they know their resources and spending needs. Accordingly, Chase believes the most effective way to help consumers avoid overdraft fees is to provide them with clear information and disclosures about checking accounts, applicable fees and payment practices, as well as up-to-the-minute account information through various channels, to help them monitor available balances and manage their accounts.

Chase understands the Board's view that further regulation of overdraft services may be necessary. Given the variety of ways consumers now are able to monitor their account balances, the wide availability of formal overdraft protection programs and the convenience discretionary overdraft services afford consumers who do not participate in a formal overdraft protection program, Chase believes an opt-out approach is far better for consumers than an opt-in, and more likely to minimize unintended consequences. This is especially true in light of the Board's recent amendments to Regulation DD. As the Board knows, effective January 1, 2010, banks must clearly disclose on bank statements the aggregate fees the consumer paid for discretionary overdraft services during the statement period and year-to-date. This new disclosure undoubtedly will heighten consumer awareness of these fees and prompt interested consumers to modify their behavior to avoid overdrafts or seek out a formal overdraft protection program.

Opt-Out v. Opt-In Approach

Consumers already are familiar with opt-outs as they routinely receive such notices under privacy, affiliate information sharing, telemarketing and spam regulations. These processes work very well. In contrast, we believe an opt-in approach could be very disruptive to consumers and merchants because consumers who do not pay attention to the opt-in notice may suddenly have their transactions rejected, impairing their ability to complete debit transactions and purchase goods and services.

Experience shows that opt-in programs, like most direct response marketing campaigns, generate low response rates, as consumers often are too busy to pay attention in advance to upcoming changes. For example, despite a year and a half of frequent advance warnings, many consumers still had not prepared for the switch from analog to digital television broadcasting, prompting the Federal Communications Commission to delay implementation. Similarly, we expect that most consumers will not focus on opt-in notices and then will be surprised, frustrated and quite possibly angry when their bank begins denying transactions.

To provide some context, we estimate that over 50 billion debit card and ATM transactions will be initiated in 2009[1]. Based on our experience, banks will authorize approximately one billion of these transactions into overdraft, and decline another 500 million due to insufficient funds. Of those debit/ATM transactions authorized into overdraft, more than 50% of the time an overdraft fee likely will not be assessed because the customer will have deposited sufficient funds before the final debit transaction has settled. If an opt-in approach is adopted and the response rate is, as we expect, relatively low, debit card denials at the point of sale could triple and as many as one billion additional consumer transactions could be declined each year; at a $40 average debit card transaction amount, this represents a potential $40 billion reduction in consumer spending.

In addition, an opt-in approach might discourage consumers from participating in formal overdraft protection programs if they mistakenly believe (i) their opt-in means the bank is obligated to cover all overdrafts or (ii) they, in fact, have signed up for a formal overdraft protection program.

An Opt-Out Should Cover All Categories of Transactions

While an opt-out approach is far better for consumers than an opt-in, we believe that any opt-out should not be limited to just debit and ATM transactions. The continuing innovation and hybridization of payment methods makes it increasingly difficult to categorize payment types. For example, consumers may use electronic bill payment services at bank or merchant internet sites that employ a number of different payment methods, including debit, ACH, eCHecks and even PayPal, which in turn may be converted into an ACH or debit card payment. Some banks offer a "debit" card that customers can use like a bank debit card, except that the issuing bank does not hold the checking account but instead converts the debit purchases into ACH transactions that draw funds from the customer's checking account at another bank. Some merchants have coupled store loyalty cards with ACH so a customer pays for a purchase by using their loyalty card and pressing "debit", but the transaction is actually routed to the customer's bank by ACH.

In addition, new payment methods are constantly being developed in the United States and globally, including mobile payments via cell phone, payments tied to driver's license magnetic stripes, college debit cards, and biometrics. These innovations will continue to provide more consumer payment options that are not easily categorized as either debit/ATM or check/ACH. Consumers may think of many of these methods as "debit", yet most run through different payment mechanisms, often without giving the customer's bank the opportunity to authorize a payment before it is initiated.

We believe that creating a separate debit and ATM opt-out is likely to confuse consumers, merchants and other payment system participants. In addition, we believe that artificially

[1] Based on data from 2008 EFT Data Book, extrapolated for 2009 based on expected growth.

distinguishing among transaction types may result in other unintended consequences, which are discussed below. Therefore, Chase recommends that any opt-out approach apply to all transaction types and we support the Board's alternative language in Section 205.17(b)(2), enabling a financial institution to condition a consumer's opt out of debit/ATM overdraft services on him also opting out of overdraft services for checks, ACH and other types of transactions.

If, however, the Board prefers to distinguish among payment types, we believe the opt-out should apply only to ATM withdrawals rather than to both ATM and debit card transactions. Unlike debit card transactions, ATM withdrawals generally do not involve a merchant or a commercial transaction already in process. Accordingly, we believe ATM transactions are much less like checks and other transactions than are debit transactions, and the potential commercial disruption and consumer confusion and frustration when an ATM transaction is declined is less significant. These are among the reasons Chase does not pay discretionary overdrafts generated by ATM withdrawals.

Other Potential Consequences

If consumers experience many more debit card declines at the point of sale, they may write more checks in situations in which they previously had used debit cards. This may strain future check clearing capacities as the Federal Reserve has been consolidating its check clearing operations due to reduced check usage and the expectation that this trend will continue. Further, such changes in consumer behavior may stifle future innovations that rely on debit card infrastructures like mobile payments and chip-based stored value cards. We urge the Board to study these potential consequences carefully before issuing a final regulation.

Initial Opt-Out Disclosure[2]

Chase supports the Board's decision not to require a financial institution to send an initial opt-out disclosure to its existing customers. Such a requirement would be very expensive. Since the vast majority of our customers rarely incur overdraft fees, we believe it would be more meaningful and effective to provide an opt-out notice to existing customers if and when they incur an overdraft fee.

We also suggest Section 205.17(b)-2 of the Proposed Commentary state more clearly that a financial institution is not required to offer consumers three different opt-out response methods (mail-in form, telephone and electronic), but need only offer one of the opt-out methods. This approach would be consistent with the Board's Regulation P (12 C.F.R. 40.7(a)(2)(ii)), which requires only one opt-out method. Consumers have become accustomed to opting out via

[2] If, notwithstanding Chase's view that an opt-out approach is significantly better for consumers and risks fewer unintended consequences than an opt-in approach, the Board decides to consider further an opt-in, we respectfully suggest that, given customer expectations and the anticipated low opt-in response rate (see discussion above) the Board implement an opt-in for new customers only and allow an opt-out for existing customers.

telephone, the most efficient and effective method, and we would support a requirement that banks provide a toll free number to do so.

We do not support presenting the initial opt-out notice on a separate document. Banks are making the account opening process more efficient and environmentally friendly. Requiring multiple disclosures on separate pieces of paper increases printing, distribution, processing and training costs. It is in everyone's best interests to reduce the costs of opening and maintaining bank accounts.

To address these issues and others, we have proposed several minor revisions to Sample Form A-9(A), which is set forth on Exhibit A attached to this letter.

Model Opt-Out Form for Periodic Statements (Form A-9(B))

We support the simpler message form proposed in A-9(B) versus a longer message. A complete explanation of the benefits and consequences of opt-out are too complex to be covered in a statement message. We agree that consultation with a banker or reference to a website is far more effective.

Location on Account Statement

Section 205.17(c)(2)(i) of the Proposal requires the opt-out disclosure to be "in close proximity" to the disclosure of total overdraft fees required under the recent Regulation DD amendment (12 C.F.R 230.11(a)), which, in turn, requires that the total fee disclosure must be "in close proximity" to the line item description of the overdraft fee required by Regulation DD (12 C.F.R. 230.6(a)(3)). The two sections together require the bank to display a lengthy opt-out disclosure and an aggregate fee disclosure next to the line items of fees charged. This is not practical for many banks. Some account statements are presented in chronological order and others are sorted by type of transaction (e.g., deposits, checks presented, electronic transactions, fees). In either case, introducing these lengthy disclosures in the middle of the account statement will make account statements unwieldy and unnecessarily complicated for consumers and banks. Accordingly, we suggest that these requirements be eliminated.

Trigger for Subsequent Opt-Out Disclosure

Section 205.17(c)(2)(i) of the Proposal states that, if an opt-out disclosure is delivered in a periodic account statement, it must be included "on each periodic statement that reflects any such fee or charge". We respectfully suggest this language be changed to read, "on each periodic statement reflecting any overdraft fee(s) or charges(s) for which the consumer could have opted out and has not done so". Even if a consumer opts out, there are exceptions under which a bank will be permitted to pay an item into overdraft and to charge a fee for doing so, and these instances should not trigger an opt-out disclosure. Providing the disclosure under these circumstances would cause significant customer confusion.

Debit Holds (Section 205.19)

The Board has asked for comments about Section 205.19 of the Proposal, which would prohibit a financial institution from charging an overdraft fee if the overdraft resulted from a debit hold where:

- the transaction amount can be determined by the merchant or other payee shortly after the financial institution authorizes the transaction; and

- the debit hold amount is greater than the final transaction amount.

We strongly support the Board's decision to restrict this section to pay-at-the-pump gas transactions and restaurant transactions where the initial amount authorized may be different from the final transaction amount but the merchant generally is able to determine the final transaction amount within a short period of time. Applying this provision to all debit transactions would create significant operational and processing issues and cause confusion for consumers. It could very well also discourage debit card use at certain types of merchants, especially hotels and rental car agencies. We would suggest, though, that the regulation more clearly specify that it applies only to pay-at-the-pump and restaurant transactions. We believe the current standard in the Proposal ("if the actual amount of the transaction can be determined by the merchant or other payee within a short period of time") is too vague and subject to varying interpretations.

However, while we recognize that the Board has proposed to limit the scope of the debit hold provision, Chase is concerned it nevertheless will have unintended consequences that negatively impact consumers. For example, many banks now offer alternative checking accounts for customers who have had previous credit or banking difficulties. Debit holds are among the tools that help banks manage the risk associated with these accounts. Further restrictions on processing debit holds may prompt banks to limit the availability of these alternative accounts, which would impede the industry's and policymakers' efforts to broaden access to mainstream banking services.

We recognize that consumers may be unaware of holds placed on their accounts in response to a debit authorization request, and may incur overdraft fees as a result. We agree this needs to change but we believe the Proposal relies on banks entirely to address this concern when merchant behavior and network operation are better suited to solve these challenges.

Chase agrees with the Board's suggestion that payment processors also should be required to settle pay-at-the-pump and restaurant transactions within a specified time frame. We note that VISA operating rules recently were amended with respect to gas station pay-at-the-pump transactions. The amended rule provides an optional new payment authorization method that requires these transactions to be settled within two hours of the initial debit authorization, and provides interchange incentives for station operators to adopt this improved process. VISA also recently restricted restaurants from adding anticipated tips to the transaction amount being authorized, because of the perceived adverse effects of account holds on consumers who had tipped with cash instead of adding it to the card transaction amount. It is clear the payment system already is being enhanced to improve consumer experiences with debit holds, suggesting there is no need for additional bank regulation.

Effective Date of Final Regulations

The Proposal would require banks to make significant changes to payment processing systems, develop a system to capture consumers' opt-out choices, train personnel, redesign statements and educate consumers. In order to give banks, payment networks, merchant processors and merchants sufficient time to develop, test and implement the necessary systems and operational changes, we recommend that the final regulations not become effective until at least 24 months after the date they are issued in the case of Section 205.19 regarding debit holds, and at least 18 months after issuance for the rest of the Proposal.

JPMorgan Chase & Co. appreciates the opportunity to comment on the Regulation E Proposal. If you would like to discuss any of our comments in more detail, please contact Andrea Beggs at 312-732-5345.

Very truly yours,

Scott E. Powell
Chief Executive Officer, Consumer Banking

EXHIBIT A
PROPOSED OPT-OUT NOTICE
INITIAL DISCLOSURE

A-9(A) Model Opt-Out Form for Account Opening
(suggested changes in italics)

EXPLANATION OF OVERDRAFT COVERAGE

Overview of Coverage
We currently provide *limited* overdraft coverage for your account. This means that if you attempt to spend or withdraw more money than you have in your account, we may decide to pay the overdrawn amount. Having overdraft coverage does not guarantee that we will pay your overdrafts. If we do, we will charge you fees. This coverage differs from other *committed* overdraft *protection* services we offer, such as linking your account to another account *you have* with us or an overdraft line of credit.

Your Right to Opt Out of Overdraft Coverage
You may tell us not to pay overdrafts for *any* ATM withdrawals and debit card purchases you make at a store, online, or by telephone, *and not to charge overdraft fees for these transactions.* [If you do, we will decline these transactions if you do not have enough money in your account to cover them, *subject to certain permitted exceptions*.] As a result, you may pay fewer overdraft fees.

Your decision to opt out will not affect whether we pay overdrafts for other types of transactions, including checks. We may still cover these transactions and *fees may apply to these transactions.* See below for more information about your overdraft coverage, including how to contact us to opt out.

Overdraft Fees *for ATM Withdrawals and Debit Card Purchases*
- We will charge you a fee of [up to] [$___] each time that we pay an overdraft.
- We will also charge you a fee of [$___] for each day your account remains overdrawn.
- [There is no limit on the daily fees we can charge you for overdrawing your account.]

Other Ways We Can Cover Your Overdrafts
We offer other ways of covering your overdrafts that may be less expensive, such as linking your account to another account with us or an overdraft line of credit. Contact us to learn more about these options *for qualified customers*.

How to Opt Out or Get More Information
To opt out of our overdraft coverage *for ATM withdrawals and debit card purchases*, or for information about alternatives we offer for covering overdrafts please: [include as applicable]
- Contact us at 1-8xx-xxx-xxxx.
- Contact us at [insert Internet address].
- Complete the form below and mail it to [insert address].

___I do not want overdraft coverage for my ATM withdrawals and debit card purchases.
Printed Name: ______________________________
Date: ______________________________
Account Number: ______________________________

EXHIBIT B
PROPOSED OPT-OUT NOTICE
SUBSEQUENT DISCLOSURE

A-9(B) Model Opt-Out Form for Periodic Statements (suggested changes in italics)

You *may* tell us not to pay overdrafts for ATM withdrawals and debit card purchases you make at a store, online, or by telephone, *and not to charge overdraft fees for these transactions.* [If you do, we will decline these transactions if you do not have enough money in your account to cover them, *subject to certain permitted exceptions*.] As a result, you may pay fewer overdraft fees.

To opt out of our overdraft coverage *for ATM withdrawals and debit card purchases*, or for information about alternatives we offer *to qualified customers* for covering overdrafts (including linking this account to another account with us**),** contact us at **1-8xx-xxx-xxxx** or [insert Internet address].