



Scott E. Powell  
CEO Consumer Banking

March 31, 2010

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> 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 proposal to amend and clarify the recent amendments to Regulation E and the official staff commentary, which limit the ability of financial institutions to assess overdraft fees in connection with certain transactions unless the consumer has opted in to those 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 and Chase 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](http://www.jpmorganchase.com).

In general, Chase supports the clarifications made to Regulation E and the official staff commentary, including the revisions to Section 205.17(b)(4) to clarify that the prohibition on assessing overdraft fees under Section 205.17(b)(1) applies to all institutions. We also appreciate the addition of several examples illustrating when a financial institution may assess daily or sustained overdraft or negative balance fees if that balance is attributable in part to a check or other transaction not subject to the fee prohibition of Section 205.17(b)(1). While Chase had already begun to modify its systems consistent with the proposed clarifications, we believe it is important that the Board provide this guidance in its official staff commentary in order to remove any ambiguity. However, we are concerned, as are many in the financial

services industry, with the Board's modification to its official staff commentary on written confirmations, and would like to provide the Board with specific comments below.

#### Proposed Comment 17(b)-7

The Proposal would amend comment 17(b)-7 of the official staff commentary to state that a financial institution may not assess an overdraft fee on a consumer's account with respect to an everyday debit card or ATM transaction until the financial institution has sent the written confirmation of the consumer's opt in pursuant to Section 205.17(b)(1)(iv). We do not believe that this amendment is in the best interest of consumers or financial institutions, because it effectively prevents a financial institution from permitting its customers to remotely opt in to overdraft services and have that election effective immediately. As a result, many consumers who have received the required disclosures, have a clear desire to obtain these services, and want to opt in outside of a branch (making it harder to provide a confirmation immediately) will be harmed because they will not have access to the range of services that might otherwise be available to them.

The original version of comment 17(b)-7 said that a financial institution could satisfy the requirement of Section 205.17(b)(1)(iv) by providing a consumer with a copy of the completed opt-in form, and include a statement about revocation on the initial opt-in notice. We agree this is sensible and reasonable. However, consumers may find themselves in a situation, after their account has been opened or after they had made an initial decision to opt out, where they want to opt in away from a branch. In its comments released with the Proposal, the Board itself recognized that "a consumer may not opt into an institution's overdraft service until the time the service is needed." The proposed new language, however, would deny consumers the ability to make that choice in real time, and would therefore work against the goal of the original Regulation E amendment to provide consumers with more choices and control over their deposit accounts. A financial institution would not be able to allow consumers to sign up for overdraft services on a real time basis unless it either does not charge any overdraft fees for the immediate use of those services, or develops costly process enhancements to immediately generate and deliver opt in confirmations.

Today, consumers are able to request many bank services electronically or by telephone, such as stop payment orders, extra copies of statements or checks, wire transfers, and expedited bill payments. Fees often are charged for these services immediately and before the bank provides any written confirmation to the consumer (typically on the monthly account statement). There is no reason to treat overdraft services differently from other bank services. When consumers are not in a branch (and therefore do not have the opportunity to receive a paper copy of the confirmation notice immediately), they should be able to order overdraft services electronically or by telephone, and pay a fee without requiring the financial institution to send a confirmation notice prior to providing the services. As with other bank services, consumers who have the desire to opt in to the bank's overdraft services at a remote location must have been previously provided with initial disclosures clearly identifying these services, and the fees associated therewith, as required by Section 205.17(b)(1)(i). The proposed restrictions will negatively

impact the ability of financial institutions to provide real time services to consumers when those services are needed.

If a consumer initiates a call to his or her financial institution while standing at a merchant's counter to inquire about a debit card transaction that was denied and requests to opt in to overdraft services, that consumer is in a good position to understand the pros and cons of opting in to overdraft services. As with any banking service, it is in the financial institution's best interest to be clear about the service and the associated cost.

Consumers should be able to opt in to overdraft services in real time, and a financial institution should be permitted to immediately authorize and pay an ATM or one-time debit card transaction pursuant to the institution's overdraft service, as long as there are procedures in place reasonably designed to send the written confirmation within two business days of the opt-in. If a consumer later claims he did not understand that there was a cost for the service, the claim should be handled just like any other claim about services and fees. Any consumer who has opted in to overdraft services has the option at any time to revoke his opt in choice, which right to revoke is clearly identified not only in the original disclosures provided to consumers before they have the ability to opt in, but also in the confirmation letter that is subsequently delivered following the opt-in election.

Finally, if the Board adopts the Proposal, we respectfully request that financial institutions be granted a grace period of twelve months to implement these additional changes. We have almost completed the extensive programming changes to our deposit systems that were required in order to be in compliance with the Regulation E amendments issued on November 17, 2009. This proposed amendment to comment 17(b)-7, if adopted as proposed, will require additional significant programming changes but it is infeasible to do so immediately.

We respectfully ask the Board to revise the proposed amendment to comment 17(b) -7 of the official staff commentary to Regulation E to allow a practical method for consumers to opt in to overdraft services in real time.

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 Michael Lipsitz at (312) 732-4223.

Very truly yours,

A handwritten signature in black ink that reads "Scott Powell". The signature is written in a cursive, flowing style.

Scott E. Powell  
Chief Executive Officer, Consumer Banking