



The Carlsbad National Bank

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July 24, 2008

Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th St. and Constitution Avenue, NW.
Washington, DC 20551
regs.comments@federalreserve.gov

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW.,
Washington, DC 20552
ATTN: OTS-2008-0004

Re: FRB Docket No. R-1314; OTS Docket No. OTS-2008-0004;
Unfair or Deceptive Acts or Practices; *73 Federal Register* 28904;
May 19, 2008

After careful review of the proposed rule in the referenced action it is the recommendation of Carlsbad National Bank that you do not adopt the proposed rules based on the following oppositions.

- A. Carlsbad National Bank has always exercised discretion to cover overdrafts for our customers, now including a safe and sound program that extend that accommodation to virtually all of our customers on a fair and equitable basis. Overdraft fees can be avoided by our customers without requiring a specific advance notice and opt-out or repeated periodic opt-out reminders. Our customers regularly manage their accounts to avoid overdrawing them. Carlsbad National Bank does offer overdraft options today, including a total opt-out provision, without the burdensome compliance exercise described in the proposed rules. Our consumer customer base has received these options very positively, most notably by our ability to address individual concerns on a case-by-case manner as opposed to drafting a formal one-size-fits-all opt-out requirement. By observing the 2005 interagency guidance and best practices, we have continually strived to provide this service to our customers in a fair and equitable manner. We disclose in a very conspicuous and consistent manner that there is no contractual obligation of the bank to honor transactions creating an overdrawn situation, rather it is a privilege exercised at bank discretion. We find no cause to declare this program unfair now after having implemented the elements of the guidance.
- B. The proposal for a partial opt-out of ATM and debit card transactions, while retaining coverage for checks and ACH, is not technically feasible under our processing system and could not be implemented without numerous exceptions due to processing system complexity. Additionally, it would adversely affect customers who use debit cards for recurring payments. Many of our customers are increasing their reliance on debit cards as their primary and preferred

payment method. These customers appreciate that we accommodate overdrafts on debit card transactions and understand that fees may apply. Furthermore, our processing system will not allow us to differentiate debit card point-of-sale transactions from debit card recurring payment transactions therefore a partial opt-out may create unnecessary confusion for our customers as to which transactions may or may not be honored for overdraft payment.

- C. The proposal covering debit holds is far too complicated to be implemented for consumers to understand. The problem is really one that involves merchants and the card networks and cannot be solved by putting the onus only on banks who are simply acting in a safe and sound manner to assure funds are available for authorized transactions. The underlying transaction elements of initial authorizations and final settlement amounts routinely create timing and valuation variances. These variances are at the discretion of the merchants and their respective processing networks, often without real time confirmation from the customer's respective financial institution. Restricting the bank from assessing fees based on presented transaction flows resulting from these timing and valuation variances changes the nature of the risk management decision for the bank.

In conclusion, Carlsbad National Bank provides overdraft accommodation as a beneficial service to our customer, not as an injurious practice. The fees associated with this benefit are reasonably avoidable by customers exercising normal care and control of their accounts. Our discretionary program has proven successful because the customers understand the benefits derived from the service outweigh the fees and alternative negative consequences if the service was not available. Our ability to respond to individual customer situations and concerns adds further value to the customer experience. It is our position that the proposed rules would add no additional value to the customer experience, but would add only confusion and frustration. It would only add additional system and operational cost and inefficiencies to the bank, assuming the technical processes could actually be developed to address the rule requirements.

We respectfully request that you do not adopt the proposed rules contained in FRB Docket No. R-1314; OTS Docket No. OTS-2008-0004.

Very truly yours.

Chris A. Bird

Chris A. Bird
EVP-Operations

Cc: Lucille Rivas - OCC