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July 30, 2008

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

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

VIA ELECTRONIC SUBMISSION

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

Dear Sirs:

This letter is in response to the request for comments on the proposed rulemaking under Unfair or Deceptive Acts or Practices issued on May 19, 2008. The following comments address the Overdraft Services Subpart only.

Under the Legal Analysis section, the proposal states "...consumers cannot reasonably avoid injury if they are automatically enrolled in an institution's overdraft service without an opportunity to opt out". The proposal goes on to state "...consumers often lack sufficient information about key aspects of their account". We strongly disagree with these assertions. For many years, a vast majority of consumers have been able to avoid injury (overdraft fees) armed only with a paper check register and a pen. In today's electronic world, consumers know more about their account faster than ever before. Free services such as telephone banking, internet banking, e-mail alerts, and mobile banking offer access to account information at a moment's notice 24 hours a day 7 days a week. Rather than lacking information, consumers have abundant information at their fingertips.

While technically feasible, implementation of the proposal for partial opt-out of ATM and debit card transactions will be very challenging. Our processing system is proprietary and, as such, the proposed partial opt-out will require enormous programming time and expense. This fact notwithstanding we believe that the alternative approach where the required opt-out would only cover ATM and point-of-sale debit card transactions is the best choice. Any limitation in the scope of the opt-out choices will reduce programming time and expense.

The proposal also solicits comment on transaction clearing practices. We are strongly opposed to any regulatory mandate of a specific processing

order. There are advantages and disadvantages to any processing order. For instance, we currently process items largest to smallest. This processing order ensures the largest, and likely most important, items pay first (e.g. a mortgage or rent payment). The disadvantage is that this processing order may increase the number of overdraft fees charged to a consumer. We addressed this issue by enacting limits on the number of overdraft fees that may be assessed on a given day and we do not charge an overdraft fee on items that are \$5.00 or less. Finally, allowing an individual consumer to choose an alternative processing order would be a disaster on many levels. Not only would it be extremely difficult to manage from a technology standpoint, but it would be very difficult to educate consumers to a level of understanding that would allow them to make an informed decision.

Thank you for your consideration.

Sincerely,

Jeff Asher, CRCM
Senior Vice President