

P.O. Box 869105  
Plano, TX 75086-9105  
www.viewpointbank.com  
972.578.5000

August 1, 2008

**Via facsimile 202-452-3819**

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

**Via facsimile 202-906-6518**

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

To Whom It May Concern:

ViewPoint Bank ("ViewPoint") is pleased to submit comments on the amendments to Regulation DD proposed by the Federal Reserve Board as well as the amendments to Regulation AA proposed by the federal reserve Board, Office of Thrift Supervision, and the National Credit Union Administration (collectively, the "Regulators"). Viewpoint's comments herein are limited to the portions of the Regulators' proposal that relate to overdraft protection.

First, ViewPoint strongly objects the use of the Regulators' rulemaking authority under the Federal Trade Commission Act to prescribe regulations that establish a bank's clearly disclosed and discretionary, customer-friendly action as an unfair or deceptive act or practice. We're aware of the extensive treatment that this issue has been afforded in the comment letters already delivered to the Regulators and we echo those same concerns. We find it unimaginable that the Regulators would subject banks across the country to regulatory and private party liability for providing a service to its customers that is both fully disclosed to the customer base and for which the customers themselves have the very power and obligation to monitor. For that reason alone, this proposal should be withdrawn with the exception of banks that actually market their overdraft programs to its customer base, as was originally proposed by the Regulators.

Notwithstanding the foregoing objection, there are three basic aspects of the proposal that we feel are problematic. First, overdraft fees are avoided by the majority of our customers who regularly manage their accounts – they avoid overdrawing their accounts altogether by

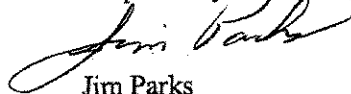
closely maintaining a checkbook register, or its electronic equivalent. For the occasional mistake that even the most well-intentioned customer makes, our customers welcome our efforts to minimize embarrassment and additional cost by paying an item and charging the resulting fee. We believe that our customers would much rather pay a fee and have the item paid to avoid an additional fee by the merchant, or a rejection of the item being processed altogether, as opposed to what the Regulators proposal implies to be a customer preference with opt-out requirements, i.e., paying an NSF and having the item rejected or returned, only to have to pay another fee to the merchant or being embarrassed by a transaction rejection with a debit card. For additional protection, we offer other options for customers to completely avoid NSF charges including a line of credit and allowing the amounts to be transferred from another account maintained at ViewPoint. Neither of these options requires the burdensome compliance exercise of a formal one-size-fits-all opt-out requirement. For those customers that bank at one of several large regional institutions that only offer these NSF avoidance options for its crème-de-la-crème customers, perhaps the proposal could require that banks offer these options to all customers instead of using the lure of lower NSF fees as a loss leader to establish a higher wallet share with their customer base.

Another aspect of the proposal to which ViewPoint objects is the requirement for a partial opt-out of ATM and debit card transactions, while retaining coverage for checks and ACH. As the Regulators have heard numerous times, this is not a technically feasible practice for most data-processing systems, including our own and we could not implement this without numerous revisions to the system by our data processing vendor at what would undoubtedly be a substantial cost.

Finally, the portions of the proposal covering debit holds is extremely complicated for bankers to understand, and we don't believe that we'll be able to explain this to our customers in easy-to-understand terms. As with many disclosure requirements, what may start out as an admirable effort gets finalized in such a way as to create such extreme confusion. Far from creating understanding, many required disclosures confound and complicate the very situation that they are designed to simplify.

Ultimately, we believe that the Regulators are attempting to solve evils in the payment systems that either do not exist, or that should be addressed in other ways so that payment processors and merchants are held responsible for compliance instead of the nation's banking system. From our perspective, we believe that bank customers understand that if they overdraw their accounts, there is a fee associated with that and the way to avoid that fee is to maintain accurate records of their transactions. Granted that it may be more challenging to record those transactions given the multitude of channels from which a customer can initiate a banking transaction but to take the onus off of a customer to maintain account records is contrary to the long-standing underpinnings of our payment system.

Respectfully submitted,



Jim Parks  
Chief Operations Officer  
ViewPoint Bank