August 4, 2008

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

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

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Federal Reserve System 12 CFR Part 227: Docket No. R-1314; 12 CFR Part 230: Docket No. R-1315; 12 CFR Part 226: Docket No. R-1286; Office of Thrift Supervision 12 CFR 535: Docket ID. OTS 2008-0004; National Credit Union Administration 12 CFR Part 706: RIN 3133-AD47

Supplement to Bank of America's July 18 Submission

Dear Ms. Johnson, Mr. Bowman and Ms. Rupp:

This letter supplements Bank of America's comment letter of July 18, 2008. In this supplement, we seek an important clarification of the proposal on deposits, and present further data to support greater use of risk-based repricing than permitted in the proposed rule.

I. Regulation AA Proposal Related to Overdrafts: Clarify that banks can alter the features of an account

We recommend that the Agencies clarify that nothing in the proposal will prohibit a bank from offering an array of products and features, at least one of which includes the choice to opt-out of overdrafts. Like any other business, banks should be permitted to offer customers a menu of products and services with differing value propositions, depending on the individual customer's needs. As drafted, the proposal does not prohibit a bank from doing so, but neither does it expressly allow it. This distinction is important, for at least the four reasons listed below.

Maximize Customer Choice

Opt-out may appeal to a small segment of our customer base, but we do not expect universal appeal, particularly if customers fully understand all of the ramifications of opting-out. [1] The Bank is in the midst of developing a spectrum of account features and services designed to appeal to all customer segments. Some of the features address overdraft fees in ways that are

[1] Our customer surveys suggest that, opt-out appeals to a small segment of customers. Public interests would not be served by imposing a one-size-fits-all restriction that appeals only to a very small segment of consumers, at the cost of less customer choice.

incompatible with an opt-out feature, and others only make sense if we can offer differentiated pricing for customers who choose the feature. To say this another way, in order to maximize innovation and customer choice, banks must be assured they can create different value propositions for customers; and as long as they offer customers the choice of value propositions that include the opportunity to opt-out, not all of the offerings need to include that feature.

Minimize Risk

Second, because banks cannot currently prevent all overdrafts from occurring, and because the proposed rule effectively prohibits a bank from receiving compensation for overdrafts that do occur, banks are placed in the position of taking uncompensated risk. Furthermore, a customer who opts out of fees will lose a powerful incentive to monitor and manage his or her account carefully, increasing the number of inadvertent overdrafts that must be covered (as well as the number of times transactions are declined).

Thus, in order to minimize or offset the uncompensated risk created by an opt-out, banks may wish to alter some of the features of an account that affect a customer's ability to overdraw his or her account in the first place. For example, pre-paid debit cards allow a customer to segregate funds for debit transactions from other items, making it less likely that checks or other items will deplete funds the customer intended to use for other transactions. As a result, banks may offer a pre-paid card, rather than a traditional debit card, to customers who opt out. As described in our initial letter, there are other features of an account, such as funds-availability, that go directly to reducing the risk of overdrafts, that banks should be given broad discretion to change. [2]

Cost of Compliance

The third consideration is the cost of compliance. The Agencies have historically weighed the cost of compliance (to industry, but ultimately, consumers) with proposed regulations against the benefit to consumers. There are systemic and technology issues with offering an opt-out that are significant. If these systemic and technology constraints had to be confronted for all accounts and all features, the implementation and compliance costs associated with the proposed rule would be considerably larger than if the bank were only required to make opt-out compatible with a set of reasonable products and features. Therefore, while still not proportionate, we believe that allowing banks to change the features, terms and conditions of an account for those who opt out brings the cost-benefit assessment into more appropriate alignment.

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[2] With regard to any concerns that a bank could price or condition the opt-out option in such a way as to discourage opt-out, the Agencies could require by regulation that consumers be offered a *bona fide* opportunity to opt out. Banks that failed to comply would be subject to administrative action. In an analogous context – debt cancellation contracts – the Office of the Comptroller of the Currency has adopted an anti-evasion standard that should be adaptable to the current rule: "A bank may offer a customer a contract that does not provide for a refund only if the bank also offers that customer a *bona fide* option to purchase a comparable contract that provides for a refund." 12 CFR 37.4.

Customer Confusion

Finally, as we identified in our July 18 letter, there is a real risk of customer confusion about the downside of opting out, particularly in light of the sample notice provided by the Agencies. We believe that the intent of the proposal was to provide consumers with information to allow them to make informed decisions about whether to have overdrafts covered and pay resulting fees. However, the proposal actually does little to help a consumer make an informed choice, rather it steers a consumer to opt out. Our considerable market research in this area demonstrates that many if not most customers do not believe that opting out would be the best option for them. We would like to offer these customers options in addition to the status quo. But we cannot offer customers these new options if they must be offered, and offered at the same price, to customers who opt out.. By differentiating features, we believe customers will be in a better position to understand the benefits and detriments to opting-out.

In summary, the Agencies should clarify that banks may reasonably offer an array of products and features with differing terms and conditions, provided at least one includes the choice of opt-out. Such a clarification will allow banks to minimize risk, maximize customer choice, reduce implementation costs and increase customer understanding.

II. Credit Card Industry Statistics

Bank of America and several other major credit card issuers have arranged for a compilation of aggregated data associated with the Agencies' credit card proposals. We highlight below some of that information, which confirms the concerns expressed in our initial comment letter.

Economic Impact

Dramatic. The data make clear that the revenue impacts of this proposal will be so sizable as to require significant changes in the price of credit to consumers. Based the aggregated data, a card issuers' pre-tax rate of return on assets and their return on equity would both be cut in half on average. This represents an estimated impact of over $11 billion to the industry as a whole.

Financial institutions would not be able to offer the same services at such a rate of return, and would respond by raising additional revenue through higher interest rates and fees, or reducing credit availability for qualified borrowers with a higher risk profile. While every issuer would respond by some combination of line reduction and pricing, if financial institutions only attempted to reduce credit losses as a way of addressing this challenge, the data show that credit lines would contract on average by slightly over twenty-one percent (an average decrease of $2,029 on an average line of $9,561). This would be the equivalent of taking $931 billion of available credit out of the market – at a time of already reduced credit availability. Of course, because line reductions would be more focused on consumers with a higher risk profile, whose average credit lines would be significantly lower than $9,500, this would translate to a far greater reduction, or outright elimination, of credit to marginally riskier customers *(e.g.,* customers with FICO scores less than 660). Similarly, any pricing impact would not be evenly borne or applied.

This loss of credit, and increases in the cost of credit, would not benefit these consumers, or the economy. As noted in our initial letter, these customers have proven abilities to manage credit card debt, presenting higher but reasonable rates of charge-off. But they pose risks that issuers cannot run if there is no meaningful ability to monitor and price for heightened risk. The Agencies have received thousands of letters from consumers who are anticipating freezes on current interest rates with equal availability of credit; we believe the proposed rule mistakenly encouraged this belief. Unfortunately, the aggregate industry data demonstrate that the truth is clearly otherwise.

Default Events

The Agencies propose to allow only one default event – no minimum payment made in the thirty days following the payment due date – to justify a re-pricing. Based on industry data looking back to January 2007, customers who are 30 days late exhibit a 23.3% loss rate on outstanding balances. Loss rates are an integral part in determining the interest rate for an account; it becomes immediately apparent that for a cohort of borrowers with an expected loss rate in excess of 23%, issuers would have to charge an interest rate far in excess of what issuers, consumers or policymakers would consider tolerable.

The aggregate data also demonstrate other default events, besides the one in the proposed rule, that better predict an actionable, yet significant, material increase in risk. In our prior letter, Bank of America proposed the default event of two late or overlimit events in a 12 month period. Industry data show such accounts have a loss rate of approximately 12.9%, as opposed to a loss rate of 5.4% for accounts that are current and below their credit limits (all numbers based on January 2007 data). In short, the dollar loss rate is more than double for these accounts – the sort of demonstrable increase in risk that has been and should be the underpinning of risk-based re-pricing programs.

Given the additional data, Bank of America also proposes that a failure to make a payment prior to the end of the billing cycle also be an appropriate measure of material increase in risk. This loss rate, which would fall between 8.4% and 10.8%, has similar increase in the overall loss rate on outstanding balances as the two event trigger previously proposed, and the same demonstrable increase in risk.

As noted in our July 18 letter, we believe the best course for the Agencies would be to allow default pricing only for default events, adequately disclosed, that reflect a material risk of default. The Agencies could then establish a safe harbor for events that clearly meet that standard. In addition to the two mentioned above, we note that the aggregate industry data justify the use of other events, which the Agencies may wish to consider. On the other hand, there are some events – for example, a returned payment check – which may not justify a "default" characterization on the account. The Agencies could make that clear as well.

Our July 18 letter also supported repricing by amendment, with notice and choice, for a broader set of risk-related reasons. Looking at our internal data for pricing by amendment, and comparing this data to the industry data, we again find clear support for this approach, demonstrating that repricings by amendment, correlate with increased risk of default. For

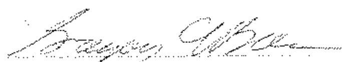
example, accounts that qualified for re-pricing in January 2007 but were held out in a control group had, in the most recent month reported, an annualized dollar loss rate of 11%, which is strikingly consistent with the risk level associated with our recommended default pricing proposals. Such re-pricing by amendment should be permissible as a matter of safety and soundness, and for the reasons discussed in our prior letter.

III. Implementation Time

Bank of America would like to reemphasize that if the Agencies finalize the most complex aspects of the proposal, banks will need a significant period of time to update the infrastructure necessary to comply. Either the overdraft proposal or the card proposal, if implemented in isolation, would strain most banks resources. Our Credit Card team views the systems and technology work necessary to implement the credit card provisions of the proposal to be comparable to a recent systems upgrade that took approximately two years. Similarly, our Deposits team has identified 60 systems within Bank of America that will require updating because of the overdraft proposals, and also estimates two years of full-time work to implement.

Furthermore, in addition to these proposals under UDAP, full-service banks, like Bank of America, are responding to two other mammoth regulatory initiatives related to HOEPA and FDIC insurance, which will take most of 2009. In light of the extreme burden placed on the financial institutions by these prior rulemakings, the Agencies should provide additional time for banks to comply. Moreover, these regulatory burdens will severely limit the resources available for new-product development and innovation. Thus, we recommend the Agencies stagger the implementation dates, with the earlier of the implementation dates no sooner than two years from when the rule is finalized.

Sincerely,



Gregory Baer
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Bank of America