



Local. Personalized. Customer-Driven.

July 28, 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

To: The Board of Governors of the Federal Reserve System and The Office of Thrift Supervision,

This letter is submitted on behalf of Viking Bank in response to the proposal to amend the Unfair or Deceptive Acts or Practices Act. In respect to deposit account overdrafts, we are concerned that the proposal, as written, will have a significant adverse effect on our institution and will not provide any additional benefits to our customers. It may, in fact, have unintended negative consequences for our customers.

It appears the proposal's primary objective is to prohibit assessing any fees in connection with an overdraft unless the consumer is given a notice and a reasonable opportunity to opt out. The proposal is aimed at preventing banks from assessing a fee for paying an overdraft item, but is short sighted in the consequences for doing so.

The agencies have requested comment on the following:

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EQUAL HOUSING LENDER

MEMBER FDIC

Opt Out-

The courtesy payment of an overdraft, for a fee, is a long standing industry practice that is considered customer friendly because it can save the customer additional fees assessed by merchants for returned items and can help the customer avoid potentially embarrassing situations. Banks take a risk of loss by paying overdraft items as some customers may not pay those funds back. The fee assessed for paying the overdraft is used in part to cover this risk.

Additionally, the fee for paying an overdraft item is often the same or similar to the fee assessed to return an overdraft item. The additional cost to a consumer for a returned overdraft item may include substantial fees from a merchant or other negative consequences, such as derogatory reporting to a consumer reporting agency and the embarrassment and time needed to resolve the issue.

Overdraft fees can easily be avoided by the consumer by not overdrawing their account. In fact consumers regularly manage their accounts to avoid overdrawing them. For the occasional unintentional overdraft that occurs on checking accounts, the vast majority of our customers appreciate the bank covering the overdraft.

Partial Opt Out of Electronic Channels-

The partial opt out option could be problematic for several reasons. The first being that our current operating system does not technically allow for a partial opt out of overdrafts for ATM and point-of-sale, while retaining coverage for checks and ACH. To implement this type of change would not only be very costly, it would result in numerous exceptions due to processing system complexities.

Secondly, in our current operating environment legitimate ATM and point-of-sale transactions can not be returned and must be honored, regardless of whether an institution offers overdraft services or not.

Most importantly, I believe consumers could be greatly misled by a partial opt out. What starts out as one type of payment instrument can easily be converted into another type of payment instrument. Payments starting as a check can end up as an image, an ACH or a credit card transaction. Consumers have very little control over the final channel that is used to clear the item. Additionally, most consumers have very little knowledge about the differences between the payment options and how it could affect their account.

Lastly, many customers regularly pay their monthly expenses with debit cards for recurring payments. Often they carry no other payment method with them and the debit card serves as their primary payment method. These customers appreciate that we accommodate overdrafts on debit card transactions and understand that fees will apply.

Debit Holds-

The proposal for debit holds is better left to the card associations and networks to resolve, rather than the banks who are acting in a safe and sound manner to assure funds are available for authorized transactions.

Transaction Clearing Practices-

In our current processing environment the order in which transactions are presented for payment varies across the industry. This is to ensure that system efficiencies are utilized and sound risk management practices are applied. It is just not practical to apply any single rule to the order in which the items are presented for payment due to the complexities of each system used to present the payment. Transaction clearing practices are not determined based on what method generates the most fee income for the bank, but instead on what method best utilizes current technologies.

Letting an individual customer choose an alternative payment posting order would be impossible to manage as each separate system used to present payments would need to be able to be modified for each customer.

In closing, Viking Bank believes that providing overdraft accommodations are a benefit to our customers and that overdraft is reasonably avoided by customers exercising normal care with their account. In proposing well intended rules, unintended negative consequences can and will occur which contradict the original intent and result in increased cost, confusion, and inconvenience for the customer and costly inefficiencies in payment processing systems.

Viking Bank currently observes the 2005 interagency guidance on overdraft protection programs and believes the best practices we have adopted due to the guidance should not now be considered unfair.

Sincerely,

A handwritten signature in black ink that reads "Dawn M. Otto". The signature is written in a cursive, flowing style.

Dawn M. Otto, CRCM
Vice President & Compliance Manager