



July 21, 2008

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th St. & Constitution Ave. 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

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

Merchants Bank is a Vermont state chartered \$1.30 billion bank wholly owned by Merchants Bancshares, Inc. We have significant concerns with the above-referenced proposals.

With regard to the overdraft accommodation offered by banks, the proposed rules would be a disservice to bank customers. First, most banks, including Merchants Bank, offer methods of covering overdrafts which include transfers from other deposit accounts and transfers from a home equity line of credit. These options are the first options offered to customers and most often are all that are needed. The discretionary payment of checks and other payments is the last line of defense for most customers. The accommodation of paying customer checks beyond the traditional transfer options provides a welcome safety net to reduce the likelihood that a customer's payment will be returned. Whether due to a bookkeeping error or cash flow problem, the occasional accommodation by the bank of paying a customer's check or other payment is a service the customer is grateful to have in lieu of the alternative outcomes from a returned payment.

Customers who overdraw periodically are aware of the consequences of their conduct and are acting in accordance with their preferences given that awareness. They do not need repeated notice that they can opt-out of the convenience they are choosing to accept—assessment of the fee is what gets their attention. We are always available and make a point of reaching out to work with customers who would benefit from alternatives for managing their transaction activity.

Banks have always exercised discretion to cover overdrafts for good customers—today we have developed safe and sound programs that extend that accommodation to virtually all our customers. But neither customers nor regulators should lose sight of the fact that our program is an accommodation based on the bank's exercise of risk-based discretion—there is not a contract to pay overdrafts.

The regulatory authorities issued guidelines in 2005 about the best practices for promoting and disclosing an overdraft coverage program. Any fee associated with an overdraft is clearly disclosed to the customer at account opening. The language in the current proposal turns best practices into unfair or deceptive practices. Such inconsistency on the part of the regulatory authorities does not serve the banking community or its customers well.

From a technology standpoint, several of the elements of the proposal are not feasible. Our technology will not allow us to differentiate debit card transactions from ACH or check transactions at the customer account level--meaning that all we can really offer a customer is an all or nothing choice. We are also unable to differentiate between a debit card sale transaction and one using the debit card number for a recurring bill payment.

The proposal portrays overdraft coverage accommodation in an unfavorable light and in need of additional regulatory action. The facts simply do not support such a conclusion. The service is valued by our customers who will ultimately either lose or have their service reduced if the proposal is implemented. Please allow the banking industry to utilize the guidance issued in 2005 and provide a properly disclosed, valuable service to its customers.

We would be happy to provide additional comments, respond to concerns or provide testimony, at your request.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Tuttle", with a long horizontal flourish extending to the right.

Michael R. Tuttle
President & CEO