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August 17, 2001

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, N.W.
Washington, D.C. 20551

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Attn: Comments/OES

Re: Study of Banking Regulations Regarding the Online Delivery of Financial Services
FRB Docket R-1105, OTS Docket 2001-41, FDIC #FR 01-17666

Dear Sirs and Mcsdames:

J.P. Morgan Chase & Co., ("JPM"), on behalf of its banking and financial services affiliates, appreciates the opportunity to submit its views and respond to the requests for comments of the Board of Governors of the Federal Reserve System (the "FRB"), the Office of Thrift Supervision ("OTS") and the Federal Deposit Insurance Corporation ("FDIC") (collectively, the "Agencies") concerning banking regulations which should be amended or removed in order to facilitate online delivery of financial services.

JPM encourages the Agencies to take active approaches to foster electronic commerce and online banking. We also are encouraged by and supportive of the FRB's early efforts to normalize the electronic delivery of communications and disclosures and recognize the need for such government initiatives that can help to remove barriers to online banking. While Congress and the Agencies should work toward removing existing barriers to electronic commerce, we ask them also to be cautious that their efforts do not result in inadvertently creating new barriers in the process. We believe caution is particularly advisable in areas where the Agencies might anticipate a potential need or concern to consumers which has not yet in fact arisen. We are concerned with attempts by the Agencies to address these perceived needs by the implementation of prophylactic rules which can create barriers and huge, unanticipated burdens to financial institutions without providing a commensurate benefit to consumers.

Public E-Mail Requirement Under the FRB's Interim Final Rules

A significant potential barrier to electronic banking is the public e-mail "alert" requirement in the FRB's interim final rules on electronic communications ("Interim Final Rules"). This requirement necessitates that in addition to making electronic disclosures available at the institution's website or delivering them via an institution's private home banking e-mail system, the institution must also send an alert to the customer's public e-mail box. Although JPM has already addressed its concerns with respect to this requirement to some extent in its prior comment to the FRB relative to the Interim Final Rules, we feel the impact is sufficiently significant to warrant additional consideration in this letter.

The supplementary materials to the Interim Final Rules ("Supplementary Materials") indicate that the public e-mail alert is desirable in order to (presumably) allow consumers to "choose when to review, and for how long to retain, account information." The assumption that a consumer has more control over a public e-mailbox than a private box supplied by their financial institution (as with a home banking program) is simply not uniformly true. Many public e-mail services not only place limits on the number of days a message will be retained by the service provider prior to being deleted, but also control the size of messages that can be received and the number of messages that can be maintained at any given time. Some systems will not accept e-mails with large file attachments such as may be necessary when initial disclosures or change in terms notices are delivered. In these instances, the e-mail would simply be rejected, leaving the institution with no other alternative but to revert to paper communications with this customer.

A requirement that only public e-mailboxes be used for alerts of regulatory communications will reduce the number of online banking alternatives available to JPM customers who have neither public e-mail addresses or Internet access. JPM currently provides Regulation E disclosures and communications electronically to home banking customers via JPM's private e-mail facility in its home banking system. This allows JPM to communicate with both Internet customers as well as customers who may not have Internet access via JPM's proprietary dial up system. Exclusion of JPM's private e-mail system as an alternative means of communication will effectively force JPM to either communicate with customers using the dial up system by paper mail or to discontinue offering the services to customers who cannot furnish a public e-mail address. This result is clearly inconsistent with the E-Sign Act which was intended to promote electronic commerce. Section 104 of the E-Sign act prohibits a federal agency from specifying specific technology to deliver electronic documents. The requirement that communications be sent to a public e-mail address is clearly requiring specific technology in contravention of that prohibition.

A requirement that alerts be sent to a public e-mailbox whenever there is a regulatory communication will cause a significant hardship to JPM. Currently JPM customers who have Regulation E claims for errors or unauthorized transfers relative to a home banking transaction may institute such claims via the private electronic mail facility of that service. Under the Interim Final Rules definition of "electronic address", JPM would not be able to respond to the customer by utilizing the same vehicle utilized by the customer in filing the claim without also sending an "alert" to the public e-mailbox. Since JPM does not have the public e-mail addresses of most of this customer base, we would be required to mail a paper communication to the customer in response to the customer's electronic Regulation E claim. This will result in a significant expense not only in additional mailing and handling costs but in revising internal processes and procedures. Even if JPM had the public e-mail addresses of its entire customer base, existing online banking systems are not designed to communicate with customers outside the bank's

firewall. As a result, significant expenditures would be necessary to modify systems to communicate with customers at their public e-mail boxes. Additionally, turnover of public e-mail addresses is extremely high and there is no effective forwarding process currently in existence. Maintenance of the public e-mail address base would also be extremely costly, but necessary, given the additional requirement of the Interim Final Rules which would require a backup paper communication in the event that the public e-mail is returned.

Many customers have indicated a preference that we not communicate with them via their public e-mailboxes. Although JPM has included a line item for a public e-mail address as part of its online banking application for many years, the vast majority of customers have chosen not to provide their e-mail addresses. We believe that one of the reasons for this preference is the fact that the private communications vehicle can be maintained in a secure environment, which the public e-mailbox is not. Many communications contain private and confidential customer information which is much safer when communicated behind JPM's firewall as opposed to being disseminated to a public e-mail system. In those situations where we have attempted to send nonconfidential, general service messages to customers' public e-mail addresses, the results have been less than optimal, with a great number of "undeliverables" and an outpouring of responses from customers who failed to read the service announcement, assumed it was "spam" and requested to "unsubscribe".

The Supplementary Materials discuss the means by which a financial institution may meet the requirements of providing timely disclosures when a consumer contracts for a service on line. Both Regulations DD and E require that the disclosures be rendered before the first transaction is performed. The Supplementary Materials, and the Official Staff Commentaries indicate that in such instances, this requirement can be satisfied either by automatically displaying the disclosure at the time the service is opened online or by providing a "nonbypassable link" to the disclosure. We are encouraged by the FRB's position on this manner of satisfying the timely disclosure requirement. However, we are concerned that the Interim Final Rules would also require an "alert" of the disclosure to the consumer's public e-mail address. We propose that when a consumer has consented to receive and receives disclosures or other communications in a "real time" environment that the institution's obligations should be fully satisfied with respect to providing the requisite communication.

We believe that though well-intentioned, the public e-mail alert requirement is fraught with issues for both consumers and financial institutions and serves as a prime example of why the Agencies should not attempt to anticipate potential issues until they have in fact materialized. Then and only then can all the pros and cons of the problems and possible solutions be weighed and measured in a real, existing environment.

Periodic **Statement** Requirements

~~Both Regulation E and Regulation DD contain periodic statement requirements which~~ were developed for a paper environment and which fail to make sense in an electronic realm. The periodic statement requirement of Regulation E at Section 205.9 fails to anticipate the delivery of certain electronic products and services such as stored value cards, mobile payment vehicles and electronic/Internet cash exchange. The delivery of periodic statements in connection with these type services is *not only* impractical but presents a major technical and compliance burden in their potential development and maintenance. Likewise, although Regulation DD does not require that a periodic statement be rendered, it does mandate certain requirements for any deposit account statement that is produced. In a real time environment where a customer can

view their account and transaction history online at any time and any number of times during the month, or even during a given day, the necessity of providing a particularized "statement period" or "to/from" dates are questionable, at best. Similarly, the requirement of providing an "APY Earned" may prove particularly difficult (if not impossible) in an online environment since daily balance fluctuations may affect that number, resulting in the likelihood of customer confusion and an additional potential for inadvertent calculation errors.

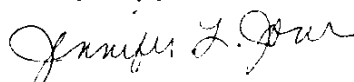
Regulation Z Issues

As creditors attempt to implement electronic commerce initiatives, such as instant credit, they have struggled to understand how to comply with such paper-based rules in an electronic environment. For example, the FRB recently revised the disclosure requirements for credit and charge card applications and solicitations. The revisions require certain format requirements, such as the annual percentage rate for purchase transactions to be disclosed in 18-point type. It is unclear how creditors will meet this requirement in an electronic environment. Creditors have no control over how disclosures will appear on the consumer's computer screen. Institutions should have no duty to ensure that a consumer views the disclosures in the context of such format and type size requirements.

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JPM appreciates the opportunity to comment on these issues. The advent of e-commerce presents exciting opportunities for the industry and consumers alike. We strongly urge the Agencies to take the lead in helping to fashion the new compliance paradigm to facilitate financial transactions in the Internet era. Any questions you have about this letter may be directed either to Jennifer Jones at 716-258-6994 or Jay Soloway at 212-552-1721.

Very truly yours,



Jennifer L. Jones
