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March 27, 2009

Via Email - regs.comments@federalreserve.gov

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

Re: Proposed Amendments to Regulation E
Docket No. R-1343

Dear Ms. Johnson:

We appreciate this opportunity to comment on the proposed amendments to Regulation E. Founded in 1868, Frost is the largest Texas-based banking organization that operates only in Texas, with more than 100 financial centers in Austin, Corpus Christi, Dallas, Fort Worth, Houston, Rio Grande Valley and San Antonio regions.

Our primary objective in providing discretionary overdraft consideration is to take care of our customers. While we encourage our customers to establish other methods of overdraft protection, such as an account transfer or a line of credit, not all do. Our experience has been that customers appreciate knowing that an occasional insufficient item will be paid, instead of returned or declined, and they are willing to pay a fee for the convenience given the alternatives.

We clearly disclose the fees for overdrafts and give the customer the option to opt-out of this discretionary service. We have not tried to maximize our OD/NSF revenue, as profitability is not the primary objective of our overdraft consideration program. Our fees are not the highest in the industry, nor do we charge a daily fee on an outstanding overdraft balance. Unlike some banks, we do not charge a fee for drawing against uncollected funds or intra-day overdrafts. Our current practice is to decline ATM withdrawals if there are not sufficient funds to cover the transaction.

The best way to avoid overdraft and NSF fees is to manage personal bank accounts wisely. That means keeping an accurate up-to-date record of all transactions -- paper, electronic and automatic bill payments -- and monitoring account balances carefully. The bottom line is that the customer is in the best position to know what their actual balance is -- only they know what checks they have written, automatic payments they have authorized, and debit card transactions they have approved. Today, customers have easy access to their balance and account information through extended hours at our call center, 24-hour voice response, internet banking, email alerts, or even using the Internet browser on their phone or other handheld devices. Knowing their balance and what transactions they have authorized, but have yet to be processed, is key to avoiding overdrafts and the related fees.



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Overdraft consideration is an important service for our customers, and we believe customers should understand the process, the responsibilities to track deposits and withdrawals, and any fees associated with overdrafts and options to avoid them. We share the Board's concern with the practices of some financial institutions and agree that there has been some abuse in the market place. While we agree with many provisions of the Proposal, we do have some concerns about some of the specifics. We hope our comments will be useful.

Opt-Out vs. Opt-In: We support the provisions in the Proposal that would increase disclosure of overdraft programs and most of the Proposal's opt-out provisions. Our experience has been that very few customers opt-out of our overdraft consideration program, which suggests that an opt-in requirement is not necessary. Such a requirement would impose additional administrative burdens on the bank while adding little benefit to the customer. Most customers rarely, if ever, overdraw their accounts. Studies suggest that consumers are likely to adhere to the default rule, so for such customers an opt-in requirement may result in more declined transactions even though the customer would have preferred to have the transaction authorized despite the fee charged. The consequences of a failed payment transaction, together with the impact of the embarrassment of having a transaction denied should not be underestimated, especially when an increasing percentage of customers use debit cards as their primary payment method, often carrying no other payment means. Many customers living paycheck to paycheck will use their debit card knowing their payroll deposit will post that night. Further, declining a transaction at a critical time could present very negative consequences to the customer. As mentioned in the Proposal, these types of transactions could be of an emergency nature where funds are needed immediately or for purchasing groceries or medicine with no other means of payment available. Finally a requirement for existing customers, currently participating in the overdraft consideration program, to affirmatively opt-in will result in an unnecessary cost to the bank, not to mention unhappy customers when transactions that previously would have been approved are declined because the customer failed to respond to the opt-in notice. We believe the opt-out alternative accomplishes consistency in application, because the overdraft service is automatically applied to all qualified accounts based on identical, objective criteria. All customers are provided the opt-out notice and have the same opportunity to opt-out of the overdraft service. The significant benefit is the service is available if needed without the customer having to ask for it.

Partial Opt-Out: Systematically, we are only able to provide an opt-out on an "all-or-nothing" basis at this time. There are extraordinary technological difficulties in allowing the partial opt-out of ATM and one-time debit card transactions while continuing to pay paper checks and ACH items. Distinguishing debit card transactions from ACH is challenging enough, but even more problematic is the ability to distinguish between one-time debit card transactions and recurring debit card transactions. While a partial opt-out approach may be technically feasible, it will not be an easy or inexpensive task. We support the Board's alternative approach of opting-out on an all-or-nothing basis.



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Reasonable Opportunity to Opt-Out: We do agree with the proposed requirements for providing an initial opt-out notice at account opening, as well as the ongoing notification when a fee is assessed either through the notice provided at the time of the overdraft or on the periodic statement. The model opt-out notice does accomplish the clear notification to the customer. We would recommend the abbreviated notice for subsequent notices so that customers can quickly see the pertinent information about opting out. We would also recommend that the notice be provided whenever an overdraft situation occurs, not just with an ATM or one-time debit transaction partly due to the cost to implement an exception based rule, but also to provide the customer with every opportunity to decline the service if this satisfies their individual financial situation and needs.

It should be convenient for a customer to opt-out. While this could be accomplished with a written or electronic notice, a phone call to a toll-free number would most quickly facilitate the opt-out.

Providing the option of allowing the opt-out to be accomplished at the account level or via a different product with varying terms not substantially different from the original product does allow flexibility to financial institutions to get the opt-out implemented in a reasonable amount of time. We prefer the account level option, but believe each financial institution should have the ability to implement either approach depending on their particular processing issues.

Exceptions to Opt-Out: We support the “reasonable belief” and the “paper-based debit card transaction” exceptions included in the Proposal. However, of great concern is the exception when the merchant does not submit a transaction for authorization because it is below the floor limits or because of the small dollar amount. The Board points out that the merchant’s decision not to seek authorization is transparent to the consumer and concludes the consumer should not be held responsible for a fee should there be insufficient funds to cover the transaction. A similar argument can be made on behalf of the bank. The bank has no opportunity to decline the transaction and must honor it when presented even if insufficient funds are present. The customer is in the better position to know whether they have sufficient funds in their account to complete the transaction. Likewise, on those occasions when the debit card network is temporarily unavailable and the bank uses a stand-in processor to authorize the transaction, the customer is in the best position to know if they have sufficient funds. Yet the Board concludes that the customer should not be assessed a fee. This could have negative consequences on the customer should an institution decide to make less funds available or simply decline transactions when the system is down for those customers that have opted-out.

Debit Holds: We currently do not assess fees for overdrafts caused solely by a debit hold placed on the funds in a customer’s account. The concerns highlighted in the proposal related to debit card holds are legitimate concerns as excessive holds could cause a consumer to incur unreasonable fees. We support the concept of a two-hour safe harbor. However, to ensure the consumer is afforded the best protection against erroneous fees, we encourage the Board to



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exercise its authority under Section 904 of the EFTA to also require merchants (or their acquirers or processors) to submit such transactions for settlement within the two-hour safe harbor period.

Conclusion: We strongly support responsible overdraft consideration programs and fully support the customer's right to opt-out in full if they so desire. Our customers see real value when we stand behind their payment decisions, and they understand that the fee is a source of compensation to the bank for that accommodation. Overdraft consideration is valued by those customers who use it and easily avoidable if they choose by exercising common care in managing their account as the vast majority of customers do every day.

We appreciate the opportunity to provide our comments on this significant proposal.

Sincerely,

A handwritten signature in cursive script that reads "Paul Olivier".

Paul Olivier
Group Executive Vice President
And Chief Consumer Banking Officer