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Ms. Jennifer Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue  
Washington, DC 20551  
regs.comments@federalreserve.gov

Re: Regulation E; Docket No. R-1343

Dear Ms. Johnson:

Wolters Kluwer Financial Services is pleased to provide this comment letter to the Federal Reserve Board (Board) regarding its recently proposed amendments to Regulation E.

#### **About Wolters Kluwer Financial Services**

Wolters Kluwer Financial Services is a leading provider of content, compliance, technology, and services to banking, indirect lending, insurance, mortgage, and securities organizations in the United States. More than 15,000 financial services organizations look to Wolters Kluwer Financial Services to help address compliance and operational risk management issues. One of the many compliance services provided by Wolters Kluwer Financial Services is helping financial institutions comply with the disclosure requirements of Regulation E.

#### **Summary of the Proposed Rule**

The proposed rule would limit the ability of a financial institution to assess an overdraft fee for paying automated teller machine (ATM) withdrawals and onetime debit card transactions that overdraw a consumer's account, unless the consumer is given notice of the right to opt out of the payment of such overdrafts, and the consumer does not opt out. As an alternative approach, the proposal would limit the ability of a financial institution to assess an overdraft fee for paying ATM withdrawals and one-time debit card transactions that overdraw a consumer's account, unless the consumer affirmatively consents, or opts in, to the institution's payment of overdrafts for these transactions. The Board has requested comment on numerous areas in the proposed rule. Wolters Kluwer Financial Services has comments on several areas of the proposed regulation and those comments follow below.

#### **The Need for Examples of Opt-out Methods that Do Not Satisfy the Rule**

As part of the proposed rule, a financial institution would be required to provide consumers with a reasonable opportunity to opt out of the financial institution's overdraft services for the specified transactions. The Board has requested comment on whether it should provide examples of methods of opting out that would not satisfy this requirement, such as requiring the consumer to write a letter to opt out. We believe the Board should provide such examples as it will help financial institutions avoid implementing non-compliant solutions.

#### **Whether to Require a Separate Opt-out Notice**

Under the proposed rule, *the opt-out notice* could either be separate or combined with other account disclosures. The Board has requested comment on whether institutions should be required to segregate the opt-out notice from other account disclosures. Wolters Kluwer Financial Services does not have a specific recommendation for the Board on this question. However, we think it is prudent to point out to the Board that two of the examples the Board uses for institutions to provide consumers with a reasonable opportunity to opt out do not easily lend themselves to being combined with other account disclosures. Specifically, a form that can be filled out and mailed back to the institution will probably not be combined with other disclosures, especially considering the fact that some of those disclosures (e.g., Truth in Savings) need to be in a form the consumer can keep. A product that contemplates a tear-away form (attached to other disclosures) to fill out and mail back, for example, would have to be carefully designed so as not to violate the competing rules. Similarly, for an institution that requires a consumer to choose whether to opt out at account opening, those institutions will likely provide a separate notice as well as separately document the consumer's choice simply because they will need to ensure the event occurs during the account opening process. At a minimum, therefore, if the Board decides to permit the opt-out notice to be combined with other disclosures, we recommend that the Board include a reminder of these competing rules in its guidance.

### **Content of the Opt-out Notice**

Under the proposed rule, *the opt-out notice* must be substantially similar to the model notice. However, without violating the requirement that the opt-out notice be substantially similar to the model notice, an institution can include a brief explanation of the consequences of opting out, the type of transactions that would not be covered by the opt-out, and a statement that payment of the overdrafts is at the institution's discretion.

Wolters Kluwer Financial Services knows from years of experience that many institutions will want to include helpful explanatory information when the law permits. As a result, the more information and guidance the Board can provide institutions relating to the content of the notice the easier it will be to help institutions create meaningful notices that comply with the rules. For example, the Board should provide additional guidance on the meaning of "brief." The Board should also provide additional guidance on the meaning of "the type of transactions that would not be covered by the opt-out." Is the exception, for example, limited to a statement that the opt out may not apply to transactions made by check or preauthorized withdrawal? Or, could an institution also include an explanation of the "reasonable belief" exceptions? We believe that financial institutions and consumers alike will benefit from inclusion of the "reasonable belief" exceptions in the opt-out notice. For example, consumers that bank at institutions that use batch processing may frequently find that items are paid and overdraft fees are imposed even though the consumer has opted out. Explaining this information in the notice gives institution personnel information to point to when the unhappy consumer wonders why the transaction was paid and an overdraft fee was imposed even though they opted out. The inclusion of such a statement could help reduce confusion and control expectations on the part of the consumer and help the institution from a customer satisfaction perspective.

### **Content of the Opt-in Notice**

In the proposed rule, the opt-in alternative specifically states that *the opt-in notice* cannot contain any information not specified in or otherwise permitted by the section. This kind of strict limitation raises serious questions for Wolters Kluwer Financial Services. For example, does this provision prohibit the inclusion of a tagline for source tracking and maintenance purposes? Could an institution include a logo or other graphic on the notice? If the Board adopts an opt-in approach, we encourage the Board to either soften the language, clarify all the kinds of information that can be included on the notice, or draft a broad exception for non-material information such as taglines and logos.

### **The Implementation Period**

The Board has requested comment on the appropriate implementation period for the proposed rule. Given the need to implement the proposed new notice into our deposit account opening software, at a minimum, we request a six month implementation period. Ideally, we would prefer a one year implementation period.

Respectfully submitted,

Karl E. Leslie, Esq.  
Senior Attorney  
Wolters Kluwer Financial Services