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August 6, 2004

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

RE: Regulation DD; Docket No. R-1197

Dear Ms. Johnson:

Hibernia National Bank is pleased to have this opportunity to comment on the proposed amendments to Regulation DD, including the possibility of revising Regulation Z to govern overdraft protection programs.

There appears to be some misconceptions about these types of programs that would lead someone to believe that these programs harm the consumer.

Hibernia does not promote a 'bounce protection' service or predetermined a specified overdraft amount. We do often try to pay a customer's items for them. Banks have always had the option of paying an item that may cause an overdraft.

Automating the process was done for the purpose of internal efficiency, not a way to cause harm to a customer. This automated process should not be considered a loan. Additionally, any automated decision may be overturned manually. Furthermore, our Regulation DD disclosures list all of our fees that apply to our checking accounts.

Financial institutions should not be required to obtain permission from customers to participate in an overdraft protection program. The customer will be charged the NSF fee for presenting a non-sufficient funds item, regardless of whether or not their item is paid. It is likely to assume that since this process only benefits the customer (paying the item and charging the fee, versus not paying the item and charging the fee), if asked, customers would opt to have their items paid. Of course the main issue with this practice would be that a customer may assume that by giving permission to pay items, all items would be automatically paid. This is clearly not the message that the bank wants to send. The net result is that we try to pay the customer's item, as a

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courtesy to the customer. By paying the customer's item, the customer avoids additional charges from the merchant such as the merchant's return check fees and late payment fees. The customer also avoids the embarrassment of having his or her payment denied. By request, we can turn this service off from a customer's account.

Hibernia, in addition to many other banks, already has a system in place that notifies customers by mail of returned items and associated fees at the time of the overdraft. This notification includes a request for timely repayment, and is followed by an additional notice if the owed amount is not paid timely. Hibernia currently gives customers 42 calendar days in which to clear an overdraft. During that time, we communicate to them by telephone and direct mail. This communication to the customer, in reference to their overdraft is significantly more information than the customer with an overdraft line of credit would receive. Customers receiving transfers from a line of credit receive notice only on their monthly statement. Therefore, the continued communication with customers makes it clear that banks are usually over-providing notification to customers about their NSF activity through an overdraft protection. Further communication to overdraft protection customers would be both redundant for customers and costly to institutions.

Additionally, it is unreasonable to request that banking institutions offer periodic statements of year-to-date fees. This requirement will be costly to the bank and it would imply that banks are the only entities charging service fees. Banks actually receive the lowest fees of any other service company when compared to merchant fees and credit card late fees. Customers receive disclosures about these fees and notices if these fees occur. We also send to our customers monthly statements of all of their activity as well as access to their account information through our on-line banking service. These resources should be sufficient in keeping customers informed.

Thank you again for this opportunity to comments on this proposed guidance. If you have any questions, please feel free to contact me at (504) 533-2555.

Sincerely,

Hibernia National Bank

Becky Spinnato  
Senior Vice President  
Deposit Products Manager

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