American Bankers Association

Building Success. Together.

Virginia E. O'Neill
Senior Counsel
Center for Regulatory Compliance
Phone: 202-663-5073
voneill@aba.com

By electronic delivery

31 March 2010

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20051

> **Re: Docket Number R-1315**
> **Proposed Amendments to Regulation DD**
> **Truth in Savings Act**

Dear Ms. Johnson,

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the Federal Reserve Board's (the Board) proposed amendments and clarifications to Regulation DD and the Official Staff Interpretations (the Proposed Rule).[2] The Proposed Rule seeks to clarify certain aspects of the Board's January 29, 2009, final rule amending Regulation DD to impose requirements for disclosure practices related to overdraft services, including balances available to consumers through automated systems (the Final Rule).[3]

ABA welcomes the Board's effort to clarify these situations and urges it to extend the scope of the policy exception it proposes for retail sweep arrangements by creating a parallel exception for investment sweep arrangements and accounts. As with retail sweep arrangements, customers view these investment sweep accounts and related demand deposit accounts as a single account and expect the "available balance" to reflect funds in the investment account. Such arrangements enable costless intermingling of funds for transaction purposes, and unlike separate savings accounts that may trigger a fee when overdrafts of the demand account draw on funds in the linked account, no such transfer fee is applied in the draw of funds within the investment sweep arrangement or account. The additional exception should recognize the characteristics that distinguish these accounts from demand deposit accounts linked to savings accounts: (1) the investment and demand deposit accounts must be opened simultaneously and remain linked, and (2) there are no charges for transfers between accounts.

---

[1] The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent all segments of the industry's $13 trillion in assets and employ over 2 million men and women.
[2] 75 Fed.Reg. 9126 (March 1, 2010).
[3] 74 Fed.Reg. 5584 (January 29, 2009).

Regulation DD's Rule on Disclosure of Account Balances Involving Automated Systems and Proposed Official Comment.

Section 230.11(c) of the Final Rule governs a financial institution's disclosure of an account balance through an automated system. It requires institutions that disclose balance information to a consumer through an automated system to exclude additional funds that may be made available to the consumer through an overdraft service, a line of credit, or a service that transfers funds from another account. The rule is intended to ensure that consumers are not confused or misled about the available funds in their account when they request an account balance. The Final Rule also permits an institution to disclose another balance that includes these additional funds as long as the institution prominently states that this balance includes these additional funds, and if applicable, that additional amounts are not available for all transactions.[4]

The present proposal reflects the Board's consideration of the special case presented by sweep arrangements and its decision to exempt them from the disclosure requirements of the Final Rule. Thus, the Board proposes an addition to official comment 11(c)-2 which states that section 230.11(c) of Regulation DD does not require a bank to exclude from a consumer's automated account balance funds that may be transferred from another account pursuant to a retail sweep program that has the following characteristics:

1. The classification of the accounts complies with Regulation D;
2. The consumer does not have direct access to the non-transaction subaccount that is part of the retail sweep program; and
3. The consumer's monthly account statement shows a combined balance in the two subaccounts.[5]

ABA appreciates the Board's willingness to propose an exception for sweep accounts; however, as drafted, the proposed exception is too narrow and fails to accommodate other forms of sweep account relationships which also should be excluded from the disclosure requirements of section 230.11(c).

Expand the Retail Sweep Exception to Investment Sweeps.

Proposed comment 11(c)-2 narrowly describes one particular form of sweep arrangement, a "retail sweep arrangement," established at the insistence of a bank to manage and mitigate its reserve requirements under Regulation D and, in some cases, to provide the consumer with a higher rate of interest than the consumer would otherwise receive. However, the proposed comment fails to accommodate other forms of sweep account relationships that deserve similar treatment, including investment sweep arrangements created by linking transaction and investment accounts.

Like retail sweep arrangements, these investment sweep accounts are not established for the purpose of avoiding overdrafts. Rather, they are set up to accommodate a customer's wish to maximize the rate of return on deposits through the daily (or at some other interval) sweep of deposits and other credits to the transaction account to the investment account. No charge is imposed for transfers from one account to another, and, as the Board recognized with respect to

---

[4] 74 Fed.Reg., *supra* at 5593.
[5] 75 Fed.Reg., *supra* at 9128.

retail sweep arrangements, customers who hold an investment sweep account would be confused – and possibly alarmed – by receiving an account disclosure that excludes funds swept to the linked non-transaction account. Thus, the rationale the Board relied upon to exclude retail sweep arrangements from section 230.11(c)'s disclosure requirements – customer expectation and the possibility for confusion – applies with equal force to these linked accounts.

Despite their similarities, investment sweep accounts do not fit within the parameters of a retail sweep arrangement as defined by the Board in proposed comment 11(c)-2. For example, these accounts do not consist of two distinct subaccounts; instead, they generally involve a transaction or demand deposit account that is linked to a non-transaction account or an investment account held at a brokerage or investment company (which may or may not be affiliated with the depository institutions). In addition, unlike the retail sweep agreement in which the customer usually does not have direct access to the funds in the savings subaccount, the customer may have direct access to the funds in the linked non-transaction or investment account. Indeed, the transaction account and the investment account may be used and funded independently of one another. Finally, the classification of accounts involved in a linked account relationship does not always fit within the strictures of Regulation D. Accordingly, the Board should add another exception to make room for qualifying investment sweeps that have their own operational features.

Ultimately, these sweep-connected accounts have sufficient characteristics in common – and those that distinguish them from linked demand deposit and savings accounts that are the real target of the rule – that the Board should create an exception for investment sweep accounts similar to the one created for retail sweep arrangements. For example, as with retail sweep accounts, investment sweep accounts are promoted as a single product or single relationship, and the customer expectation is for the accounts to act as a single financial product. Both accounts, the demand deposit account and the investment account, must be opened contemporaneously. One account may not be opened without the other. The demand deposit account is set up to access funds in the investment account *on a regular basis* and as funds are needed. Indeed, customers seeing a $0 balance or $0 available funds might well react unnecessarily with alarm to notices that would be required by the rule as drafted. In addition, like retail sweep accounts, fees are never charged for transfers from the investment sweep account to the demand deposit account. In contrast, savings accounts may be established independently of a demand deposit account, and a fee may be imposed for transferring funds between the savings and demand deposit accounts.

In summary, customers who contemporaneously establish a transaction account with a depository institution linked to an investment account with either the depository institution or another investment entity do not view the funds held in the investment account as "overdraft funds." Rather, they view the demand deposit account simply as a channel to access the investment account funds. Accordingly, they expect and should receive an "available balance" or "available funds" amount that includes funds in the investment account.

For these reasons, ABA respectfully requests that the Board create an additional exception to section 230.11(c)'s disclosure requirement that excludes investment sweep account relationships.[6] The characteristics that distinguish them from demand deposit accounts linked to savings accounts

---

[6] ABA has considered whether modification of proposed comment 11(c)-2 is possible, and we believe that because the characteristics of a retail sweep arrangement and linked relationship accounts differ sufficiently, treating the two separately within a new section of comment 11(c)-2 would provide the greatest clarity.

are: (1) the investment and demand deposit accounts must be opened simultaneously and remain linked, and (2) there are no charges for transfers between accounts.

ABA appreciates the opportunity to comment on the Proposed Rule. If you have any questions about these comments, please contact the undersigned at (202) 663-5073 or via e-mail at voneill@aba.com.

Sincerely,

Virginia O'Neill
Senior Counsel
Center for Regulatory Policy