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24 November 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors
of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 205551

Re: Docket No. R1210
Regulation E
69 *Federal Register* 55996, 17 September 2004

Dear Ms. Johnson,

ABA is submitting brief additional comments to the Federal Reserve Board's ("Board") proposed changes to the Commentary to Regulation E (Electronic Fund Transfer Act). Previously, on 17 November, we submitted a letter on the proposed revisions to the Regulation and Commentary addressing coverage of electronic check conversion services and payroll cards and other issues. This letter addresses only the proposed changes related to ATM disclosures.

The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

Under Regulation E, ATM operators that impose a fee on a consumer for using the ATM must provide a notice of that fact in a prominent and conspicuous location on or at the ATM. In addition, the operator must also provide notice that the fee will be charged and the amount of the fee either on the screen of the ATM or on paper, before the consumer is committed to paying the fee. The proposed change to the Commentary clarifies that on the posted signage ATM operator may disclose that a fee "may be" imposed for using the ATM.

We strongly support this proposed provision. To disclose that an operator "will" disclose a fee when, in fact, in many or the great majority of cases, it will not, is misleading to consumers. Most banks, for example,

do not impose ATM fees on their own customers when they use an ATM owned by the customer's bank. In addition, most banks' experience is that the great majority of ATMs transactions are conducted by their own customers. In these cases, to post a notice that a fee "will" be imposed will confuse and mislead the banks' customers. Some may even choose to forgo the transaction, inconveniencing and annoying them. It simply makes no sense to disclose that a fee will be imposed when there are circumstances when the transaction is free.

The ABA appreciates the opportunity to submit these additional comments to support the proposed changes relating to ATM fee disclosures.

Sincerely,

Nessa Eileen Feddis