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Washington, DC 20036

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Mark J. Tenhundfeld
Director
Office of Regulatory
Policy
Phone: 202-663-5042
Fax: 202-828-4548
mtenhund@aba.com

March 27, 2008

By Electronic Delivery

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1307; Reserve Requirements of Depository Institutions; Issue and Cancellation of Federal Reserve Bank Capital Stock; 73 Federal Register 8009; February 12, 2008

Dear Ms. Johnson,

The American Bankers Association¹ appreciates the opportunity to submit comments on recently proposed revisions to reserve requirements that apply to depository institutions.² The Board of Governors of the Federal Reserve System (Board) has invited comments on several changes, two of which – having to do with pass-through accounts and the definition of “savings deposit” – have been identified as substantive changes by the Board. The other changes are intended to incorporate existing guidance into the Board’s regulations, to clarify ambiguous provisions, or to reorganize sections to improve the order of the regulations. We believe that most of the proposed changes will provide appropriate additional flexibility and clarity in several sections of the Board's rule, and we support adoption of the changes as proposed except where noted below.

Pass-through accounts. All depository institutions must maintain reserves against certain types of accounts in amounts specified by the Board. Prior to enactment of the Financial Services Regulatory Relief Act of 2006 (Reg Relief Act),³ banks that were members of the Federal Reserve System (member banks) were required to maintain reserves in an account with a Federal Reserve Bank while non-member banks were permitted to maintain reserves using “pass-through accounts” (*i.e.*, accounts maintained at another depository institution that in turn has an account at a Federal Reserve Bank). The Reg Relief Act permitted all depository institutions, whether or not a member of the Federal Reserve System, to satisfy reserve requirements by using pass-through 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 over 95 percent of the industry’s \$12.7 trillion and assets and employ over 2 million men and women.

² These proposed changes were published at 73 *Fed. Reg.* 8009 (Feb. 12, 2008).

³ Pub. L. 109-351 (Oct. 13, 2006).

Under the Board's current regulation, only non-member banks may satisfy reserve requirements through “pass-through” accounts at another bank. The Board is proposing to amend its rules to conform to the recent statutory change.

We support this amendment. It will provide additional flexibility for member banks without affecting the policy objectives that underlie the reserve requirements.

Definition of “savings deposit.” The Board also proposes to change the definition of “savings deposit” for purposes of reserve requirements. A bank must maintain reserves based on a specified percentage of “transaction accounts”⁴ but not “savings deposits.”⁵ The Board distinguishes the two types of accounts primarily based on the ease with which customers may access funds. As stated in the preamble to the proposal, “[g]enerally speaking, the more convenient it is to make withdrawals or transfers from an account, the more likely it is that the account will be used for making payment or transfers to third parties as opposed to holding savings.”⁶ The Board’s current regulation limits the number of transfers that may be made from a savings deposit account to six per month, no more than three of which may be by check, debit card, or similar order.⁷ This limitation is sometimes referred to as the “six-three rule.”

In order to minimize the amount of reservable accounts and to provide customers with a higher rate of interest on their deposits, banks frequently offer “sweep account” products. While there are several variations of sweep accounts, these products typically involve both a savings deposit account and a transaction account opened by the same customer. Funds will be deposited and maintained in the savings deposit account until they are needed by the customer, at which point the funds are “swept” into the transaction account, subject to the six-three rule noted above.

The Board proposes to eliminate from the definition of “savings deposit” the limit on the number of transactions that may be conducted by check, debit card, or similar order. Thus, if adopted as proposed, the change would permit all six transfers or withdrawals per month to be by any means.

We support this change. The six-three rule was an appropriate implementation of an ambiguous statute at the time the Board adopted it.⁸ However, the statutory ambiguity no longer exists⁹ and

⁴ A transaction account is defined by the Board as a “deposit or account from which the depositor or account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, or other similar device for the purpose of making payments or transfers to third person or others or from which the depositor may make third party payments at an automated teller machine (ATM) or a remove service unit, or other electronic device, including by debit card....” 12 CFR 204.2(e).

⁵ The Board defines “savings deposit” as a “deposit or account with respect to which the depositor is not required by the deposit contract but may at any time be required by the depository institution to give written notice of an intended withdrawal not less than seven days before withdrawal is made, and that is not payable on a specified date or at the expiration of a specified time after the date of deposit.” *Id.* at 204.2(d).

⁶ 73 Fed. Reg. at 8010.

⁷ 12 CFR 204.2(d)(2).

⁸ That statute -- the Garn-St Germain Depository Institutions Act of 1982 (Garn-St Germain Act) -- authorized banks to offer money market deposit accounts (MMDAs) that could compete with money market mutual funds without requiring the bank to set aside reserves on the funds in the MMDAs. At the time the Garn-St Germain Act was enacted, a “transaction account” was defined as any account from which more than three preauthorized, automatic, or telephonic transfers or withdrawals per month were permitted. The Garn-St Germain Act specified that an MMDA would not be a transaction account even though it permitted, among other things, three “third-party transfers.” Congress noted that the third-party transfers included transfers by checks. It was unclear whether Congress intended for customers to be able to make three preauthorized, automatic, or telephonic transfer *plus* three third-party

changes in technology have changed notions of what it means for a transfer to be “convenient.” As the Board notes in the preamble, “depository institutions have identified the six-three distinction as a regulatory burden in various contexts, as distinctions that have historically been drawn between ‘six’ or ‘three’ transfers or withdrawals are overtaken by developments in payments technology.”¹⁰ Given the change in the underlying statute and the evolution in payments technology, we believe the change should be adopted as proposed.

The preamble to the proposal notes that this proposed change could result in a slight decrease in transaction accounts. While we agree that such a result is possible, we believe the benefits of the proposal outweigh such possibility.

Other changes. The Board has proposed a number of other changes intended (a) to incorporate interpretations into the Board’s rules, (b) to clarify various provisions, and (c) to reorganize provisions to reflect a logical order of topics. We support the adoption of each of these non-substantive provisions, subject to the following comments.

Section 204.3 – Reporting and location. Current section 204.3(a)(2)(i) states that every depository institution, U.S. branch or agency of a foreign bank, and Edge or Agreement corporation shall file a report of deposits with the Federal Reserve Bank in the Federal Reserve District in which the entity is located. The Board proposes to redesignate this provision to section 204.3(a) and add that the reporting entities are to file a report of deposits “or any other form or statement that may be required by the Board or by a Federal Reserve Bank.”

We urge the Board and Reserve Banks to be judicious in the information requested of the reporting entities. While any individual information request may seem reasonable in isolation, the collective burden of the myriad reports and other information collections imposed by the bank regulators is enormous. We suggest that the Board (and the other banking agencies) maintain a complete and readily accessible inventory of reporting requirements currently in effect and assess whether any proposed new requirement is justified in light of what already is being asked of the entities within your jurisdiction. Moreover, we encourage the Board (as well as the heads of the other regulators) to conduct periodic reviews of the overall paperwork burden imposed on the institutions you regulate. While the proposed additional text in section 204.3(a) is not objectionable on its face, it nevertheless creates another opportunity for the Federal Reserve System to impose more regulatory burden in a way that evokes the image of “death by a thousand cuts,”

Section 204.6 – Charges for reserve deficiencies. The Board’s rules authorize Federal Reserve Banks to charge banks for deficiencies in required reserve balances. The proposal would eliminate the provision in current section 204.7(a)(2)(i) that states --

Each Reserve Bank has adopted guidelines that provide for waivers of small charges. The guidelines also provide for waiving the charge once during a two-year period for any deficiency that does not exceed a certain percentage of the depository institution’s required reserves. Decisions by Reserve Banks to waive charges in other situations are based on an

transfers (for a total of six transactions) or whether it intended for the three withdrawals or transfers from an MMDA to include the possibility of third-party transfers (for a total of three transactions). The Board resolved this ambiguity by permitting six transactions per month, no more than three of which could be check, debit card, or similar order.

⁹ The statutory provisions that authorized MMDAs have expired. Authority for MMDAs is found in the Board’s Regulation D, 12 CFR Part 204.

¹⁰ 73 Fed. Reg. at 8010.

evaluation of the circumstances in each individual case and the depository institution's reserve maintenance record.

The preamble to the proposal states that this change is proposed because the current rule “describes only in part the extent of the discretion of the Reserve Banks in this regard and to avoid the implication that Reserve Banks must waive charges in certain of the cases described.”¹¹ Given that the current rule refers to Reserve Bank guidelines that outline when waivers may be appropriate, we are unclear on why the Board believes that the rule describes only “in part the extent of the [Reserve Banks'] discretion.” The rule simply incorporates the Reserve Banks' guidelines and notes two instances where waivers are available. The Board's desire to avoid creating the impression that the rule sets forth the entire universe of waiver situations could be addressed by identifying those two instances as illustrative.

More problematic from our perspective is the implication that waivers may not be available in the circumstances identified in the current rule. The only circumstances alluded to in the current rule for when a waiver will be granted -- *i.e.*, when the charge would be small or when the deficiency falls below a predetermined threshold -- seem appropriate situations for the Board to exercise its discretion not to impose a charge. If the Board believes that the charges should be automatic in these cases, we respectfully request the Board to share its reasoning. Absent a compelling reason to change, we urge the Board to retain the current examples of when charges will be waived and simply note that they are illustrative.

* * *

We appreciate the opportunity to share these comments with you and would be pleased to discuss them with you at your convenience should you find that helpful.

Sincerely,



Mark J. Tenhundfeld

¹¹ Id. at 8014.