



April 14, 2008

Mr. Robert E. Feldman, Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, N.W.  
Washington, DC 20429  
Attn: RIN 3064-AD26  
[comments@fdic.gov](mailto:comments@fdic.gov)

Re: Proposed Regulations regarding Processing of Deposit Accounts and Insurance  
Determination Modernization

Dear Madams and Sirs:

The SHAZAM Network appreciates the opportunity to comment on the proposed regulations of the Federal Deposit Insurance Corporation (FDIC) addressing the processing of deposit accounts in the event of an insured depository institution failure. SHAZAM is one last remaining member-owned and controlled electronic funds transfer (EFT) networks whose owners include 866 community-minded financial institutions. We process over 55 million transactions for over 1,500 financial institution participants monthly.

SHAZAM appreciates the actions of the FDIC to proactively outline practices for processing deposit accounts in failure situations. However, the proposed rule raises several questions and issues that are cause for concern for the SHAZAM Network and our financial institution partners. Specifically, these issues relate to the settlement process for two areas:

- Daily settlement activity (PIN and Signature Based) pertaining to the FDIC Cutoff Point in payout situations where deposit operations are not continued by a successor institution (Daily Activity Settlement)
- Trailing settlement activity for signature-based debit card transactions in payout situations where deposit operations are not continued by a successor institution (Trailing Activity Settlement).

We understand and appreciate that the FDIC's overarching primary charter is to maintain confidence in the banking industry and the underlying goal of timely payment of insured deposits. We also understand to accomplish this, the closing team needs a stable deposit base to use to conduct insured deposit determination. As a result, this process leads to the processing of all transactions through the date of closing and any item presented after closing would be returned unpaid. However, in both of the situations above the SHAZAM Network and our financial institution partners would be taking on significant financial risk if properly authorized transaction activity would not be allowed to settle. This risk would ultimately have a ripple

effect on our participants and potentially hinder the public's overall confidence in the payment industry.

### Daily Activity Settlement

The notice of proposed rulemaking outlines the establishment of an FDIC Cutoff Point. Upon taking control of a failed institution as receiver, the FDIC “would take steps necessary to limit additional transactions to ensure, to the extent practicable that funds would not be received by or removed from the failed institution. These steps might include the suspension of wire activities and new deposit account transactions. For example, wire transactions not yet executed by the FDIC Cutoff point would not be allowed to occur.” In our opinion the establishment of an FDIC cutoff point could cause our daily settlement amounts to be rejected on the day of failure if our settlement takes place after the FDIC cutoff point. This would place our organization as a general creditor with the institution and likely causing financial loss for the entire amount of the institution's signature based and PIN based activity for the day.

While we recognize the need to establish a cutoff time, particularly in a complex processing environment, the proposed regulation should instead require that the FDIC use established cutoff times used by banks in their ordinary course of business and operations. This would allow our daily settlement activity to occur properly on the day of failure. The section below addresses our concerns relating to settlement after failure.

### Trailing Activity Settlement

Signature based debit card transactions, unlike PIN activity, does not settle immediately. This delayed settlement also presents risks to our organization and similar organizations as this delayed settlement is not reflected in depositor's ledger balances. Within the proposed rule, the FDIC advocates the use of the ledger balance of the account for deposit insurance purposes. The use of the ledger balance would cause signature-based debit card activity settlement, which does not typically settle for up to seven days, to also be rejected for each day after the institution fails. Again, this would place SHAZAM as a general creditor with the institution and likely cause financial loss for up to seven days of signature-based activity. Cardholders would also lose their ability to utilize their ATM or debit cards for purchases or cash withdrawals as EFT networks would decline all authorization activity after receiving notice of failure.

This issue is further complicated by the fact that national card brands (e.g. Visa and MasterCard) operating regulations would not allow us to chargeback this activity to the merchant. During most signature-based activity an electronic authorization is obtained by the issuing financial institution (or their processor). The merchant's obtainment of this authorization and compliance with existing operating rules guarantees payments of these funds and does not allow the amount to be charged back to the merchant in most conditions.<sup>1</sup> Chargeback rights would be allowed in cases of fraud or no authorization obtained; however, chargeback rights do not currently exist for institution failure. Additionally, upon signing for the transaction, the cardholder agrees to be subject to the terms and conditions governing the card and also has an expectation that they will be required to pay for the transaction.

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<sup>1</sup> 2007 MasterCard Operating Rules, Section 5.2.2

This electronic authorization makes this situation vastly different from a situation where a merchant accepts a negotiable instrument from a customer and presents the instrument for payment after closing. In this negotiable instrument case, no paying institution authorization is obtained; as a result the merchant has accepted the risk of accepting this negotiable instrument.

One potential alternative is to allow organizations with existing and confirmed business relationships (such as EFT networks) to place provisional holds on these signature-based transaction amounts. Present day information systems make this information readily available and as such it would be irrational to not use it depositor calculations. Portions of this alternative are outlined within the second part of the proposed rules addressing Large Bank Deposit Insurance Determination Modernization. Currently, this section of the proposal is not applicable to institutions under two billion dollars in deposits. However, this should not be limited to only large institutions especially since in many cases the provisional holds could be applied manually or are already part of many current banking processing systems. In our opinion, it is not appropriate for those entities that have business relationships with “small” financial institutions to not have this remedy available to them when such a remedy is available to business partners of larger organizations.

This alternative would have several benefits. It would allow the FDIC to limit its costs in closing the institution by not paying inflated ledger balances. It would also limit depositor’s receiving more funds than they are entitled, since signature based deposit purchases would not be reflected in ledger balance. This alternative would also allow EFT networks to maintain their current risk management practices and refrain from having to enact stricter policies to compensate for this increased risk exposure. Additionally, this alternative would also lessen the need for EFT networks to immediately suspend an institution’s authorizations whenever credible market evidence points to a potential financial institution failure. Overall, the alternative would ensure cardholders would continue to have immediate access to their funds and maintain public confidence in the overall payment industry.

SHAZAM appreciates the opportunity to comment on the proposed regulations and we thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Christensen". The signature is fluid and cursive, with a large initial "K" and "C".

Kevin Christensen  
Senior Internal Audit Manager