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Statement by

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before the

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of the

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The Board of Governors of the Federal Reserve System appreciates this opportunity to comment on issues concerning fees imposed on electronic fund transfers at automated teller machines (ATMs). ATM fees have received considerable attention recently and are the subject of bills introduced in the House by Representatives Schumer and Sanders.

This hearing is focusing on an examination of the existing ATM fee structure, the current regulatory scheme regarding surcharges, and the potential impact of these charges. The existing fee structure has been or will be addressed by witnesses representing the industry, who are better able to provide current detailed information on the subject. I will tell you about the regulatory scheme concerning fee disclosure under the Electronic Fund Transfer Act (EFTA), which the Board is responsible for implementing; provide some data about consumer complaints, the level of compliance with the EFTA found in bank examinations, and the incidence and amount of ATM transaction fees reported in Federal Reserve surveys; and make some observations about the legislative proposals.

Let me start by differentiating between two categories of ATM fees: fees charged by a financial institution to its own customers for use of ATMs, and fees charged directly to a consumer by another ATM owner or operator for use of its machines. This latter type of fee is sometimes referred to as an ATM surcharge.

The Federal Reserve does not have any direct information on ATM surcharges; we do have data on ATM fees charged by institutions to their own customers. Fees charged to a consumer by the account-holding institution can include fees charged for the use of the institution's own ATMs, and fees charged for use of ATMs operated by others. Our studies show that a relatively small number of financial institutions charge customers for use of the

institution's own ATMs. Data developed for the Board's Annual Report to the Congress on Retail Fees and Services of Depository Institutions indicate that in 1995, 9.6 percent of banks charged their customers fees for cash withdrawals at the banks' own ATMs; the fee amount averaged $0.61. Among savings associations, 8.8 percent charged their customers, with a fee averaging $0.65.

The more common, and longstanding, practice is to charge customers for use of other institutions' ATMs -- so-called nonproprietary ATMs. ATM networks charge account-holding institutions for handling transactions that their customers initiate at a nonproprietary ATM, and the institutions often pass on to their customers all or a portion of the network charge or impose a flat fee for such transactions. Again referring to the Board's study of retail fees and services, for cash withdrawals from nonproprietary ATMs in 1995, the percentage of institutions that charged their customers was higher: 85.3 percent for banks, with fees averaging $1.03, and 83.1 percent for savings associations, with fees averaging $0.97.

The trend in the incidence and level of charges has generally been upward. In 1990, 61.7 percent of banks charged their customers for use of nonproprietary ATMs; the fees averaged $0.90. For savings associations in 1990, 40.3 percent charged their customers fees that averaged $0.85.

In the past, ATM operators were limited to recovering costs through network agreements; generally they could not impose surcharges directly on ATM users. Until recently, Visa and MasterCard rules prohibited surcharges at ATMs in the networks they operate. In some areas the regional ATM network rules prohibited surcharges. A few states enacted limits on surcharges, without prohibiting them outright. ATM surcharges could be

imposed in approximately 15 states where state law explicitly disallowed the prohibitions in network rules.

Visa and MasterCard have now repealed their prohibitions on ATM surcharges, effective April 1. Thus, many financial institutions that could not previously do so are now permitted to impose surcharges on ATM users, and some institutions have opted to impose such a fee. Because the consumer pays an ATM surcharge in addition to any fee imposed by the consumer's own account-holding bank for use of nonproprietary ATMs, a question has been raised about whether the fees are adequately disclosed to the consumer.

The EFTA and Regulation E require debit card issuers to disclose fees they charge for ATM and other electronic transactions. Disclosures are given at the time a consumer opens an account or signs up for an EFT service, and on periodic statements, typically monthly, of account activity. If an institution later increases the fees charged, it must provide a notice of the change 21 days in advance. Under Regulation E, these disclosures must be provided in a written, clear, and readily understandable form.

An account-holding bank is not required to disclose ATM surcharges imposed by others, since it would be impractical to monitor and disclose the dollar amount of a surcharge that might be imposed at any given time by some other financial institution nationwide. However, the EFTA and Regulation E do require disclosure of a surcharge at the ATM. The surcharge must appear on a sign posted at the ATM. Alternatively, the ATM operator has the option of displaying the fee on the terminal screen (instead of a sign) provided consumers are given the option to cancel the transaction after receiving notice of the fee. In addition, surcharges must also be disclosed after the ATM transaction on the terminal receipt. Although the receipt disclosure generally comes after the transaction has been

completed, the sign or screen requirement is designed to give machine users advance notice of the imposition of the fee and an opportunity to avoid the fee.

The EFTA provides for civil liability for violations, in the amount of actual damages plus punitive damages of between $100 and $1,000 in an individual action, or up to $500,000 or one percent of the defendant's net worth in a class action, together with court costs and attorneys' fees. The act also provides for criminal liability ($5,000 fine or one year imprisonment, or both) for knowing and willful violations.

It is our understanding that in addition to the EFTA and Regulation E, a number of state laws, as well as the MasterCard and Visa operating rules, require disclosure of ATM surcharges.

Data on examinations of financial institutions show general compliance with Regulation E. For each of the years 1993, 1994, and 1995, for instance, the five federal financial institution regulatory agencies reported that 90 percent of institutions examined were in full compliance with Regulation E. There appear to be few violations involving fee disclosures. The data for state member banks of the Federal Reserve System show that out of 1,943 banks examined during the period January 1, 1993 to the present, 20 were cited for failing to disclose EFT fees in the initial disclosures; one institution failed to properly disclose EFT fees on a periodic statement; and four institutions were cited for failing to comply with the change-in-terms notice requirement (but it is not clear that these occurrences involved a change in EFT fees). No institutions were cited for failure to provide the proper notices at their ATMs.

Consumer complaint data also suggest few problems with electronic fund transfers generally. For example, in 1994, the Federal Reserve System received 1,177 complaints

against state member banks; of these, 27 related to EFT services. One of them involved EFT fees (but not at ATMs). Similarly, in 1995, the Federal Reserve System received a total of 1,238 complaints against state member banks; 39 dealt with EFT services. Again, only one complaint concerned EFT fees (and the complaint did not concern use of an ATM). Of all consumer complaints -- involving both state member banks and other types of institutions -- received by the Federal Reserve over the past five years, only ten involved EFT fees, and only four of these related specifically to ATM fees.

The Subcommittee has requested that we comment on the proposed legislation. H.R. 3246, the "ATM Fee Disclosure Act of 1996," has been introduced by Representative Schumer. The bill would amend the EFTA to require disclosure at ATMs of all fees imposed in connection with a transaction by any person, whether the ATM operator, the account-holding institution, or a national, regional, or local network. We believe that because Regulation E, network operating rules, and laws in a number of states already require fee disclosures, the proposed legislation may be unnecessary. As I mentioned, Regulation E requires disclosure of a surcharge by the ATM operator at the time of the transaction, and requires disclosure of fees imposed by the account-holding institution in the initial disclosures, in periodic statements, and in notices of changes in terms for fee increases.

There is a real question whether it is operationally feasible for an operator of an ATM to disclose fees imposed by the thousands of account-holding institutions whose customers have access to the ATM. Fees vary, and there is no practical way for the ATM operator to find out the fee amounts imposed by all institutions so as to comply with the proposed disclosure requirements. The ability to access funds through ATMs in almost any location

nationwide is a valuable benefit to consumers; the costs of compliance with the requirements of the legislation, or the potential liability for failure to comply, could tend to discourage expansion of this service.

H.R. 3246 would require disclosure of fees not only at ATMs operated by persons other than the consumer's institution, but also at ATMs of the consumer's own institution. This latter type of transaction does not, by definition, involve a surcharge, only a charge imposed by the consumer's bank. As I mentioned earlier, this type of charge is imposed by relatively few banks, and is not a new development. Consumers are likely fully aware of the charge, given that disclosure is required under Regulation E.

H.R. 3221, the "Electronic Fund Transfer Fees Act of 1996," introduced by Representative Sanders, would amend the EFTA to totally prohibit ATM surcharges. In general, the Board believes that substantive limitations on prices, if adopted at all, are better left to state legislatures, which can take into account local economic conditions in deciding what limits, if any, are necessary. A few states have in fact enacted limits on ATM surcharges. A prohibition on surcharges might have the same effect as added compliance costs for additional disclosure of surcharges -- a tendency to deter financial institutions and other ATM operators from making ATMs widely available to consumers.

There is also the possibility that a surcharge prohibition may be ineffective in keeping costs to consumers down. The network charge imposed on the account-holding bank is generally shared by the network with the operator of the ATM. ATM operators, if unable to impose surcharges, may be able to negotiate for an increase in the amounts received from networks, and such an increase could be passed on (via the account-holding bank) to consumers.

In conclusion, the Board believes that consumers benefit substantially from the availability of regional, nationwide and worldwide ATM service. The Board also believes that the current disclosure scheme provides adequate and straightforward information to consumers about ATM fees. Although the level of fees paid by consumers for bank services is a matter of importance for consumers, competition in the marketplace -- when combined with clear and full disclosure to consumers of fees -- should be sufficient to keep fees at a level commensurate with the value provided in return and to give consumers a range of choices.