



## Enforcement Alert from Hudson Cook, LLP: CFPB Announces Resolution with Regional Bank over Alleged "Surprise Overdraft Fees"

September 28, 2022 | Kristen Yarows and Mark E. Rooney

### **HIGHLIGHTS:**

- CFPB announced an administrative resolution of Consumer Financial Protection Act claims against a regional bank concerning unfair and abusive acts and practices for allegedly charging consumers "surprise overdraft fees."
- The regional bank neither admitted nor denied the allegations but agreed to stop charging the fees and to pay \$141 million in consumer redress and a \$50 million penalty to the Bureau.

### **CASE SUMMARY:**

On September 28, 2022, the CFPB issued an administrative consent order against a regional bank for committing unfair and abusive acts and practices in violation of the Consumer Financial Protection Act of 2010 (the "CFPA"). The Bureau alleges that from August 2018 through July 2021, the regional bank charged consumers approximately \$141 million in "surprise overdraft fees" on certain ATM withdrawals and debit card purchases. The bank charged a type of overdraft fee known as an authorized-positive fee. This occurs when a consumer's account had sufficient available funds for the transaction at the time the bank authorized the transaction, but lacked sufficient funds when the transaction later settled due to a separate intervening withdrawal.

In announcing the consent order, the Bureau highlighted regulatory guidance from 2015 warning financial institutions over the sort of authorized-positive fees at issue in this case. It also pointed out that the same bank was subject to a prior consent order relating to overdraft fee practices. The prior matter related to the bank's opt-in process for overdraft coverage and was not centered on authorized-positive fees. Under the leadership of Director Rohit Chopra, the Bureau recently announced its intention to focus enforcement efforts on "repeat offenders." By invoking the prior consent order against this same bank for only nominally related issues, the Bureau appears be taking an expansive view of what constitutes a "repeat offender."

Without admitting any liability, the bank agreed to pay \$141 million in consumer redress

and a \$50 million penalty to the Bureau. The order also prohibits the bank from charging authorized-positive overdraft fees.

**RESOURCES:**

You can review all of the relevant court filings and press releases at the [CFPB's Enforcement Page](#).

- [Consent Order](#)
- [Stipulation](#)
- [CFPB Press Release](#)

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