

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE NO. 1:09-MD-02036-JLK**

**IN RE: CHECKING ACCOUNT  
OVERDRAFT LITIGATION**

**MDL No. 2036**

**THIS DOCUMENT RELATES TO:  
FOURTH TRANCHE ACTION**

*Swift v. BancorpSouth, Inc.*  
N.D. Fla. Case No. 1:10-00090-SPM-AK  
S.D. Fla. Case No. 1:10-cv-23872-JLK

**PLAINTIFFS' OPPOSITION TO DEFENDANT  
BANCORPSOUTH BANK'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Shane Swift, individually and on behalf of the certified class (collectively, “Plaintiffs”), files this opposition to Defendant BancorpSouth Bank’s (“BancorpSouth” or “Bank”) Motion for Summary Judgment (“Motion”). (DE # 2999). In accordance with S.D. Fla. Local Rule 56.1(a), Plaintiffs attach hereto as Exhibit A Plaintiffs’ Statement of Facts to Be Tried and Response to BancorpSouth Bank’s Statement of Material Facts, which supports this opposition (“Plfs. Stmt.”), inclusive of Exhibits 1 through 31 thereto.

### **INTRODUCTION**

BancorpSouth attempts to defeat Plaintiffs’ claims by ignoring clear facts and law, and previous decisions of this Court. Resolution of this case requires a fact-finder to resolve a number of disputed facts. The affirmative defenses raised by BancorpSouth do not change that fact. Therefore, having failed to meet its summary judgment burden as to Plaintiffs’ claims or the select affirmative defenses raised in the Motion, BancorpSouth’s Motion must be denied.<sup>1</sup>

### **FACTUAL BACKGROUND**

For at least ten years, BancorpSouth operated sophisticated computer software to manipulate and re-order its customers’ debit card transactions in order to generate excess overdraft fees. (Plfs. Stmt. ¶¶ 68-72). Instead of instantaneously holding or sequestering a depositor’s funds, as Bank personnel concede is the reasonable expectation of customers (Plfs. Stmt. ¶ 93), BancorpSouth waited hours, sometimes even days, to process and then reorder the transactions from highest dollar amount to lowest dollar amount before removing the funds. (Plfs. Stmt. ¶¶ 68, 71, 81). These account manipulations caused Plaintiffs’ accounts to be depleted more rapidly than they would have if the transactions had been posted in the order in which they were actually initiated and authorized, resulting in more overdrafts and, consequently, more overdraft fees. (Plfs. Stmt. ¶¶ 68, 71). Many overdraft fees were levied when, but for BancorpSouth’s bookkeeping device, Plaintiffs would have had sufficient funds in their accounts. (Plfs. Stmt. ¶¶ 68, 71). BancorpSouth did not disclose to Plaintiffs the account manipulations, took active steps to keep them secret, and engaged in these manipulations despite recognizing that it harmed its own customers. (Plfs. Stmt. ¶¶ 70, 76, 78, 83, 86-89).

BancorpSouth attempts to justify its actions by relying on the terms of multiple standardized deposit account agreements and related documents – terms hidden in a succession

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<sup>1</sup> Plaintiffs are no longer pursuing the claim for conversion in this action and, therefore, do not oppose summary judgment on this count.

of dense, small type boilerplate agreements. (Plfs. Stmt. ¶ 82). The Bank misconstrues Plaintiffs' claims by asserting that Plaintiffs seek to alter the terms of the account agreements. Plaintiffs seek only to require that BancorpSouth discharge its discretionary contractual rights in good faith and otherwise comply with common and statutory laws that are the subject of Plaintiffs' other claims. BancorpSouth fails to offer undisputed facts demonstrating that it exercised its discretion in good faith; that its adhesion account agreement and overdraft policies were not unconscionable; that it was not unjustly enriched by the implementation and enforcement of its overdraft policies; or that it did not violate the Arkansas Deceptive Trade Practices Act.

## **ARGUMENT**

### **I. Summary Judgment Standard**

A party is entitled to summary judgment only when there is no "genuine issue as to any material fact" and the undisputed facts warrant judgment for the moving party as a matter of law. Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). The moving party bears the burden of showing that there are no genuine issues of material fact that should be decided at trial. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159 (1970); *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). A factual dispute is genuine where the evidence is such that a reasonable fact-finder could return a verdict for the non-moving party. *Patterson & Wilder Constr. Co., Inc. v. United States*, 226 F.3d 1269, 1273 (11th Cir. 2000).

In deciding a motion for summary judgment, a court must view all evidence and inferences in the light most favorable to the non-moving party. *Clark*, 929 F.2d at 606. As the Eleventh Circuit has repeatedly explained:

All reasonable doubts about the facts should be resolved in favor of the non-movant. If the record presents factual issues, the court must not decide them; it must deny the motion and proceed to trial. *Summary judgment may be inappropriate even where the parties agree on the basic facts, but disagree about the inferences that should be drawn from these facts. If reasonable minds might differ on the inferences arising from undisputed facts, then the court should deny summary judgment.*

*Patterson & Wilder Constr.*, 226 F.3d at 1273 (emphasis in original) (citations omitted). See also *United States v. Four Parcels of Real Property in Greene and Tuscaloosa Counties in the State of Ala.*, 941 F.2d 1428, 1437 (11th Cir. 1991). As this Court recently noted, "in reviewing the record evidence, the Court may not undertake the jury's function of weighing the evidence

properly offered by the Parties.” *Cortina v. F.A.D. Detective & Sec. Services, Inc.*, Case No. 11-20732-CIV, 2011 WL 6025638, at \*1 (S.D. Fla. Dec. 1, 2011) (slip copy) (citations omitted).

Opinion evidence alone can be sufficient to preclude summary judgment, *Poe v. Sears, Roebuck & Co., Inc.*, 1 F. Supp. 2d 1472, 1477 (N.D. Ga. 1998), and conflicting opinions may preclude a finding that no genuine issues exist. *Wise v. Hartford Life and Accident Ins. Co.*, 360 F. Supp. 2d 1310, 1324 (N.D. Ga. 2005). Courts “would ‘rather wrongly submit a close question to the jury than wrongly deny a litigant his or her day in court.’” *Kendall v. Cobb County, Ga.*, 14 F. Supp. 2d 1342, 1346-47 (N.D. Ga. 1998) (quoting *McKenzie v. Atlantic Richfield Co.*, 906 F. Supp. 572, 576-77 (D. Colo. 1995)); *see also Collins v. Beazer Homes USA, Inc.*, 334 F. Supp. 2d 1365, 1377 (N.D. Ga. 2004) (denying summary judgment in a “close case”). This case is not even close, as Plaintiffs demonstrate below.

## **II. Plaintiffs’ Claims for Breach of Contract and Breach of the Implied Duty of Good Faith and Fair Dealing Require Resolution of Many Disputed Facts**

BancorpSouth’s principal argument in support of the Motion has previously been rejected by this Court – that Plaintiffs fail to state a claim for breach of contract. (DE # 1305). BancorpSouth “respectfully” disagrees with the Court’s earlier ruling, contending that the Court failed to consider Arkansas law. (DE # 2999-1 at 3, n. 5 (hereafter, “Def.’s Mem.”). Tellingly, BancorpSouth’s supporting memorandum fails to cite a single fact in support of the Motion attacking Plaintiffs’ contract claims. Rather, BancorpSouth merely attempts to re-litigate the same arguments previously raised in its Motion to Dismiss. (DE # 1068).

BancorpSouth argues that since its adhesive Deposit Agreement implicitly permits high-to-low posting of debit card transactions, it can post high-to-low irrespective of the methods it employs or its rationale for doing so. (Def.’s Mem. at 5). This argument flies in the face of this Court’s prior ruling that Arkansas law allows claims for breach of contract and for breach of the implied duty of good faith and fair dealing when a party fails to exercise in good faith the discretion it reserved to itself in a contract: “Plaintiffs do not ask the Court to tell the [bank] how to order transactions, but simply that the ordering must be carried out as contemplated by the covenant of good faith and fair dealing.” *In re Checking Account Overdraft Litig.*, 694 F. Supp. 2d 1302, 1315 (S.D. Fla. 2010). Other courts have reached similar conclusions:

The court cannot find as a matter of law that the Deposit Agreement’s statement that Wachovia “may” post items “in any order” . . . expressly gives Wachovia the right to manipulate transactions, delay posting indefinitely, and maximize overdraft fees in the ways the Complaint alleges.



*White v. Wachovia Bank, N.A.*, 563 F. Supp. 2d 1358, 1364 (N.D. Ga. 2008).

Here, Plaintiffs are not trying to vary the explicit contract language, in derogation of *Burger King Corp. v. C.R. Weaver*; *M-W-M, Inc.*, 169 F.3d 1310, 1316 (S.D. Fla. 1995) (applying Florida law). (Def.'s Mem. at 5). Rather, Plaintiffs seek only to require that BancorpSouth discharge its discretionary contractual rights in good faith. BancorpSouth fails to offer any new or convincing rationale this Court did not previously consider and reject warranting entry of judgment on Plaintiffs' breach of contract claims. Indeed, BancorpSouth does not even contend that it discharged its duty in good faith, let alone offer any factual support for that argument.

**a. Arkansas Law Recognizes an Implied Covenant of Good Faith and Fair Dealing in the Performance of Contracts.**

Under Arkansas law, "every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement." *Aon Risk Servs., Inc. v. Meadors*, 267 S.W.3d 603, 613 (Ark. Ct. App. 2007); *Cantrell-Waind & Assocs., Inc. v. Guillaume Motorsports, Inc.*, 968 S.W.2d 72 (Ark. Ct. App. 1998) (quoting Restatement (Second) of Contracts § 205). Accordingly, "[a]s is the case with the contract's express terms, the implied covenant is part of the contract and creates contractual obligations that are actionable." *Yarborough v. DeVilbiss Air Power, Inc.*, 321 F.3d 728, 732 (8th Cir. 2003) (applying Arkansas law). Having adopted the Restatement (Second) of Contracts § 205, Arkansas courts look to see whether the conduct at issue is "consisten[t] with the justified expectations of the other party." Restatement (Second) of Contracts § 205, cmt. a. See *Arkansas Research Medical Testing, LLC v. Osborne*, No. 10-750, 2011 WL 1423993 (Ark. Apr. 14, 2011) (citing Restatement (Second) of Contracts § 205).

As it previously argued, BancorpSouth again overstates the Arkansas Supreme Court's holding in *Preston v. Stoops*, 285 S.W.3d 606 (Ark. 2008), when it argues that implied covenant of good faith and fair dealing claims are not recognized by Arkansas courts. (Def.'s Mem. at 5). In fact, *Preston* only provides that the "court has never recognized a cause of action for failure to act in good faith" in the context of "a cause of action *pled in tort*." *Preston*, 373 S.W.3d at 610 (emphasis added). BancorpSouth erroneously attempts to bolster its argument by citing the more recent Arkansas Supreme Court ruling in *Arkansas Research*. That case is in line with *Preston* but does not require this Court to conclude that Plaintiffs may not pursue this claim. BancorpSouth incorrectly argues that Plaintiffs are prosecuting a claim independent of their

breach of contract claim. After reconfirming that there is no independent *tort* claim in Arkansas, the *Arkansas Research* court observed that a breach of the implied duty of good faith and fair dealing may demonstrate evidence of a breach of contract between parties, which is what is in play here. *Arkansas Research*, 2011 WL 1423993 at \*6. Also, *Arkansas Research* is an appeal from a verdict where the jury found no breach of contract, but ruled for the plaintiffs on their implied duty of good faith and fair dealing claim. Having concluded that breach of the implied duty may be evidence of a breach of contract, the Arkansas Supreme Court has not eliminated Plaintiffs' claim challenging the policy of re-sequencing debit card transactions in the face of the contract language the Bank used in its Deposit Agreement. Ultimately, the cases on which BancorpSouth relies do not preclude Plaintiffs' claims. The Deposit Agreement undisputedly contains discretionary terms in that it provides:

If more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we *may* pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order.

(Plfs. Stmt. ¶¶ 77, 78). The Account Information Statement also contains similar discretionary language as that of the Deposit Agreement including language that falsely suggests that BancorpSouth will not *always* post transactions from high to low. (Plfs. Stmt. ¶¶ 77, 83). Discretion is apparent from the use of the term “may,” and the issue of whether or not that language permitted BancorpSouth to manipulate transactions, delay posting indefinitely, or maximize overdraft fees in the ways the Second Amended Complaint alleges are questions of fact that preclude the grant of a Rule 56 motion. *See Checking Account Overdraft Litig.*, 694 F. Supp. 2d at 1316-1317.

BancorpSouth does not argue that Plaintiffs failed to present sufficient facts that the Bank chose to exercise its discretion in bad faith. Instead, BancorpSouth argues incorrectly that such a bad faith exercise of discretion does not give rise to a claim. The rehashing of the Motion to Dismiss should again be rejected.

Additionally, BancorpSouth cites to language in its Account Information Statement from 2010 that discloses to Bank customers that the Bank's account manipulations may result in additional overdraft fees. (Def.'s Mem. at 4). This evidence is insufficient to serve as the basis for summary judgment. The statements to which the Bank cites do nothing to put Plaintiffs on notice that their instantaneous debit card transactions will be held and then reordered at a later

time in order to maximize the number of fees to the Bank. Nor are customers advised of the negative impacts that arise from the undisclosed Overdraft Matrix Limit that the Bank used throughout the class period to exacerbate the effects of re-sequencing. The supposed disclosure itself is insufficient and buried within multiple pages of small typeface. Finally, as noted later in this opposition regarding unconscionability, the pre-2010 versions of the Account Information Statement were misleading. *See infra* at 11-13. There are clear, disputed and material facts regarding the timing and sufficiency of the Bank's disclosure that a jury must decide. Summary judgment is therefore inappropriate.

BancorpSouth does not argue that it complied with the covenant of good faith and fair dealing. It cannot do so. The testimony from Bank officers shows that BancorpSouth introduced high-to-low re-sequencing for the purpose of increasing the Bank's revenue, after first installing the secret Overdraft Matrix Limit, despite the fact that it knew the re-sequencing was harmful to its customers. (Plfs. Stmt. ¶¶ 69, 70, 73, 74, 76, 85, 89). Derek Caswell, First Vice President of Retail Banking, testified that the Bank's processing order was so confusing that Bank personnel – from front line tellers up to regional Bank presidents – lacked sufficient understanding to clearly convey it to BancorpSouth's customers. (Plfs. Stmt. ¶ 90, 91, 93). Indeed, Mr. Caswell's testimony shows that the Bank's processing order was deliberately confusing in order to maximize overdraft fee revenue. (Plfs. Stmt. ¶¶ 92-94). Further, Michael Lindsey, Senior Vice President of Retail Banking, confirmed that the bank's disclosures do not state that the Bank always posted high to low; the customers' account statements do not disclose the commingled posting of all customer-initiated debits high to low; and the overdraft notices make no mention of the posting order that caused additional overdraft fees to be assessed. (Plfs. Stmt. ¶¶ 86-88).

**b. The Court Should Follow Decisions Recognizing that BancorpSouth's Overdraft Fee Scheme Constitutes a Breach of the Implied Covenant.**

Citing *Gunn v. Farmers Ins. Exch.*, 372 S.W.3d 346 (Ark. 2010), BancorpSouth argues that language in the Deposit Agreement providing that it “may pay [debit items] in any order we choose” and “[w]hen we pay Transactions, we generally choose to pay the largest Transaction first and the smallest Transaction last,” are “expressly bargained-for terms,” which preclude a claim for breach of the implied covenant because “the contract at issue permits the actions of which Plaintiff complains.” (Def.'s Mem. at 6). However, the contract in *Gunn* – a case involving a series of agreements appointing the plaintiff to serve as a reserve agent for the Farmers Insurance companies – bears no resemblance to BancorpSouth's contract of adhesion.

*Gunn* affirmed summary judgment against the plaintiff's claim that the defendant terminated the plaintiff's agency in violation of the implied covenant, finding that the language addressing termination without cause was a provision:

- (1) where the parties have expressly disavowed any limitations on their discretion, and (2) the consequences of the exercise of that discretion are easily foreseeable. . . . The parties clearly bargained for such termination on three months' notice, and an implied covenant should not be used to limit an expressly bargained-for term.

*Gunn*, 372 S.W.3d at 352.

Here, in contrast, there is no evidence that Plaintiffs intended to disavow any limitations on BancorpSouth's discretion to post transactions in any order it saw fit, or if such disavowal was remotely fair even if it was intended. Here, the Bank's representatives admit that the Deposit Agreement, the account statements, and overdraft notices did not warn Plaintiffs that BancorpSouth always reordered debit card transactions from high-to-low, while employing the Overdraft Matrix Limit to authorize additional transactions without regard to actual funds in the accounts, resulting in excessive overdraft fees and, in fact, at times causing overdrafts even when the accounts would otherwise not have been overdrawn. (Plfs. Stmt. ¶¶ 70, 71, 76, 78, 86-88). At the very least, there is a genuine question of fact as to whether the consequences of BancorpSouth's exercise of discretion were foreseeable to Plaintiffs. *Keck v. American Employment Agency*, 652 S.W.2d 2, 4 (Ark. 1983) (foreseeability is a question of fact for the jury); *Stacks v. Ark. Power & Light, Co.*, 771 S.W.2d 754, 756 (Ark. 1989) ("It will be up to the trier of facts to decide whether the occurrence was foreseeable...."). The mere fact that BancorpSouth's Deposit Agreement reserves discretion to post high-to-low does not resolve whether BancorpSouth exercised its discretion in bad faith. Arkansas law is consistent with other states in providing a claim for breach of the implied duty of good faith and fair dealing premised on an express contractual provision. *Arkansas Research*, 2011 WL 1423993 at \*6.

This Court's denial of BancorpSouth's Motion to Dismiss is also in accord with the *White* and *Gutierrez* decisions. In *White*, the court found that Wachovia's deposit agreement did not confer *absolute* discretion because of the implied duty of good faith and fair dealing existed in all contracts in relation to the following discretionary language: "Wachovia 'may' post transactions in any order." 563 F. Supp. 2d at 1365. Likewise, in *Gutierrez v. Wells Fargo & Co.*, 622 F. Supp. 2d 946 (N.D. Cal. 2009), Judge Alsup denied summary judgment to Wells Fargo notwithstanding its argument that the account agreement conferred absolute discretion

regarding the posting order:

even if the bank-depositor contract confers discretion on the bank as to the sequence of honoring presentments, the bank must exercise its discretion in accordance with fair dealing and cannot exercise its discretion to enrich itself by gouging the consumer. Put differently, even if the bank-depositor contract purports to allow the bank to post in any order it wishes, such discretion remains subject to the bank's duty of good faith and fair dealing. There is a duty of good faith and fair dealing to honor checks in such a way as to be fair to the consumer and that discretionary power cannot be exercised so as to pile on ever greater penalties on the depositor, which is exactly what Wells Fargo seems to be doing, or so a reasonable jury could conclude.

*Id.* at 952-53.

BancorpSouth ignores *White* and *Gutierrez*, and instead relies on *Saunders v. Mich. Ave. Nat'l Bank*, 662 N.E.2d 602 (Ill. App. Ct. 1996), (Def.'s Mem. at 12), the Illinois case repeatedly rejected by this Court. *See Checking Account Overdraft Litig.*, 694 F. Supp. 2d at 1319. Like many of the cases cited by BancorpSouth (Def.'s Mem. at 7, n. 8), *Saunders* deals only with the high-to-low posting of paper checks. Debit card transactions are not implicated. In addition, BancorpSouth cites inapplicable U.C.C. § 4-303 cases. *See Checking Account Overdraft Litig.*, 694 F. Supp. 2d at 1316. In fact, BancorpSouth's disclosed trial expert, Paul A. Carrubba, Esq., agreed this UCC provision is not even applicable to debit card transactions. (Plfs. Stmt. ¶ 99).

In sum, BancorpSouth's attempt to re-argue the same issues raised in its Motion to Dismiss should be rejected. Because BancorpSouth cannot establish *undisputed* genuine facts showing that it exercised its discretion in good faith, the Motion must be denied.

### **III. Unconscionability**

BancorpSouth incorrectly argues that Plaintiffs' unconscionability claims fail because the claim does not exist under Arkansas law and, even if it does, Plaintiffs cannot prove that BancorpSouth's contracts and implementation of its overdraft policies are unconscionable.

#### **a. Plaintiffs May Assert Unconscionability as an Affirmative Cause of Action**

The Court previously rejected the argument that a claim for unconscionability does not exist under Arkansas law. (DE # 1305). BancorpSouth seeks to have this Court reverse course based on the Bank's same faulty analysis. The record evidence warrants a trial on the merits.

Rehashing its argument, BancorpSouth completely ignores this Court's reasoning in its Order Ruling on Omnibus Motion to Dismiss ("Omnibus Order"), in which the Eleventh Circuit case on which BancorpSouth relies was correctly distinguished. *See Checking Account*

*Overdraft Litig.*, 694 F. Supp. 2d at 1318 (citing *Cowen Equip. Co., Inc. v. Gen. Motors Corp.*, 734 F.2d 1581 (11th Cir. 1984)). As argued in opposition to BancorpSouth's Motion to Dismiss, the issue here is exactly the same. See *Checking Account Overdraft Litig.*, 694 F. Supp. 2d at 1318 ("Defendants appear to be correct in their assertion that, ordinarily, unconscionability is properly asserted as a defense to a contract rather than an affirmative cause of action. *But this is not the ordinary case . . .* [in this situation] the customer never has the opportunity to raise unconscionability as a defense for nonpayment. The only opportunity to do so is through a lawsuit filed by the customer, after payment has been made. Hence, the facts of the instant case weigh in favor permitting Plaintiffs to pursue unconscionability claim."). BancorpSouth's failure to distinguish this Court's prior ruling demonstrates the futility of its argument.

The Bank relies on *Hughes v. Wet Seal Retail, Inc.*, No. 10-CV-05090, 2010 WL 4750216 (W.D. Ark. Nov. 16, 2010), and *Parker v. Frazer's, Inc.*, No. CA98-116, 1998 WL 811425 (Ark. Ct. App. Nov. 18, 1998), for the proposition that unconscionability may not be asserted as an affirmative claim.<sup>2</sup> Those cases merely state that, generally speaking, unconscionability is asserted as a defense to a contract – precisely what this Court concluded in its Omnibus Order when it recognized the unique circumstances of this case supporting the unconscionability claim. Further, neither *Hughes* nor *Parker* dealt with a cause of action for unconscionability where the plaintiff sought declaratory relief, as Plaintiffs do here. Damages are sought as supplemental relief in accordance with Arkansas law. See Ark. Code Ann. § 16-111-103(a) (creating jurisdiction for Arkansas courts for claims seeking declaratory relief "either affirmative or negative in form and effect"); Ark. Code Ann. § 16-111-110 (authorizing Arkansas courts to grant supplemental relief based on the declaratory judgment). Further, the federal counterpart, 28 U.S.C. §§ 2201-2202, creates the platform for a damages award as "[f]urther necessary or proper relief based on a declaratory judgment or decree." See *BancInsure, Inc. v. BNC Nat. Bank, N.A.*, 263 F.3d 766 (8th Cir. 2001) ("[D]istrict courts have broad power under 28 U.S.C. § 2202 to craft damages awards in declaratory judgment actions to effectuate their judgment."); *Auto-Owners Ins. Co. v. Johnson, Rast & Hays Ins. of South Alabama, Inc.*, 820 F.2d 380, 384 (11th Cir. 1987) (same).

Contrary to BancorpSouth's assertion, numerous courts have sustained claims, like the

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<sup>2</sup> Pursuant to Arkansas Revised Supreme Court Rule 5-2, the *Parker* opinion is not entitled to any precedential value.



claims asserted here, seeking affirmative declaratory relief that the terms of a contract are unconscionable. See e.g., *Williams v. First Gov't Mortg. & Inv. Corp.*, 225 F.3d 738, 748-49 (D.C. Cir. 2000); *Ross v. Wells Fargo Bank, N.A.*, No. 3:08-1452, 2009 WL 357921, at \*2 (S.D. W. Va. Feb 12, 2009); *Premier Digital Access, Inc. v. Cen. Tel. Co.*, 360 F. Supp. 2d 1161, 1168 (D. Nev. 2005); *Eva v. Midwest Nat'l Mortg. Banc, Inc.*, 143 F. Supp. 2d 862, 895 (N.D. Ohio 2001). In fact, in the recent overdraft fee decision of *Hughes v. TD Bank, N.A.*, 856 F. Supp. 2d 673 (D.N.J. 2012), the United States District Court for the District of New Jersey aligned itself with this Court's Omnibus Order in finding that the plaintiffs' were entitled to assert an affirmative claim of unconscionability regarding TD Bank's overdraft fee policies because the bank would not need to sue for unpaid overdraft fees, meaning that customers would not otherwise have the opportunity to raise unconscionability as an affirmative defense.

**b. BancorpSouth's Contract and Overdraft Policy is Unconscionable Under Arkansas Law**

Summary judgment is improper given that "the issue of unconscionability is a mixed question of law and fact and must be resolved at a trial on the merits." *In re Price*, 313 B.R. 805, 812 (E.D. Ark. Bankr. 2004) (citing *Associated Press v. So. Ark. Radio Co.*, 809 S.W.2d 695, 697 (Ark. Ct. App. 1991)). There are numerous disputed material facts to support a jury finding of unconscionability here. BancorpSouth ignores those facts in seeking summary judgment. To determine whether a contractual provision is unconscionable under Arkansas law, "courts should review the totality of the circumstances surrounding the negotiation and execution of the contract." *State ex rel. Bryant v. R&A Inv. Co.*, 985 S.W.2d 299, 302 (Ark. 1999) (citing *Geldermann & Co., Inc. v. Lane Processing, Inc.*, 527 F.2d 571, 575 (8th Cir. 1975)). Arkansas courts also consider "whether there is a gross inequality of bargaining power between the parties to the contract and whether the aggrieved party was made aware of and comprehended the provision in question." *Associated Press*, 809 S.W.2d at 697 (finding unconscionability where "[t]he agreement is a preprinted form; . . . the agreement was neither read nor understood by the appellee; . . . and there appears to be a substantial disparity in the relative bargaining power of the parties").

As in most other states, this analysis is "divided into two categories; (1) procedural and (2) substantive." *Easter v. Compcredit Corp.*, No. 08-CV-1041, 2009 WL 499384, at \*4 (W.D. Ark. Feb. 27, 2009). Procedural unconscionability "deals with the manner in which a contract was entered into . . . ." *Gobeyn v. Travelers Indem. Co.*, No. 1:09CV00034JLH, 2009 WL

3148755, at \*3 (E.D. Ark. Sept. 24, 2009). Substantive unconscionability, on the other hand, “looks to the terms of the contract and whether they are harsh, one-sided, or oppressive.” *Gobeyn*, 2009 WL 3148755 at \*3. Using language identical to that used in this Court’s Omnibus Order, the Arkansas Court of Appeals held that an unconscionable contract is one “such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other.” *T-1 Constr., Inc. v. Tannenbaum Dev. Co.*, 2009 WL 613552 (Ark. Ct. App. Mar. 11, 2009) (citing *Hume v. U.S.*, 132 U.S. 406, 415 (1889)). The record evidence here supports reasonable inferences for both elements of unconscionability.

### ***1. Procedural Unconscionability***

As recognized by BancorpSouth, “[c]ourts may look at various factors when determining whether an agreement is procedurally unconscionable, including whether the contract is ‘oppressive,’ which has been defined as arising from unequal bargaining power that results in an absence of meaningful choice, and the extent to which the person signing the agreement may be surprised by the terms hidden in a form drafted by the party seeking to enforce its terms.” *Hughes*, 2010 WL 4750216 at \*3. The record here is replete with evidence of procedural unconscionability.

Despite BancorpSouth’s claims to the contrary, Plaintiff Shane Swift testified on numerous occasions that he was not aware until shortly before this lawsuit was filed that BancorpSouth engaged in the practice of re-sequencing and posting his debit card transactions from high to low dollar amount, and that he incurred overdraft fees as a result of BancorpSouth’s practice. (Plfs. Stmt. ¶ 95). Testimony referenced by BancorpSouth claiming otherwise suffers from a hindsight bias given that Plaintiff Swift had engaged counsel and filed suit. While BancorpSouth purports to offer “multiple channels” from which customers, including Plaintiff Swift, could access account information, those channels are of little help given BancorpSouth’s clear lack of transparency as to its actual posting practice. The Bank’s argument is belied by the fact that the various account documents at issue did *not* clearly and unambiguously disclose BancorpSouth’s everyday posting practice.

BancorpSouth’s account agreements derive from standardized form adhesion contracts, which were *non-negotiable* for consumer account holders, like Plaintiff Swift and the members of the certified class. (Plfs. Stmt. ¶ 80). BancorpSouth’s Deposit Account Terms and Conditions provided the following relevant language for the first time in the October 22, 2008 version:



ORDER OF PAYMENT – Unless otherwise provided in the Account Information Statement (see OTHER TERMS section below) if more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we *may* pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

(Plfs. Stmt. ¶ 78) (emphasis added).<sup>3</sup> This provision was buried deep in the account agreement which, throughout the class period, was a single-spaced, small-font form contract of adhesion. (Plfs. Stmt. ¶ 82). Nor is the subject language even accurate, as the evidence demonstrated that BancorpSouth *always* posted high-to-low. (Plfs. Stmt. ¶¶ 81, 82).

BancorpSouth's 2004 version of its Account Information Statement, referenced in the Deposit Account Terms and Conditions, was equally misleading because it failed to: (a) refer to the uniform high-to-low posting order that had been established for all retail accounts; and (b) inform customers that they could opt out of the Bank's so-called discretionary overdraft process, instead choosing to only inform customers that overdraft fees could be avoided if they enrolled in one of the Bank's overdraft protection products. (Plfs. Stmt. ¶ 83). Previous versions of the Account Information Statement included a vague reference to debiting multiple debit transactions presented for payment on a single banking day in descending order of the dollar amount of the transactions, but this process would have been part of BancorpSouth's pre-2003 posting order (outside the class period). (Plfs. Stmt. ¶ 84). Also, some of these prior versions mentioned: "A description of the categories, method, and order of payment/posting is available upon request." (Plfs. Stmt. ¶ 84). Notably, the bank removed this verbiage from the Account Information Statement as of the May 1, 2003 version. (Plfs. Stmt. ¶ 84).

BancorpSouth concealed its practice of re-sequencing debit transactions to artificially increase the number of overdrafts and overdraft fees. While the Bank's high-to-low posting practice remained consistent throughout the class period, and could have easily been described in clear, certain terms, the Bank chose not to provide clear disclosures. Rather, it cryptically stated

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<sup>3</sup> Previous versions excluded the phrase: "Unless otherwise provided in the Account Information Statement (see OTHER TERMS) section below)." (Plfs. Stmt. ¶ 79). Thus, prior to October 2008, customers were not directed by the Deposit Account Terms and Conditions documents to directly refer to the Account Information Statement, discussed *infra*.

that BancorpSouth “*may* pay any of them in any order we choose.” (Emphasis added). Plus, the Bank removed the offer to provide customers with a description of the actual posting order. Notably, the Bank considered doing so in 2007, but decided against it. (Plfs. Stmt. ¶¶ 84-85).

Moreover, throughout the class period, customers’ monthly statements did not disclose BancorpSouth’s practice of re-sequencing and posting debit card transactions from high-to-low dollar value. (Plfs. Stmt. ¶ 86). In fact, transactions debited from a customers’ account are contained in two separate sections – checks and other debits – and the statements do not indicate the actual commingled posting of checks and other debits. (Plfs. Stmt. ¶ 87). Further, during the entire class period, the Notice of Charge for Overdrawn Accounts, which is the Bank’s form overdraft notice, did not disclose the posting order for future reference and clarity. (Plfs. Stmt. ¶ 88).

BancorpSouth’s reliance on *Best v. U.S. Nat. Bank of Oregon*, 739 P.2d 554 (Ore. 1987), and *Saunders v. Michigan Ave. Nat’l Bank*, 662 N.E.2d 602 (Ill. App. 1996), is unavailing. Both decisions only concerned the re-ordering of checks. In addition, allegations of unconscionability in *Best* were narrowly limited to the per item NSF fee amount charged by that bank in relation to its actual cost of processing NSF checks. As set forth in the Second Amended Complaint and demonstrated here, the allegations and evidence of unconscionability in this case are far broader. *Saunders* specifically dealt with the Illinois Consumer Fraud Act, which is not even at issue here.

The evidence summarized above establishes that the disparity in sophistication and bargaining power between Plaintiffs and the Bank was obvious. The terms at issue were contained in voluminous boilerplate language drafted by the Bank. Even if Plaintiffs disagreed with the terms in these adhesion contracts, there was no meaningful opportunity to negotiate with the Bank. *Checking Account Overdraft Litig.*, 694 F. Supp. 2d at 1319.

## **2. Substantive Unconscionability.**

As previously stated, “substantive unconscionability . . . looks to the terms of the contract and whether they are harsh, one-sided, or oppressive.” *Gobeyn*, 2009 WL 3148755 at \*3. BancorpSouth’s overdraft policy and its implementation of that policy are archetypal examples of substantive unconscionability under Arkansas law.

BancorpSouth disputes that its high-to-low posting is unconscionable. However, with good reason, this Court has left no doubt that substantive unconscionability is shown by:

deposit agreements contain[ing] contractual terms regarding overdraft protection that had the purpose and effect of allowing defendants to re-order the posting of

debit transactions to maximize the number and amount of overdraft fees to Plaintiffs, and that the fees bear no reasonable commercial relationship to the costs or risks associated with providing the overdraft service.

*Checking Account Overdraft Litig.*, 694 F. Supp. 2d at 1320; *see also Hunter*, 798 F.2d at 303; *Gobeyn*, 2009 WL 3148755 at \*3. In addition, this Court rejected BancorpSouth's argument that "the UCC and statements of federal bank regulatory agencies accept the authority of banks to post in high-to-low order." *See supra* at 8. Specifically, this Court held: "Defendants are not entirely correct when they state that high-to-low posting is expressly condoned by the UCC. As discussed in the above section, the provision they rely on, section 4-303(b), applies only to paper checks, not the electronic debits that are the subject of this lawsuit." *Checking Account Overdraft Litig.*, 694 F. Supp. 2d at 1320. Neither *White* nor *Daniels v. PNC Bank, N.A.*, 738 N.E.2d 447 (Ohio App. 2000), both cited by BancorpSouth, held otherwise when stating that the high-to-low posting of checks was not unconscionable.

BancorpSouth's high-to-low posting order can have a dramatic impact on the number of overdraft charges assessed. If there are insufficient funds to cover all posted transactions, the Bank's high-to-low posting order reduces customers' balances as quickly as possible, thereby maximizing the number of overdraft fees assessed. This is the fundamental reason why BancorpSouth adopted high-to-low posting in 2003. (Plfs. Stmt. ¶ 69).<sup>4</sup> Beginning in 2002, BancorpSouth engaged EPG, a financial consulting firm for banks that offered fee revenue optimization as one of its services, and adopted its recommendation of a high-to-low posting order which commingled debits. (Plfs. Stmt. ¶ 69). In its recommendation to the Bank, EPG stated: "It is anticipated that the bank will also realize an increase in NSF/OD fee revenue, as more items will be paid into overdraft or returned." (Plfs. Stmt. ¶ 69). With EPG's assistance, combined overdraft and NSF fee revenue, which had been around \$35 million in 2002, grew to over \$48 million in 2003, a 36% increase. (Plfs. Stmt. ¶ 69). Even though high-to-low re-sequencing provided significant fee revenue, one of the Bank's regional presidents questioned posting high-to-low as early as in 2005 in an email to BancorpSouth's top management:

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<sup>4</sup> BancorpSouth admits that if it wanted to go *low-to-high* when it implemented its posting priority in 2003, it could have done so, but the Bank followed the recommendation of its third party consultant for the purpose of increasing revenues. (Plfs. Stmt. ¶ 73). The Bank considered the impact of *low-to-high* posting in 2007 and concluded that it would significantly decrease revenues, estimating a 17.5% decrease of more than \$12 million. (Plfs. Stmt. ¶ 74). It did so again in 2010 after the filing of this lawsuit, and noted concern that switching "could provide a different class of customer to claim unfair practice." (Plfs. Stmt. ¶ 75).

PLEASE EXPLAIN THE RATIONALE BEHIND OUR POLICY OF POSTING LARGEST ITEMS FIRST. WHAT CAN BE DONE TO PROTECT OUR BANK FROM LOSS AND OUR TELLERS FROM CRITICISM IN SITUATIONS WHERE TRANSIT ITEMS COME THROUGH AND PAY AHEAD OF ITEMS WE HANDLE PROPERLY DURING OPREATION HOURS?

(Plfs. Stmt. ¶ 89).

To make matters worse for consumers, beginning in 2002, BancorpSouth utilized a secret “Overdraft Matrix Limit” to augment its high-to-low posting. BancorpSouth’s use of the Overdraft Matrix was integral to its scheme to increase debit card transaction authorizations and, in turn, the number of overdrafts as much as possible. (Plfs. Stmt. ¶ 71). The Overdraft Matrix process was intentionally concealed. (Plfs. Stmt. ¶ 76).

BancorpSouth’s assertion that “Plaintiff has presented no evidence that BancorpSouth’s posting order was wrongful” is incorrect. (Def.’s Mem. at 11). BancorpSouth ignores Plaintiff Swift’s descriptions of BancorpSouth’s re-sequencing scheme as “unfair,” and specifically unfair for the Bank to engage in the re-sequencing practice for its own financial gain. (Plfs. Stmt. ¶ 97). In fact, when asked whether he believed re-sequencing is always harmful to BancorpSouth customers, Plaintiff Swift emphatically replied: “It’s always harmful. I believe unfair resequencing is always harmful to BancorpSouth customers.” (Plfs. Stmt. ¶ 97). Plaintiff even referred to BancorpSouth’s re-sequencing scheme as a “corrupt practice.” (Plfs. Stmt. ¶ 97). In addition, BancorpSouth’s claim that Plaintiff Swift “refused to identify a ‘correct’ posting order” is likewise contradicted by Plaintiff Swift’s testimony. Plaintiff Swift repeatedly stated that BancorpSouth should post debit card transactions in chronological order. (Plfs. Stmt. ¶ 98). Ultimately, it is up to the jury to decide if the posting order was unfair.

At no time did the Swifts agree that re-sequencing debit card transactions from high-to-low dollar value was a benefit, as BancorpSouth claims. Even if the Swifts acknowledged their obligation to pay overdraft fees that were *not* caused by re-sequencing, it does not follow that they “preferred” that BancorpSouth pay transactions into overdraft that do not actually overdraft the account. Similarly, it is inconsequential that the Swifts did not tell BancorpSouth that they did not want overdraft protection, or that they did not complain to the Bank, given that they were unaware that they had fallen victim to BancorpSouth’s re-sequencing scheme.

Finally, BancorpSouth’s claim that Plaintiff Swift “can avoid any possible disadvantage by simply not overdrawing his” account is misleading and untrue. (Def.’s Mem. at 12). While

Plaintiff Swift acknowledged that he had control over whether his account became overdrawn in the context of one overdraft occurrence, BancorpSouth's re-sequencing scheme, including the undisclosed Overdraft Matrix, deprived Plaintiff Swift and the other members of the Class of the ability to prevent the cascade effect of multiple overdrafts that occurred solely based on the Bank's high-to-low re-sequencing scheme. The evidence clearly shows that Plaintiff Swift and members of the Class could not reasonably avoid incurring the additional overdraft fees as a result of BancorpSouth's manipulation, even when exercising due diligence to monitor his account balance and to maintain sufficient funds.

#### **IV. Unjust Enrichment**

The Bank once again simply rehashes its Motion to Dismiss without citation to relevant material facts. As previously stated, Plaintiffs acknowledge that they cannot recover judgment under both claims, but are permitted to plead and pursue these alternative claims. *Checking Account Overdraft Litig.*, 694 F. Supp. 2d at 1321 ("The Court agrees with Plaintiff's position. Fed. R. Civ. P. 8(d) allows pleading in the alternative, even if the theories are inconsistent. Defendants have not conceded that Plaintiff is entitled to recovery under the contract, and if the contractual claim fails, Plaintiff may still be entitled to recovery under an unjust enrichment theory."). Arkansas law expressly permits alternative pleading. *See Crawford v. Lee County Sch. Dist.*, 983 S.W.2d 141, 145 (Ark. Ct. App. 1998); *Wachter Elec. Co. v. Elec. Sys., Inc.*, Nos. 3:10CV00083 SWW and 3:10CV00140 DPM, 2010 WL 5137361 (E.D. Ark. Dec. 9, 2010). Therefore, in the event Plaintiffs ultimately recover a verdict under the contract-based claims, judgment would be entered under those claims only. Likewise, should the fact-finder reject the contract claims but award recovery under the unjust enrichment claim, judgment would be entered under that claim only.

The Bank also erroneously argues that because Plaintiffs allege a contract in one claim, summary judgment on the unjust enrichment claim is warranted. (Def.'s Mem. at 15). Plaintiffs are challenging the material contract terms as unconscionable. As this Court has previously and correctly held, "if the terms of the deposit agreement are subsequently declared to be unconscionable, Defendant may be barred from relying on them." *Checking Account Overdraft Litig.*, 694 F. Supp. 2d at 1323. Moreover, this Court previously concluded that even if the deposit agreement gives a bank the discretion to re-order debits ("we *may* pay them in any order we choose"), a bank exercises that discretion in bad faith by intentionally causing the account

holder to incur overdrafts that would not have otherwise be incurred. *Id.* Indeed, BancorpSouth is being unjustly enriched by the re-sequencing of debit card transactions and using the Overdraft Matrix Limit in the process to exacerbate the frequency of overdrafts. Thus, Plaintiffs' unjust enrichment claim should proceed until a fact-finder determines whether or not the terms of the Deposit Agreement are unconscionable and unenforceable.

#### **V. Arkansas Deceptive Trade Practice Act Claims ("ADTPA")**

BancorpSouth advances three arguments in support of its Motion as to the ADTPA: (1) Plaintiffs' claim fails because BancorpSouth's conduct falls within the ADTPA's "safe harbor" provision; (2) the record lacks evidence that BancorpSouth engaged in any deceptive practice; and (3) the record lacks evidence that Plaintiffs have been damaged by BancorpSouth's deceptive practices. BancorpSouth's arguments are without merit.

##### **a. BancorpSouth's Conduct Does Not Fall Within the ADTPA's "Safe Harbor" Provision**

BancorpSouth's argues that that because state and federal law authorize its posting order for debit card transactions its conduct falls within the ADTPA's safe harbor provision. However, since these laws do not authorize high-to-low posting, this Court should reject the safe harbor argument. *See supra* at 8 and 14.<sup>5</sup> In addition, the OCC Opinion cited by BancorpSouth stating that "banks are authorized, pursuant to section 24 (Seventh) of the National Bank Act and Section 7.4002, to charge NSF fees that result from the high-to-low order of check posting" is inapposite. (Emphasis added).

Even in the context of checks, the OCC advisory letters, drawing upon state law, suggest that such reordering is permissible *only* if the bank does so *in good faith*. OCC Interp. Letter No. 997, 2002 WL 32639293, at \*2 (Apr. 15, 2002). According to the OCC, "a procedure designed to maximize the number of returned checks solely to increase returned check fees charged to customers *would not be appropriate*." *Id.* (quoting Texas statutory commentary) (emphasis added). Moreover, a bank "could not properly follow an established practice of maximizing the number of returned checks for the sole purpose of increasing the amount of returned check fees charged to the customer." OCC Interp. Letter No. 916, 2001 WL 1285359 (May 22, 2001) (quoting California statutory commentary). Nothing in 12 C.F.R. § 7.4002 or OCC

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<sup>5</sup> BancorpSouth made this argument in its Motion to Dismiss. (DE # 1068). The Order denying that motion does not explicitly reference the issue, but the Court apparently agreed this argument was wrong. (DE # 1305).



interpretations condones an overdraft scheme implemented to maximize fees charged to customers. Under 12 C.F.R. § 7.4002(b), non-interest fees may be established only “according to sound banking judgment and safe and sound banking principles,” and not for the purpose of maximizing fees. The regulation, as written, clearly contemplates that the imposition of non-interest fees may be subject to at least some state laws. 12 C.F.R. § 7.4002(d).<sup>6</sup> Given the fundamental difference between checks and debit card transactions – namely the instantaneous nature of electronic debit card transactions – if this procedure is inappropriate as applied to checks, then it certainly cannot be appropriate to debit card transactions when the risk to the merchant is much less significant since a bank can choose to decline the purchase at the point of service. Because this case does not concern the high-to-low posting of checks, the ADTPA’s safe harbor provision is not applicable.

**b. The Record Evidence Supports a Claim Under the ADTPA**

The ADTPA prohibits “[d]eceptive and unconscionable trade practices,” which include, but are not limited to, “[k]nowingly taking advantage of a consumer who is reasonably unable to protect his or her interest because of ignorance,” and “[e]ngaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade.” Ark. Code Ann. § 4-88-107(a)(10). “An ‘unconscionable’ act is an act that ‘affront[s] the sense of justice, decency, or reasonableness.’” *Baptist Health v. Murphy*, 226 S.W.3d 800, 811 n. 6 (Ark. 2006). Although Arkansas courts have not construed the term “deceptive,” the ADTPA is to be liberally construed to protect consumers. *State ex rel. Bryant v. R&A Inv. Co.*, 985 S.W.2d 299, 302 (Ark. 1999).

Assuming the Court concludes that Plaintiffs have met their burden in opposing summary judgment on the unconscionability claim, the facts supporting unconscionability claim support a claim under the express terms of the ADTPA. *See supra* at 8-16; *Baptist Health*, 226 S.W.3d at 811 (defining unconscionability as “an act that ‘affront[s] the sense of justice, decency, or reasonableness’”); *State ex rel. Bryant*, 985 S.W.2d at 302 (“[t]he deceptive and unconscionable trade practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law”) (citing Ark. Code Ann. § 4-88-107(b)). Thus, even if the

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<sup>6</sup> Further, even if OCC interpretive letters lent support to the Bank’s argument that its practices are lawful, the letters are not binding and do not preempt Arkansas’s general civil laws. An OCC letter is advisory only. It “does not have the full force of law. It is merely interpretive rather than legislative.” *Gutierrez v. Wells Fargo Bank, N.A.*, Case No. 07-05923 WHA, 2008 WL 4279550 at \*7 (N.D. Cal. Sept. 11, 2008).

Court were to exclude an affirmative unconscionability claim, the same deceptive practices that are in play in the claims for breach of contract and the implied duty of good faith and fair dealing and for unjust enrichment would support an ADTPA claim.

The Bank's argument that "nothing about BancorpSouth's posting practice was a 'deceptive' act as contemplated by the ADTPA" is based on the faulty premise that its practice of re-sequencing debit card transactions was disclosed in the contract between the parties, or that it exercised its reserved discretion fairly. (Def.'s Mem. at 16). BancorpSouth's claim is flatly contradicted by record evidence. *See supra* at 11-13. BancorpSouth's concealment of its re-sequencing practice is deceptive. BancorpSouth's vaguely worded account agreements were purposeful, as BancorpSouth took active measures not to communicate to Plaintiffs the Bank's high-to-low re-sequencing or the existence of the Overdraft Matrix Limit. When it adopted commingled high-to-low posting in 2003, BancorpSouth made the conscious decision not to disclose the change in posting order to customers and maintained that policy throughout the class period. A prime example of such active concealment came in the form of a Frequently Asked Questions training document given to the Bank's call center employees discussing the Overdraft Matrix, which specifically stated at the assigned Overdraft Matrix Limit should not be disclosed to customers. (Plfs. Stmt. ¶ 76).

BancorpSouth even recognizes in its Motion that, rather than disclosing that it always posted high-to-low, it merely "disclosed its authority to post debit transactions from highest amount to lowest amount." (Def.'s Mem. at 17). Accordingly, *Carmichael v. Nationwide Life Ins. Co.*, 810 S.W.2d 39 (Ark. 1991), and *Belew v. Griffis*, 460 S.W.2d 80 (Ark. 1970), which both deal with claims of misrepresentations where alleged oral representations contradicted the written language of the contracts at issue, are inapposite. (*See* Def.'s Mem. at 16-17). In addition, while it is true that both cases recognize that a person is ordinarily bound to know the contents of a signed contract, it cannot be said that Plaintiffs were bound to know BancorpSouth's posting order because its posting order was not disclosed in the contract with Plaintiffs.<sup>7</sup>

BancorpSouth's citation to *Baskin v. Collins*, 806 S.W.2d 3 (Ark. 1991), is equally

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<sup>7</sup> BancorpSouth also cites to the non-precedential opinion of *Yoes v. Marine Midland Bank*, No. CA90-235, 1991 WL 104049 (Ark. Ct. App. June 12, 1991) in violation of AR R S CT Rule 5-2. Notwithstanding the impropriety of the citation, *Yoes* is inapposite because it dealt with alleged oral misrepresentations that contradicted the express terms of the written agreement at issue.



unavailing. In that case, the court held that the sellers of commercial property did not have a duty to disclose a certain federal environmental regulation concerning underground storage tanks, despite the fact that the sellers were aware that the buyers were purchasing the property for use as a gas station. *Id.* Perhaps acknowledging that it did not actually disclose the posting practice at issue, BancorpSouth believes this case supports the position that it was not required to disclose its posting practice to Plaintiffs. However, in *Baskin*, the court explicitly held that “the duty to disclose does not arise where the ‘fact’ that is not disclosed is the existence of a federal regulation, because both parties have equal access to the knowledge.” *Id.* at 5. Here, however, the only way Plaintiffs could ever know BancorpSouth’s posting practice is through BancorpSouth’s disclosure of that fact. There is simply no other source for Plaintiffs to ascertain the posting practice, and there is no law that specifically permits high-to-low posting of debit card transactions. Accordingly, a fact-finder could reasonably infer that BancorpSouth and Plaintiffs did not have “equal access to the knowledge.” Thus, *Baskin* actually supports Plaintiffs’ position that BancorpSouth’s failure to disclose its posting practice was deceptive.

**c. Plaintiffs Have Established Injury Arising From BancorpSouth’s Deceptive Practices**

BancorpSouth’s final argument is that Plaintiffs have provided no proof that Plaintiff Swift would have acted differently had BancorpSouth actually disclosed its posting practice and, as a result, have failed to prove injury. BancorpSouth’s false assertion is again marred by a hindsight bias. No matter how many times BancorpSouth claims otherwise, the fact is that Plaintiff Swift did not understand BancorpSouth’s re-sequencing scheme until shortly before this lawsuit was filed. A fact-finder can reasonably infer that BancorpSouth wanted it that way especially in light of the secret Overdraft Matrix and its obvious ability to be more transparent. Thus, it is impossible to conclude at this juncture how Plaintiffs would have acted had BancorpSouth been transparent. BancorpSouth’s citation to *Bildstein v. MasterCard Intern, Inc.*, 329 F. Supp. 2d 410 (S.D.N.Y. 2004) is misplaced given that *Bildstein* deals solely with an alleged violation of New York General Business Law § 349, and the burden under that law for plaintiff to “show a materially deceptive conduct on which they relied to their detriment.” *Id.* at 414. On the other hand, *Whatley v. Reconstruct Co. NA*, No. 3:10CV00242JLH, 2010 WL 4916372 (E.D. Ark. Nov. 23, 2010), cited by BancorpSouth, correctly states the rule that in order to recover under the ADTPA, one must suffer actual damages; however, that case is of little help given that the plaintiff there was unable to make allegations as to how the defendant’s conduct

caused her to suffer damages, or even explain the nature of the damages. *Id.* at \*6. Here, Plaintiffs have done both, and have provided this Court with ample facts in support of such allegations. Accordingly, sufficient facts exist for this Court to determine that Plaintiffs have satisfied the “actual damage” requirement of the ADTPA.

#### **VI. The Ratification Defense Does Not Bar Plaintiffs’ Claims**

As more fully briefed in Plaintiffs’ Motion for Summary Judgment (DE # 2997), the Bank’s purported ratification defense fails as a matter of law. “Ratification is a doctrine of agency, which is well-established in the common law, and it refers to the express or implied adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another without authority.” *Arnold v. All Am. Assur. Co.*, 499 S.W.2d 861, 865 (Ark. 1973). “Although ratification is typically a question of fact for the jury, Arkansas courts have made it clear that “[t]he doctrine of ratification, however, has no application if there was no agency relationship.” *Sterne, Agee & Leach, Inc. v. Way*, 207 S.W.3d 369, 376 (Ark. Ct. App. 2007) (citing *E.P. Dobson, Inc. v. Richard*, 705 S.W.2d 893, 894 (Ark. Ct. App. 1986) (“The doctrine of ratification is inapplicable when no agency relationship is proved.”). The “essential elements for a showing of the agency relationship (are) authorization and control.” *Taylor v. Gill*, 934 S.W.2d 919, 921 (Ark. 1996). Here, it is undisputed that there is no agency relationship between Plaintiffs and BancorpSouth, and it would be impossible for BancorpSouth to show that Plaintiffs controlled BancorpSouth when it paid Plaintiffs’ overdrafts, particularly given the previously cited language in the Deposit Agreement: “If more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, *we may pay any of them in any order we choose.*” (Emphasis added). Thus, the affirmative defense of ratification fails as a matter of law.

#### **VII. The Waiver Defense Does Not Bar Plaintiffs’ Claims**

BancorpSouth asserted waiver or license as a defense based on an assertion that “Plaintiff knowingly continued to overdraw his account and incur overdraft fees on his BancorpSouth account after he received multiple notices of overdraft fees and disclosures regarding BancorpSouth’s overdraft policies.” (Def.’s Mem. at 19.) “Waiver is the voluntary abandonment or surrender by a capable person of a right known by him to exist, with the intent that he shall forever be deprived of its benefits. *Pearson v. Henrickson*, 336 Ark. 12, 983 S.W.2d 419 (1999). It may occur when one, with full knowledge of material facts, does

something which is inconsistent with the right or his intention to rely upon that right. The relinquishment of the right must be intentional. *Id.*” *Bharodia v. Pledger*, 11 S.W.3d 540, 545 (Ark. 2000) (reversing judgment based on waiver). BancorpSouth cannot show, based on undisputed facts, that Plaintiffs knew of a right and intended to relinquish that right forever. This is especially true given that the account statements and overdraft notices admittedly do not reflect or discuss the re-sequencing that caused multiple overdrafts, nor are customers told of the assigned Overdraft Matrix Limit that further intentionally increases the frequency of overdrafts.

BancorpSouth points to Plaintiff Swift’s testimony that he and his wife would debit their account when they were uncertain of the balance, because BancorpSouth would pay the debit in exchange for a fee. (Def. Stmt. Facts ¶¶ 60-63). Even if true, such facts do not defeat the re-sequencing claim. Plaintiffs are not arguing that an overdraft fee policy is *per se* wrong. Rather, Plaintiffs’ claim is that the intentional re-sequencing of instantaneous transactions in order to charge additional overdraft fees, or to overdraft the account when the account contained sufficient funds at the time of the transaction, is a wrongful intentional and compensable action. The Bank cites no facts showing that Plaintiffs knew that BancorpSouth was: 1) holding instantaneous transactions until a later time; 2) re-sequencing instantaneous debit card transactions after they were held; 3) approving transactions using the Overdraft Matrix Limit; and 4) doing all of that to maximize overdraft fee revenue. Plaintiffs’ payment of overdrafts is immaterial to the defense and is not evidence of a voluntary abandonment of a right known to exist. *See e.g. Ray Dodge, Inc. v. Moore*, 479 S.W.2d 518, 521 (Ark. 1972) (holding that waiver in affirming a contract is equivalent to ratification, and when based on inferences drawn from conduct, is properly a question for the jury).

BancorpSouth has presented no evidence that Plaintiffs knowingly and voluntarily relinquished their right to recover for BancorpSouth’s wrongful actions with the intent to forever abandon that right. Therefore, summary judgment should be denied as to this defense.

### **CONCLUSION**

The parties agree that the claims of the certified Class are adjudicated through Plaintiff Swift’s case. Thus, the parties agree that the Court’s ruling as to Plaintiff Swift will bind all members of the class, except those who timely opt-out following class notice.<sup>8</sup> As demonstrated

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<sup>8</sup> Notice to the class has not yet been given. See Revised Scheduling Order (DE # 2834, 2965, 2985, 3021).

above, Plaintiff Swift has provided sufficient evidence supporting each element of the claims asserted against BancorpSouth (except conversion) so as to preclude summary judgment in BancorpSouth's favor. Accordingly, because BancorpSouth's Motion as to Plaintiff Swift must be denied, the claims of the certified Class proceed as well. Plaintiffs respectfully request entry of an Order denying the Motion in its entirety.

Dated: November 8, 2012.

Respectfully submitted,

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*Plaintiffs' Executive Committee*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE No. 09-MD-02036-JLK**

**IN RE: CHECKING ACCOUNT  
OVERDRAFT LITIGATION**

**MDL No. 2036**

**CERTIFICATE OF SERVICE**

I hereby certify that on November 8, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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# EXHIBIT A



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE NO. 1:09-MD-02036-JLK**

**IN RE: CHECKING ACCOUNT  
OVERDRAFT LITIGATION**

**MDL No. 2036**

**THIS DOCUMENT RELATES TO:  
FOURTH TRANCHE ACTIONS**

*Swift v. BancorpSouth, Inc.*  
N.D. Fla. Case No. 1:10-00090-SPM-AK  
S.D. Fla. Case No. 1:10-cv-23872-JLK

**PLAINTIFFS' STATEMENT OF FACTS TO BE TRIED AND RESPONSE TO  
BANCORPSOUTH BANK'S STATEMENT OF MATERIAL FACTS**

Plaintiff, Shane Swift, individually and on behalf of the certified class (collectively, “Plaintiffs”), pursuant to this Court’s Local Rule 56.1(a), submit this Statement of Facts to be Tried and Response to Defendant’s Statement of Material Facts in support of the contemporaneously filed Opposition to Defendant BancorpSouth Bank’s (“BancorpSouth” or “Bank”) Motion for Summary Judgment to which this is attached as Exhibit A:

**Response to BancorpSouth’s Statement of Material Facts**

- 1-3. Agree.
4. Plaintiffs agree that BancorpSouth adopted high-to-low posting order in order to increase fee income, but dispute that manipulating the posting order of instantaneous debit card transactions serves any other purpose. *See* Plaintiffs’ Statement of Material Facts to be Tried (“Plfs. Stmt.”) ¶¶ 69, 74.
5. Plaintiffs agree that BancorpSouth posts deposits prior to debits, but deny that this fact is material to any of Plaintiffs’ claims.
6. Agree, but BancorpSouth did not disclose the amount of the assigned Overdraft Matrix Limit, yet approved debit card transactions to exacerbate the frequency of overdraft fees for consumers. *See* Plfs. Stmt. ¶¶ 70, 71, 76.
- 7-9. Plaintiffs agree with these statements, but disagree that they are material.
10. Plaintiffs dispute that customers had an effective means of opting out of the Overdraft Payment Service at all times during the class period. *See* Plfs. Stmt. ¶ 83.
11. Plaintiffs dispute this statement. BancorpSouth’s purported disclosures were inadequate and failed to notify its customers of the Bank’s re-sequencing of instantaneous debit card transactions. *See* Plfs. Stmt. ¶¶ 78, 83, 84, 86, 87, 88.
12. Agree.
13. Plaintiffs dispute this statement. BancorpSouth’s purported disclosures were inadequate. Furthermore, the adhesion contract that BancorpSouth references is both procedurally and substantively unconscionable. Additionally, Defendant mischaracterizes the testimony of Jeff Jaggers. Finally, the referenced testimony of Plaintiff Shane Swift does not support the statement. *See* Plfs. Stmt. ¶¶ 78, 83, 84, 86, 87, 88.
14. Plaintiffs dispute this statement for the same reasons as stated in Statement 13. Additionally, nothing within the previous citations (the ambiguous “Id.” reference) supports Defendant’s statement.

15. Plaintiffs agree to the extent that the Deposit Agreement allows the Bank to debit authorized charges. Plaintiffs' disagree that the Deposit Agreement allows BancorpSouth to re-sequence customer's instantaneous debit card transactions. *See* Plfs. Stmt. ¶¶ 77, 78.
16. Plaintiffs agree that the 2010 Account Information Statement contains this language, but note that the class period goes back to 2003.
17. Plaintiffs agree that the 2009 Deposit Agreement contains this language, but dispute that it authorizes BancorpSouth to re-sequence instantaneous debit card transactions.
18. Plaintiffs agree that the 2010 Account Information Statement contains this language, but dispute that it authorizes BancorpSouth to re-sequence instantaneous debit card transactions.
19. Plaintiffs dispute that BancorpSouth adequately disclosed its payment order or that the Bank would re-sequence instantaneous debit card transactions because BancorpSouth used the word "may", not "would", in the disclosures. Plaintiffs further dispute that the cited testimony supports this purported fact. *See* Plfs. Stmt. ¶¶ 78, 83, 84, 86, 87, 88.
20. Plaintiffs agree that customers have multiple methods of obtaining account information, but dispute that BancorpSouth offers real-time, up-to-date account information to customers. *See* Plfs. Stmt. ¶ 91. Further, the monthly account statements and overdraft notices do not disclose or refer to the actual posting order. *See* Plfs. Stmt. ¶¶ 86, 88.
21. Plaintiff Swift disputes that the cited testimony supports this statement. Rather, the citation is to a portion of a longer colloquy about the propriety and fairness of re-sequencing transactions. Moreover, Plaintiff Swift's testimony does not reference instantaneous debit card transactions, and instead refers to check transactions.
22. Plaintiffs agree that the referenced document contains this statement, but dispute that it is material to the claims at issue. BancorpSouth's representative testified that consumers typically do not qualify for the Bank's overdraft protection products. *See* Plfts. Stmt. ¶ 83 n. 3.
23. Plaintiff Swift agrees that he received updated documents from time to time, but disputes that they were full, complete, and adequate disclosures. Plaintiffs dispute that this statement is material to the claims at issue. *See* Plfs. Stmt. ¶¶ 78, 83, 84, 86, 87, 88.
24. Plaintiff Swift agrees that he received documents from a branch from time to time, but

- disputes that they were full, complete, and adequate. Plaintiffs dispute that this statement is material to the claims at issue. *See* Plfs. Stmt. ¶¶ 78, 83, 84, 86, 87, 88.
- 25-26. Plaintiff Swift disputes that the cited testimony supports the statement. Moreover, this statement is speculative at best and, therefore, an inappropriate basis for summary judgment.
27. Plaintiffs dispute that the cited testimony supports the statement or that BancorpSouth has established that it sent the mentioned item to Shane Swift. Plaintiffs further dispute that this statement is material to Plaintiffs' claims.
28. Plaintiffs agree that the Deposit Agreement contains such a statement, but deny that it is material to Plaintiffs' claims.
29. Plaintiffs dispute that the cited testimony supports the statement. Indeed, Plaintiff Swift testified that he only understood the Bank's posting order after researching it in 2010. *See* Plfs. Stmt. ¶ 95. This is understandable given the testimony from BancorpSouth's First Vice President of Retail Banking, Derek Caswell, that Bank officers, executives, and employees routinely misunderstood the Bank's posting order. *See* Plfs. Stmt. ¶ 93.
30. *See* Plaintiffs' response to Statement No. 29.
31. Agree that Plaintiff Swift had access to some account information, but deny that it was accurate or complete. *See* Plfs. Stmt. ¶¶ 78, 83, 84, 86, 87, 88.
- 32-33. Plaintiffs dispute that the cited testimony supports the statement. *See also* Plaintiffs' response to Statement No. 29.
34. Agree that this occurred as a result of the re-sequencing at issue in this lawsuit.
35. Plaintiff Swift agrees that none of the underlying transactions were initiated by unauthorized parties, but deny that all the fees were appropriate. Plaintiffs dispute that this statement is material.
36. Plaintiffs dispute that the cited testimony supports the statement. Moreover, this statement is speculative at best and, therefore, an inappropriate basis for summary judgment. *See* Plfs. Stmt. ¶¶ 86, 96.
- 37-40. Plaintiffs disagree that the referenced testimony supports the purported fact or that it is material.
41. Agree that the statement is accurate, but disagree that it is material.
42. Plaintiffs disagree that the referenced testimony supports the purported fact or that it is

material.

- 43. Plaintiffs disagree that the referenced testimony supports the purported fact. Plaintiff Swift testified that the charges were automatically debited from his account. *See* Plfs. Stmt. ¶ 96. Plaintiffs disagree that this fact is material.
- 44-48. Agree that the statement is accurate, but disagree that it is material.
- 49. Plaintiffs disagree that the referenced testimony supports the purported fact or that it is material.
- 50-51. Agree that the statement is accurate, but disagree that it is material.
- 52-53. Plaintiffs disagree that the referenced testimony supports the purported fact. Plaintiff Swift only testified that overdraft coverage can be beneficial in some instances without agreeing that BancorpSouth's re-sequencing policy was fair if it caused more overdraft fees to be assessed. Plaintiffs disagree that this fact is material.
- 54-62. Agree that the statement is accurate, but disagree that it is material.
- 63. Plaintiffs disagree that the referenced testimony supports the purported fact. Rather, Plaintiff Swift testified that he was aware BancorpSouth would honor a transaction "if it just so happened" that he overdrew his account. Plaintiffs also disagree that this fact is material.
- 64-67. Agree that the statement is accurate, but disagree that it is material.

**Plaintiffs' Statement of Material Facts to be Tried**

- 68. Beginning in 2003, and continuing throughout the entire class period, BancorpSouth uniformly manipulated the order of its customers' debit transactions pursuant to a standardized scheme that re-sequenced and posted debits each day in the order of largest-to-smallest in dollar amount instead of in the order in which they were received. October 12, 2012 deposition of Jeff Jagers ("Jagers Depo."), attached as Exhibit 1, at 68:2-9 and 82:18-87:16.
- 69. Beginning in 2002, BancorpSouth engaged EPG, a financial consulting firm that focused on the financial services industry and offered fee revenue optimization as one of its services, and adopted EPG's recommendation to utilize a high-to-low posting order which commingled debits. Jagers Depo. at 136:25-146:16; Exhibit 2 at 11-12; Exhibit 3; Exhibit 4. In its recommendation to the Bank, EPG stated: "It is anticipated that the bank will also realize an increase in NSF/OD fee revenue, as more items will be paid into

overdraft or returned.” Ex. 4 at 3. With EPG’s assistance, combined overdraft and NSF fee revenue, which had been around \$35 million in 2002, grew to over \$48 million in 2003, a 36% increase. Exhibit 5 at 2-3. Maximizing the number of overdraft fees assessed was the fundamental reason why BancorpSouth adopted high-to-low posting in 2003. *See, e.g.*, Jagers Depo. at 141:7-12 and 144:22-146:4 (“the whole engagement [with third party consultant EPG] was for revenue enhancement”); Ex. 2 at 11.

70. Beginning in 2002, and continuing throughout the class period, BancorpSouth utilized a secret “Overdraft Matrix Limit” (which BancorpSouth calls its Overdraft Payment Service in its Statement of Facts) for each customer. Jagers Depo. at 126:20-127:15, 60:19-25, 61:1-8 and Exhibits 4, 5, and 6 thereto.
71. Augmenting its high-to-low re-sequencing practice, BancorpSouth’s use of the Overdraft Matrix was integral to its overall scheme of increasing the number of completed debit transactions and, in turn, the number of overdrafts. In addition, the entire Overdraft Matrix process of determining the amount which would be available and authorizing a transaction into overdraft was intentionally not disclosed to the customers during the class period. Jagers Depo. at 60:19-25 and 126:20-127:15.
72. The amount of BancorpSouth’s overdraft fees ranged from \$25 to \$35 per transaction throughout the class period. Exhibits 6-11.
73. BancorpSouth admits that if it wanted to use low-to-high posting when it implemented its posting priority in 2003, it could have done so, but the Bank followed the recommendation of its third party consultant [EPG] for the purpose of increasing the Bank’s revenue. Jagers Depo. at 142:15-143:6.
74. BancorpSouth considered the impact of low-to-high posting in 2007 and concluded that it would significantly decrease revenues, estimating a 17.5% decrease of more than \$12 million. Exhibit 12.
75. BancorpSouth considered the impact of low-to-high posting again in 2010 in light of the filing of this lawsuit, and noted concern that changing its posting order “could provide a different class of customer to claim unfair practice.” Exhibit 13.
76. BancorpSouth actively concealed its Overdraft Matrix Limit. A prime example of such active concealment came in the form of a Frequently Asked Questions training document given to the Bank’s call center employees discussing the Overdraft Matrix, which

specifically stated that the assigned Overdraft Matrix Limit should not be disclosed to customers:

Seldom do we have the opportunity to present our customers with such outstanding financial and customer service benefits while at the same time providing improved branch and back office productivity together with a ***fair and consistent decision-making process*** and improved risk control. As you will see in reviewing the following questions and answers regarding BancorpSouth's ***new automated pay/return check decision process***, our new Overdraft Matrix is a win – win for our customers as well as BXS.

BancorpSouth is joining a number of other banking systems already providing some form of check/ATM/POS, pay/return system. Regional ***competitors*** such as AmSouth, Compass, Union Planters and Trustmark offer a similar automated system. . . . Our new soon-to-be partner in Little Rock, Pinnacle Bank, also currently offers such an arrangement.

. . . .

The Matrix Overdraft Limit itself **should not** be disclosed to the customer. Because the limit will fluctuate with account age and activity, disclosure may cause confusion. This is an internal process and should be transparent [sic][<sup>1</sup>] to the customer.

Jaggers Depo. at Ex. 6 (bold and underline in original).<sup>2</sup>

77. BancorpSouth's Deposit Agreements and Account Information Statements throughout the class period reserved discretion to the Bank in determining debit posting order. Exhibits 6-11 and 15-22.
78. BancorpSouth's disclosures never advised that the Bank would always manipulate transactions from high-to-low. Jaggers Depo. at 209:13-25. BancorpSouth's Deposit Account Terms and Conditions provided the following relevant language for the first time in the October 22, 2008 version:

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<sup>1</sup> The Bank used the word "transparent" when it should have used "opaque" because it was not willing to disclose the Overdraft Matrix Limit. The use of the word transparent in this document should not be chalked up as an anomaly because the Bank's Deposit Operations manual used the same incorrect word. Exhibit 14.

<sup>2</sup> A full reading of Deposition Exhibit 6 reflects other evasive answers that call center employees were trained to give customers responses to questions about the Bank's then new practice. Jaggers Depo. at Exhibit 6. Another frequently asked questions document provided similarly evasive scripted responses to be used by retail banking staff and call center employees in the event of customer inquiries. Jaggers Depo. at Exhibit 5. This script was misleading because the scheme was precisely intended to charge additional overdraft fees in order to provide BancorpSouth with huge revenue flow, not to cover extra costs.

ORDER OF PAYMENT – Unless otherwise provided in the Account Information Statement (see OTHER TERMS section below) if more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we *may* pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

Ex. 19 at 4 (emphasis added).

79. Previous versions of the Deposit Account Terms and Conditions excluded the phrase: “Unless otherwise provided in the Account Information Statement (see OTHER TERMS section below)”. See Ex. 15-18. Thus, prior to October 2008, customers were not directed by the Deposit Account Terms and Conditions documents to refer to the Account Information Statement.
80. BancorpSouth’s account agreements were standardized form adhesion contracts that are uniform across the states in which BancorpSouth operates and are *not negotiable* for any retail customer. Jagers Depo. at 179:1-180:24 and 202:10-22.
81. BancorpSouth *always* posts such items from high-to-low dollar value. Jagers Depo. at 68:2-9 and 82:18-87:16; Ex. 2 at 11.
82. BancorpSouth’s provision regarding the order of payment of transactions was buried deep in the account agreement which, throughout the class period, was a single-spaced, small-font contract of adhesion. Ex. 19.
83. BancorpSouth’s Account Information Statement, referenced in the Deposit Account Terms and Conditions failed to refer to the uniform high-to-low posting order that had been established for all retail accounts and failed to inform the customers that they could opt out of the Bank’s so-called discretionary overdraft process, instead choosing to only inform customers that overdraft fees could be avoided if they enrolled in one of the Bank’s overdraft protection products.<sup>3</sup> The Account Information Statement from September 1, 2004, for the first time provided:

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<sup>3</sup> In discussing the Bank’s overdraft limit practice using the Overdraft Matrix and its credit overdraft protection products, BancorpSouth’s representative stated that most customers do not qualify for the Bank’s overdraft protection products.



### ABOUT OVERDRAFTS

An “overdraft” occurs any time a check or other transaction is presented for payment against an account and the available balance of the account is insufficient to pay the check or transaction. When an overdraft occurs, we *may*, at our discretion, return the check and refuse the transaction, or, alternatively, we *may* choose to pay the check or transaction, in which case a negative account balance will result. If we return the check and refuse the transaction, you will be charged an Insufficient Funds (NSF) Item fee for each returned check and refused transaction. *If we pay* the check or transaction, you will be charged an Overdraft (OD) Item fee for each check or transaction paid in overdraft.

Determining whether to pay a check or other transaction in overdraft is *strictly discretionary* with us. We are not required to pay any check or other transaction in overdraft, even if we have paid overdrafts many times previously and even if we have permitted an account to remain in overdrawn status for an extended period. Also, if more than one check or other transaction is presented for payment against your account on the same banking day and the available balance is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater Overdraft Item or Insufficient Funds item fees than if we had chosen to pay them in some other order. We *may* also choose to first pay checks or other transactions which are payable to BancorpSouth and our affiliates.

See Ex. 8 (emphasis added).

84. Previous versions of the Account Information Statement included a vague reference to debiting multiple debit transactions presented for payment on a single banking day in descending order of the dollar amount of the transactions, but this process would have been part of BancorpSouth’s pre-2003 posting order. Exhibit 6. Also, some of these prior versions mentioned: “A description of the categories, method, and order of payment/posting is available upon request.” *Id.* Notably, the Bank removed this verbiage from the Account Information Statement as of the May 1, 2003 version. Ex. 7.
85. In 2007, high level Bank personnel discussed the level of customer communications regarding NSF and overdraft fees in an e-mail. Reference was made to a How to Avoid Fees brochure that only briefly touched on NSF and overdraft fees without mention of the Bank’s uniform high-to-low posting process or the Overdraft Matrix Limit. The email author noted: “We do not monitor and communicate to a targeted group of customers using parameters such as number of times the account is overdrawn. We can do this if requested.” Ex. 12. This never changed during the class period. Apparently in 2010, after Regulation E changes went into effect, the Bank committed to the FDIC to improve

customer communications. Ex. 13.

86. BancorpSouth's Senior Vice President of Retail Banking, Michael Lindsey, agreed that BancorpSouth's customers' account statements did not disclose BancorpSouth's practice of re-sequencing and posting debit card transactions from high-to-low dollar value. May 10, 2012 deposition of Michael Lindsey ("Lindsey Depo."), attached as Exhibit 23, at 89:3-89:15 and Exhibit 11 thereto.
87. Transactions debited from a customers' account are contained in two separate sections on customers' account statements – checks and other debits – and the statement does not indicate the interplay between the two sections such that it would identify to customers that the order in which the transactions were posted was a combination of checks and other debits. Lindsey Depo. at 85:23-89:11 and Exhibit 11 thereto.
88. The Notice of Charge for Overdrawn Accounts, a form used during the class period, which provides notice to customers that their account had been assessed an overdraft fee, does not disclose the Bank's posting order. Lindsey Depo. at 93:10-25, 94:6-23 and Exhibit 13 thereto.
89. Even though high-to-low re-sequencing provided significant fee revenue, one regional Bank president questioned posting high-to-low in 2005 in an email to BancorpSouth's top management. He wrote:

PLEASE EXPLAIN THE RATIONALE BEHIND OUR POLICY OF POSTING LARGEST ITEMS FIRST. WHAT CAN BE DONE TO PROTECT OUR BANK FROM LOSS AND OUR TELLERS FROM CRITICISM IN SITUATIONS WHERE TRANSIT ITEMS COME THROUGH AND PAY AHEAD OF ITEMS WE HANDLE PROPERLY DURING OPREATION HOURS?

Exhibit 24.

90. BancorpSouth received complaints regarding the Bank's overdraft policies, but failed to maintain records of those complaints. Jagers Depo. at 199:12-22 and 200:2-17.
91. BancorpSouth personnel knew that its Online Banking System did not allow for accurate account balance tracking. Exhibit 25.
92. BancorpSouth employees were often confused about the Bank's posting order and the mechanics of the Overdraft Matrix. Exhibits 26 and 27.
93. Customer confusion is understandable given the testimony from BancorpSouth's First Vice President of Retail Banking, Derek Caswell, that Bank officers, executives, and

employees routinely misunderstood the Bank's posting order. August 17, 2012 deposition of Derek Caswell ("Caswell Depo."), attached as Exhibit 28, at 105:12-16, 140:20-144:3, 157:15-159:25, 160:11-162:6, and 166:17-170:8.

94. BancorpSouth's internal confusion over the posting order led to the Bank's customer service representatives providing inaccurate advice to Bank customers. *Id.*
95. Plaintiff Swift was not aware until shortly before this lawsuit was filed that BancorpSouth engaged in the practice of re-sequencing and posting his debit card transactions from high-to-low dollar amount, and that he incurred overdraft fees as a result of BancorpSouth's practice. Exhibit 29; January 18, 2012 deposition of Shane Swift ("Swift Depo."), attached as Exhibit 30, at 39:24-41:3 and 77:5-79:6. Indeed, Plaintiff Swift testified that he only understood the Bank's posting order after researching it in 2010. Swift Depo. at 81:8-82:21.
96. The overdraft fees assessed to Plaintiff Swift's account were automatically deducted from Plaintiff Swift's account by BancorpSouth. Swift Depo. at 54:11-14.
97. On multiple occasions, Plaintiff Swift has described BancorpSouth's re-sequencing scheme as "unfair" and specifically that it is unfair for the Bank to engage in the re-sequencing practice for its own financial gain. Swift Depo. at 28:7-14, 30:8-23, 35:10-16, and 36:4-37:2. In fact, in response to the question of whether he believed re-sequencing is always harmful to BancorpSouth customers, Plaintiff Swift replied: "It's always harmful. I believe unfair re-sequencing is always harmful to BancorpSouth customers." Swift Depo. at 35:10-16. Plaintiff Swift even referred to BancorpSouth's re-sequencing scheme as a "corrupt practice." Swift Depo. at 78:5-7.
98. Plaintiff Swift has repeatedly stated that BancorpSouth should post debit card transactions in chronological order. Swift Depo. at 29:5-16, 31:9-12.
99. BancorpSouth's disclosed trial expert, Paul A. Carrubba, Esq., admitted during his deposition that the U.C.C. that BancorpSouth contends authorizes its high-to-low re-sequencing practice does not apply to debit card transactions. October 9, 2012 deposition of Paul A. Carrubba ("Carrubba Depo."), attached as Exhibit 31, at 61:23 – 63:4.

Dated: November 8, 2012.

Respectfully submitted,

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*Plaintiffs' Executive Committee*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE No. 09-MD-02036-JLK**

**IN RE: CHECKING ACCOUNT  
OVERDRAFT LITIGATION**

**MDL No. 2036**

**CERTIFICATE OF SERVICE**

I hereby certify that on November 8, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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# EXHIBIT 1

**In Re: Checking Account Overdraft Litigation  
Jeff Jaggers**

**1:09-MD-02036-JLK  
October 12, 2011**

**Page 1**

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

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IN RE: CHECKING ACCOUNT     )  
OVERDRAFT LITIGATION       )  
                                      )  
                                      ) NO. 1:09-MD-02036-JLK  
                                      )  
                                      )

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DEPOSITION  
OF  
JEFF JAGGERS  
OCTOBER 12, 2011

ALPHA REPORTING CORPORATION  
236 Adams Avenue  
Memphis, TN 38103  
901-523-8974  
www.alphareporting.com

1 know -- we know what debit card goes with what  
2 customer. They call in our call center, you  
3 know, my debit card ain't working, you know, we  
4 know -- yeah, we know as well.

5 Q. Okay. So let me back up. Explain for  
6 me, the IMPHCS system is your -- is your  
7 internal checking account application?

8 A. Yes.

9 Q. And then Stratus is specific to?

10 A. Stratus is specific to ATM's, and PIN  
11 based authorizations for debit cards, you know.  
12 Of course, all our ATM's are tied and driven by  
13 the Stratus device. And then it is used --  
14 utilized for the -- it's a connectivity point  
15 for FDR into our bank's -- into our bank's  
16 information.

17 Q. The overdraft limit you spoke of  
18 earlier, do customers ever know what that limit  
19 is?

20 A. No.

21 Q. Can they find out?

22 A. Normally, not. It's not something that  
23 we publish.

24 Q. How often is that recalculated?

25 A. Normally, it's calculated at the

1 statement time, when the customer's account  
2 statement drops, which is, normally, every  
3 month. It is also recalculated if they have  
4 been overdrawn more than eight consecutive days,  
5 it's recalculated to zero. It goes down to  
6 nothing.

7 MR. TAYLOR: When you get to a  
8 convenient stop, can we take a very short break?

9 MR. OSTROW: Right now.

10 (SHORT BREAK)

11 BY MR. OSTROW:

12 Q. All right. So in that first example  
13 with the signature based transaction, if they  
14 don't have an overdraft limit, or if their limit  
15 is nothing, then when that card is swiped, FDR  
16 sends back a rejection to the merchant; is that  
17 correct?

18 A. If the available balance -- if the  
19 Stratus is less than what the authorization  
20 request is for, or if the available balance at  
21 the Stratus is enough, but there's, within three  
22 days, settled authorized transactions that have  
23 not been settled that lower balance below the  
24 authorization request, they will be declined.

25 Q. Is Stratus' available balance, you said

1 you know, is it's either memo posting, or we do  
2 not do, you know, real time processing posting.  
3 The -- the application, the core applications,  
4 IMPHCS is processed at night. All of the  
5 transactions are accumulated for that day,  
6 regardless of the transaction source. And then  
7 they post on the customer's account that night.

8 Q. Okay. So FDR, then, is your third  
9 party for debit transactions to authorize or  
10 reject, correct?

11 A. Yes.

12 Q. And they use FIS?

13 A. We -- we use FIS' IMPHCS application in  
14 house to process our core checking account.

15 Q. Okay. So does FIS communicate with the  
16 IMPHCS software?

17 A. FIS owns -- FIS is the company.

18 Q. Right?

19 A. That -- that we licensed the software  
20 from them.

21 Q. But is there other than, you know, when  
22 you get the software, other than maintenance,  
23 or, you know, upgrading year to year so they can  
24 get their gazillion dollars that they probably  
25 do, what is the every day, if any, relationship

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1 it's --

2 Q. You're doing good.

3 A. It's the X Net standard, you know. And  
4 its intent is to, you know, be efficient in the  
5 storage of reports and be efficient in the  
6 amount of space it takes to store reports, and  
7 all like that. But if you -- if there's a  
8 reason, a business reason, that we want to --  
9 that report to be in Excel format, you know, the  
10 system is capable of doing that. But now, I  
11 can't take like the 2008 report that's already  
12 been archived and say, now, I want to see it  
13 Excel.

14 Q. Before you store it?

15 A. Right.

16 Q. Talk to me about the process of what  
17 happens at night in terms of settlement. So  
18 explain to me how that works.

19 A. On signature transactions or nightly  
20 processing or both?

21 Q. Both.

22 A. Makes sense to do both.

23 Q. One at a time.

24 A. First, we'll do the signature debit  
25 card process. Through our relationship with

1 FDR, each evening, we receive two files from FDR  
2 for the signature transactions that have been  
3 settled with them by a cut-off time. My  
4 recollection is that the cut-off time that the  
5 merchants and/or the merchant services providers  
6 out there in the world have in order to get  
7 their transactions in so that FDR gets them to  
8 us is 6 p.m. central time.

9 So if the merchant makes a settlement  
10 prior to the cut off time, somewhere between  
11 9 p.m. and 10:30 p.m. central time, we will  
12 receive two files from FDR for that day's  
13 settled transactions. There will be a file, a  
14 large file of all of the transactions, and then  
15 there's a file called the travel and  
16 entertainment file. There are rules and  
17 requirements, regulatory requirements,  
18 implemented back half a dozen years ago that  
19 said certain information is required to be on a  
20 debit card transaction that is used for certain  
21 types of travel and entertainment. And so  
22 there's -- there's additional fields of data.

23 Q. Would have that stuff?

24 A. Would have that stuff in it for the  
25 transactions. So that we can have that and pass



1 that information on in the form of an additional  
2 description on a statement. So you know, so we  
3 get two files, up to about 10:30 at night. And  
4 then those are the two files, from a signature  
5 process, that are going to go into tonight's  
6 processing and post, or attempt to post to the  
7 appropriate account.

8 Q. When something posts, it's fully  
9 settled, right?

10 A. That is correct.

11 Q. And then it comes off of your available  
12 balance?

13 A. Yes.

14 Q. And?

15 A. Want me to go through the nightly?

16 Q. Yes.

17 A. Throughout the day, there are multiple  
18 types of transactions that customers may be  
19 doing and or have asked someone else to do on  
20 their behalf, whether it be drafts, you know,  
21 that you've authorized some company to take  
22 draft your insurance payment. Whether it's some  
23 form of a bill payment that you've authorized to  
24 be made. There's checks, there's transactions  
25 that occur inside a branch.

1           There's ATM transactions. There's  
2     signature transactions. There's PIN  
3     transactions. There is systems generated  
4     transactions you previously authorized on every  
5     day, you know, you want a -- a transfer made  
6     from your account on the 15th of every month to  
7     your child's account, who's in college in XYZ.

8           You know, it's not an online banking  
9     transfer, it's more of a system generated.  
10    There are system generated transactions, you  
11    know, to pay interest, to charge fees to -- all  
12    of those type things. Well, the collection of  
13    customer initiated transactions, you know,  
14    occurs throughout the day in those forms; debit  
15    card, ATM ACH, over the counter, checks, et  
16    cetera.

17           We accumulate those somewhere around  
18    midnight. You know, we've processed all the  
19    checks that we've taken from them, all of our  
20    branches. We've processed all the checks that  
21    we received from the federal reserve, from other  
22    banks. We've gotten our debit card files from  
23    FDR. We've processed all the ACH draft files  
24    for that day.

25           And so we're going to post what we call

1 our core applications, which IMPHCS is the  
2 checking application, core application. And we  
3 are going to create posting files, based upon  
4 whether it was a checking account transaction  
5 that needs to post, a loan payment that needs to  
6 post, a CD that was purchased or renewed or  
7 whatever.

8 You know, across the different types of  
9 application, we're going to post those, normally  
10 starting around midnight. That posting is going  
11 to -- posting process is going to take about  
12 four hours. Those programs run out of West  
13 Jackson Street, Tupelo.

14 Somewhere around 4 a.m., we've  
15 processed all of our customer core  
16 applications. And then we're going to have  
17 produced the reports for that posting. And they  
18 will be archived into X Net. We're going to  
19 update our online banking.

20 Q. When you say the reports, you mean the  
21 individual customer reports?

22 A. Either individual customer reports or  
23 bank generated aggregate reports. It could be  
24 notices. It could be statements, it could be a  
25 system report

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1 Q. So everything happens while we're  
2 sleeping?

3 A. Everything happens when everybody is  
4 asleep.

5 Q. Pretty amazing, if you think about it.

6 A. And so at 4 a.m., we'll start getting  
7 ready for the next day. At 5 a.m. in the  
8 morning, we'll start accepting, if you will,  
9 files for that day from the Federal Reserve.  
10 You know, they got, you know, ACH files. You  
11 know, we'll start processing next day. We, you  
12 know, we want to be ready for our branches to  
13 open and our call center to open and be current.  
14 So that's a simple explanation.

15 Q. That was an excellent explanation.  
16 When FDR sends over their information to you for  
17 the debit signature authorizations, which have  
18 now been settled, okay, the good stuff that  
19 matters to you all, what is in that report,  
20 other than -- well, let me ask you this. You  
21 already went through what's in the report and  
22 told me about the entertainment category. Is  
23 there a date and time information on that report  
24 as it relates to actual settlement time for each  
25 one of those transactions?

1 Because you only get \$500, regardless. The  
2 question is whether or not you're going to get  
3 hit for an overdraft fee because whether you had  
4 protection or not?

5 A. From an authorization perspective, the  
6 -- the debit card authorization, if it's an  
7 overdraft limit, you can have up to. If it's an  
8 overdraft protection, you get \$500, it's not up  
9 to. You get an arbitrary \$500.

10 Q. Right. But you guys don't -- there's  
11 no -- there's no discretion when they have the  
12 money available, they just get \$500, though,  
13 that's for --

14 A. For a debit card authorization.

15 Q. As opposed to a person who doesn't have  
16 it, they may get \$225?

17 A. That's right.

18 Q. We're calling it overdraft limit. Have  
19 you also heard that as overdraft matrix?

20 A. Well, the overdraft matrix calculates  
21 the overdraft limit.

22 Q. Right. The matrix is just the elements  
23 that go into determining the limit?

24 A. Correct.

25 Q. And each person, there's a matrix that

1 applies to each customer?

2 A. There's -- the criteria is unique for  
3 that customer in that, you know -- you know, the  
4 common criteria, you use like age of account.  
5 You know, if your account has been with you a  
6 shorter amount of period, you know, you may, you  
7 know, that person will not get as much credit  
8 for being customer as a customer who's been with  
9 you ten years. Same thing on balance and other  
10 things.

11 Q. And earlier, you said the customers  
12 don't know what arbitrary 0 to 500 limit is?.

13 A. That's right. We do not disclose.

14 Q. That's re-calibrated or calculated  
15 every time a new statement drops?

16 A. That is correct.

17 Q. But the \$500 to your linked account,  
18 that's not a -- something you would not tell the  
19 customer because that is what it is, right?

20 A. Well, again, we don't -- we don't --

21 Q. I'm talking about for the linked  
22 account, \$500 max?

23 A. Max -- no, we don't, I mean, we don't  
24 market that as a service, if that's what you're  
25 asking. Are we -- are we communicating to our

1 it an overdraft disposition report. What do you  
2 all call that report?

3 A. I believe the official name for that  
4 report is the exception processing NSF activity  
5 report, I believe is what the branch sees. And  
6 then, you know, they'll -- they'll make their  
7 decisions. Because those are items that they  
8 need to make a decision on. And so they will  
9 make, you know, pay return decisions based upon  
10 that. And they have a -- they have a screen  
11 they go in and key, you know, pay or return.

12 Q. So these branch managers expect to look  
13 at these reports of every overdraft and say, you  
14 know, just find the exceptions that they want to  
15 reverse, basically? Or they -- well, no, it's  
16 reversal because they're going to have to put a  
17 deposit back in?

18 A. Do they want to pay the item, you know,  
19 or do they want to return the item. And the,  
20 you know, there could be multiple reasons to pay  
21 the item, but they make that decision at the  
22 branch.

23 Q. Okay. EPG, you know that company?

24 A. Earnings Performance Group.

25 Q. Do you still work with them?



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1 A. No.

2 Q. From what I saw in interrogatory  
3 response, they are a company that consulted with  
4 you back in '02 regarding fee income and areas  
5 that you may want to consider to generate  
6 additional income; is that correct?

7 A. We engaged EPG on -- the earliest  
8 engagement was in 2002.

9 Q. And from my understanding, from the  
10 response that we got, there were different areas  
11 that they consulted with you regarding?

12 A. Yes.

13 Q. And in addition to posting priorities?

14 A. Yes.

15 Q. What else did they consult with you  
16 about?

17 A. The initial engagement was with what  
18 they called the overdraft matrix. They came to  
19 us in, I believe, it was late 2001, and asked to  
20 do a presentation about a service that they  
21 offered regarding overdraft matrix. We engaged  
22 them.

23 And they came in the bank in 2002. And  
24 we implemented their -- at their recommendation,  
25 you know, we implemented the overdraft matrix on

1 our customers' accounts. And they also did  
2 recommendations. I don't remember how many --  
3 across a number of areas for revenue  
4 enhancement, and we worked with them for about  
5 two years.

6 Q. How was that engagement? Did you pay  
7 them a fixed amount, or was that a -- what I  
8 would call contingent agreement, based upon the  
9 amount of income that they generated for the  
10 bank? Did they get a percentage of it?

11 A. No, they did not. It was a fixed  
12 figure.

13 Q. And prior to meeting with them, how  
14 were you prioritizing your transactions in terms  
15 of debiting the account?

16 A. We were high to low. And what we were  
17 doing, from a high/low perspective, we had like  
18 maybe four buckets, high to low. And --

19 Q. This is pre EPG?

20 A. Yes. Yes.

21 Q. Okay. Four buckets?

22 A. Yes.

23 Q. Do you remember what they were? I know  
24 I'm challenging your memory.

25 A. Yeah, it was -- I believe it was

1 electronic transactions in one bucket, paper  
2 check transactions in one bucket. Bank  
3 initiated entries in one bucket, and bank,  
4 electronic, paper and check, and then there  
5 were -- I believe it was things like cash,  
6 checks, ATM withdrawals. My recollection is  
7 there was a bucket for transactions that  
8 involved cash. If cash left the bank, there was  
9 a bucket for transaction that involved cash.  
10 But those four buckets, and they all posted high  
11 to low.

12 Q. So were you involved with that  
13 engagement?

14 A. Yes.

15 Q. What was your role?

16 A. I managed that engagement. I led that  
17 engagement.

18 Q. And with respect to what I'm calling  
19 posting priority?

20 A. Yes.

21 Q. What we're talking about. What changed  
22 from the time that you engaged them, going  
23 forward?

24 A. We simplified out posting order. We --  
25 we basically went to a more simplified posting

1 order. All -- all customer transactions in one  
2 bucket, high to low. And you know, bank  
3 initiated transactions in one bucket, high to  
4 low. So it didn't matter what the transaction  
5 type was that the customer initiated, they would  
6 post high to low, instead of ACH and check in  
7 one bucket, and electronic transactions in  
8 another bucket, and over-the-counter  
9 transactions in another bucket.

10 Q. So you just went from those buckets  
11 to -- if you give me a check, ACH debit,  
12 whatever it is, we're just going to go high to  
13 low?

14 A. High to low. Didn't matter the  
15 transaction type the customer initiated.

16 MR. TAYLOR: And just so it's clear,  
17 EPG, the engagement included a number of  
18 suggestions. You're talking about only one of  
19 them, and not all of the suggestions were  
20 implemented. So in focusing on this one, I  
21 don't want you to lose sight of the larger  
22 engagement that EPG --

23 MR. OSTROW: No, I understand. I mean,  
24 it was clear from your response that there was  
25 things that you didn't go with. I'm assuming

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1 that if there were anything that were directly  
2 relative to our case, you'd probably tell me.

3 MR. TAYLOR: Probably.

4 BY MR. OSTROW:

5 Q. Maybe a foolish question. But what did  
6 that do to your overdraft revenue?

7 A. What, when you say --

8 Q. What did the posting change do to the  
9 overdraft revenue?

10 A. Overdraft revenue increased.

11 Q. Obviously, you keep records of your  
12 overdraft revenues from year to year?

13 A. Yes.

14 Q. And can you analyze that on a month to  
15 month basis?

16 A. Yes.

17 Q. Have you done an analysis to determine  
18 what Reg E is going to do or has -- what it was  
19 going to do, and now what it has done to your  
20 overdraft revenue?

21 A. Yes.

22 Q. And you have all those reports? You  
23 don't have them with you, but you have those  
24 reports at the bank that you could pull if  
25 necessary?

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1 A. Yes.

2 Q. Again, speaking specifically about  
3 consumer accounts. The posting priority to that  
4 change which went from high to low for  
5 everything, did that vary between any customers  
6 within the consumer checking account group?

7 A. No.

8 Q. Everybody got the same treatment, per  
9 se?

10 A. Yes.

11 Q. And this was a decision that the bank,  
12 obviously, decided to go with to change the  
13 priority, correct?

14 A. Yes.

15 Q. And if the bank wanted to, at that  
16 time, switch to go low to high, it could have  
17 done that as well, right?

18 MR. TAYLOR: Object to the form.

19 A. Yes. We received recommendations from  
20 EPG on a number of areas; this being one of  
21 them. And you know, we -- we implemented their  
22 recommendations. So if it had been a different  
23 recommendation and we made the decision to do  
24 it, we would have done that.

25 BY MR. OSTROW:

1 Q. Right. I guess my question was, you  
2 know, isn't really, you know, why or who, it's  
3 more of the bank can change the posting priority  
4 if it wants, correct?

5 A. Posting priority is -- yes, we  
6 determine the posting priority for our account.

7 Q. Where do fees fall? In the high to  
8 low, fees fall -- how do they fall in the high  
9 low hierarchy?

10 A. The fees would fall in the group  
11 considered bank initiated transactions. Bank  
12 initiated transactions post first. Overdraft  
13 fees are a day's delay, you know, they post the  
14 next day. But they will post first in the next  
15 day.

16 And a fee cannot generate another fee.  
17 You know, if you get an ATM withdrawal fee,  
18 you're not subject to incur an overdraft fee  
19 because you're overdrawn and you got an ATM  
20 withdrawal fee. So fees don't incur, you know,  
21 additional fees, but they do post first.

22 Q. Why is that?

23 A. The bank has always posted fees first.  
24 I mean, that's been our practice for --

25 Q. Do you know why you do that?



1 A. No, I have no idea. We always do it.  
2 That goes back, I mean, to me, that's standard  
3 banking practice, from my experience.

4 Q. I'm not suggesting it's not a good  
5 idea. I mean, I assume, and my assumption  
6 doesn't really mean anything in the case that,  
7 you know, you want to make sure you get our  
8 money for your own fees first.

9 A. I understand what you're saying. And  
10 again, from my experience, that's the way banks  
11 have always posted fees. But I've been doing it  
12 so long, I've never sat in a meeting where  
13 somebody said, here's why we are going to do,  
14 you know, post fees first.

15 Q. Did you sit in the meeting where EPG  
16 told you why you should switch everything from  
17 high to low?

18 MR. TAYLOR: Object to the form.

19 BY MR. OSTROW:

20 Q. Did EPG tell you that you should switch  
21 the posting order that you were currently using  
22 at the time that you met with them to a high to  
23 low for all transactions?

24 A. EPG made a number of recommendations.  
25 And yes, I participated in those conversations

1 and meetings regarding those recommendations,  
2 including the posting order recommendations that  
3 they made.

4 Q. What was the rationale for their  
5 suggestion to go high to low in every -- with  
6 all transactions?

7 A. Multiple reasons. You know,  
8 simplification was No. 1. We had buckets -- if  
9 you -- if you go back in time, customers wrote  
10 checks, and then they wrote checks that had  
11 ACH. And then they -- you introduced different  
12 types of transactions. So we had multiple  
13 buckets. You know, a customer were to call up  
14 and say, hey, I'm -- I had an overdraft fee last  
15 night, I can't figure out why.

16 You know, you said, well, you know, we  
17 posted you two checks first, and then we posted  
18 your debit card transaction, and then we posted  
19 this, no. If it's high to low, it's very simple  
20 for the customer to understand. Very simple for  
21 the bank to explain, so simplification was one  
22 reason.

23 Certainly, we discussed revenue. That  
24 was -- the whole engagement was for revenue  
25 enhancement. So for certain customers, there

1 would be additional revenue that the bank would  
2 generate from those account relationships.

3 Let's see. What else was there? I mean, you  
4 know, they had three or four points that  
5 supported their recommendation.

6 Q. Are you still posting the same way?

7 A. We -- yes. Since 2003, we've posted  
8 the same way. Not all the same transactions are  
9 subject to OD fees because of Reg E. But the  
10 posting order, it was not changed as a result of  
11 Reg E.

12 Q. So you're still doing every transaction  
13 high to low?

14 A. Yes.

15 Q. Did you keep notes from your meetings  
16 with EPG?

17 A. I don't -- you know, I provided counsel  
18 my EPG file. I can't remember if there were  
19 notes in them or not. I'm not a big note  
20 taker. But I know, you know, there were EPG  
21 related documents that they, you know,  
22 produced. I mean --

23 MR. TAYLOR: You have everything from  
24 his file.

25 A. Right. But I don't recall notes per

1 A. No.

2 Q. And are these, the two documents that  
3 we just discussed, the deposit agreement and the  
4 account information statement, are they the same  
5 document that all BancorpSouth customers have  
6 gotten, regardless of what state they're in?

7 A. The account information statement is.  
8 I'm just trying to remember. We would have, at  
9 the point of acquiring a bank during that  
10 period, we would have made some specific  
11 disclosures to those customers. But the posting  
12 order, again, would not have been any different  
13 in any state, you know. But there's just --  
14 when you acquire a bank, there's a significant  
15 amount of regulatory disclosures that you've got  
16 to undertake.

17 MR. TAYLOR: And I think the way you  
18 asked the question was, were the account's  
19 opening documents the same per state. I may  
20 have misunderstood.

21 MR. OSTROW: And I don't remember  
22 saying account opening.

23 MR. TAYLOR: I'm combining the two  
24 documents as account opening.

25 MR. OSTROW: Right. Those two

1 documents, the deposit agreement and account  
2 information statement, I wanted to know whether  
3 they varied from state to state, or are they the  
4 same regardless of where you were.

5 MR. TAYLOR: And when you phrased the  
6 question, literally, that broadly, I think the  
7 answer is, there are differences, state to  
8 state, in the deposit, but --

9 BY MR. OSTROW:

10 Q. Well, let's break it down then, now  
11 that you're telling me that.

12 A. The terms and conditions agreement is  
13 the same.

14 MR. TAYLOR: Right. And I think what  
15 you're interested in, if you were to ask the  
16 question about posting order, I don't think that  
17 is a difference among the states.

18 THE WITNESS: No, it's not.

19 MR. OSTROW: Do you know what the  
20 differences are, for whatever the other terms  
21 would be?

22 MR. TAYLOR: I would have to go back  
23 and look at the chart. But anything that  
24 impacts the lawsuit, I think the answer is no.

25 BY MR. OSTROW:

1 A. Yes. There's a one-time fee. After  
2 ten days, if your account reaches the ten day --  
3 ten days overdrawn -- ten consecutive days  
4 overdrawn, there will be a one-time fee.

5 Q. How much is it?

6 A. \$25, and changed October 1st to \$35.

7 Q. Charge them 40. What about -- is there  
8 a minimum threshold that you need to be negative  
9 before an OD fee will kick in, or is it one  
10 penny?

11 A. There is no threshold.

12 Q. Has the bank received customer  
13 complaints regarding high to low posting from  
14 the time period of '06 through Reg E?

15 A. Yes, I would say yes. Yes.

16 Q. Is there a record kept when somebody  
17 complains?

18 A. If it is a formal complaint, there is a  
19 record kept. But if it's a call center, you  
20 know, inquiry, you know, hey, you know, you  
21 charged me three fees yesterday. I don't like  
22 that. No, there's not a record kept.

23 Q. Where is the call center?

24 A. West Jackson Street campus.

25 Q. Down the block?

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1 A. Around the corner.

2 Q. You used the word, formal, in  
3 describing the type of complaint there would be  
4 a record. What you mean by formal?

5 A. There's complaint process that you --  
6 through either, you know, the state regulatory  
7 agencies, FDIC.

8 Q. You're talking about a regulatory type  
9 of --

10 A. Right, a formal complaint that someone  
11 might make about anything. There's a -- if  
12 they, you know, whatever it is, they don't like  
13 interest they're charged, those, we do maintain  
14 records of.

15 Q. And where are those records kept?

16 A. Those records are kept in our audit  
17 department.

18 Q. What format are they kept in?

19 A. I don't know.

20 MR. OSTROW: Take a two-minute break,  
21 five-minute break.

22 (SHORT BREAK)

23 BY MR. OSTROW:

24 Q. Do you know turnover information in  
25 terms of customer turnover, retention, how long

1 MR. TAYLOR: If you visit the web site,  
2 it has a map of locations. Which, I don't know  
3 if that is a reasonable proxy, but it's heavily  
4 Mississippi country from a branch perspective.

5 BY MR. OSTROW:

6 Q. It's green, right?

7 A. It's green.

8 Q. If the terms of the deposit agreement  
9 and the account information statement, are those  
10 negotiable terms between a customer and the  
11 bank?

12 A. Not a retail customer.

13 MR. TAYLOR: Well, let me -- I guess I  
14 will phrase it as an objection. You were  
15 earlier talking about special allowances for  
16 certain customers?

17 A. Right, right. Those are processing --  
18 what we consider processing allowances. They  
19 would not change the terms and conditions of the  
20 account, on a retail account.

21 BY MR. OSTROW:

22 Q. I asked you about the purpose of  
23 implementing the posting change from buckets,  
24 high to low, to straight up high to low for all  
25 transactions. I did not ask you the same as it



1 difference, but...

2 MR. TAYLOR: I will object.

3 MR. OSTROW: You can object on the  
4 legal analysis and give me the banker's reason  
5 why it's called an overdraft limit as opposed to  
6 really just a line of credit?

7 A. Right. From an overdraft limit is --  
8 is BancorpSouth, we have -- the systems are  
9 designed to you can -- you know, set up account  
10 criteria to pay all, pay none, pay to the limit,  
11 those type things. So it is a processing  
12 efficiency mechanism. Historically speaking,  
13 most customers don't apply and obtain credit  
14 overdraft protection.

15 That's just -- they don't. Many of  
16 them, when they do apply, don't qualify for a  
17 credit facility. And so you know, we consider  
18 the credit decision of a credit card or a line  
19 of credit, under our underwriting standards for  
20 making a loan. And the overdraft limit criteria  
21 is really a payment decision tool to, No. 1,  
22 treat customers as consistently as possible  
23 across the spectrum of customers, throughout all  
24 the different branches and all -- and where  
25 they're located. And No. 2, be efficient in

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1 doing that. And so it's different.

2 BY MR. OSTROW:

3 Q. Would you agree that the qualification  
4 for the overdraft limit -- qualifications for an  
5 overdraft limit are less than the qualifications  
6 for being approved for a true line of credit?

7 MR. TAYLOR: Object to the form.

8 A. And I would -- I would not just  
9 arbitrarily agree with that. The overdraft  
10 limit criteria is completely different, based  
11 upon a completely different set of factors than  
12 a line of credit criteria. So it's -- they're  
13 not -- they're not comparable.

14 BY MR. OSTROW:

15 Q. I don't want to go, really, you know,  
16 off the script too much, but why don't you just  
17 tell me, briefly, what are the criteria?

18 A. The overdraft limit primary criteria is  
19 age of the account. And the age of account, as  
20 the account matures, they get a larger value for  
21 the account age. Historically speaking, you  
22 know, the longer you have an account, the less  
23 likely you are to have losses on it.

24 The second criteria is the 90-day  
25 average balance in the account. You know,

1 And so we did that according to the guidelines.

2 Q. Okay. We talked about your  
3 disclosures, and that they seem to be limited to  
4 deposit agreement and account information sheet?

5 A. Yes.

6 Q. In either of those documents, or in any  
7 other -- at any other time, in any other form,  
8 have you ever disclosed to your customers that  
9 the bank will always post high to low?

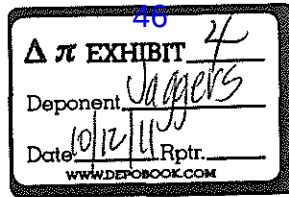
10 MR. TAYLOR: Object to the form. And  
11 it's the use of the word, will. But answer.

12 BY MR. OSTROW:

13 Q. Or let me correct that, and I'll remove  
14 the word, will, and say other than those two  
15 documents, have you -- well, including those two  
16 documents as well as any other form of  
17 communication, have you ever notified the  
18 customer that the bank always posts high to low?

19 A. I do not recall any document that  
20 specifically said, we will always post high to  
21 low. I believe we reference, in some documents,  
22 that we may post high to low, and that we may  
23 post in any order we choose. But I am not aware  
24 of a document where we have said we pay high to  
25 low.

# DEPOSITION EXHIBIT 4



1-19-07

**OD Matrix****Exclusions:**

Accounts not in normal status

Accounts that go to account analysis Service Charge Types: O, Q, X, Y, or V

Accounts with system types of:

3\* Public Funds

4\* Due to Banks

5\* Employees

6\* Trust

7\* Bank - Official Items

Accounts with Charge Card = 1

Accounts with Loan Trailer

Accounts with OD Limits over OD Matrix Limits or OD Limit = 0

Accounts with Locator Number (Bankruptcy Accounts)

Accounts with product type of 025 - Checkless Checking 015

Accounts with product type of 300 - Health Savings Accounts

Accounts coming across from bank conversion for first 90-120 days

Accounts with product type 051 or 071 or system type 01\* will use the Commercial Matrix, else the accounts go through the Retail Matrix

**Overdraft Parameter Matrix (Retail)**

Matrix Score	Age in Days	90 Day Average Balance	12 Month Times NSF
-500	<90		
-100		<=\$100	
-50		>-\$100 and <=\$50	>=10
-25			>=5 and <10
0		>-\$50 and <=\$100	>=3 and <5
50		>\$100 and <=\$250	>=0 and <3
100	>90 and <=180	>\$250 and <+\$1000	
150	>180 and <=270	>\$1000 and <\$1500	
200	>270 and <=360	>\$1500 and <\$2000	
250	>360 and <=450	>\$2000 and <\$2500	
300	>450 and <=2189	>\$2500 and <\$3000	
350	>2190 and <=2554	>\$3000 and <\$3500	
400	>2554 and <=2919	>\$3500 and <\$4000	
450	>2919 and <=3284	>\$4000 and <\$4500	
500	>3284	>\$4500	

Request 10.538.11 - 07-17-07 - Service SYSTEM TYPE 025  
FROM MATRIX

**Overdraft Parameter Matrix ( Business, Non-Analyzed)**

Matrix Score	Age in Days	90 Day Average Balance	12 Month Times NSF
-2000	<90		
-1000		<=\$100	
-500		>-\$100 and <=\$50	>=10
-100			>=5 and <10
0		>-\$50 and <=\$100	>=3 and <5
100		>\$100 and <=\$250	>=0 and <3
200		>\$250 and <+\$1000	
400	>90 and <=180	>\$1000 and <\$1500	
600	>180 and <=270	>\$1500 and <\$2000	
800	>270 and <=360	>\$2000 and <\$2500	
1000	>360 and <=450	>\$2500 and <\$3000	
1200	>450 and <=2189		
1400	>2189 and <=2554	>\$3000 and <\$3500	
1600	>2554 and <=2919	>\$3500 and <\$4000	
1800	>2919 and <=3284	>\$4000 and <\$4500	
2000	>3284	>\$4500	

**Overdraft Parameter Matrix ( Business, Non-Analyzed)**

Matrix Score	Age in Days	90 Day Average Balance	12 Month Times NSF
-2000	<90		
-1000		<=\$100	
-500		>-\$100 and <=\$-50	>=10
-100			>=5 and <10
0		>-\$50 and <=\$100	>=3 and <5
100		>\$100 and <=\$250	>=0 and <3
200		>\$250 and <+\$1000	
400	>90 and <=180	>\$1000 and <\$1500	
600	>180 and <=270	>\$1500 and <\$2000	
800	>270 and <=360	>\$2000 and <\$2500	
1000	>360 and <=450	>\$2500 and <\$3000	
1200	>450 and <=2189		
1400	>2189 and <=2554	>\$3000 and <\$3500	
1600	>2554 and <=2919	>\$3500 and <\$4000	
1800	>2919 and <=3284	>\$4000 and <\$4500	
2000	>3284	>\$4500	

## Recommendation to Enhance the Overdraft Matrix

The current matrix has been in production since March 2002. The matrix is utilized to automate much of the overdraft management process. Based on the automation results of the original project the following enhancement is recommended for consideration:

### Modify the Age of Account Score

#### Current Table

Score	Age in Days
-500	<31
-100	>31 and <=121
-50	>121 and <=212
0	>212 and <=303
50	>303 and <=396
100	>396 and <=761
150	>761 and <=1126
200	>1126 and <=1491
250	>1491 and <=1856
300	>1856 and <=2221
350	>2221 and <=2586
400	>2586 and <=2951
450	>2951 and <=3316
500	>3316

#### New Table

Personal		Business	
Score	Age in Days	Score	Age in Days
-500	<90	-2000	<90
100	>90 and <=180	400	>90 and <=180
150	>180 and <=270	600	>180 and <=270
200	>270 and <=360	800	>270 and <=360
250	>360 and <=450	1000	>360 and <=450
300	>450 and <=2189	1200	>450 and <=2189
350	>2190 and <=2554	1400	>2190 and <=2554
400	>2554 and <=2919	1600	>2554 and <=2919
450	>2919 and <=3284	1800	>2919 and <=3284
500	>3284	2000	>3284

The recommended change will provide greater consistency in managing the Overdraft process across more accounts.



# Overdraft Parameter Matrix Implementation

DRAFT

## OVERDRAFT PARAMETER MATRIX (BUSINESS, NON-ANALYZED)

Matrix Score	Age in Days	90 Day Average Account Balance	12-Month Times NSF	90 Day Average Relationship Balance	Relationship Profitability or Value Tiers
- 2,000	< 31				
- 1,000	> 31 and <= 91	<= -\$100			
- 500		> -\$100 and <= -\$50	>= 10		
- 100	> 91 and <= 211		>= 5 and < 10		
0	> 211 and <= 301	> -\$50 and <= \$100	>= 3 and < 5		
100	> 301 and <= 365	> \$100 and <= \$250	>= 0 and < 3	>= \$1,000 and < \$2,000	1 (Lowest)
200	> 365 and <= 730	> \$250 and <= \$1,000		>= \$2,000 and < \$3,000	2
400	> 730 and <= 1,095	> \$1,000 and <= \$1,500		>= \$3,000 and < \$4,000	3
600	> 1,095 and <= 1,460	> \$1,500 and <= \$2,000		>= \$4,000 and < \$5,000	4
800	> 1,460 and <= 1,825	> \$2,000 and <= \$2,500		>= \$5,000 and < \$6,000	5
1,000	> 1,825 and <= 2,190	> \$2,500 and <= \$3,000		>= \$6,000 and < \$7,000	6
1,400	> 2,190 and <= 2,555	> \$3,000 and <= \$3,500		>= \$7,000 and < \$8,000	7
1,600	> 2,555 and <= 2,920	> \$3,500 and <= \$4,000		>= \$8,000 and < \$9,000	8
1,800	> 2,920 and <= 3,285	> \$4,000 and <= \$4,500		>= \$9,000 and < \$10,000	9 (Highest)
2,000	> 3,285	> \$4,500		>= \$10,000	

Earnings Performance Group

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BXS Swift H-006653

## OD Matrix

### Exclusions:

Accounts not in normal status

Accounts that go to account analysis Service Charge Types: O, Q, X, Y, or V

Accounts with system types of:

3\* Public Funds

4\* Due to Banks

5\* Employees

6\* Trust

7\* Bank -- Official Items

Accounts with Charge Card = 1

Accounts with Loan Trailer

Accounts with OD Limits over OD Matrix Limits or OD Limit = 0

Accounts with Locator Number (Bankruptcy Accounts)

Accounts with product type of 025 -- Checkless Checking 300 HEALTH SAVINGS ACCT

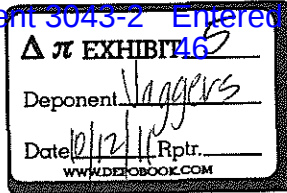
~~Accounts in branches 161 or 162 and open date before 02/24/05~~

Accounts with product type 051 or 071 or system type 01\* will use the Commercial Matrix, else the accounts go through the Retail Matrix

### Overdraft Parameter Matrix (Retail).

Matrix Score	Age in Days	90 Day Average Balance	12 Month Times NSF
-500	<90		
-100		<=\$100	
-50		>-\$100 and <=\$50	>=10
-25			>=5 and <10
0		>-\$50 and <=\$100	>=3 and <5
50		>\$100 and <=\$250	>=0 and <3
100	>90 and <=180	>\$250 and <+\$1000	
150	>180 and <=270	>\$1000 and <\$1500	
200	>270 and <=360	>\$1500 and <\$2000	
250	>360 and <=450	>\$2000 and <\$2500	
300	>450 and <=2189	>\$2500 and <\$3000	
350	>2190 and <=2554	>\$3000 and <\$3500	
400	>2554 and <=2919	>\$3500 and <\$4000	
450	>2919 and <=3284	>\$4000 and <\$4500	
500	>3284	>\$4500	

# DEPOSITION EXHIBIT 5



**Frequently asked Customer questions on Overdraft Matrix:**

**You never paid me into the overdraft before, why have you now?**

Based on the age of your account, the average balance and the prior activity of your account, a decision was made to pay your account into overdraft.

**Why did you pay my largest checks and not my smaller checks? I had enough funds to cover the smaller amounts. The bank is just making more fees.**

We feel in most cases you would want your larger checks such as your house payments and rent payments paid before paying other smaller checks since typically they are your more important payments.

**I have two accounts and you paid my checks on one of my accounts and not the other? Can you tell me why? I have been a customer for many years.**

The decision to pay is based on each individual account. We base our decision on the age of your account, the average balance of your account and the prior activity of your account.

**I received a notice stating my check was paid and I was charged a fee, but also see a deposit in my account for \$25.00. Can you explain?**

At the time your check was presented for payment, your account did not have sufficient funds to pay the check. The decision was made to pay the item into overdraft resulting in the \$25.00 fee. Your local branch then decided to refund the fee. A receipt should be in the mail to you.

**I received a collection letter on my account and I now live out of town, can I mail a deposit to you?**

Yes, you can. (Upon receipt, deposit will be made to account. No need to contact branch where account is housed.)

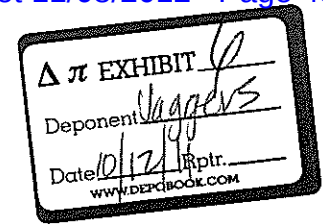
**Can I make a deposit to cover my overdraft at any of your banking locations?**

Yes, you can. (Teller takes deposit, no need to contact branch where account is housed.)

**I received a notice on my savings account that I was being charged an overdraft fee? What is this?**

If there is an item that processes on your savings account and causes it to overdraw, your account will be charged a \$25.00 fee.

# DEPOSITION EXHIBIT 6



### Overdraft Matrix Program Questions/Answers

It's a Friday afternoon at the Jackson Street call center in Tupelo when BXS call center agent Katie Smith receives a less than happy call from BancorpSouth customer Sid Gilbert in Hattiesburg. It seems that Sid, having forgotten about writing two checks days earlier on his BXS Crown Services checking account, has caused his account to be overdrawn by \$150, including \$50 in bank overdraft charges. Apparently Sid experienced a memory lapse and did not record the checks in his register. And, of course, the checks were eventually presented for payment on Sid's account at BXS. Unfortunately, one of the checks was to a friend for some computer consulting work and the other check was to Wal-Mart. So now as Sid reviews his BXS overdraft notice he is not a happy camper! In addition to having \$100 less than he thought, he realizes he owes the Bank \$50 in overdraft charges. He's even more upset at the notion of having to pay Wal-Mart another \$30 in returned check charges. And, worst of all, there's the embarrassment of his best friend, the consultant, having Sid's check returned for insufficient funds.

NOW, Katie our call center "agent hero" gets to deliver the news. Yes in fact, per bank policy, Sid does owe BXS the \$50 in overdraft charges and they aren't being refunded, as he probably would like. However, it gets better - much better! Katie gets to tell Sid that he will not owe another \$30 to Wal-Mart for returned check charges and best of all, he will not suffer the embarrassment of having his check returned for insufficient funds to his best friend the consultant. Why? Because at BancorpSouth's discretion and via our new automated Overdraft Matrix decision-making process the items were paid in the overdraft and not returned. While Katie did have to communicate the fact that Sid owes the \$50, she was able to end her explanation on a happy note with the news of the checks not being returned. Bottom line.....Sid saves face with his friend and \$30 bucks to boot!

Seldom do we have the opportunity to present our customers with such outstanding financial and customer service benefits while at the same time providing improved branch and back office productivity together with a fair and consistent decision-making process and improved risk control. As you will see in reviewing the following questions and answers regarding BancorpSouth's new automated pay / return check decision process, our new Overdraft Matrix is a win - win for our customers as well as BXS.

BancorpSouth is joining a number of other banking systems already providing some form of a check / ATM / POS, pay / return system. Regional competitors such as AmSouth, Compass, Union Planters and Trustmark offer a similar automated system while smaller local competitors also offer their customers some form of overdraft arrangements. Our new soon-to-be partner in Little Rock, Pinnacle Bank, also currently offers such an arrangement.

Please review the following information at your earliest convenience. Our new pay / return matrix goes into effect beginning March 1 so you need to be familiar with this process. Should you have questions and or need additional information, please consult with your immediate supervisor. Deposit Operations Coordinators will address any questions that branch management may have. As always, thank you for your assistance.

## **Frequently Asked Questions on Overdraft Parameter Matrix ("Matrix")**

### ***What is changing with the implementation of the Matrix?***

The Matrix is designed to automate the decision-making process and aid in the paying of items for customers. Certain account criteria such as the age of the account, account balances and NSF history are important factors. The goal is to make decisions to pay as many items as possible on each customer's account without undue risk to the bank. By paying more items the customer is sent a message that the relationship is important and the bank is trying to maintain the relationship by paying the items. Effective Friday, March 1st, a majority of the checking accounts will be assigned a new OD limit. This new limit will be based on account criteria such as age of account, average deposit balance and NSF/OD history. Internal accounts, trust accounts, employee accounts, public fund accounts and those accounts already covered by Overdraft Protection Products will not get a new OD limit. The minimum OD limit will be \$25. If an account has a current OD limit of greater than \$1,000, the limit greater than \$1,000 will stay the same. Each account will be analyzed monthly to provide an updated OD limit. Also, if an account is overdrawn for 8 consecutive days the OD limit will automatically change to zero.

*Calendar*

### ***What happens to my accounts?***

About 60% of the items reviewed by the Matrix will be paid into overdraft. The remaining items will be referred for your review as they are today. You will still be making decisions on which of the referred items to pay or return. Because of the factors mentioned above, new accounts will require your attention. It will be critical to carefully consider whether to return an item because the message to the customer is we do not consider their account and relationship important enough to pay an item into overdraft. This decision must be weighed against the potential loss due to fraudulent activity.

### ***Does every account get the same overdraft limit?***

No. Each account is scored based on the factors mentioned above. Since it is unlikely two accounts were opened on the same day and have the same balance characteristics, the score will be different for each account.

### ***How often does an account get assigned a new OD limit?***

Each account is assigned a new OD limit monthly, this occurs when the account statement drops.

### ***Can I discuss the overdraft limit with the customer?***

The Matrix Overdraft Limit itself should not be disclosed to the customer. Because the limit will fluctuate with account age and activity, disclosure may cause confusion. This is an internal process and should be transparent to the customer.

***Will the Matrix apply to more than checks? And, if so, what do we apply it to?***

Yes, the Matrix will apply to more than checks. The bank has decided to apply the same logic to electronic (ATM and POS) transactions. We want the customer to be encouraged to use these electronic channels, and so, we wish to extend to them the same courtesies electronically that we do for the paper items. In this way we believe we will enhance customer service levels. The electronic authorization using up to \$500 of a customers OD limit will begin mid to late April.

The messages we want to send the customer is that their business is important to us; we want to encourage use of electronic channels; and, we want to treat them equally well regardless of the channel used.

***How does this enhance customer service levels for electronic transactions?***

Our old approach was to require good funds in the account before authorizing an electronic transaction. Yet, that balance depending on many circumstances may not reflect recent account activity, and may not accommodate timing differences for some transactions.

The old approach would decline the ATM withdrawal or force the POS customer to use an alternate form of payment, either another card (credit or debit) or write a check (which we may honor after all).

***How do I handle the customer who objects to us paying their item into overdraft?***

The bank has long charged for both items which overdrew the account and items returned NSF. We are providing an additional service by trying to pay and honor as many of these transactions as we can.

If the customer objects to their items being paid, you can, with authorization, turn off Matrix decision making for their account. Then you, or your branch, will once again have to review each exception item as it occurs and manually return the items to prevent any overdrafts. Procedures remove an account from the Matrix and to permanently assign another OD limit are available in the Deposit Operations Manual.

***But previously, neither a declined ATM nor POS transaction could result in a returned item or overdraft fee!***

Yes, this is true and that policy continues. What we will be doing is extending a reasonable service (i.e. paying or honoring a transaction request). There will not be a fee for the authorization of the transaction. A fee may be assessed, as it is today, if that transaction creates an overdraft. We expect that customers would overwhelmingly prefer the bank to pay their items if possible, rather than reject them.

***What if our customers ask "How did the transaction get authorized if I did not have funds in my account to cover it?"***

We expect that customers would overwhelmingly prefer the bank to authorize, rather than reject their transaction request.



***How do we reply to customers who ask how much of an overdraft the bank will honor?***

In deciding whether to allow your account to overdraw, the bank considers factors such as how long the account has been open and the balances you have maintained.

**Can the bank continue to permanently waive NSF/OD Fees on an account?**

Yes, all accounts will be coded normal status on March 8, 2002. A request form can be completed and with authorization of the Regional President an account can be maintained to permanently waive NSF/OD fees.

**Can the bank continue to waive fees each day when making a pay/return decision?**

Yes, the procedure to waive fees is changing so that the branch will write a GL ticket to waive these fees. New Procedures are being distributed by Bank Coordination. The new pay/return waive procedures will take effect March 8, 2002.

**Will the branch continue to collect Overdrawn Accounts?**

Yes, each branch will continue to collect OD accounts. The bank is also implementing the following new collection procedures:

1. OD Collection letters will be sent to customers after an account has been OD for 8 consecutive days and 17 consecutive days.
2. A new report is being created that will list OD accounts that meet the following criteria:
  - a. Each Account that is OD for more than \$1,000
  - b. Each Account that is OD for more than 12 consecutive days
  - c. Each Account that is OD for more than 22 consecutive days and the OD balance is greater than \$25.

# EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

Case No. 1:09-MD-02036-JLK

**IN RE: CHECKING ACCOUNT )  
OVERDRAFT LITIGATION )**

**MDL No. 2036 )  
*Fourth Tranche* )**

**THIS DOCUMENT RELATES TO: )**

***Shane Swift v. BancorpSouth, Inc.,* )  
S.D. Fla. Case No. 1:10-cv-23872-JLK )**

**DEFENDANT BANCORPSOUTH BANK'S RESPONSES TO PLAINTIFF'S  
FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, defendant BancorpSouth Bank ("BancorpSouth")<sup>1</sup> hereby submits its answers and objections to Plaintiff's First Set of Interrogatories ("Interrogatories").

**GENERAL ANSWERS AND OBJECTIONS**

BancorpSouth hereby incorporates each of these general answers and objections into its specific answers and objections to each of Plaintiff's Interrogatories, whether or not BancorpSouth

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<sup>1</sup> In the definitions section of his interrogatories, Plaintiff defines "You" to refer to, "the above-named Defendant." The only defendant named in the interrogatories, however, is "BancorpSouth, Inc.," which is listed in the case style at the top of Plaintiff's Interrogatories. BancorpSouth, Inc., is not a proper defendant in this matter. Counsel for Plaintiff and Defendant discussed the proper BancorpSouth entity to name in this matter in 2010, and Plaintiff properly identified the defendant herein as BancorpSouth Bank in his Second Amended Complaint (DE # 994). BancorpSouth Bank, as the only defendant in this matter, is the entity responding to Plaintiff's interrogatories, and BancorpSouth Bank interprets any references to "Defendant" in Plaintiff's interrogatories to refer to BancorpSouth Bank.

refers to such general answers or objection in its specific answer to a specific Interrogatory.

1. BancorpSouth objects to the Interrogatories to the extent that they purport to seek information protected from disclosure by the attorney-client privilege, the work product doctrine, the joint defense or common interest privilege, or any other privilege, immunity, or exemption from disclosure.

2. BancorpSouth objects to the Interrogatories to the extent they call for the disclosure of information prohibited or otherwise protected from disclosure by any laws or regulations of any State or the United States.

3. BancorpSouth objects to the Interrogatories to the extent that they seek information outside of BancorpSouth's possession, custody, or control, and/or information that is also within Plaintiff's possession, custody or control. Nevertheless, as described in BancorpSouth's Responses to Plaintiff's First Request For Production, BancorpSouth will produce Swift's monthly statements and other documents related to Swift's BancorpSouth account that BancorpSouth regularly distributes to Plaintiff, to the extent that BancorpSouth has such documents within its possession, custody, or control.

4. BancorpSouth objects to the Interrogatories to the extent that they purport to impose upon BancorpSouth any duty or obligation that is in excess of those obligations that are imposed by the Federal Rules of Civil Procedure, the Local Rules, the Court's orders, or any other applicable law or rule. In particular, BancorpSouth objects to the Interrogatories to the extent that they purport to call for information neither relevant to the claims or defenses of the parties nor reasonably calculated to lead to the discovery of admissible evidence, and/or purport to impose a duty on BancorpSouth beyond undertaking a reasonably diligent search for requested information.

5. BancorpSouth objects to the timeframe of the Interrogatories as set forth in paragraph nine

(9) of the Interrogatories on the grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant to the claims or defenses in this action nor reasonably calculated to lead to the discovery of admissible evidence. BancorpSouth further objects to the timeframe of the Interrogatories to the extent that the timeframe includes claims or damages that are barred by statutes of limitations, statutes of repose, or laches. The longest limitations period applicable to Plaintiff Swift's claims in his lawsuit is the five-year limitations period on his contract and ADTPA claims under Arkansas law. Plaintiff filed his original complaint in this matter on May 18, 2010. Therefore, any claims seeking compensation for overdraft fees assessed before May 18, 2005 are time-barred. Thus, for purposes of these answers, unless otherwise stated, BancorpSouth shall respond only for the period of January, 2005, to present (i.e., the date of these Interrogatories) in response to any requests regarding transactions which Plaintiff contends triggered compensable overdraft fees.

This limitation on BancorpSouth's responses shall not apply to responses related to information concerning the decisions regarding the order for posting electronic debit card transactions or other policies which were in effect during the alleged class period related to the posting of electronic debit card transactions. For responses related to policies or procedures related to posting order or paying debit card transactions into overdraft, or the decisions to adopt such policies, BancorpSouth shall produce documents only for the period of January, 2002 until the present (i.e., the date of these Interrogatories). The basis for this limitation is that BancorpSouth first adopted a policy of posting all transactions from highest dollar amount to lowest dollar amount in 2003, as first applied its "overdraft payment service" (as described in BancorpSouth's Responses to Plaintiff's First Set of Interrogatories) to debit card transactions in 2003.

6. BancorpSouth objects to the definition of " 'you,' 'your' and/or 'defendant' " to the extent it

purports to encompass "any affiliated entities" of BancorpSouth. BancorpSouth responds with respect to the entity named as defendant herein, BancorpSouth Bank.

7. BancorpSouth objects to the Interrogatories' definition of the term "Complaint" to the extent it purports to define that term to include any complaint pending in MDL 2036 other than the operative complaint *Swift v. BancorpSouth, Inc.*, S.D. Fla. Case No. 1:10-cv-23872-JLK.

8. BancorpSouth objects to the Interrogatories' definition of the term "Deposit Agreement" on the grounds that its reference to "all related documents which incorporate the Deposit Agreement" is vague and ambiguous. For purposes of these answers, BancorpSouth interprets the term "Deposit Agreement" to mean the "Deposit Account Terms and Conditions" attached as Exhibit A to Plaintiff's Second Amended Complaint and the "Account Information Statement" attached as part of Exhibit B to Plaintiff's Second Amended Complaint, and any earlier versions of these documents that applied to Swift's BancorpSouth account.

9. BancorpSouth objects to the Interrogatories' definition of the term "Item" on the grounds that its reference to "any debit or transaction processed through an account" is vague and ambiguous. BancorpSouth defines the term "Transaction" in the Account Information Statement. When BancorpSouth uses the term "Transaction" in these answers, BancorpSouth interprets and uses the term as it is defined in the Account Information Statement.

10. BancorpSouth objects to the Interrogatories' definition of the term "Account" to the extent that it purports to include accounts that cannot be accessed by an electronic debit card and/or on which overdraft fees cannot be incurred.

11. BancorpSouth further objects to the definition of the term "Account" on the grounds that the phrase "your institution" is vague and ambiguous. BancorpSouth responds with respect to the entity named as a defendant herein, BancorpSouth Bank.

12. BancorpSouth further objects to use of the phrase "other members of the proposed Class(es)" in the definition of the term "Account" on the grounds that no motion to certify any proposed class has been filed, that no Class has been or properly can be certified, and that members of the proposed Class(es) cannot readily be ascertained.

13. BancorpSouth objects to the Interrogatories' definition of the term "authorized" on the grounds that it is vague and ambiguous, and to the extent that it relies on the definition of "item" in the interrogatories (*see* objection number 9, above). With respect to use of the term "authorized" in connection with items initiated by use of an electronic debit card, BancorpSouth objects to any definition different from the process of authorization as specified by the rules and regulations of Visa, MasterCard, and similar networks with respect to debit cards accepted on their networks. For purposes of these answers, BancorpSouth will interpret the term "authorized" in this manner.

14. BancorpSouth objects to the Interrogatories' definition of the term "received" on the grounds that it is vague and ambiguous, and it is based on the definition of the term "authorized" (*see* objections number 13, above). BancorpSouth further objects to the definition of the term "received" to the extent that it depends on the formulation of "the date and time ... a dollar amount for the item is made available to you" because that formulation is vague and ambiguous. BancorpSouth further objects to the definition because it is inconsistent with banking practice and the operation of electronic debit card networks, and improperly conflates authorization of an electronic debit card transaction with receipt of an electronic debit card debit item for settlement of a definitive dollar amount.

15. BancorpSouth objects to the Interrogatories' definition of "overdraft fees" which includes a reference to the undefined phrase "sustained overdraft fees." BancorpSouth further objects to this definition because it does not make any distinction between charges assessed but not paid and

charges assessed and paid. For purposes of these Responses, BancorpSouth interprets the term "overdraft fees" to mean only overdraft fees incurred on consumer deposit accounts, which charges are both assessed and paid.

16. BancorpSouth objects to the Interrogatories to the extent they call for information related to any individual other than Swift, the only Plaintiff specifically named in the operative case *Shane Swift v. BancorpSouth, Inc.*, S.D. Fla. Case No. 1:10-cv-23872-JLK. BancorpSouth also objects to the definition of "Plaintiffs' account" to refer to "any bank account opened and maintained at your institution by any of the named Plaintiffs" to the extent it seeks to reach any account information related to any customer other than Swift.

17. Certain of the information sought in these Interrogatories can only be obtained and produced, as a practical matter by searching electronically stored information ("ESI") in the possession, custody, or control of BancorpSouth. A manual search for and production of such information would be unduly burdensome and oppressive, and requiring BancorpSouth manually to search for and produce the information sought in these Interrogatories would exceed the scope of its obligations under the Federal Rules of Civil Procedure. BancorpSouth is prepared to meet and confer with Plaintiff to discuss and agree upon appropriate protocols for searching and production of ESI, as specifically contemplated and required under the Federal Rules of Civil Procedure. BancorpSouth anticipates that the agreed-upon protocols will include, at a minimum, identification of custodians whose electronic records will be searched and agreed upon search terms that are reasonably designed to obtain ESI that is relevant to the parties' claims and defenses in this action. BancorpSouth provides its written responses to these Interrogatories with the understanding that it may need to supplement its responses to these Interrogatories after ESI protocols are agreed upon and the information is obtained from the ESI within BancorpSouth.



18. BancorpSouth has answered certain Interrogatories pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, referring Plaintiff to documents that BancorpSouth will produce that contain information responsive to one or more of the Interrogatories. BancorpSouth states that certain of these documents may only be obtained through the ESI protocol described above, in paragraph 17 of these General Responses and Objections.

19. Certain information called for in these Interrogatories is confidential and proprietary. BancorpSouth will produce such information only pursuant to an appropriate protective order entered by the Court. BancorpSouth is prepared to meet and confer with Plaintiff to discuss and agree upon an appropriate protective order. Further, to the extent any Interrogatory seeks customer-identifying information related to customers other than the named Plaintiff, or other customer confidential information that BancorpSouth is under an obligation to keep confidential, BancorpSouth will not produce that information.

20. BancorpSouth is continuing to compile information and documents responsive to the non-objectionable portion of the Interrogatories. All objections and answers are based on information presently known to BancorpSouth after reasonable inquiry performed to date. BancorpSouth's objections and answers as set forth herein are made without prejudice to BancorpSouth's right to assert additional or supplemental objections or responses. Accordingly, BancorpSouth reserves the right to supplement these answers and objections, and will do so as responsive, non-privileged information is located and compiled, pursuant to Fed. R. Civ. P. 26.

21. BancorpSouth objects to the general instruction in paragraph number five (5) of the Interrogatories which refers to documents that are "generated ... after the date of your answers" to the extent it is intended to reach documents that are prepared in anticipation of litigation in accordance with Fed. R. Civ. P. 26(b)(3).

22. BancorpSouth objects to the general instruction in paragraph number six (6) of the Interrogatories as there has been no agreement as to the production or format of a privilege log. Subject to this objection, with regard to the identification and protection of privileged documents and information, BancorpSouth will comply with the Fed. R. Civ. P. 26(b)(5).

23. BancorpSouth has made reasonable efforts to answer the Interrogatories, subject to its general and specific objections, as BancorpSouth understands and interprets each Interrogatory. If Plaintiff subsequently asserts any interpretation of any Interrogatory that differs from BancorpSouth's interpretation of the Interrogatory, BancorpSouth reserves the right to supplement and amend its objections and answers.

24. Nothing contained herein is an admission of the relevance or admissibility of any answer.

25. BancorpSouth is prepared to meet and confer with Plaintiff in an effort to resolve any questions or concerns regarding its general and specific objections.

#### **RESPONSES TO FIRST SET OF INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify all persons who have knowledge of the facts or circumstances regarding the subject matter of this lawsuit and, for each such person, describe the facts known to that person and identify all documents relating to those facts. Such persons should include but not be limited to all persons who have knowledge of facts you will use in opposing a motion for class certification; who have knowledge of the policies, practices and procedures you employed regarding the manner or sequence in which your customers' transactions are posted to their accounts; and who were employed and/or retained by you in connection with the development, operation, revision and/or maintenance of software used to determine overdrafts and overdraft fees.

**ANSWER TO INTERROGATORY NO. 1:** BancorpSouth objects to Interrogatory No. 1 on the grounds that it is premature, overly broad, and unduly burdensome. As phrased, Interrogatory No. 1, particularly the request for disclosure of all persons "who have knowledge of the policies, practices and procedures you employed regarding the manner or sequence in which your customers' transactions are posted to their accounts," would require disclosure of every current or former

BancorpSouth employee (since 2003) in Bank operations or at a BancorpSouth branch. BancorpSouth further objects to Interrogatory No. 1 on the grounds that it is vague and ambiguous, especially as it relates to the undefined terms and phrases "subject matter of this lawsuit" and "employed regarding the manner or sequence in which your customers' transactions are posted to their accounts." Subject to its general and specific objections, and using its best efforts to comprehend Plaintiff's vague terms, BancorpSouth states that the following individuals have substantial knowledge of facts or circumstances relevant to BancorpSouth's policies and procedures related to the assessment, collection, and refunding of overdraft fees: Michael Lindsey and Jeff Jagers. Subject to and without waiving the foregoing general and specific objections, BancorpSouth states that it continues to investigate in good faith the subjects identified in this Interrogatory.

**INTERROGATORY NO. 2: Identify each overdraft fee you assessed against an account held by each Plaintiff named in the Complaint(s) and, for each such fee, identify each item that was the basis for the overdraft fee and state all facts that show the basis on which the account was deemed to have been subject to an overdraft fee.**

**ANSWER TO INTERROGATORY NO. 2:** BancorpSouth objects to Interrogatory No. 2 on the grounds that it is vague and ambiguous, especially as it relates to the undefined terms and phrases "basis for the overdraft fee" and "basis on which the account was deemed to have been subject to an overdraft fee." BancorpSouth also objects to the use of the term "assessed" with regard to overdraft fees, because Plaintiff does not clarify whether this Interrogatory requests information regarding fees triggered by a transaction, fees actually charged, or fees collected, and does not clarify whether fees that were later refunded should be included. Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d), related to Swift's accounts with BancorpSouth, which reflect reasonably available information concerning the transactional history of such accounts, for the time period of January, 2005, through the date of the

Interrogatories. *See also* BancorpSouth's Responses to RFP Nos. 7 and 8. BancorpSouth generally states that, with regard to debit card transactions before the effective date of Reg E in 2010, it charged an overdraft fee against a customer's account when a customer authorized a transaction that his account did not have sufficient funds to cover, as determined when the debit card transaction posted to the account. BancorpSouth also states that, even if a BancorpSouth customer authorizes a transaction at a time when, to the best BancorpSouth can determine, insufficient funds are in the account to cover the transaction, the transaction may not cause an overdraft (and an attendant overdraft fee) if the customer makes a deposit that posts the same banking day and which would cover the debit card transaction, because BancorpSouth posts all deposits for a given banking day before posting any debits. BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

**INTERROGATORY NO. 3:** For each item identified in response to Interrogatory No. 2 as the basis for an overdraft fee, state: (a) the date and time you authorized the item; (b) the date and time you received the item; and (c) the date and time the item was debited from the account.

**ANSWER TO INTERROGATORY NO. 3:** BancorpSouth objects to this Interrogatory on the grounds that it is vague and ambiguous including the phrase "the basis for an overdraft fee." Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents or ESI that it agrees to produce related to Swift's accounts with BancorpSouth (subject to agreed-upon appropriate protocols for searching and production of ESI, as discussed in General Objection No. 17 herein), which reflect reasonably available information concerning the transactional history of such accounts, for the time period of

January, 2005, through the date of the Interrogatories. *See also* BancorpSouth's Response to RFP No.

7. BancorpSouth further agrees to meet and confer with Plaintiff concerning whether a further narrative response is required after review of such documents.

**INTERROGATORY NO. 4:** For the period 1998 to the present, describe with particularity all policies, practices and procedures you used to determine the sequence in which items are posted to customers' accounts, including the dates any policies, practices or procedures were changed and the reason for such changes, and identify all persons with knowledge of the creation, implementation, modification, of such policies, practices and procedures.

**ANSWER TO INTERROGATORY NO. 4:** BancorpSouth objects to the timeframe of Interrogatory No. 4 on the grounds that it is overly broad, unduly burdensome, and requests information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence. BancorpSouth further objects to Interrogatory No. 4 because it seeks information which falls outside of the applicable statutes of limitations. Subject to and without waiving the foregoing objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, subject to the entry of an appropriate protective order, concerning the posting of electronic debit card transactions to customer accounts. *See also* BancorpSouth's Responses to RFP Nos. 9-11, 13, 22, 24, 38-41, 49-51, 53-54. BancorpSouth further states that, beginning in 2003, it posted the debits on checking accounts for a given day from highest dollar amount to lowest dollar amount. No debits for a given day are posted, however, until after all deposits for that day are posted to the customer's account. Prior to 2003, BancorpSouth's posted transactions in an order dictated by the type of transaction, and to post high-to-low within each type of transaction if there was more than one transaction of a particular type. Earnings Performance Group ("EPG") and other consulting firms approached BancorpSouth in the early 2000s offering consulting services that they represented would increase BancorpSouth's revenue. BancorpSouth engaged EPG in 2002. EPG proposed numerous policies for increasing bank profitability, including

adopting a high-to-low posting order for debits. BancorpSouth did not adopt all of EPG's recommendations, but BancorpSouth did adopt a high-to-low posting order. BancorpSouth adopted the high-to-low posting order for debits to, among other reasons, increase non-interest revenue and streamline the posting process by eliminating the distinctions between types of transactions.

**INTERROGATORY NO. 5:** Describe with particularity how the policies, practices and procedures identified in Interrogatory No. 4 varied or vary from state to state, if at all.

**ANSWER TO INTERROGATORY NO. 5:** BancorpSouth incorporates by reference its objections to Interrogatory No. 4. Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, subject to the entry of an appropriate protective order, concerning the order of posting of electronic debit card transactions to customer accounts. *See also* BancorpSouth's Responses to RFP Nos. 9-11, 13, 22, 24, 38-41, 49-51, 53-54. BancorpSouth further states that practices described in BancorpSouth's response to Interrogatory 4 do not vary from state to state. BancorpSouth further states that when it acquired a bank that used a different posting order, the acquired bank's posting order was used for its account holders until the acquired bank and its account holders could be converted to BancorpSouth's systems. For the time period relevant to this lawsuit, BancorpSouth states that it acquired American State Bank in 2005. Between November 30, 2005 and April 21, 2006, the account posting order for former account holders at American State Bank differed from the posting order on preexisting BancorpSouth accounts.

**INTERROGATORY NO. 6:** If the policies, practices and procedures regarding overdraft fees you have followed during the 180 days immediately preceding the date on which you answer these interrogatories are materially different than the policies, practices and procedures relating to overdraft fees you followed from 1998 to present, describe in detail all ways in which your current policies, practices and procedures differ, explain when, how and why they changed, and identify all documents that describe, refer or relate to the differences or changes.

**ANSWER TO INTERROGATORY NO. 6:** BancorpSouth objects to Interrogatory No. 6

on the ground that it potentially reaches BancorpSouth's policies, practices, and procedures for setting the amount of an individual overdraft fee, and the Interrogatory is, therefore, overly broad, unduly burdensome, and seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence. BancorpSouth also objects to the vague term "policies and procedures regarding overdraft fees." BancorpSouth further objects to the timeframe of this Interrogatory in that the request for information dating to 1998 is overly broad, unduly burdensome, and seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence, and because it falls outside of applicable statutes of limitations. Subject to and without waiving the foregoing general and specific objections, BancorpSouth states that in anticipation of the effective date of "Reg E," and in order to comply with Reg E, BancorpSouth changed its policies in 2010 with regard to enrollment of customers in its overdraft payments service (as described in response to Interrogatory No. 12 herein). BancorpSouth now requires all customers to affirmatively opt in to the overdraft payment service in connection with transactions governed by Reg E. For more information regarding BancorpSouth's overdraft payment service, see response to Interrogatory No. 12 herein. BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

**INTERROGATORY NO. 7: Describe with particularity all actions you have taken to inform your customers of your policies, practices and procedures of posting items in the order of highest to lowest dollar amount, including when, how and by whom each such action was taken.**

**ANSWER TO INTERROGATORY NO. 7:** BancorpSouth objects to Interrogatory No. 7 on the grounds that it is overly broad, unduly burdensome, and to the extent that it purports to



require BancorpSouth to identify each and every separate document, oral conversation, communication, or other responsive item concerning the posting of certain items to customer accounts in highest to lowest order. Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiffs to reasonably available documents that it agrees to produce, subject to the entry of an appropriate protective order, concerning information provided to customers concerning the posting of debit card transactions in order of highest to lowest dollar amount, for the time period of 2003 through the date of these Interrogatories. *See also* BancorpSouth's Response to RFP Nos. 1-6, 11, 17, 26, 48 and 55.

BancorpSouth further states that it has fully and regularly disclosed its policy of posting debit card transactions in order of highest to lowest dollar amount since it began following this policy in 2003. These disclosures were made, among other methods of disclosing BancorpSouth's posting policies, in the Deposit Account Terms and Conditions and Account Information Statements, revised from time to time, which have governed BancorpSouth accounts during all periods since 2003. BancorpSouth also refers Plaintiff to the Deposit Account Terms and Conditions, attached as Exhibit A to Swift's Second Amended Complaint, which states, in part:

ORDER OF PAYMENT - Unless otherwise provided in the Account Information Statement (see OTHER TERMS section below), if more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us . . .

and refers Plaintiff to the Account Information Statement, attached as Exhibit B to Swift's Second Amended Complaint. BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information,



and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

**INTERROGATORY NO. 8:** State the manner in which you have defined or otherwise described the term "overdraft" to your customers.

**ANSWER TO INTERROGATORY NO. 8:** Subject to and without waiving the foregoing general objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning the actions it has taken to inform customers of BancorpSouth's policies, practices and procedures regarding the posting of electronic debit card transactions, for the time period of 2003 through the date of the Interrogatories, including exemplars of its Deposit Account Terms and Conditions and Account Information. *See also* BancorpSouth's Responses to RFP Nos. 1-6, 11, 17, 26 and 55. BancorpSouth further agrees to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

In addition, BancorpSouth refers Plaintiff to the Deposit Account Terms and Conditions attached as Exhibit A to Swift's Second Amended Complaint, which states, among other things, as follows:

LIABILITY: ... Each of you also agrees to be jointly and severally (solitarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from the account, and the costs we incur to collect the deficit including our reasonable attorneys.

\* \* \*

ORDER OF PAYMENT - Unless otherwise provided in the Account Information Statement (*see* OTHER TERMS section below), if more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we may pay any of them in any order

we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

BancorpSouth also refers Plaintiff to the "About Overdrafts" section of the Account Information Statement, attached as Exhibit B to Swift's Second Amended Complaint, which states in part:

An "overdraft" occurs any time a check, ACH, ATM, debit card, bank fee (including overdraft-related fee) or any other transaction (collectively, a "Transaction") is presented for payment against an account and the available balance of the account is insufficient to pay the Transaction. When an overdraft occurs, we may, at our discretion, refuse the Transaction, or alternatively, we may choose to pay the Transaction, in which case a negative account balance will result.

**INTERROGATORY NO. 9:** Describe with particularity each step, including each form of communication, involved in an electronic debit transaction, beginning with the initiation of the transaction, continuing through your receipt of notice of the dollar amount of the transaction and authorization of the transaction, and ending with your posting of the transaction to the customer's account and your assessment of overdraft fee, if any, based on the transaction.

**ANSWER TO INTERROGATORY NO. 9:** BancorpSouth objects to Interrogatory No. 9 on the grounds that it is vague and ambiguous, especially as to its use of the undefined terms and phrases "electronic debit transaction," "initiation," "receipt," and "notice." BancorpSouth further objects on the grounds that this Interrogatory is overly broad and unduly burdensome (e.g., the steps entailed may differ depending on the type of transaction), and to the extent that it calls for information that is not within the knowledge, custody, or control of BancorpSouth. BancorpSouth further objects on the ground that Interrogatory No. 9 is inaccurate to the extent it states that BancorpSouth is presented with information reflecting the final amount of a transaction prior to or at the time of initiation or authorization of the transaction.

Subject to and without waiving the foregoing general and specific objections, BancorpSouth

refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning the steps involved in posting of transactions to customer accounts, for the period of 2003 through the date of the Interrogatories. BancorpSouth also refers Plaintiff to the Omnibus Motion to Dismiss and/or for Judgment on the Pleadings and Incorporated Memorandum of Law [DE # 217] at 8-12 (discussing the authorization and settlement process for electronic debit card transactions), and to BancorpSouth's Motion to Dismiss Plaintiff's Second Amended Complaint [DE# 1068] in this matter. *See also* BancorpSouth's Responses to RFPs 34-36, 41, 69-70. BancorpSouth further states as follows:

BancorpSouth's processing of debit card transaction (whether a "PIN" or a "signature" transaction) begins when BancorpSouth's systems receive an inquiry from a credit card processor. For a signature transaction, the transaction is routed to BancorpSouth via a third-party card processing vendor ("FDR"). The FDR system determines whether the transaction is or is not authorized. Authorization is based on whether the requested transaction exceeds the total of what the FDR system calculates the customer's account balance to be. FDR initiates a balance inquiry to BancorpSouth's Stratus system, and subtracts any signature transactions authorized from up to three prior days that have not "settled." If the requested transaction exceeds the total of the account balance (as calculated by FDR), the transaction will not be authorized. A signature transaction does not post to a customer's account, and does not reduce the customer's balance, until the merchant clears the transaction, which can be several days later. A signature transaction posts to the customer's account only after that the merchant clears the transaction. Signature transactions post at the end of the day when all other transactions for that day post, in order from highest dollar amount to lowest dollar amount. The posting of the transaction occurs on BancorpSouth's account demand deposit

account system ("DDA" or "mainframe"). If the transaction at issue causes the customer's account to be overdrawn or causes an overdrawn account to be further overdrawn, an overdraft fee will be assessed against the customer's account. The overdraft fee will be charged against the customer's account on the day following the transaction that triggered the fee.

For debit card "PIN" transactions, the process is similar, but not identical. PIN transactions are authorized or denied by BancorpSouth's "Stratus" system. Authorization is based on whether the requested transaction exceeds the total of what the Stratus system calculates the customer's account balance to be. The Stratus system will include the overdraft limit for that customer if the customer is enrolled in the overdraft payment service. The Stratus system's balance information is regularly updated by communication with BancorpSouth's DDA system. If the requested transaction exceeds the total of the account balance (as calculated by Stratus) the transaction will not be authorized. A PIN transaction posts to the customer's account, on the DDA, at the end of the day when all other transactions for that day post, in order from highest dollar amount to lowest dollar amount. If the transaction at issue causes the customer's account to be overdrawn or causes an overdrawn account to be further overdrawn, an overdraft fee will be assessed against the customer's account. The overdraft fee will be charged against the customer's account on the day following the transaction that triggered the fee.

BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

**INTERROGATORY NO. 10:** For each step in the process described in your answer to Interrogatory No. 9, identify each computer system or database used to transmit and/or store information and for each such database or system, identify its task and function and describe in detail where and how you retain the information associated with each step and the process

by which such records or information can be accessed:

**ANSWER TO INTERROGATORY NO. 10:** In Response to Interrogatory No. 10, BancorpSouth incorporates by reference its specific objections to Interrogatory No. 9. BancorpSouth further objects to Interrogatory No. 10 on the grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning computer systems and databases concerning electronic debit card transactions, for the time period of 2003 through the date of the Interrogatories. *See also* BancorpSouth's Responses to RFP Nos. 32-33, 41 and 69-70. BancorpSouth further states that this Interrogatory overlaps with Interrogatory No. 9 to a substantial extent; therefore, BancorpSouth refers Plaintiff to the portions of BancorpSouth's response to Interrogatory No. 9 that are responsive to this Interrogatory.

BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

**INTERROGATORY NO. 11:** On an annual basis for each year since 2002 and for each State in which you maintain customer accounts, state (a) the aggregate total dollar amount of overdraft fees based on debit card and/or ATM transactions you assessed against your customers' accounts; (b) the aggregate total dollar amount of overdraft fees based on debit card and/or ATM transactions assessed against customers accounts that you have forgiven, waived, reversed or otherwise not collected; and (c) the number of your customers' accounts that have been assessed more than one overdraft fee based on debit card and/or ATM transactions on a single day.

**ANSWER TO INTERROGATORY NO. 11:** BancorpSouth objects to Interrogatory No.

11 on the grounds that it is overly broad, unduly burdensome, seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence, and falls outside of applicable statutes of limitations. BancorpSouth also objects to the use of the vague and undefined phrase "overdraft fees based on debit card and/or ATM transactions." Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents and/or data that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning the aggregate amounts and number of customer accounts requested, for the time period of 2003 through the date of the Interrogatories. *See also* BancorpSouth's Responses to RFP Nos. 27 and 28. BancorpSouth further agrees to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

**INTERROGATORY NO. 12:** Describe in detail how you determine whether to authorize a debit transaction made on a customer's account. In the event an automated algorithm is used, describe in detail each factor considered by the algorithm and the weight ascribed to each such factor.

**ANSWER TO INTERROGATORY NO. 12:** BancorpSouth objects to Interrogatory No. 12 on the grounds that it is vague and ambiguous, especially as it relates to the phrase "authorize a debit transaction made on a customer's account." BancorpSouth further objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, subject to the entry of an appropriate protective order, concerning the method by which BancorpSouth determines whether or

not to authorize an electronic debit card transaction, for the time period of 2003 through the date of the Interrogatories. *See also* BancorpSouth's Response to RFP Nos. 34-36. BancorpSouth further states that, since 2003, BancorpSouth has provided an "overdraft payment service" with a varying overdraft limit. A customer can both have an overdraft protection product (such as a linked savings account, credit card, or line of credit to cover transactions that would overdraw the customer's checking account) and be enrolled in the overdraft payment service. Under the overdraft payment service, BancorpSouth provides an amount over and above the customer's available balance for which BancorpSouth will authorize payment of debit card transactions initiated by the customer. Under the overdraft payment service, each enrolled account holder has an overdraft limit. The bank may also, at its discretion, pay an item into overdraft above the overdraft limit. The amount of the overdraft limit may vary for each customer, and may vary for an individual customer, from statement period to statement period. The amount of the overdraft limit is affected by such factors as the length of time the customer's account has been open, the average balance in the account over the previous 90 days, and the number of times the customer has overdrawn his account in the previous 12 months. For an account enrolled in the overdraft payment service, whether a particular debit card transaction is authorized or not is determined by comparing the amount of the requested debit card transaction with the amount in the customer's account (as best BancorpSouth can determine in light of the uncertainties of what other transactions will be requested or will arrive before all of the transactions post at the end of the banking day) plus the amount of the customer's currently effective overdraft limit for the account. If the apparently available balance plus the overdraft limit exceeds the amount of the requested debit card transaction, the debit card transaction will be authorized; if the amount of the requested debit card transaction exceeds the apparently available balance plus the overdraft limit, the transaction will not be authorized.



Since its inception, the existence of the overdraft payment service has been disclosed to customers in BancorpSouth's Account Information Statement, among other methods of disclosure. At all times, a BancorpSouth customer has had the option to remove the overdraft payment service from his account on request. Although the default rule from 2003 until the effective date of Reg E in 2010 was for an account holder to be enrolled in the overdraft payment service unless he opted out, BancorpSouth changed its policies in 2010 to comply with Reg E. BancorpSouth now requires all customers to affirmatively opt in to the overdraft payment service for debit card and ATM card transactions in order to use the service for those transactions.

BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

**INTERROGATORY NO. 13:** Describe in detail the manner in which your Hogan or RDS (or equivalent) system operates with regard to the processing of items.

**ANSWER TO INTERROGATORY NO. 13:** BancorpSouth objects to Interrogatory No. 13 on the grounds that it is vague and ambiguous, especially as it relates to the undefined terms "equivalent" and "processing." BancorpSouth also objects to the use of the undefined and vague term "Hogan or RDS (or equivalent) system." Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning the system(s) it employs, for the time period of 2003 through the date of the Interrogatories. *See also* BancorpSouth's Responses to RFP Nos. 41, 69 and 70. BancorpSouth further states that this Interrogatory overlaps with Interrogatory No. 9 to a substantial extent; therefore, BancorpSouth refers Plaintiff to the portions of BancorpSouth's



response to Interrogatory No. 9 that are responsive to this Interrogatory.

BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.


**INTERROGATORY NO. 14:** Identify all third parties, other than legal counsel or federal agencies, who have provided any documents, advice, assistance, proposals, reports, studies or services of any kind to you in connection with your policies, practices and procedures relating to the determination or assessment of overdraft fees, or the revenue projected to be derived from such fees.

**ANSWER TO INTERROGATORY NO. 14:** BancorpSouth objects to Interrogatory No. 14 on the grounds that it is overly broad, unduly burdensome and seeks information that is not relevant to any claim or defense in this action and/or not reasonably calculated to lead to the discovery of admissible evidence. BancorpSouth further objects to Interrogatory No. 14 because it potentially reaches BancorpSouth's policies, practices, and procedures for, among other things, setting the amount of an overdraft fee. Subject to and without waiving the foregoing general and specific objections, BancorpSouth agrees to conduct a reasonable inquiry and identify the requested third parties.

\*\*\*\*\*

Respectfully submitted this 27th day of June, 2011.

**PARKER, HUDSON, RAINER & DOBBS LLP**

A handwritten signature in black ink, appearing to read "Eric Jon Taylor", is written over a horizontal line.

Eric Jon Taylor  
Georgia Bar No. 699966  
William J. Holley, II  
Georgia Bar No. 362310  
David B. Darden  
Georgia Bar No. 250341  
Darren E. Gaynor  
Georgia Bar No. 288210

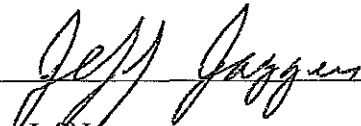
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*Counsel for Defendant BancorpSouth Bank*

**VERIFICATION**

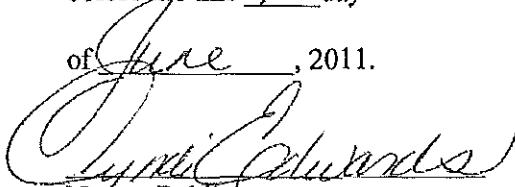
I, Jeff Jaggers, being duly sworn, depose and say that I am Senior Vice President for BancorpSouth Bank ("BancorpSouth"). I have reviewed the foregoing Defendant BancorpSouth's Responses to Plaintiff's First Set of Interrogatories, which I understand have been compiled from a number of sources within BancorpSouth with the assistance of BancorpSouth's counsel. To the best of my knowledge, information, and belief, the factual information contained in Defendant BancorpSouth's Objections and Responses to Plaintiff's First Set of Interrogatories is true and accurate.

This 27th day of June, 2011.

  
Name: Jeff Jaggers

Position: Senior Vice President

Sworn to and subscribed  
before me this 27 day  
of June, 2011.

  
Notary Public

My Commission Expires:



**CERTIFICATE OF SERVICE**


I hereby certify that I have this day served a copy of the within and foregoing **DEFENDANT BANCORPSOUTH BANK'S RESPONSES TO PLAINTIFF'S FIRST INTERROGATORIES** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed as follows:

Robert C. Gilbert, Esq.  
Alters Law Firm, P.A.  
4141 N.E. 2<sup>nd</sup> Avenue, Suite 201  
Miami, Florida 33137

Jeffrey M. Ostrow, Esq.  
Jonathan Streisfeld, Esq.  
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200 S.W. First Avenue, 12<sup>th</sup> Floor  
Fort Lauderdale, Florida 33301

Darren T. Kaplan, Esq.  
Chitwood Harley Harnes, LLP  
2300 Promenade II  
1230 Peachtree Street, NE  
Atlanta, Georgia 30309

This 27<sup>th</sup> day of June, 2011.

  
Eric Jon Taylor

# EXHIBIT 3



## EXECUTIVE SUMMARY – CUMULATIVE

POTENTIAL ANNUAL BENEFIT: \$12.9 TO \$13.3 MILLION

RECOMMENDATION	CURRENT CONDITION	EPG SOLUTION	BENEFIT
AF 01 – Telephone Transfers	Despite the availability of a variety of automated channels in which <i>account-to-account</i> transfers can be made, each month bank personnel assist customers in effecting 12,000 transfers via the telephone.	Introduce a \$3 fee for any <i>people-assisted</i> telephone transfers.	\$216,000
AF 02 – Overdraft Protection	Each month, over 16,000 transfers are made under the bank's Overdraft Protection program. This service is viewed by customers as insurance against overdraft and as such has a high-perceived value.	Introduce a \$5 fee for each transfer executed under the ODP program.	\$960,000
BB 01 – Return Deposit Items	The bank offers value-added services to commercial customers for deposited items that are returned. These services are provided at <i>price points</i> that are inconsistent with its costs to handle them.	Introduce <i>premium</i> pricing for special services and instructions.	\$366,000 to \$529,000



## EXECUTIVE SUMMARY – CUMULATIVE

**POTENTIAL ANNUAL BENEFIT: \$12.9 TO \$13.3 MILLION**

RECOMMENDATION	CURRENT CONDITION	EPG SOLUTION	BENEFIT
AF 09 - Foreign ATM Charges	Bank customers who use the ATM machines owned by other financial institutions generate a direct expense. Like other banks, BancorpSouth assesses a fee for the service.	Raise the surcharge associated with bank customer usage of non-bank ATMs by 50¢ to \$1.50.	\$600,000
BB 03 – Hard Code Waivers: NSF & OD Charges for Analyzed Accounts	At present, over 700 Commercial Analyzed checking accounts have been systematically marked as exempt from the charges associated with Insufficient and Overdraft funds.	Review and validate all existing hard code waivers, reactivating those that are unjustified.	\$450,000
BB 04 – Hard Code Waivers: Small Business Service Charge	Currently, almost 2,000 Small Business checking accounts have been systematically marked as exempt from service charge.	Review and validate all existing hard code waivers, reactivating those that are unjustified.	\$153,000



## EXECUTIVE SUMMARY – CUMULATIVE

**POTENTIAL ANNUAL BENEFIT: \$12.9 TO \$13.3 MILLION**

RECOMMENDATION	CURRENT CONDITION	EPG SOLUTION	BENEFIT
AF 12 – Escheatment Pricing & Practices	Over the course of a typical year, several dozen accounts will reach the point of abandonment as prescribed by statute. At that stage, any remaining account balance must be relinquished to the state in which the account is domiciled. Provisions have been made by most states to allow the institution to recover a handling charge. Today, the bank assesses such a charge but its application is both informal and unpublished.	Standardize and enforce, where permitted, escheatment fees for accounts that meet the dormant test.  Likewise, establish a policy and practice for escheatment of abandoned cashier's check balances.	Not Material
OP 01 – Posting Sequence	Currently, the bank posts debits to an account from the Highest-to-Lowest amount within four buckets. The transaction migration that has occurred means that certain types of transactions are not being treated uniformly.	Reduce the total number of buckets from 4 to 2.	\$3,500,000
BB 06 – FDIC Expense for Analyzed Accounts	Currently, the bank discloses the fee for FDIC expense, however, that fee is not being assessed.	Activate the fee assessment routine under the H&S application.	\$250,000



# EXHIBIT 4



# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

## CURRENT CONDITION

In recent years, the banking industry has begun to experience the long anticipated migration from *paper-based* to *electronic-based* transactions. With the shift in the transaction mix quickly approaching parity levels, many institutions have found the need to *revisit* their existing policies and practices with respect to *how* the transactions are sequenced and posted on their records. They contend that this is necessary in order to ensure greater consistency between transactions executed through traditional vs. emerging channels, as well as rebalance the risk that is inherent in certain types of electronic transactions.

In an effort to ensure that its current practices are relevant and represent generally accepted *best practices*, the management of BancorpSouth asked EPG to review its present operations and, if necessary, set forth recommendations for refining its approach.

At present, the bank posts transactions against customer deposit accounts based on the following factors:

- The date in which the transactions occurred,
- The transaction posting priority group – with credit *always* preceding debits, and
- The transaction amount – generally following a high to low progression based upon the amount.

After collecting and reviewing transaction data for an entire month, a simulation was constructed, which centered on the posting of 54,315 debits for a five-day period<sup>1</sup> using the bank's *current* method and a *proposed* alternative method.

<sup>1</sup> October 7-11, 2002. The total universe included only accounts without overdraft protection regardless of the funding account.



# Recommendation OP 01: Posting Priority

**Draft**

**POTENTIAL \$3.5 MILLION**

Several factors were considered in formulating the *proposed* solution, including the decrease in the number of *paper-based* transactions, maintaining *consistency* across all delivery and access channels, and the *relative importance* of certain transactions to the customer.

## EPG SOLUTION

Based upon a review and result of the simulation, EPG recommends that bank use the following modified posting method:

- Bank-initiated transactions followed by,
- Customer-initiated transactions (high to low dollar amount).



# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

## BENEFITS

This modified method will:

- Ensure consistency across delivery channels,
- Pay additional checks against good funds,
- Improve customer satisfaction assuming that customers typically are more concerned about large dollar items posting to their account against good funds,
- Decrease returned item costs, and
- Avoid third-party charges to the customer

It is anticipated that the bank will also realize an increase in NSF/OD fee revenue, as more items will be paid into overdraft or returned.<sup>2</sup>

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<sup>2</sup> Additional information is available in Attachments A, B, C, and D on pages 5-22.



# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

## BENEFIT ANALYSIS

The following table illustrates the results of our two posting analyses:<sup>3</sup>

DESCRIPTION	CURRENT COUNT	PROPOSED COUNT
Paid Against Good Funds:	16,386	13,469
Force Pay - Non Chargeable:	4,571	4,594
Force Pay - Within Matrix Limit Non Chargeable:	2,144	2,323
Total Non Chargeable Items:	<b>23,101</b>	<b>20,386</b>
Force Pay - Chargeable	2,975	4,001
Force Pay - Within Matrix Limit Chargeable	2,793	4,381
Paid Within Matrix Limit Chargeable	9,430	9,433
Returned Within Matrix Limit Chargeable:	16,016	16,114
Total Chargeable Items:	<b>31,214</b>	<b>33,929</b>

<sup>3</sup> Detailed analysis by transaction code is available in Attachment B.



## Recommendation OP 01: Posting Priority

**Draft**

**POTENTIAL \$3.5 MILLION**

The estimated benefit is as follows:

Change in NSF/OD Volume:	2,715
Annualized:	136,836
NSF/OD Fee:	\$29.00
Gross Additional Revenue:	\$3,968,244
Estimated Waivers & Refunds (@ 10%):	(\$396,824)
<b>TOTAL ESTIMATED ANNUAL BENEFIT:</b>	<b>\$3,571,420</b>

**POTENTIAL BENEFIT: \$3,571,420**



# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

## ATTACHMENT A: IMPACT ON INDIVIDUAL ACCOUNTS

The impact on individual accounts is illustrated in the following table:

NUMBER OF ADDITIONAL NSF/OD FEES	NUMBER OF ACCOUNTS	% OF TOTAL
-1	7	0.05%
0	13,054	89.19%
1	989	6.76%
2	335	2.29%
3	127	0.87%
4	72	0.49%
5	24	0.16%
6	9	0.06%
7	5	0.03%
8	4	0.03%
9	2	0.01%

<sup>4</sup> October 7-11, 2002



## Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

NUMBER OF ADDITIONAL NSF/OD FEES	NUMBER OF ACCOUNTS	% OF TOTAL
10	3	0.02%
11	1	0.01%
12	1	0.01%
16	1	0.01%
32	1	0.01%
33	1	0.01%
<b>TOTAL</b>	<b>14,636</b>	<b>100.00%</b>





# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

## ATTACHMENT B: VOLUME BY TRANSACTION CODE

Customer Type	Transaction Disposition	TranCode	Description	Current Way		New Way	
				Count	Sum of Amt	Count	Sum of Amt
Commercial	Paid Against Good Funds		Analysis Charge	1	\$7.53	1	\$7.53
Commercial	Paid Against Good Funds	REDACTED	Returned Dep Item	52	\$9,390.86	52	\$9,390.86
Commercial	Paid Against Good Funds	REDACTED	Force Pay 1	8	\$96,530.24	9	\$96,535.24
Commercial	Paid Against Good Funds		Interbank Transfer Debit	11	\$268,698.38	11	\$268,698.38
Commercial	Paid Against Good Funds		ATM Fee	16	\$16.00	6	\$6.00
Commercial	Paid Against Good Funds	REDACTED	Returned Dep Item Fee	37	\$200.00	37	\$200.00
Commercial	Paid Against Good Funds	REDACTED	Stop Hold Charge	3	\$75.00	3	\$75.00
Commercial	Paid Against Good Funds		NSFOD Charge	229	\$13,375.00	236	\$13,650.00
Commercial	Paid Against Good Funds		ACH Debit	198	\$929,539.34	153	\$1,144,312.97
Commercial	Paid Against Good Funds		ATM Debit	44	\$4,213.92	21	\$1,959.35
Commercial	Paid Against Good Funds		Cash Check	326	\$366,430.74	172	\$271,719.07
Commercial	Paid Against Good Funds	REDACTED	Over Counter Check	343	\$860,867.85	223	\$729,561.98
Commercial	Paid Against Good Funds		Transit Check	1,444	\$2,524,905.91	1,481	\$3,039,308.56
Commercial	Paid Against Good Funds		Checking withdrawal	17	\$92,607.87	12	\$80,145.52
Commercial	Paid Against Good Funds		Transfer Dr Customer	11	\$37,718.83	7	\$33,667.83
Commercial	Paid Against Good Funds		MasterMoney Debit	87	\$7,396.27	50	\$4,944.85
Commercial	Paid Against Good Funds	REDACTED	Wirenext Debit	7	\$561,458.61	5	\$540,640.64
Commercial	Paid Against Good Funds	REDACTED	Automatic Loan Pay	4	\$4,560.82	1	\$543.04
Commercial	Paid Against Good Funds		Wirenext Fee	14	\$182.00	14	\$182.00
Commercial	Paid Against Good Funds		Redeposit Item Fee	2	\$4.00	2	\$4.00
Commercial	Paid Against Good Funds		Analysis Charge	111	\$9,397.50	113	\$9,437.21
Commercial	Paid Against Good Funds		Clarke American Charge	9	\$223.79	6	\$174.59
Commercial	Paid Against Good Funds		CSC Transfer Debit	2	\$550.00		
Commercial	Paid Against Good Funds		Interest Adj Debit	1	\$1.07	1	\$1.07
Subtotal				2,977	\$5,788,351.53	2,616	\$6,245,165.69



# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

Customer Type	Transaction Disposition	TranCode	Description	Current Way		New Way	
				Count	Sum of Amt	Count	Sum of Amt
Commercial	Force Pay - Non Chargeable		Returned Dep Item	13	\$10,949.32	13	\$10,949.32
Commercial	Force Pay - Non Chargeable	REDACTED	ATM Fee	9	\$9.00	17	\$17.00
Commercial	Force Pay - Non Chargeable		Returned Dep Item Fee	12	\$56.00	12	\$56.00
Commercial	Force Pay - Non Chargeable	REDACTED	NSFOD Charge	477	\$36,275.00	472	\$36,050.00
Commercial	Force Pay - Non Chargeable		Wirenext Fee	1	\$10.00	1	\$10.00
Commercial	Force Pay - Non Chargeable		Redeposit Item Fee	1	\$2.00	1	\$2.00
Commercial	Force Pay - Non Chargeable	REDACTED	Analysis Charge	76	\$3,600.30	74	\$3,560.59
Commercial	Force Pay - Non Chargeable		Interest Adj Debit	1	\$0.04	1	\$0.04
			<b>Subtotal</b>	<b>590</b>	<b>\$50,901.66</b>	<b>591</b>	<b>\$50,644.95</b>
Commercial	Force Pay - Within Matrix Limit Non Chargeable		Force Pay 1	1	\$5.00		
Commercial	Force Pay - Within Matrix Limit Non Chargeable	REDACTED	ATM Fee	4	\$4.00	6	\$6.00
Commercial	Force Pay - Within Matrix Limit Non Chargeable		Stop Hold Charge	1	\$100.00	1	\$100.00
Commercial	Force Pay - Within Matrix Limit Non Chargeable		NSFOD Charge	156	\$8,550.00	154	\$8,500.00
Commercial	Force Pay - Within Matrix Limit Non Chargeable		Analysis Charge	5	\$213.67	5	\$213.67
		REDACTED	<b>Subtotal</b>	<b>167</b>	<b>\$8,872.67</b>	<b>166</b>	<b>\$8,819.67</b>
			<b>Subtotal - Non-Chargeable</b>	<b>3,734</b>	<b>\$5,848,125.86</b>	<b>3,373</b>	<b>\$6,304,630.31</b>

P26.GJS.0203

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Page OP01.9

CONFIDENTIAL

BXS Swift E-007459



# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

Customer Type	Transaction Disposition	TranCode	Description	Current Way		New Way	
				Count	Sum of Amt	Count	Sum of Amt
Commercial	Force Pay - Chargeable	REDACTED	ATM Debit	15	\$7,691.25	27	\$8,843.56
Commercial	Force Pay - Chargeable		MasterMoney Debit	35	\$3,367.87	55	\$4,704.28
Commercial	Force Pay - Chargeable		Clarke American Charge	8	\$412.10	8	\$412.10
			<b>Subtotal</b>	<b>58</b>	<b>\$11,471.22</b>	<b>90</b>	<b>\$13,959.94</b>
Commercial	Force Pay - Within Matrix Limit Chargeable	REDACTED	ATM Debit	13	\$1,022.25	24	\$2,124.51
Commercial	Force Pay - Within Matrix Limit Chargeable		MasterMoney Debit	48	\$3,298.16	65	\$4,413.17
Commercial	Force Pay - Within Matrix Limit Chargeable		Clarke American Charge	3	\$81.07	6	\$130.27
			<b>Subtotal</b>	<b>64</b>	<b>\$4,401.48</b>	<b>95</b>	<b>\$6,667.95</b>
Commercial	Paid Within Matrix Limit Chargeable	REDACTED	ACH Debit	91	\$71,359.74	107	\$74,017.35
Commercial	Paid Within Matrix Limit Chargeable		Cash Check	45	\$167,499.75	82	\$177,032.86
Commercial	Paid Within Matrix Limit Chargeable		Over Counter Check	82	\$60,778.50	117	\$63,219.41
Commercial	Paid Within Matrix Limit Chargeable	REDACTED	Transit Check	809	\$713,819.36	793	\$655,721.06
Commercial	Paid Within Matrix Limit Chargeable		Checking withdrawal	1	\$2,200.00	3	\$4,880.86
						1	\$200.00
			<b>Subtotal</b>	<b>1,028</b>	<b>\$1,015,657.35</b>	<b>1,103</b>	<b>\$975,071.54</b>
Commercial	Returned Within Matrix Limit Chargeable		ACH Debit	281	\$7,572,261.16	310	\$7,354,829.92



# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

Customer Type	Transaction Disposition	TranCode	Description	Current Way		New Way	
				Count	Sum of Amt	Count	Sum of Amt
Commercial	Returned Within Matrix Limit Chargeable	REDACTED	Cash Check	80	\$145,541.80	197	\$230,720.36
Commercial	Returned Within Matrix Limit Chargeable		Over Counter Check	115	\$3,478,470.30	200	\$3,607,335.26
Commercial	Returned Within Matrix Limit Chargeable	REDACTED	Transit Check	3,540	\$6,731,387.36	3,519	\$6,275,083.01
Commercial	Returned Within Matrix Limit Chargeable		Checking withdrawal	16	\$14,538.20	19	\$24,319.69
Commercial	Returned Within Matrix Limit Chargeable		Transfer Dr Customer	1	\$100.00	4	\$3,951.00
Commercial	Returned Within Matrix Limit Chargeable	REDACTED	Wirenext Debit			2	\$20,817.97
Commercial	Returned Within Matrix Limit Chargeable		Automatic Loan Pay			3	\$4,017.78
Commercial	Returned Within Matrix Limit Chargeable	REDACTED	CSC Transfer Debit			2	\$550.00
		REDACTED	Subtotal	4,033	\$17,942,298.82	4,256	\$17,521,624.99
	Commercial:		Total Non-Chargeable:	3,734	\$5,848,125.86	3,373	\$6,304,630.31
			Total Chargeable:	5,183	\$18,973,828.87	5,544	\$18,517,324.42
		REDACTED	Total Items:	8,917	\$24,821,954.73	8,917	\$24,821,954.73
Retail	Paid Against Good Funds		Returned Dep Item	26	\$11,563.23	26	\$11,563.23
Retail	Paid Against Good Funds		Force Pay 1	6	\$1,374.60	7	\$1,624.60
Retail	Paid Against Good Funds		Force Pay 2	1	\$147.00	1	\$147.00
Retail	Paid Against Good Funds		Interbank Transfer Debit	10	\$1,678.00	7	\$1,190.00



# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

Customer Type	Transaction Disposition	TranCode	Description	Current Way		New Way	
				Count	Sum of Amt	Count	Sum of Amt
Retail	Paid Against Good Funds		Miscellaneous Fee	1	\$70.00	1	\$70.00
Retail	Paid Against Good Funds	REDACTED	ATM Fee	746	\$746.00	396	\$396.00
Retail	Paid Against Good Funds		Returned Dep Item Fee	19	\$57.00	25	\$75.00
Retail	Paid Against Good Funds		Stop Hold Charge	9	\$325.00	10	\$350.00
Retail	Paid Against Good Funds		NSFOD Charge	597	\$24,450.00	735	\$29,250.00
Retail	Paid Against Good Funds		ACH Debit	723	\$128,951.68	582	\$134,131.27
Retail	Paid Against Good Funds	REDACTED	ATM Debit	3,371	\$194,188.16	2,133	\$153,534.75
Retail	Paid Against Good Funds		Cash Check	411	\$128,541.29	281	\$114,617.09
Retail	Paid Against Good Funds		Over Counter Check	944	\$136,273.26	585	\$130,564.01
Retail	Paid Against Good Funds		Transit Check	3,554	\$794,188.51	4,401	\$999,053.47
Retail	Paid Against Good Funds		Checking withdrawal	27	\$6,604.09	16	\$4,925.86
Retail	Paid Against Good Funds		Transfer Dr Customer	8	\$3,471.56	8	\$4,405.60
Retail	Paid Against Good Funds	REDACTED	MasterMoney Debit	2,841	\$95,769.13	1,553	\$71,031.86
Retail	Paid Against Good Funds		Automatic Loan Pay	19	\$6,268.63	13	\$4,561.44
Retail	Paid Against Good Funds		Wirenext Fee	3	\$32.00	5	\$52.00
Retail	Paid Against Good Funds		Analysis Charge	3	\$112.56	3	\$112.56
Retail	Paid Against Good Funds		Clarke American Charge	44	\$702.11	19	\$270.94
Retail	Paid Against Good Funds	REDACTED	Safe Deposit Box Charge	1	\$32.00	2	\$50.00
Retail	Paid Against Good Funds		CSC Transfer Debit	4	\$425.00	4	\$425.00
Retail	Paid Against Good Funds		Interest Adj Debit	42	\$26.14	41	\$23.74
			<b>Subtotal</b>	<b>13,410</b>	<b>\$1,535,996.95</b>	<b>10,854</b>	<b>\$1,662,425.42</b>
Retail	Force Pay - Non Chargeable		Returned Dep Item	22	\$24,320.28	22	\$24,320.28
Retail	Force Pay - Non Chargeable	REDACTED	Force Pay 1	3	\$1,317.82	3	\$1,317.82
Retail	Force Pay - Non Chargeable		ATM Fee	519	\$519.00	688	\$688.00



# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

Customer Type	Transaction Disposition	TranCode	Description	Current Way		New Way	
				Count	Sum of Amt	Count	Sum of Amt
Retail	Force Pay - Non Chargeable		Returned Dep Item Fee	25	\$75.00	23	\$69.00
Retail	Force Pay - Non Chargeable	REDACTED	Stop Hold Charge	2	\$50.00	1	\$25.00
Retail	Force Pay - Non Chargeable		NSFOD Charge	3,388	\$151,275.00	3,246	\$145,850.00
Retail	Force Pay - Non Chargeable	REDACTED	Wirenext Fee	3	\$32.00	1	\$12.00
Retail	Force Pay - Non Chargeable		Redeposit Item Fee				
Retail	Force Pay - Non Chargeable		Analysis Charge	1	\$22.73	1	\$22.73
Retail	Force Pay - Non Chargeable	REDACTED	Safe Deposit Box Charge	3	\$83.00	2	\$65.00
Retail	Force Pay - Non Chargeable		Interest Adj Debit	15	\$20.68	16	\$23.08
			<b>Subtotal</b>	<b>3,981</b>	<b>\$177,715.51</b>	<b>4,003</b>	<b>\$172,392.91</b>
Retail	Force Pay - Within Matrix Limit Non Chargeable		Returned Dep Item	6	\$3,425.00	6	\$3,425.00
Retail	Force Pay - Within Matrix Limit Non Chargeable		Force Pay 1	3	\$309.05	2	\$59.05
Retail	Force Pay - Within Matrix Limit Non Chargeable	REDACTED	ATM Fee	391	\$391.00	572	\$572.00
Retail	Force Pay - Within Matrix Limit Non Chargeable		Returned Dep Item Fee	10	\$30.00	6	\$18.00
Retail	Force Pay - Within Matrix Limit Non Chargeable		NSFOD Charge	1,558	\$65,525.00	1,562	\$66,150.00
Retail	Force Pay - Within Matrix Limit Non Chargeable		Safe Deposit Box Charge	1	\$43.00	1	\$43.00



# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

Customer Type	Transaction Disposition	TranCode	Description	Current Way		New Way	
				Count	Sum of Amt	Count	Sum of Amt
Retail	Force Pay - Within Matrix Limit Non Chargeable	REDACTED	Interest Adj Debit	8	\$4.94	8	\$4.94
			<b>Subtotal</b>	<b>1,977</b>	<b>\$69,727.99</b>	<b>2,157</b>	<b>\$70,271.99</b>
			<b>Subtotal - Non-Chargeable</b>	<b>19,368</b>	<b>\$1,783,440.45</b>	<b>17,014</b>	<b>\$1,905,090.32</b>
Retail	Force Pay - Chargeable	REDACTED	ATM Debit	667	\$43,583.63	1,179	\$61,807.44
Retail	Force Pay - Chargeable		MasterMoney Debit	2,197	\$69,376.10	2,674	\$78,290.91
Retail	Force Pay - Chargeable		Clarke American Charge	53	\$907.09	58	\$998.30
			<b>Subtotal</b>	<b>2,917</b>	<b>\$113,866.82</b>	<b>3,911</b>	<b>\$141,096.65</b>
Retail	Force Pay - Within Matrix Limit Chargeable	REDACTED	ATM Debit	805	\$32,017.32	1,531	\$54,446.92
Retail	Force Pay - Within Matrix Limit Chargeable		MasterMoney Debit	1,879	\$56,568.19	2,690	\$72,390.65
Retail	Force Pay - Within Matrix Limit Chargeable		Clarke American Charge	45	\$785.37	65	\$1,125.33
			<b>Subtotal</b>	<b>2,729</b>	<b>\$89,370.88</b>	<b>4,286</b>	<b>\$127,962.90</b>
Retail	Paid Within Matrix Limit Chargeable		Interbank Transfer Debit	2	\$110.00	5	\$598.00
Retail	Paid Within Matrix Limit Chargeable	REDACTED	ACH Debit	839	\$123,587.06	933	\$120,533.96
Retail	Paid Within Matrix Limit Chargeable		Cash Check	69	\$59,238.90	146	\$67,183.01
Retail	Paid Within Matrix Limit Chargeable		Over Counter Check	754	\$96,350.22	1,028	\$95,852.01
Retail	Paid Within Matrix Limit Chargeable		Transit Check	6,719	\$744,106.26	6,191	\$646,411.44
Retail	Paid Within Matrix Limit Chargeable		<b>Subtotal</b>	<b>14</b>	<b>\$6,725.39</b>	<b>19</b>	<b>\$7,155.50</b>



# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

Customer Type	Transaction Disposition	TranCode	Description	Current Way		New Way	
				Count	Sum of Amt	Count	Sum of Amt
Retail	Paid Within Matrix Limit Chargeable		Transfer Dr Customer	4	\$1,212.29	4	\$278.25
Retail	Paid Within Matrix Limit Chargeable	REDACTED	Automatic Loan Pay	1	\$94.78	4	\$954.24
			<b>Subtotal</b>	<b>8,402</b>	<b>\$1,031,424.90</b>	<b>8,330</b>	<b>\$938,966.41</b>
Retail	Returned Within Matrix Limit Chargeable		ACH Debit	1,745	\$358,886.89	1,792	\$356,760.40
Retail	Returned Within Matrix Limit Chargeable	REDACTED	Cash Check	78	\$21,999.84	131	\$27,979.93
Retail	Returned Within Matrix Limit Chargeable		Over Counter Check	942	\$122,079.34	1,027	\$128,286.80
Retail	Returned Within Matrix Limit Chargeable		Transit Check	9,197	\$2,528,399.98	8,878	\$2,421,229.84
Retail	Returned Within Matrix Limit Chargeable	REDACTED	Checking withdrawal	17	\$18,207.91	23	\$19,456.03
Retail	Returned Within Matrix Limit Chargeable		Wirenext Debit	1	\$300.00	1	\$300.00
Retail	Returned Within Matrix Limit Chargeable		Automatic Loan Pay	1	\$416.80	4	\$1,264.53
Retail	Returned Within Matrix Limit Chargeable	REDACTED	CSC Transfer Debit	2	\$100.00	2	\$100.00
			<b>Subtotal</b>	<b>11,983</b>	<b>\$3,050,390.76</b>	<b>11,858</b>	<b>\$2,955,377.53</b>
			<b>Subtotal – Chargeable</b>	<b>26,031</b>	<b>\$4,285,053.36</b>	<b>28,385</b>	<b>\$4,163,403.49</b>
	<b>Retail:</b>		<b>Total Non-Chargeable:</b>	<b>19,368</b>	<b>\$1,783,440.45</b>	<b>17,014</b>	<b>\$1,905,090.32</b>
			<b>Total Chargeable:</b>	<b>26,031</b>	<b>\$4,285,053.36</b>	<b>28,385</b>	<b>\$4,163,403.49</b>
			<b>Total Items:</b>	<b>45,399</b>	<b>\$6,068,493.81</b>	<b>45,399</b>	<b>\$6,068,493.81</b>





# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

## ATTACHMENT C: TRANSACTIONS THAT CAUSED ACCOUNTS TO OVERDRAW

CustomerType	TranCode	Description	Current: Count	Proposed: Count	% Change
Commercial		Returned Dep Item	4	4	0%
Commercial	REDACTED	Force Pay 1	1	0	-100%
Commercial		NSFOD Charge	26	26	0%
Commercial		ACH Debit	52	58	12%
Commercial		ATM Debit	10	18	80%
Commercial		Cash Check	78	96	23%
Commercial	REDACTED	Over Counter Check	48	54	13%
Commercial		Transit Check	672	651	-3%
Commercial		Checking withdrawal	12	15	25%
Commercial		MasterMoney Debit	21	26	24%
Commercial		Analysis Charge	4	4	0%
Commercial	REDACTED	Clarke American Charge	2	1	-50%
Commercial		CSC Transfer Debit	0	1	0%
		<b>Subtotal</b>	<b>930</b>	<b>954</b>	<b>3%</b>
Retail		Returned Dep Item	24	24	0%
Retail		Force Pay 1	2	1	-50%
Retail	REDACTED	Interbank Transfer Debit	2	3	50%
Retail		ATM Fee	13	16	23%
Retail		Returned Dep Item Fee	1	1	0%
Retail		Stop Hold Charge	1	0	-100%
Retail		NSFOD Charge	327	423	29%
Retail		ACH Debit	880	881	0%
Retail	REDACTED	ATM Debit	672	992	48%
Retail		Cash Check	82	115	40%
Retail		Over Counter Check	547	619	13%



# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

CustomerType	TranCode	Description	Current: Count	Proposed: Count	% Change
Retail		Transit Check	4612	4207	-9%
Retail	REDACTED	Checking withdrawal	20	24	20%
Retail	REDACTED	Transfer Dr Customer	3	3	0%
Retail		MasterMoney Debit	1224	1381	13%
Retail	REDACTED	Automatic Loan Pay	1	4	300%
Retail	REDACTED	Clarke American Charge	26	35	35%
Retail		Safe Deposit Box Charge	3	2	-33%
Retail	REDACTED	CSC Transfer Debit	2	0	-100%
Retail	REDACTED	Interest Adj Debit	1	1	0%
		<b>Subtotal</b>	<b>8443</b>	<b>8732</b>	<b>3%</b>



# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

## ATTACHMENT D: TRANSACTION CODE LISTING

TranCode	Description	Debit/Credit	Post Priority	Force Post	Chargeable	Bank/Customer Init
	Interest Adj Credit	Credit	20	No	N	Bank
	EXC Credit	Credit	20	No	N	Bank
REDACTED	ACH EXC Credit	Credit	20	No	N	Bank
	ATM EXC Credit	Credit	20	No	N	Bank
	ACH Credit	Credit	20	No	N	Bank
REDACTED	ATM Credit	Credit	20	No	N	Bank
	ATM POS Credit	Credit	20	No	N	Bank
	OD Protection Credit	Credit	20	No	N	Bank
REDACTED	Interbank Transfer Credit	Credit	20	No	N	Bank
	Quest Transfer Credit	Credit	20	No	N	Bank
	Deposit	Credit	25	No	N	Customer
REDACTED	Quest Cash Deposit	Credit	20	No	N	Customer
	Beginning Balance	Credit	1	No	N	Bank
	Beginning Balance	Credit	1	No	N	Bank
	Quest Memo Deposit	Credit	25	No	N	Customer
REDACTED	Infoline Transfer Credit	Credit	20	No	N	Bank
	OD Account Closed Credit	Credit	20	No	N	Bank
	POS Credit	Credit	20	No	N	Bank
REDACTED	Interest Adj Debit	Debit	30	Yes	N	Bank
	Wirenext Credit	Credit	20	No	N	Bank
	Home Banking Credit	Credit	20	No	N	Bank
	Loan Proceeds	Credit	20	No	N	Bank
	Home Banking Transfer Credit	Credit	20	No	N	Bank
REDACTED	IOD MMDA Closing	Debit	30	Yes	N	Bank
	Loan Proceeds Deposit	Credit	25	No	N	Bank
	Returned Dep Item	Debit	30	Yes	N	Bank



# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

TranCode	Description	Debit/Credit	Post Priority	Force Post	Chargeable	Bank/Customer Init
—	Force Pay 1	Debit	35	Yes	N	Bank
—	Force Pay 2	Debit	36	Yes	N	Bank
REDACTED	Interbank Transfer Debit	Debit	40	No	Y	Customer
—	Miscellaneous Fee	Debit	33	Yes	N	Bank
—	ATM Fee	Debit	33	Yes	N	Bank
REDACTED	Returned Dep Item Fee	Debit	33	Yes	N	Bank
—	Stop Hold Charge	Debit	33	Yes	N	Bank
—	NSFOD Charge	Debit	33	Yes	N	Bank
—	ACH Debit	Debit	42	No	Y	Customer
REDACTED	ATM Debit	Debit	31	Yes	Y	Customer
—	ATM POS Debit	Debit	42	No	Y	Customer
—	Cash Check	Debit	32	No	Y	Customer
—	Over Counter Check	Debit	41	No	Y	Customer
REDACTED	Transit Check	Debit	42	No	Y	Customer
—	Checking withdrawal	Debit	32	No	Y	Customer
—	Transfer Dr Customer	Debit	32	No	Y	Customer
—	Infoline Transfer Debit	Debit	31	Yes	Y	Customer
REDACTED	MasterMoney Debit	Debit	31	Yes	Y	Customer
—	Wirenext Debit	Debit	32	No	Y	Customer
—	Home Banking Debit	Debit	31	Yes	Y	Customer
—	Home Banking Transfer Debit	Debit	31	Yes	Y	Customer
REDACTED	Taxtel payment	Debit	31	Yes	Y	Customer
—	Interbank Transfer Debit (Install & Comm loan) force pay	Debit	30	Yes	Y	Customer
—	Automatic Force Pay	Debit	30	Yes	Y	Customer
REDACTED	ACH Force Pay	Debit	30	Yes	Y	Customer
—	ATM Force Pay	Debit	30	Yes	Y	Customer
—	Automatic Loan Pay	Debit	40	No	Y	Customer
—	Vector4 Credit Adj	Credit	25	No	N	Bank

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# Recommendation OP 01: Posting Priority

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POTENTIAL \$3.5 MILLION

TranCode	Description	Debit/Credit	Post Priority	Force Post	Chargeable	Bank/Customer Init
	Vector4 Debit Adj	Debit	30	Yes	N	Bank
REDACTED	Deposit Correction Cr	Credit	25	No	N	Bank
	Deposit Correction Dr	Debit	30	Yes	N	Customer
	ATM Card Fee	Debit	33	Yes	N	Bank
	Wirenext Fee	Debit	33	Yes	N	Bank
	Redeposit Item Fee	Debit	33	Yes	N	Bank
REDACTED	Taxtel fee	Debit	33	Yes	N	Bank
	Wirenext Fee Analysis	Debit	33	Yes	N	Bank
	Analysis Charge	Debit	33	Yes	N	Bank
REDACTED	Homesite Fee	Debit	33	Yes	N	Bank
	Clarke American Charge	Debit	31	Yes	Y	Customer
	Taxtel Credit	Credit	20	No	N	Bank
	Dividend Income	Credit	20	No	N	Bank
REDACTED	Safe Deposit Box Charge	Debit	31	Yes	N	Bank
	No Bounce Deposit	Credit	25	No	N	Customer
	Lock Box Credit	Credit	25	No	N	Bank
	Interest Adj Credit	Credit	20	No	N	Bank
	ACH Credit Online	Credit	20	No	N	Bank
REDACTED	CSC Transfer Credit	Credit	20	No	N	Bank
	Deposit Online unposted credit	Credit	25	No	N	Bank
	Vector4 Credit Adj	Credit	25	No	N	Bank
REDACTED	CSC Transfer Debit	Debit	32	No	Y	Customer
	Vector4 Debit Adj	Debit	30	Yes	N	Bank
	Inactive Dormant Closing Debit	Debit	30	Yes	N	Bank
	Inactive Service Charge	Debit	33	Yes	N	Bank
REDACTED	Service Charge Refund	Credit	25	No	N	Bank
	Credit Line Payment	Credit	1	No	N	Customer
	Cr Line Cash Payment	Credit	1	No	N	Customer

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# Recommendation OP 01: Posting Priority

**Draft**

POTENTIAL \$3.5 MILLION

TranCode	Description	Debit/Credit	Post Priority	Force Post	Chargeable	Bank/Customer Init
REDACTED	Credit Line Advance	Debit	10	No	N	Customer
	Credit Line Beginning	Debit	10	No	N	Bank
	Credit Line Beginning	Debit	10	No	N	Bank
	ATM Credit	Credit	20	No	N	Bank
REDACTED	ATM POS Credit	Credit	20	No	N	Bank
	Beginning Balance	Credit	1	No	N	Bank
	Interest Adj Debit	Debit	30	Yes	N	Bank
	Loan Proceeds	Credit	20	No	N	Bank

# EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**Case No. 1:09-MD-02036-JLK**

**IN RE: CHECKING ACCOUNT )  
OVERDRAFT LITIGATION )**

**MDL No. 2036 )  
Fourth Tranche )**

**THIS DOCUMENT RELATES TO: )**

**Shane Swift v. BancorpSouth, Inc., )  
S.D. Fla. Case No. 1:10-cv-23872-JLK )**

**DEFENDANT BANCORPSOUTH BANK'S  
FIRST SUPPLEMENTAL RESPONSES AND OBJECTIONS  
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, defendant BancorpSouth Bank ("BancorpSouth") hereby submits its First Supplemental Responses and Objections to Plaintiff's First Set of Interrogatories (the "Responses").

**GENERAL RESPONSES AND OBJECTIONS**

BancorpSouth hereby incorporates its General Responses and Objections from its Responses and Objections to Plaintiff's First Set of Interrogatories as if fully set forth herein. BancorpSouth incorporates each of its general responses and objections into its specific responses and objections whether or not the general response and objection is specifically mentioned in a response to a specific interrogatory.

**SUPPLEMENTAL RESPONSES TO INTERROGATORIES**

**INTERROGATORY NO. 11: On an annual basis for each year since 2002 and for each State in which you maintain consumer accounts, state (a) the aggregate total amount of overdraft fees based on debit card and/or ATM transactions you assessed against your customers'**



**accounts; (b) the aggregate total dollar amount of overdraft fees based on debit card and/or ATM transactions assessed against customer accounts that you have forgiven, waived, reversed or otherwise not collected; and (c) the number of your customers' accounts that have been assessed more than one overdraft fee based on debit card and/or ATM transactions on a single day.**

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11:**

BancorpSouth objects to Interrogatory No. 11 on the grounds that it is overly broad, unduly burdensome, seeks information that is neither relevant to any claim or defense nor reasonably calculated to lead to the discovery of admissible evidence, and falls outside the applicable statute of limitations. BancorpSouth also objects to the use of the vague and undefined phrase "overdraft fees based on debit card and/or ATM transactions." Subject to and without waiving the foregoing general and specific objections, BancorpSouth responds as follows:

(a): The aggregate total dollar amount of insufficient funds fees and overdraft fees, combined, assessed on BancorpSouth accounts, arising from all types of BancorpSouth customer transactions (including both consumer and commercial accounts) for the year 2002 was \$40,763,457. The aggregate total dollar amount of insufficient funds fees and overdraft fees, combined, assessed on BancorpSouth accounts, arising from all types of BancorpSouth customer transactions (including both consumer and commercial accounts) for the year 2003 was \$54,793,392. The aggregate total dollar amount of insufficient funds fees and overdraft fees, combined, assessed on BancorpSouth accounts, arising from all types of BancorpSouth customer transactions (including both consumer and commercial accounts) for the year 2004 was \$56,510,653. The aggregate total dollar amount of insufficient funds fees and overdraft fees, combined, assessed on BancorpSouth accounts, arising from all types of BancorpSouth customer transactions (including both consumer and commercial accounts) for the year 2005 was \$57,765,358. The aggregate total dollar amount of insufficient funds fees and overdraft fees, combined, assessed on BancorpSouth accounts, arising from all types of

BancorpSouth customer transactions (including both consumer and commercial accounts) for the year 2006 was \$63,815,789. The aggregate total dollar amount of insufficient funds fees and overdraft fees, combined, assessed on BancorpSouth accounts, arising from all types of BancorpSouth customer transactions (including both consumer and commercial accounts) for the year 2007 was \$70,347,449. The aggregate total dollar amount of insufficient funds fees and overdraft fees, combined, assessed on BancorpSouth accounts, arising from all types of BancorpSouth customer transactions (including both consumer and commercial accounts) for the year 2008 was \$70,102,889. The aggregate total dollar amount of insufficient funds fees and overdraft fees, combined, assessed on BancorpSouth accounts, arising from all types of BancorpSouth customer transactions (including both consumer and commercial accounts) for the year 2009 was \$64,464,528. The aggregate total dollar amount of insufficient funds fees and overdraft fees, combined, assessed on BancorpSouth accounts, arising from all types of BancorpSouth customer transactions (including both consumer and commercial accounts) for the year 2010 was \$61,630,927. The aggregate total dollar amount of continuous overdraft fees for the year 2010 was \$1,652,900.

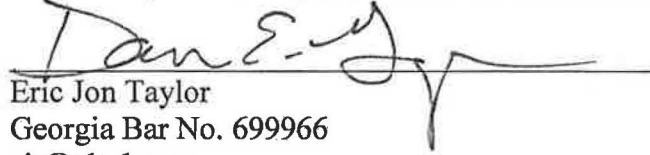
(b): The aggregate total dollar amount of insufficient funds fees and overdraft fees combined (including both commercial and consumer accounts) that BancorpSouth refunded, waived or charged off for the year 2002 was \$5,273,563. The aggregate total dollar amount of insufficient funds fees and overdraft fees combined (including both commercial and consumer accounts) that BancorpSouth refunded, waived or charged off for the year 2003 was \$6,666,754. The aggregate total dollar amount of insufficient funds fees and overdraft fees combined (including both commercial and consumer accounts) that BancorpSouth refunded, waived or charged off for the year 2004 was \$7,453,291. The aggregate total dollar amount of insufficient funds fees and overdraft fees combined

(including both commercial and consumer accounts) that BancorpSouth refunded, waived or charged off for the year 2005 was \$6,704,822. The aggregate total dollar amount of insufficient funds fees and overdraft fees combined (including both commercial and consumer accounts) that BancorpSouth refunded, waived or charged off for the year 2006 was \$7,149,943. The aggregate total dollar amount of insufficient funds fees and overdraft fees combined (including both commercial and consumer accounts) that BancorpSouth refunded, waived or charged off for the year 2007 was \$7,865,753. The aggregate total dollar amount of insufficient funds fees and overdraft fees combined (including both commercial and consumer accounts) that BancorpSouth refunded, waived or charged off for the year 2008 was \$8,145,533. The aggregate total dollar amount of insufficient funds fees and overdraft fees combined (including both commercial and consumer accounts) that BancorpSouth refunded, waived or charged off for the year 2009 was \$6,951,839. The aggregate total dollar amount of insufficient funds fees and overdraft fees combined (including both commercial and consumer accounts) that BancorpSouth refunded, waived or charged off for the year 2010 was \$6,869,570. The aggregate total dollar amount of continuous overdraft fees refunded for the year 2010 was \$76,015.

(c): BancorpSouth has no information responsive to subsection (c) of Interrogatory No. 11.

Respectfully submitted this 9<sup>th</sup> day of December, 2011.

**PARKER, HUDSON, RAINER & DOBBS LLP**



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*Counsel for Defendant BancorpSouth Bank*



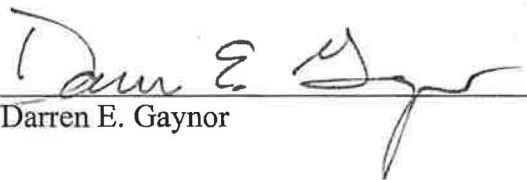
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the within and foregoing **DEFENDANT BANCORPSOUTH BANK'S FIRST SUPPLEMENTAL RESPONSES AND OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed as follows:

Jeffrey M. Ostrow, Esq.  
Jonathan Streisfeld, Esq.  
Kopelowitz Ostrow Ferguson Weiselberg Keechl  
200 S.W. First Avenue, 12<sup>th</sup> Floor  
Fort Lauderdale, Florida 33301

Darren T. Kaplan, Esq.  
Chitwood Harley Harnes, LLP  
2300 Promenade II  
1230 Peachtree Street, NE  
Atlanta, Georgia 30309

This 9<sup>th</sup> day of December, 2011.

  
\_\_\_\_\_  
Darren E. Gaynor

# **EXHIBIT 6**

❑ Christmas Club

Christmas Club accounts earn interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated on the daily ledger balance using the daily balance method. Interest is accrued daily and credited yearly in November when a check for the balance is issued to the customer. If you close your Christmas Club account before the interest is credited, you will not receive the accrued interest for the period. Partial withdrawals from your Christmas Club account are not permitted. Your account must have a \$250 balance at maturity to earn interest. Balances below \$250 forfeit any accrued interest.

MISCELLANEOUS CHARGES

Check Printing Charges	.....Charges will vary based on check design
Official Checks	.....\$5.00
Each Overdraft/Insufficient Item	.....\$25.00
Each Stop Payment	.....\$25.00
Each Returned Deposit Item	.....\$2.00
Research Fees:	
Research Per Hour	.....\$20.00
Photocopies (each)	.....\$1.00
Collection Item Fee	.....\$2.00 per item plus \$.20 per \$100 with a \$20.00 maximum

❑ MASTERMONEY™

BancorpSouth MasterMoney is the convenient plastic card that looks like a credit card but works like a check, deducting your purchases from your checking account. MasterMoney is good for cash purchases anywhere MasterCard® is accepted. Plus, you get a receipt with every transaction so there is no problem keeping track of what you have spent. Monthly, all transactions are reported on your checking account statement along with any checks you have written. A MasterMoney card serves as your ATM card, so you only have one “checking account card” to carry with you. MasterMoney fee .....No Charge There is a fee of \$1.00 per transaction when you use your MasterMoney card at an ATM that belongs to another bank or financial services company.

❑ 24-Hour Banking

You may access your BancorpSouth checking account day and night at literally thousands of ATMs across the United

States with our automated teller card. At BancorpSouth ATM locations you may make deposits as well as withdrawals, loan payments and transfers between accounts. 24-Hour Banking card fee .....\$1.00 per month There is a fee of \$1.00 per transaction when you use your 24-Hour Banking card at an ATM that belongs to another bank or financial services company.

❑ Certificates of Deposit

BancorpSouth Certificates of Deposit offer excellent returns on investments that can be tailored to fit your exact needs. Early withdrawal penalties apply to all Certificates of Deposit and are fully detailed in the Certificate of Deposit Disclosure available at all BancorpSouth offices. Minimum Opening Balance .....\$1,000.00

POINTS OF SPECIAL EMPHASIS

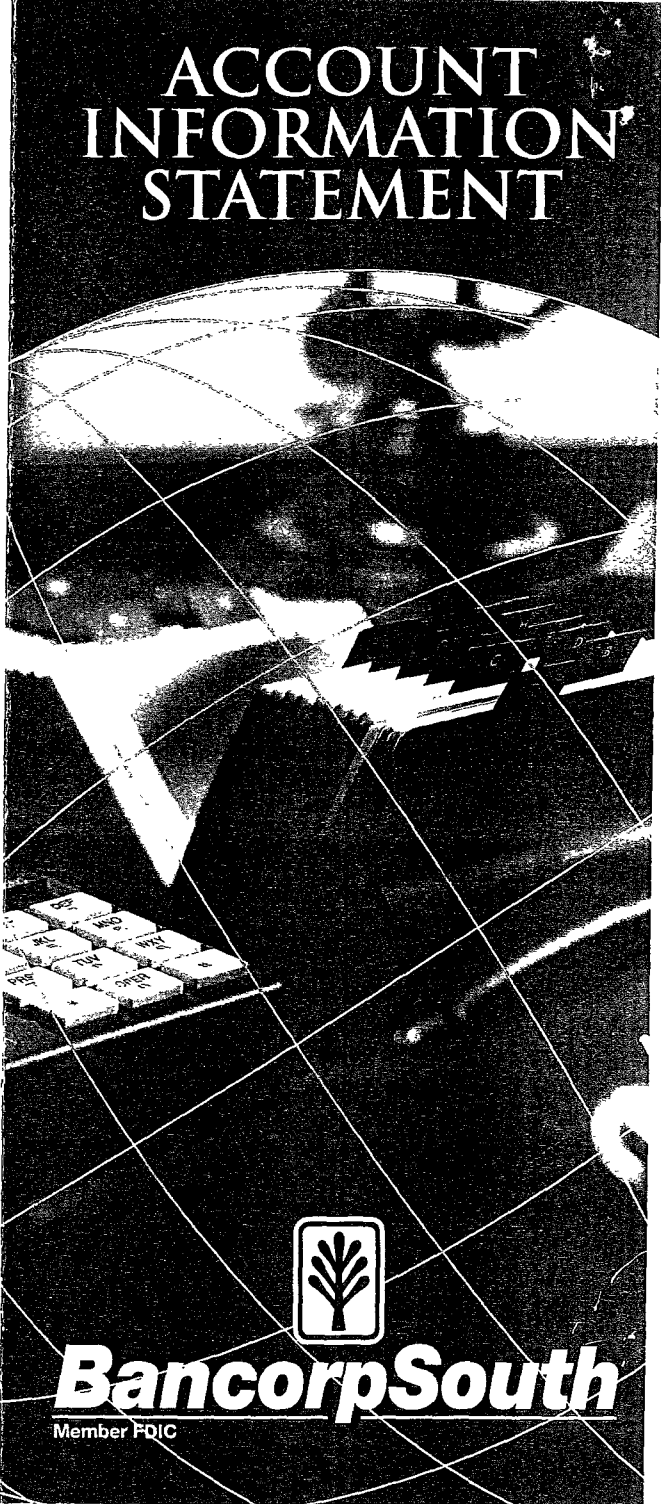
- \* Overdrawn accounts are subject to a monthly charge not to exceed 5% above the current Federal Reserve Discount Rate.
- \* If you close your Premium Access Checking Account before interest is credited, you will receive the accrued interest through the date of closing.
- \* If you close your Classic Savings Account prior to the interest being credited, you will receive the interest through the date of closing.
- \* If you close your Premium Access Money Market or Money Market Investment Account prior to the interest being credited, you will receive the interest through the date of closing.
- \* The Daily Balance Method of paying interest uses the daily balance in calculating the interest on your account. This method applies a daily periodic rate to the principal in the account each day. When you deposit checks into any account at BancorpSouth, interest begins to accrue no later than the business day we receive credit for the item.
- \* The Daily Ledger Balance reflects all deposits and withdrawals regardless of actual collection of funds.
- \* Overdraft protection is available on checking accounts.
- \* On interest bearing checking accounts, federal regulations allow the bank to create checking and savings sub-accounts which exist only on the books of the bank and which allow the bank to make transfers at the close of each working day. This puts the bank in a more favorable position concerning reserve requirements, and ultimately allows us to maintain the most competitive rates we can pay on your interest bearing checking account. The activity

- of the sub-accounts will not be reflected on your bank statement and will not affect your account balance or the interest, fees and features of your interest bearing checking account.
- \* Electronic debits such as Automatic Teller Machine and MasterMoney™ debits along with InfoLine transfers are not included in your debit item count for calculating service charges.
  - \* When multiple debit transactions are presented for payment from your account on a given banking day, your account may be debited in various categories of transactions in a descending order by the greatest dollar amount debit transaction to the least dollar amount debit transaction. This may result in more items being returned and/or paid into overdraft, thus causing you to incur fees for each such item. Since you, as customer and drawer, have drawn all checks, you should have funds available to meet all checks drawn by you, therefore you have no basis for urging one item paid before another. Further, the bank has the right to first pay items owed to itself or due to itself and pay items for which it is itself liable ahead of those for which it is not. A description of the categories, method, and order of posting/payment is available upon request.

For Account Information  
Every Hour! Every Day! Everywhere!  
Toll-Free  
1-888-797-7711  
InfoLine  
“The One Number In Banking!”

BRC004

As of January 1, 2001



Dear Customer:

Thank you for choosing BancorpSouth. We are dedicated to providing world-class financial personal service to our customers and the communities we serve. We hope you think of us as your friend as well as your bank.

This brochure is a full disclosure of the fees and charges that apply to the accounts at BancorpSouth. We think it is important for you to have a full understanding of these fees and charges. At the end of this disclosure notice is a section entitled “Points of Special Emphasis.”

We welcome your questions in person or by phone. The answers are as close as your nearest BancorpSouth office or by using InfoLine, 1-888-797-7711, our 24-hour account information line.

NON-INTEREST CHECKING

The minimum balance required to open any BancorpSouth non-interest bearing checking account is \$100.

- ☐ **Crown Services**
- Crown Services is BancorpSouth’s premium checking package, including many popular features such as unlimited checking, discounts on loans, accidental death and dismemberment insurance, and travel cash dividends: Monthly membership fee for individuals .....\$8.50 Monthly membership for family coverage .....\$10.00
- ☐ **Regular Checking Account**
- An \$800 *minimum* daily ledger balance avoids any monthly service charge. When the minimum daily ledger balance falls below \$800 during a statement cycle, the monthly service charge will be \$8.00.

- ☐ **Checking for People Over 65**
- Service charges on checking .....NONE  
Optional Benefits for People Over 65  
Monthly membership for Crown Services for the individual .....\$4.25  
Monthly membership for Crown Services for family coverage .....\$5.00

- ☐ **Absolutely Free Checking for Students\***
- Students love this account because there is no minimum balance requirement, no monthly service charge, and no per check charge... It’s “Absolutely Free.”  
No annual charge for your 24-hour banking card.

- ☐ **Value Check\***
- This account is especially popular with young people out

on their own who write only a few checks per month or customers with low activity and low balance.

Monthly maintenance fee .....\$3.50  
First 15 checks or debits .....NO CHARGE  
More than 15 checks or debits .....\$.25 each

\*Accounts receive a monthly statement. Checks and deposit slips remain on file at the bank. However, copies may be requested with no charge for the first five (5) items. In excess of five, per item copy charge is \$1.00.

INTEREST BEARING CHECKING ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum balance required to open BancorpSouth interest checking accounts varies by account type. See individual account descriptions for details.

- ☐ **Heritage Checking**
- Heritage Checking is BancorpSouth’s preferred services account for our friends who are 50 and over. Heritage Checking accounts earn interest at a competitive rate which is determined solely by the Bank and is subject to change weekly. Interest is earned daily on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Heritage Checking account before the interest is credited, you will not receive the accrued interest for that period. In addition to earning interest, Heritage Checking accounts include accidental death insurance and travel cash dividends.

Minimum opening balance .....\$100.00  
Monthly Service Charge with a minimum daily ledger balance of:  
\$500 or more .....NONE  
Below \$500 .....\$8.00

- ☐ **Checking+Plus: Personal & Household Checking**
- Personal and household checking accounts earn interest at a competitive interest rate which is determined solely by the Bank and is subject to change weekly. Interest is earned on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Checking+Plus account before the interest is credited, you will not receive the accrued interest for that period.

Minimum opening balance .....\$1,000.00  
Monthly Service Charge with a balance of:  
\$1,000 or more .....NONE  
Below \$1,000 .....\$10.00  
Per item charges:  
First 40 checks or debits .....NONE  
In excess of 40 checks or debits .....\$.20 each  
First 20 items deposited .....NONE  
In excess of 20 items deposited .....\$.08 each

- ☐ **Premium Access Checking**
- You can earn a premium rate on your checking account balance, plus write all the checks you like without incurring a service charge. With Premium Access Checking, you earn a premium rate on your checking account balance of \$5,000 or more. You may open an account with a minimum balance of \$5,000 and earn interest each day your collected balance is \$5,000 or more. A premium rate is established January 1 and July 1 and will not change during the six month period.  
Premium Access Checking Fee .....NONE if ledger balance does not fall below \$5,000  
Should your ledger balance fall below \$5,000, a minimum balance fee of \$10 is charged for that statement cycle.

SAVINGS ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum balance required to open a BancorpSouth savings account varies by account type. See individual account descriptions for details.

- ☐ **Premium Access Money Market Account**
- Premium Access Money Market Account is a tiered rate money market account. The interest rate tiers are as follows:  
Balances less than \$2,500  
Balances between \$2,500 and \$9,999  
Balances between \$10,000 and \$49,999  
Balances between \$50,000 and \$99,999  
Balances \$100,000 and above  
Your account earns a competitive rate of interest determined solely by the Bank and is subject to change weekly. Interest is paid on the collected balance using the daily balance method. Should the daily collected balance fall below \$2,500, interest will not be paid. Interest is paid on a daily basis and compounded monthly. If you close

your Premium Access Money Market Account before the interest is credited you will receive the interest through the date of closing. Minimum balance required to open a Premium Access Money Market Account is \$1,000. A total of six withdrawals may be made each month, of which three may be by check or debit to third parties.  
Monthly Service Charge with a minimum daily ledger balance of:  
\$1,000 or more .....NONE  
Below \$1,000 .....\$10.00

- ☐ **Personal Money Market Investment Account**
- Personal Money Market Investment Accounts earn interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is paid on the collected balance using the daily balance method. Should the daily collected balance fall below \$1,000, the rate of interest will be the Checking+Plus rate. Interest is available on a daily basis and is credited and compounded monthly. If you close your Money Market Investment Account before the interest is credited you will receive the interest through the date of closing. Minimum balance required to open a Money Market Account is \$1,000.  
A total of six withdrawals may be made each month, of which three may be by check or debit to third parties.  
Monthly Service Charge with a minimum daily ledger balance of:  
\$1,000 or more .....NONE  
Below \$1,000 .....\$10.00

- ☐ **Classic Savings**
- A competitive interest rate is paid on the collected balance using the daily balance method. The rate of interest is determined solely by the Bank and is subject to change on a weekly basis. Interest is compounded daily and credited semiannually. Deposits and withdrawals can be made at any time. If you close your account prior to the interest being credited, you will receive interest through the closing date. Minimum balance required to open a Classic Savings Account is \$100.

Classic Savings Fees to Which You May Be Subject:  
\* There will be a \$1.00 charge for each withdrawal in excess of six during any six-month cycle, excluding ATM withdrawals.  
\* If your balance remains below \$25 for 180 consecutive days with no activity in the account, there will be a \$7.50 maintenance charge.



# EXHIBIT 7

to a withdrawal penalty. Your account must have a \$250 balance at maturity to earn interest. Balances below \$250 forfeit any accrued interest.  
Withdrawal Penalty (per withdrawal) .....\$5.00

SERVICE FEES

Check Printing Charges.....Charges will vary based on check design  
Official Checks .....\$6.00  
Each Overdraft/Insufficient Item.....\$29.00  
Each Stop Payment.....\$29.00  
Each Returned Deposit Item .....\$4.00  
Special Statement .....\$5.00  
Research Fees:  
    Research Per Hour.....\$20.00  
    Photocopies (each) .....\$1.00  
Collection Item Fee .....\$2.00 per item  
    plus \$.20 per \$100 with a \$20.00 maximum  
Inactive Account Charges  
    Checking accounts with no activity and balances below \$200 for 90 consecutive days are subject to a \$10.00 maintenance charge.  
    Savings accounts with no activity and balances below \$200 for 180 consecutive days are subject to a \$10.00 maintenance charge.  
Dormant Account Charges  
    A \$10 per month fee will be charged on dormant accounts in addition to regular applicable fees. No interest will be paid on dormant accounts. "Dormant Accounts" are defined by individual state statutes.  
Wire Transfer Fees:  
    Outgoing .....\$12.00  
    Incoming .....\$10.00  
    Foreign .....\$50.00  
Telephone Funds Transfers:  
    Automated via InfoLine .....NO CHARGE  
    Assisted by branch personnel .....\$3.00  
Overdraft Protection Fee (per transfer other than credit card transfer) .....\$5.00

Credit Card Overdraft Protection  
If you have overdraft protection coverage via either a BancorpSouth MasterCard or VISA account, all applicable credit card fees and interest charges will apply to any amounts charged to your credit card account and transferred to your checking account. The standard cash advance transaction fees apply to those transfers (3% of the amount of the transfer, with a minimum of \$5.00 and a maximum of \$29.00).

Safe Deposit Box Key Replacement .....\$60.00  
Safe Deposit Box Drilling Fee .....\$120.00  
Safe Deposit Box Invoice Fee .....\$10.00  
Legal Processing (including levies and garnishments).....\$25.00

MASTERMONEY™

BancorpSouth MasterMoney is the convenient plastic card that looks like a credit card but works like a check, deducting your purchases from your checking account. MasterMoney is good for cash purchases anywhere MasterCard® is accepted. Plus, you get a receipt with every transaction so there is no problem keeping track of what you have spent. Monthly, all transactions are reported on your checking account statement along with any checks you have written. A MasterMoney card serves as your ATM card, so you only have one "checking account card" to carry with you.  
MasterMoney fee .....NO CHARGE  
There is a fee of \$1.50 per transaction when you use your MasterMoney card at an ATM that belongs to another bank or financial services company.

24-Hour Banking

You may access your BancorpSouth checking account day and night at literally thousands of ATMs across the United States with our automated teller card. At BancorpSouth ATM locations you may make deposits as well as withdrawals, loan payments and transfers between accounts.  
24-Hour Banking card fee .....\$1.00 per month  
There is a fee of \$1.50 per transaction when you use your 24-Hour Banking card at an ATM that belongs to another bank or financial services company.

Certificates of Deposit

BancorpSouth Certificates of Deposit offer competitive returns on investments that can be tailored to fit your exact needs. Early withdrawal penalties apply to all Certificates of Deposit and are fully detailed in the Certificate of Deposit Disclosure available at all BancorpSouth offices.  
Minimum Opening Balance.....\$1,000.00

POINTS OF SPECIAL EMPHASIS

- \* If you close your Premium Access Checking Account before interest is credited, you will receive the accrued interest through the date of closing.
- \* If you close your Classic Savings Account prior to the interest being credited, you will receive the interest through the date of closing.
- \* If you close your Premium Access Money Market or Money Market Investment Account prior to the interest being credited, you will receive the interest through the date of closing.

- \* The Daily Balance Method of paying interest uses the daily balance in calculating the interest on your account. This method applies a daily periodic rate to the principal in the account each day. When you deposit checks into any account at BancorpSouth, interest begins to accrue no later than the business day we receive credit for the item.
- \* The Daily Lodger Balance reflects all deposits and withdrawals regardless of actual collection of funds.
- \* Overdraft protection is available on checking accounts.
- \* When multiple debit transactions are presented for payment from your account on a given banking day, your account may be debited in various categories of transactions in a descending order by the greatest dollar amount debit transaction to the least dollar amount debit transaction. This may result in more items being returned and/or paid into overdraft, thus causing you to incur fees for each such item. Since you, as customer and drawer, have drawn all checks, you should have funds available to meet all checks drawn by you, therefore you have no basis for urging one item paid before another. Further, the bank has the right to first pay items owed to itself or due to itself and pay items for which it is itself liable ahead of those for which it is not.
- \* On interest bearing checking accounts, federal regulations allow the bank to create checking and savings sub-accounts which exist only on the books of the bank and which allow the bank to make transfers at the close of each working day. This puts the bank in a more favorable position concerning reserve requirements, and ultimately allows us to maintain the most competitive rates we can pay on your interest bearing checking account. The activity of the sub-accounts will not be reflected on your bank statement and will not affect your account balance or the interest, fees and features of your interest bearing checking account.
- \* Electronic debits such as Automated Teller Machine and MasterMoney™ debits along with InfoLine transfers are not included in your debit item count for calculating service charges.
- \* All fees and charges are subject to respective state statutes.

Account  
Information  
Statement

Effective Date: May 1, 2003



Get there from here.

As of May 1, 2003

Dear Customer:  
Thank you for choosing BancorpSouth. We are dedicated to providing world-class financial personal service to our customers and the communities we serve.

This brochure is a full disclosure of the fees and charges that apply to the accounts at BancorpSouth. We think it is important for you to have a full understanding of these fees and charges.

We welcome your questions in person or by phone. The answers are as close as your nearest BancorpSouth office or by using InfoLine, 1-888-797-7711, our 24-hour account information line.

**NON-INTEREST CHECKING**

The minimum balance required to open any BancorpSouth non-interest bearing checking account is \$100.

**☐ Crown Services**

Crown Services is BancorpSouth’s premium checking package, including many popular features such as unlimited checking, discounts on loans, accidental death and dismemberment insurance, and travel cash dividends:  
Monthly membership fee for individuals .....\$8.50  
Monthly membership for family coverage .....\$10.00

**☐ Regular Checking Account**

An \$800 minimum daily ledger balance avoids any monthly service charge. When the minimum daily ledger balance falls below \$800 during a statement cycle, the monthly service charge will be \$8.50.  
  
For customers in Arkansas and Texarkana, Texas, a \$600 minimum daily ledger balance avoids any monthly service charge. When the minimum daily ledger balance falls below \$600 during a statement cycle, the monthly service charge will be \$6.50.

**☐ Checking for People Over 65**

Service charges on checking .....NONE  
Optional Benefits for People Over 65  
Monthly membership for Crown Services for the individual .....\$4.25  
Monthly membership for Crown Services for family coverage .....\$5.00

**☐ Absolutely Free Checking for Students\***

Students love this account because there is no minimum balance requirement, no monthly service charge, and no per check charge... It’s “Absolutely Free” through age 24. No annual charge for your 24-hour banking card.

**☐ Value Check\***

This account is especially popular with young people out on their own who write only a few checks per month or customers with low activity and low balance.  
Monthly maintenance fee .....\$4.00

First 15 checks or debits .....NO CHARGE  
More than 15 checks or debits .....\$ .25 each  
  
\*Accounts receive a monthly statement. Checks and deposit slips remain on file at the bank. However, copies may be requested with no charge for the first five (5) items. In excess of five, per item copy charge is \$1.00.

**INTEREST BEARING CHECKING ACCOUNTS**

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum balance required to open BancorpSouth interest checking accounts varies by account type. See individual account descriptions for details.

**☐ Heritage Checking**

Heritage Checking is BancorpSouth’s preferred services account for our friends who are 50 and over. Heritage Checking accounts earn interest at a competitive rate which is determined solely by the Bank and is subject to change weekly. Interest is earned daily on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Heritage Checking account before the interest is credited, you will not receive the accrued interest for that period. In addition to earning interest, Heritage Checking accounts include common carrier accidental death insurance as well as discounts and special savings.  
Minimum opening balance .....\$100.00  
Monthly Service Charge with a minimum daily ledger balance of:  
\$500 or more .....NONE  
Below \$500 .....\$8.00

**☐ Heritage Checking Plus**

Receive all of the features and benefits of Heritage Checking plus FREE special membership checks, \$10,000 Accidental Death Insurance, a Medical Emergency Data Card, hotel room rate savings up to 50%, discount pharmaceuticals through the Rx Advantage™ Drug Program, savings on eyewear with Coast-to-Coast Vision and other bonuses.  
Minimum opening balance .....\$100.00  
Monthly Service Charge.....\$5.00

**☐ Checking+Plus: Personal & Household Checking**

Personal and household checking accounts earn interest at a competitive interest rate which is determined solely by the Bank and is subject to change weekly. Interest is earned on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Checking+ Plus account before the interest is credited, you will not receive the accrued interest for that period.

Minimum opening balance.....\$1,000.00  
Monthly Service Charge with a balance of:  
\$1,000 or more.....NONE  
Below \$1,000 .....\$10.00  
Per item charges:  
First 40 checks or debits .....NONE  
In excess of 40 checks or debits .....\$ .20 each  
First 20 items deposited .....NONE  
In excess of 20 items deposited.....\$ .08 each

**☐ Premium Access Checking**

You can earn a premium rate on your checking account balance, plus write all the checks you like without incurring a service charge. With Premium Access Checking, you earn a premium rate on your checking account balance of \$5,000 or more. You may open an account with a minimum balance of \$5,000 and earn interest each day your collected balance is \$5,000 or more. A competitive rate is determined solely by the Bank and is subject to change weekly.  
Premium Access Checking Fee .....NONE if ledger balance does not fall below \$5,000  
Should your ledger balance fall below \$5,000, a minimum balance fee of \$10 is charged for that statement cycle.

**SAVINGS ACCOUNTS**

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum balance required to open a BancorpSouth savings account varies by account type. See individual account descriptions for details.

**☐ Premium Access Money Market Account**

Premium Access Money Market Account is a tiered rate money market account. The interest rate tiers are as follows:  
Balances between \$2,500 and \$9,999  
Balances between \$10,000 and \$49,999  
Balances between \$50,000 and \$99,999  
Balances \$100,000 and above

Your account earns a competitive rate of interest determined solely by the Bank and is subject to change weekly. Interest is paid on the collected balance using the daily balance method. Should the daily collected balance fall below \$2,500, interest will not be paid. Interest is paid on a daily basis and compounded monthly. If you close your Premium Access Money Market Account before the interest is credited you will receive the interest through the date of closing. Minimum balance required to open a Premium Access Money Market Account is \$1,000. A total of six withdrawals may be made each month, of which three may be by check or debit to third parties.

Monthly Service Charge with a minimum daily ledger balance of:  
\$1,000 or more .....NONE  
Below \$1,000 .....\$10.00  
Excessive Withdrawal Fee (per withdrawal) .....\$10.00

**☐ Personal Money Market Investment Account**

Personal Money Market Investment Accounts earn interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is paid on the collected balance using the daily balance method. Should the daily collected balance fall below \$1,000, the rate of interest will be the Checking+Plus rate. Interest is available on a daily basis and is credited and compounded monthly. If you close your Money Market Investment Account before the interest is credited you will receive the interest through the date of closing. Minimum balance required to open a Money Market Account is \$1,000. A total of six withdrawals may be made each month, of which three may be by check or debit to third parties.  
Monthly Service Charge with a minimum daily ledger balance of:  
\$1,000 or more .....NONE  
Below \$1,000 .....\$10.00  
Excessive Withdrawal Fee (per withdrawal) .....\$10.00

**☐ Classic Savings**

A competitive interest rate is paid on the collected balance using the daily balance method. The rate of interest is determined solely by the Bank and is subject to change on a weekly basis. Interest is compounded daily and credited semiannually. Deposits and withdrawals can be made at any time. If you close your account prior to the interest being credited, you will receive interest through the closing date. Minimum balance required to open a Classic Savings Account is \$100.  
Classic Savings Fees to Which You May Be Subject:  
\* There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle, excluding ATM withdrawals.

**☐ Christmas Club**

Christmas Club accounts earn interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated on the daily ledger balance using the daily balance method. Interest is accrued daily and credited yearly in November when a check for the balance is issued to the customer. If you close your Christmas Club account before the interest is credited, you will not receive the accrued interest for the period. Partial withdrawals from your Christmas Club account are subject

Continued on Back

# EXHIBIT 8



Special Statement .....	\$5.00
Debit Card Replacement Fee .....	\$5.00
Research Fees:	
Research Per Hour .....	\$20.00
Photocopies (each) .....	\$1.00
Collection Item Fee .....	\$2.00 per item
plus \$ .20 per \$100.00 with a \$20.00 maximum	
Dormant Checking Account Charges	
An \$8.50 per month fee will be charged on dormant checking accounts in addition to regular applicable fees. “Dormant Accounts” are defined by applicable law.	
Wire Transfer Fees:	
Outgoing .....	\$12.00
Incoming .....	\$10.00
Foreign .....	\$50.00
Telephone Funds Transfers:	
Automated via InfoLine.....	NO CHARGE
Assisted by branch personnel .....	\$3.00
Overdraft Transfer Fee (per transfer) .....	\$5.00
Overdraft Equity Credit Line Fee (per overdraft) .....	\$5.00
Safe Deposit Box Drilling Fee .....	\$40.00
Legal Processing (including levies and garnishments).....	\$25.00

**ABOUT OVERDRAFTS**

An “overdraft” occurs any time a check or other transaction is presented for payment against an account and the available balance of the account is insufficient to pay the check or transaction. When an overdraft occurs, we may, at our discretion, return the check and refuse the transaction, or, alternatively, we may choose to pay the check or transaction, in which case a negative account balance will result. If we return the check and refuse the transaction, you will be charged an Insufficient Funds (NSF) Item fee for each returned check and refused transaction. If we pay the check or transaction, you will be charged an Overdraft (OD) Item fee for each check or transaction paid in overdraft.

Determining whether to pay a check or other transaction in overdraft is strictly discretionary with us. We are not required to pay any check or other transaction in overdraft, even if we have paid overdrafts many times previously and even if we have permitted an account to remain in an overdrawn status for an extended period. Also, if more than one check or other transaction is presented for payment against your account on the same banking day and the available balance is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater Overdraft Item or Insufficient Funds Item fees than if we had chosen to pay them in some other order. We may also choose to first pay checks or other transactions which are payable to BancorpSouth and our affiliates.

You may avoid Overdraft Item and Insufficient Funds Item fees on checking accounts through Overdraft Protection.

Credit Card Overdraft Protection works by charging your BancorpSouth MasterCard or VISA credit card for cash advances in the amounts of checks or other transactions drawn against insufficient funds, with resulting deposits of the cash advance amounts into your account to cover such checks or other transactions, up to the credit limit of your credit card. Credit card fees, interest charges and cash advance charges will be assessed to your credit card account in accordance with the terms of your credit card terms and conditions. You may also avoid Overdraft Item and Insufficient Funds Item fees on checking accounts by establishing a BancorpSouth Equity Credit Line, which is a personal line of credit. In the event of an overdraft, the bank transfers the amount of the overdraft into your account and charges the amount as an advance on your Equity Credit Line, up to the limit of your credit line. An Overdraft Equity Credit Line fee will be charged to your checking account for each check or other transaction which is paid by Equity Credit Line Overdraft Protection. Ask your BancorpSouth customer service representative about Overdraft Protection. Also, ask a customer service representative for a copy of our brochure, “How to Avoid Paying Bank Fees.”

MasterMoney™

BancorpSouth MasterMoney is the convenient plastic card that looks like a credit card but works like a check, deducting your purchases from your checking account. MasterMoney is good for cash purchases anywhere MasterCard® is accepted. Plus, you get a receipt with every transaction so there is no problem keeping track of what you have spent. Monthly, all transactions are reported on your checking account statement along with any checks you have written. A MasterMoney card serves as your ATM card, so you only have one “checking account card” to carry with you.

MasterMoney fee .....NO CHARGE

There is a fee of \$1.50 per transaction when you use your MasterMoney card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a MasterMoney transaction made at its ATM.

24-Hour Banking

You may access your BancorpSouth checking account day and night at literally thousands of ATMs across the United States with our automated teller card. At BancorpSouth ATM locations you may make deposits as well as withdrawals, loan payments and transfers between accounts.

24-Hour Banking card fee .....\$1.00 per month

There is a fee of \$1.50 per transaction when you use your 24-Hour Banking card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a 24-Hour Banking card transaction made at its ATM.


Certificate of Deposit

BancorpSouth Certificates of Deposit offer competitive returns on investments that can be tailored to fit your exact needs. Early withdrawal penalties apply to all Certificates of Deposit and are fully detailed in the Certificate of Deposit Disclosure available at all BancorpSouth offices.

Minimum Opening Balance .....\$1,000.00

- OTHER IMPORTANT INFORMATION**
- The Daily Balance Method of paying interest uses the daily balance in calculating the interest on your account. This method applies a daily periodic rate to the principal in the account each day. When you deposit checks into any account at BancorpSouth, interest begins to accrue no later than the business day we receive credit for the item.
  - The Daily Ledger Balance reflects all deposits and withdrawals regardless of actual collection of funds.
  - On interest bearing checking accounts, federal regulations allow the bank to create checking and savings sub-accounts which exist only on the books of the bank and which allow the bank to make transfers at the close of each working day. This puts the bank in a more favorable position concerning reserve requirements, and ultimately allows us to maintain the most competitive rate we can pay on your interest bearing checking account. The activity of the sub-accounts will not be reflected on your bank statement and will not affect your account balance or the interest, fees and features of your interest bearing checking account.
  - Electronic debits such as Automated Teller Machine and MasterMoney™ debits along with InfoLine transfers are not included in your debit item count for calculating service charges.
  - All fees and charges are subject to applicable law.
  - If your account is made subject to garnishment, execution, levy or any similar legal process, or if your account is made subject to any legal proceeding in which the Bank is required to respond, appear or provide records, we may charge you for each such garnishment, execution levy or proceeding a fee of \$25.00. This fee is in addition to any costs and expenses, including attorney’s fees, to which we are entitled under your Account Terms and Conditions or applicable law.

# Account Information Statement

  
Effective Date: September 1, 2004



Get there from here.

As of September 1, 2004

Dear Customer:

Thank you for choosing BancorpSouth. We are dedicated to providing world-class financial personal service to our customers and the communities we serve.

This brochure is a disclosure of the fees and charges that apply to accounts at BancorpSouth. We think it is important for you to have a full understanding of these fees and charges.

We welcome your questions in person or by phone. The answers are as close as your nearest BancorpSouth office or by using InfoLine, 1-888-797-7711, our 24-hour account information line.

**Bold text** in the following indicates changes from the last edition of the brochure.

NON-INTEREST CHECKING ACCOUNTS

The minimum balance required to open any BancorpSouth non-interest bearing checking account is \$100.00.

**Crown Services**

Crown Services is BancorpSouth’s premium checking package, including many popular features such as unlimited checking, discounts on loans, accidental death and dismemberment insurance, and travel cash dividends:

Monthly membership fee for individuals .....\$8.50

Monthly membership fee for family coverage .....\$10.00

**Regular Checking**

**An \$800.00 minimum daily ledger balance avoids any monthly service charge. When the minimum daily ledger balance falls below \$800.00 during a statement cycle, the monthly service charge will be \$8.50.**

**Checking for People Over 65**

Service charges on checking .....NONE

Optional Benefits for People Over 65

Monthly membership for Crown Services for the Individual .....\$4.25

Monthly membership for Crown Services for Family coverage .....\$5.00

**Absolutely Free Checking for Students\***

Students love this account because there is no minimum balance requirement, no monthly service charge, and no per check charge ... it’s “Absolutely Free” through age 24. No annual charge for your 24-hour banking card.

**Value Check\***

This account is especially popular with young people out on their own who write only a few checks per month or customers with low activity and low balance.

Monthly maintenance fee .....\$4.00

First 15 checks or debits .....NO CHARGE

More than 15 checks or debits .....\$ .25 each

\*Accounts receive a monthly statement. Copies of checks and deposit slips remain on file at the bank. Copies may be requested with no charge for the first five (5) items. In excess of five per

**INTEREST BEARING CHECKING ACCOUNTS**

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum balance required to open BancorpSouth interest checking accounts varies by account type. See individual account descriptions for details.

**Heritage Checking**

Heritage Checking is BancorpSouth’s preferred services account for our friends who are 50 and over. Heritage Checking accounts earn interest at a competitive rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned daily on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Heritage Checking account before the interest is credited, you will not receive the accrued interest for that period. In addition to earning interest, Heritage Checking accounts include common carrier accidental death insurance as well as discounts and special savings.

Minimum opening balance .....\$100.00

Monthly Service Charge with a minimum daily ledger balance of: \$500.00 or more .....NONE

Below \$500.00 .....\$8.00

**Heritage Plus Checking**

Receive all of the features and benefits of Heritage Checking plus FREE special membership checks, \$10,000 Accidental Death Insurance, a Medical Emergency Data Card, hotel room rate savings up to 50%, discount pharmaceuticals through the Rx Advantage™ Drug Program, savings on eyewear with Coast-to-Coast Vision and other bonuses.

Minimum opening balance .....\$100.00

Monthly Service Charge .....\$5.00

**Checking+Plus: Personal & Household Checking**

Personal and household checking accounts earn interest at a competitive interest rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Checking+Plus account before the interest is credited, you will not receive the accrued interest for that period.

Minimum opening balance .....\$1,000.00

Monthly Service Charge with a balance of:

\$1,000.00 or more .....NONE

Below \$1,000.00 .....\$10.00

Per item charges:

First 40 checks or debits .....NONE

In excess of 40 checks or debits .....\$ .20 each

First 20 items deposited .....NONE

In excess of 20 items deposited .....\$ .08 each

**Premium Access Checking**

With Premium Access Checking, you earn a premium rate on your checking account balance of \$5,000.00 or more, plus you can write all the checks you like without incurring a service charge. You may open an account with a minimum balance of \$5,000.00 and earn interest each day your collected balance is \$5,000.00 or more. A competitive rate is determined solely by the Bank and is subject to change weekly. Interest is earned on the collected balance using the daily balance method and is credited and compounded monthly. **If you close your Premium Access Checking account before the interest is credited, you will receive the accrued interest for that period.**

Premium Access Checking fee .....NONE

if ledger balance does not fall below \$5,000.00

Should your ledger balance fall below \$5,000.00, a minimum balance fee of \$10.00 is charged for that statement cycle.

**SAVINGS ACCOUNTS**

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum balance required to open a BancorpSouth savings account varies by account type. See individual account descriptions for details.

**Premium Access Money Market Account**

Premium Access Money Market Account is a tiered rate money market account. The interest rate tiers are as follows:

Balances between \$2,500 and \$9,999

Balances between \$10,000 and \$49,999

Balances between \$50,000 and \$99,999

Balances \$100,000 and above

Your account earns a competitive rate of interest determined solely by the Bank and is subject to change weekly. Interest is **accrued** on the collected balance using the daily balance method. Should the daily collected balance fall below \$2,500.00, interest will not be paid. Interest is accrued on a daily basis and **is credited and** compounded monthly. If you close your Premium Access Money Market Account before the interest is credited, you will receive the interest through the date of closing. Minimum balance required to open a Premium Access Money Market Account is \$1,000.00. A total of six withdrawals may be made each month, of which three may be by check or debit to third parties. Monthly Service Charge with a minimum daily ledger balance of:

\$1,000.00 or more .....NONE

Below \$1,000.00 .....\$10.00

Excessive Withdrawal Fee (per withdrawal) .....\$10.00

**Personal Money Market Investment Account**

Personal Money Market Investment Accounts earn interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is accrued on the collected balance using the daily balance method. Should the daily collected balance fall

below \$1,000.00, the rate of interest will be the Checking+Plus rate. Interest is accrued on a daily basis and is credited and compounded monthly. If you close your Money Market Investment Account before the interest is credited, you will receive the interest through the date of closing. Minimum balance required to open a Money Market Investment Account is \$1,000.00. A total of six withdrawals may be made each month, of which three may be by check or debit to third parties. Monthly Service Charge with a minimum daily ledger balance of:

\$1,000.00 or more .....NONE

Below \$1,000.00 .....\$10.00

Excessive Withdrawal Fee (per withdrawal) .....\$10.00

**Classic Savings**

A competitive interest rate is paid on the collected balance using the daily balance method. The rate of interest is determined solely by the Bank and is subject to change on a weekly basis. Interest is compounded daily and credited semiannually. Deposits and withdrawals can be made at any time. If you close your account prior to the interest being credited, you will receive interest through the closing date. Minimum balance required to open a Classic Savings account is \$100.00.

Classic Savings Fees to which you may be subject:

There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle, excluding ATM withdrawals.

**Christmas Club**

Christmas Club accounts earn interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated on the daily ledger balance using the daily balance method. Interest is accrued daily and credited yearly in November when a check for the balance is issued to you. If you close your Christmas Club account before the interest is credited, you forfeit all accrued interest. If the principal balance of your Christmas Club account is \$250.00 or less on the day designated by the Bank for crediting interest to Christmas Club accounts, you forfeit all accrued interest. If you make a withdrawal from your Christmas Club account prior to the date in November when a check for the balance of the account is issued to you, you will be charged a fee of \$5.00 for each such withdrawal.

SERVICE FEES	
Check Printing Charges	Charges will vary based on check design
Official Checks.....	\$6.00
Each Overdraft (OD) Item	\$29.00
Each Insufficient (NSF) Funds Item	\$29.00
Each Stop Payment	\$29.00
Each Returned Deposit Item.....	\$4.00
Each Returned Check Redeposited	\$3.00
Each Returned Check Special Handling	\$6.00
Each Deposit Correction	\$3.00

# EXHIBIT 9



Each Stop Payment .....	\$30.00
Each Returned Deposit Item .....	\$4.00
Each Returned Check Redeposited .....	\$3.00
Each Returned Check Special Handling .....	\$6.00
Each Deposit Correction .....	\$3.00
Special Statement .....	\$5.00
Debit Card Replacement Fee .....	\$5.00
Research Fees:	
Research Per Hour .....	\$20.00
Photocopies (each) .....	\$1.00
Collection Item Fee .....	\$2.00 per item
plus \$ .20 per \$100.00 with a \$20.00 maximum	
Dormant Checking Account Charges	
An \$8.50 per month fee will be charged on dormant checking accounts in addition to regular applicable fees. "Dormant Accounts" are defined by applicable law.	
Dormant Saving Account Charges	
A savings account with a balance below \$100 will be charged an \$8.50 monthly fee if dormant in excess of 730 days.	
Wire Transfer Fees:	
Outgoing.....	\$15.00
Incoming.....	\$12.00
Foreign .....	\$50.00
Telephone Funds Transfers:	
Automated via InfoLine.....	NO CHARGE
Assisted by branch personnel .....	\$3.00
Overdraft Transfer Fee (per transfer) .....	\$5.00
Overdraft Equity Credit Line Fee (per transfer) .....	\$5.00
Safe Deposit Box Drilling Fee .....	\$40.00
Legal Processing (including levies and garnishments) .....	\$25.00

ABOUT OVERDRAFTS

An "overdraft" occurs any time a check or other transaction is presented for payment against an account and the available balance of the account is insufficient to pay the check or transaction. When an overdraft occurs, we may, at our discretion, return the check and refuse the transaction, or, alternatively, we may choose to pay the check or transaction, in which case a negative account balance will result. If we return the check and refuse the transaction, you will be charged an Insufficient Funds (NSF) Item fee for each returned check and refused transaction. If we pay the check or transaction, you will be charged an Overdraft (OD) Item fee for each check or transaction paid in overdraft.

Determining whether to pay a check or other transaction in overdraft is strictly discretionary with us. We are not required to pay any check or other transaction in overdraft, even if we have paid overdrafts many times previously and even if we have permitted an account to remain in an overdrawn status for an extended period. Also, if more than one check or other transaction is presented for payment against your account on the same banking day and the available balance is insufficient to pay them

all, we may pay any of them in any order we choose, even if the order we choose results in greater Overdraft Item or Insufficient Funds Item fees than if we had chosen to pay them in some other order. We may also choose to first pay checks or other transactions which are payable to BancorpSouth and our affiliates.

You may avoid Overdraft Item and Insufficient Funds Item fees on checking accounts through Overdraft Protection. Credit Card Overdraft Protection works by charging your BancorpSouth MasterCard or VISA credit card for cash advances in the amounts of checks or other transactions drawn against insufficient funds, with resulting deposits of the cash advance amounts into your account to cover such checks or other transactions, up to the credit limit of your credit card. Credit card fees, interest charges and cash advance charges will be assessed to your credit card account in accordance with the terms of your credit card terms and conditions. You may also avoid Overdraft Item and Insufficient Funds Item fees on checking accounts by establishing a BancorpSouth Equity Credit Line, which is a line of credit. In the event of an overdraft, the bank transfers the amount of the overdraft into your account and charges the amount as an advance on your Equity Credit Line, up to the limit of your credit line. **An Overdraft Equity Credit Line fee will be charged to your checking account in accordance with the terms of your equity credit line overdraft protection agreement.** Ask your BancorpSouth customer service representative about Overdraft Protection. Also, ask a customer service representative for a copy of our brochure, "How to Avoid Paying Bank Fees."

MasterMoney™

BancorpSouth MasterMoney is the convenient plastic card that looks like a credit card but works like a check, deducting your purchases from your checking account. MasterMoney is good for cash purchases anywhere MasterCard® is accepted. Plus, you get a receipt with every transaction so there is no problem keeping track of what you have spent. Monthly, all transactions are reported on your checking account statement along with any checks you have written. A MasterMoney card serves as your ATM card, so you only have one "checking account card" to carry with you.

MasterMoney fee .....NO CHARGE  
There is a fee of \$1.50 per transaction when you use your MasterMoney card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a MasterMoney transaction made at its ATM.

24-Hour Banking

You may access your BancorpSouth checking account day and night at literally thousands of ATMs across the United States with our automated teller card. At BancorpSouth ATM locations you may make deposits as well as withdrawals, loan payments and transfers between accounts.

24-Hour Banking card fee .....\$1.00 per month  
There is a fee of \$1.50 per transaction when you use your 24-

Hour Banking card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a 24-Hour Banking card transaction made at its ATM.

Certificate of Deposit

BancorpSouth Certificates of Deposit offer competitive returns on investments that can be tailored to fit your exact needs. Early withdrawal penalties apply to all Certificates of Deposit and are fully detailed in the Certificate of Deposit Disclosure available at all BancorpSouth offices.

Minimum opening deposit .....\$1,000.00

OTHER IMPORTANT INFORMATION

- The Daily Balance Method of paying interest uses the daily balance in calculating the interest on your account. This method applies a daily periodic rate to the principal in the account each day. When you deposit checks into any account at BancorpSouth, interest begins to accrue no later than the business day we receive credit for the item.
- The Daily Ledger Balance reflects all deposits and withdrawals regardless of actual collection of funds.
- On interest bearing checking accounts, federal regulations allow the bank to create checking and savings sub-accounts which exist only on the books of the bank and which allow the bank to make transfers at the close of each working day. This puts the bank in a more favorable position concerning reserve requirements, and ultimately allows us to maintain the most competitive rate we can pay on your interest bearing checking account. The activity of the sub-accounts will not be reflected on your bank statement and will not affect your account balance or the interest, fees and features of your interest bearing checking account.
- Electronic debits such as Automated Teller Machine and MasterMoney™ debits along with InfoLine transfers are not included in your debit item count for calculating service charges.
- All fees and charges are subject to applicable law.
- If your account is made subject to garnishment, execution, levy or any similar legal process, or if your account is made subject to any legal proceeding in which the Bank is required to respond, appear or provide records, we may charge you for each such garnishment, execution levy or proceeding a fee of \$25.00. This fee is in addition to any costs and expenses, including attorney's fees, to which we are entitled under your Account Terms and Conditions or applicable law.

Account Information Statement



Effective Date: February 1, 2005



Get there from here.

As of February 1, 2005



Dear Customer:

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We welcome your questions in person or by phone. The answers are as close as your nearest BancorpSouth office or by using InfoLine, 1-888-797-7711, our 24-hour account information line.

**Bold text** in the following indicates changes from the last edition of the brochure.

**NON-INTEREST CHECKING ACCOUNTS**

The minimum deposit required to open any BancorpSouth non-interest bearing checking account is \$100.00.

**Crown Services**

Crown Services is BancorpSouth’s premium checking package, including many popular features such as unlimited checking, discounts on loans, accidental death and dismemberment insurance, and travel cash dividends:

Monthly membership fee for individuals .....\$8.50

Monthly membership fee for family coverage .....\$10.00

**Regular Checking**

An \$800.00 minimum daily ledger balance avoids any monthly service charge. When the minimum daily ledger balance falls below \$800.00 during a statement cycle, the monthly service charge will be \$8.50.

**Free Checking\***

**BancorpSouth’s Free Checking account has no monthly maintenance fee, no per check charge, and no minimum monthly balance requirement.**

**Checking for People Over 65\***

Monthly service charges on checking .....NONE

Optional Benefits for People Over 65

Monthly membership for Crown Services for the Individual .....\$4.25

Monthly membership for Crown Services for Family coverage .....\$5.00

**Free Checking for Students\***

Students love this account because there is no minimum balance requirement, no monthly service charge, and no per check charge ... it’s Free through age 24. No annual charge for your 24-hour banking card.

**Value Check\***

This account is especially popular with young people out on their own who write only a few checks per month or customers with low activity and low balance.

Monthly maintenance fee .....\$4.00

First 15 checks or debits .....NO CHARGE

More than 15 checks or debits .....\$.25 each

\*Accounts receive a monthly statement. Copies of checks and deposit slips remain on file at the bank. Copies may be requested with no charge for the first five (5) items. In excess of five, per item copy charge is \$1.00.

**INTEREST BEARING CHECKING ACCOUNTS**

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum deposit required to open BancorpSouth interest checking accounts varies by account type. See individual account descriptions for details.

**Heritage Checking**

Heritage Checking is BancorpSouth’s preferred services account for our friends who are 50 and over. Heritage Checking accounts earn interest at a competitive rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned daily on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Heritage Checking account before the interest is credited, you will not receive the accrued interest for that period. In addition to earning interest, Heritage Checking accounts include common carrier accidental death insurance as well as discounts and special savings.

Minimum opening deposit .....\$100.00

Monthly Service Charge with a minimum daily ledger balance of: \$500.00 or more .....NONE

Below \$500.00 .....\$8.00

**Heritage Plus Checking**

Receive all of the features and benefits of Heritage Checking plus FREE special membership checks, \$10,000 Accidental Death Insurance, a Medical Emergency Data Card, hotel room rate savings up to 50%, discount pharmaceuticals through the Rx Advantage™ Drug Program, savings on eyewear with Coast-to-Coast Vision and other bonuses.

Minimum opening deposit .....\$100.00

Monthly Service Charge .....\$5.00

**Checking+Plus: Personal & Household Checking**

Personal and household checking accounts earn interest at a competitive interest rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Checking+Plus account before the interest is credited, you will not receive the accrued interest for that period.

Minimum opening deposit .....\$1,000.00

Monthly Service Charge with a balance of:

\$1,000.00 or more .....NONE

Below \$1,000.00 .....\$10.00

Per item charges:

First 40 checks or debits .....NONE

In excess of 40 checks or debits .....\$.20 each

First 20 items deposited .....NONE

In excess of 20 items deposited .....\$.08 each

**Premium Access Checking**

With Premium Access Checking, you earn a premium rate on your checking account deposit of \$5,000.00 or more, plus you can write all the checks you like without incurring a service charge. You may open an account with a minimum deposit of \$5,000.00 and earn interest each day your collected balance is \$5,000.00 or more. A competitive rate is determined solely by the Bank and is subject to change weekly. Interest is earned on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Premium Access Checking account before the interest is credited, you will receive the accrued interest for that period.

Premium Access Checking fee .....NONE

if ledger balance does not fall below \$5,000.00

Should your ledger balance fall below \$5,000.00, a minimum balance fee of \$10.00 is charged for that statement cycle.

**SAVINGS ACCOUNTS**

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum deposit required to open a BancorpSouth savings account varies by account type. See individual account descriptions for details.

**Premium Access Money Market Account**

Premium Access Money Market Account is a tiered rate money market account. The interest rate tiers are as follows:

Balances between \$2,500.00 and \$9,999.00

Balances between \$10,000.00 and \$49,999.00

Balances between \$50,000.00 and \$99,999.00

Balances \$100,000.00 and above

Your account earns a competitive rate of interest determined solely by the Bank and is subject to change weekly. Interest is accrued on the collected balance using the daily balance method. Should the daily collected balance fall below \$2,500.00, interest will not be paid. Interest is accrued on a daily basis and is credited and compounded monthly. If you close your Premium Access Money Market Account before the interest is credited, you will receive the interest through the date of closing. Minimum deposit required to open a Premium Access Money Market Account is \$1,000.00. A total of six withdrawals may be made each month, of which three may be by check or debit to third parties.

Monthly Service Charge with a minimum daily ledger balance of:

\$1,000.00 or more .....NONE

Below \$1,000.00 .....\$10.00

Excessive Withdrawal Fee (per withdrawal) .....\$10.00

**Personal Money Market Investment Account**

Personal Money Market Investment Accounts earn interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is accrued on the collected balance using the daily balance method. Should the daily collected balance fall below \$1,000.00, the rate of interest will be the Checking+Plus rate. Interest is accrued on a daily basis and is credited and compounded monthly. If you close your Money Market Investment Account before the interest is credited, you will receive the interest through the date of closing. Minimum deposit required to open a Money Market Investment Account is \$1,000.00. A total of six withdrawals may be made each month, of which three may be by check or debit to third parties.

Monthly Service Charge with a minimum daily ledger balance of:

\$1,000.00 or more .....NONE

Below \$1,000.00 .....\$10.00

Excessive Withdrawal Fee (per withdrawal) .....\$10.00

**Classic Savings**

A competitive interest rate is paid on the collected balance using the daily balance method. The rate of interest is determined solely by the Bank and is subject to change on a weekly basis. Interest is compounded daily and credited semiannually. Deposits and withdrawals can be made at any time. If you close your account prior to the interest being credited, you will receive interest through the closing date. Minimum deposit required to open a Classic Savings account is \$100.00.

Classic Savings Fees to which you may be subject:

There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle, excluding ATM withdrawals.

**Christmas Club**

Christmas Club accounts earn interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated on the daily ledger balance using the daily balance method. Interest is accrued daily and credited yearly in November when a check for the balance is issued to you. If you close your Christmas Club account before the interest is credited, you forfeit all accrued interest. If the principal balance of your Christmas Club account is \$250.00 or less on the day designated by the Bank for crediting interest to Christmas Club accounts, you forfeit all accrued interest. If you make a withdrawal from your Christmas Club account prior to the date in November when a check for the balance of the account is issued to you, you will be charged a fee of \$5.00 for each such withdrawal.

SERVICE FEES	
Check Printing Charges	Charges will vary based on check design
Official Checks.....	\$6.00
Each Overdraft (OD) Item	<b>\$30.00</b>
Each Insufficient (NSF) Funds Item	<b>\$30.00</b>

Continued on Back

# EXHIBIT 10

ABOUT OVERDRAFTS

An “overdraft” occurs any time a check or other transaction is presented for payment against an account and the available balance of the account is insufficient to pay the check or transaction. When an overdraft occurs, we may, at our discretion, return the check and refuse the transaction, or, alternatively, we may choose to pay the check or transaction, in which case a negative account balance will result. If we return the check and refuse the transaction, you will be charged an Insufficient Funds (NSF) Item fee for each returned check and refused transaction. If we pay the check or transaction, you will be charged an Overdraft (OD) Item fee for each check or transaction paid in overdraft.

Determining whether to pay a check or other transaction in overdraft is strictly discretionary with us. We are not required to pay any check or other transaction in overdraft, even if we have paid overdrafts many times previously and even if we have permitted an account to remain in an overdrawn status for an extended period. Also, if more than one check or other transaction is presented for payment against your account on the same banking day and the available balance is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater Overdraft Item or Insufficient Funds Item fees than if we had chosen to pay them in some other order. We may also choose to first pay checks or other transactions which are payable to BancorpSouth and our affiliates.

You may avoid Overdraft Item and Insufficient Funds Item fees on checking accounts through Overdraft Protection. Credit Card Overdraft Protection works by charging your BancorpSouth MasterCard or VISA credit card for cash advances in the amounts of checks or other transactions drawn against insufficient funds, with resulting deposits of the cash advance amounts into your account to cover such checks or other transactions, up to the credit limit of your credit card. An Overdraft Protection credit card transfer fee of 3% of the transfer amount, minimum \$5.00 and maximum \$30.00, will be charged for each transfer. Credit card fees, interest charges and cash advance charges will be assessed to your credit card account in accordance with your credit card terms and conditions. You may also avoid Overdraft Item and Insufficient Funds Item fees on checking accounts by establishing a BancorpSouth Equity Credit Line, which is a line of credit. In the event of an overdraft, the bank transfers the amount of the overdraft into your account and charges the amount as an advance on your Equity Credit Line, up to the limit of your credit line. An Overdraft Protection Equity Credit Line transfer fee of \$5.00 will be charged for each transfer amount unless secured by Real Estate. Equity Credit Line Overdraft Protection may not be available in Texas. Standard interest charges apply to all transfers from the date posted to your account. Ask your BancorpSouth customer service representative about Overdraft Protection. Also, ask a customer service representative for a copy of our brochure “How to Avoid Paying Bank Fees.”

MasterMoney™

BancorpSouth MasterMoney is the convenient plastic card that looks like a credit card but works like a check, deducting your purchases from your checking account. MasterMoney is good for cash purchases anywhere MasterCard® is accepted. Plus, you get a receipt with every transaction so there is no problem keeping track of what you have spent. Monthly, all

transactions are reported on your checking account statement along with any checks you have written. A MasterMoney card serves as your ATM card, so you only have one “checking account card” to carry with you.

MasterMoney fee .....NO CHARGE  
There is a fee of \$1.50 per transaction when you use your MasterMoney card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a MasterMoney transaction made at its ATM.  
There is a fee of one percent (1%) of the transaction amount if you use your MasterMoney card for a transaction in a foreign country. If your transaction in a foreign country is in a currency other than U.S. Dollars, the rate used for converting the transaction to U.S. Dollars will be the wholesale market rate or any government-mandated rate in effect on the date that MasterCard processes the transaction or any other rate or method prescribed by the then-current MasterCard regulations. Currency conversion may occur on a date other than the date of the transaction, and the conversion rate may be affected accordingly.

Internet Banking and Bill Pay

HomeSite Internet Banking is free with any personal BancorpSouth Checking or Money Market account. HomeSite Internet Banking allows you to access balance inquiries, view your statement information and your canceled checks (even if your statement doesn't have check images), transfer between accounts, and make payments on your BancorpSouth line of credit or loan.

Free Bill Pay is also available with any personal BancorpSouth checking account when you sign up for HomeSite Internet Banking if you have a combination of either E-mail Statement and Debit Card, or Direct Deposit and Debit Card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in HomeSite Internet Banking, and then sign up for Bill Pay through HomeSite Internet Banking. (The Free Bill Pay option listed above is standard for all customers who register for Bill Pay after August 21, 2006. If you currently have Bill Pay and would like to change your billing method, please ask your local customer service representative or call our InfoLine at 1-888-797-7711.)

24-Hour Banking

You may access your BancorpSouth checking account day and night at literally thousands of ATMs across the United States with our automated teller card. At BancorpSouth ATM locations you may make deposits as well as withdrawals, loan payments and transfers between accounts.  
24-Hour Banking card fee .....\$1.00 per month  
There is a fee of \$1.50 per transaction when you use your 24-Hour Banking card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a 24-Hour Banking card transaction made at its ATM.

Certificate of Deposit

BancorpSouth Certificates of Deposit offer competitive returns on investments that can be tailored to fit your exact needs. Early withdrawal

penalties apply to all Certificates of Deposit and are fully detailed in the Certificate of Deposit Disclosure available at all BancorpSouth offices.  
Minimum opening deposit .....\$1,000.00  
Plus Package  
The Plus Package is a package of benefits and savings which may be added to any BancorpSouth personal checking account. A fee of \$4.50 for individuals less than 60 years of age or \$3.50 for individuals 60 and better applies and will be deducted from your BancorpSouth personal checking account on a monthly basis. If you have previously enrolled in the program and are being charged a fee of \$4.50 per month, please notify a BancorpSouth representative upon attaining the age of 60, and we will gladly adjust your monthly fee to the appropriate rate.

OTHER IMPORTANT INFORMATION

- The Daily Balance Method of paying interest uses the daily balance in calculating the interest on your account. This method applies a daily periodic rate to the principal in the account each day. When you deposit checks into any account at BancorpSouth, interest begins to accrue no later than the business day we receive credit for the item.
- The Daily Ledger Balance reflects all deposits and withdrawals regardless of actual collection of funds.
- On checking accounts, federal regulations allow the bank to create transaction and savings sub-accounts which exist only on the books of the bank and which allow the bank to make transfers at the close of each working day. This puts the bank in a more favorable position concerning reserve requirements, and ultimately allows us to maintain the most competitive pricing on your checking account. The activity of the sub-accounts will not be reflected on your bank statement and will not affect your account balance or the interest, fees and features of your checking account.
- Electronic debits such as Automated Teller Machine and MasterMoney™ debits along with InfoLine transfers are not included in your debit item count for calculating service charges.
- All fees and charges are subject to applicable law.
- If your account is made subject to garnishment, execution, levy or any similar legal process, or if your account is made subject to any legal proceeding in which the Bank is required to respond, appear or provide records, we may charge you for each such garnishment, execution, levy or proceeding a fee of up to \$125.00. This fee is in addition to any cost and expenses, including reasonable attorney's fees, which we incur in connection with any of the foregoing.

Account Information Statement

Effective Date: February 1, 2007



As of February 1, 2007

BRC004T – 11/06



Dear Customer:

Thank you for choosing BancorpSouth. We are dedicated to providing world-class financial personal service to our customers and the communities we serve.

This brochure is a disclosure of the fees and charges that apply to accounts at BancorpSouth. We think it is important for you to have a full understanding of these fees and charges.

We welcome your questions in person or by phone. The answers are as close as your nearest BancorpSouth office or by using InfoLine, 1-888-797-7711, our 24-hour account information line.

**Bold text** in the following indicates changes from the last edition of the brochure.

**NON-INTEREST CHECKING ACCOUNTS**

The minimum deposit required to open any BancorpSouth non-interest bearing checking account is \$50.00.

**Regular Checking**

An \$800.00 minimum daily ledger balance avoids any monthly service charge. When the minimum daily ledger balance falls below \$800.00 during a statement cycle, the monthly service charge will be \$8.50.

**BancSmart Free Checking**

The BancSmart Free Checking account has no monthly maintenance fee, no per check charge and no minimum monthly balance. Combined with a savings account, free HomeSite Internet Banking, e-mail statements, combined statements and other services, BancSmart Free Checking is a complete bundle of products positioned to help you start your relationship with BancorpSouth. To receive Bill Pay free of charge, you must have a combination of either e-mail statement and debit card or direct deposit and debit card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in HomeSite Internet Banking and then sign up for Bill Pay. It is not required that you have HomeSite or Bill Pay to receive BancSmart Free Checking.

**Free Checking for Students\***

Students love this account because there is no minimum balance requirement, no monthly service charge, and no per check charge ... it’s “Free” through age 24. No annual charge for your 24-hour banking card. \*Accounts receive a monthly statement. Checks and deposit slips remain on file at the bank. Copies may be requested with no charge for the first five (5) items. In excess of five, per item copy charge is \$1.00.

**INTEREST BEARING CHECKING ACCOUNTS**

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum deposit required to open BancorpSouth interest checking accounts varies by account type. See individual account descriptions for details.

**Heritage Checking**

Heritage Checking is BancorpSouth’s preferred services account for our friends who are 50 and over. Heritage Checking accounts earn interest at a competitive rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned daily on the collected balance using the daily balance method and is credited and compounded monthly. If

you close your Heritage Checking account before the interest is credited, you will not receive the accrued interest for that period. In addition to earning interest, Heritage Checking accounts include common carrier accidental death insurance as well as discounts and special savings.

Minimum opening deposit .....	\$100.00
Monthly Service Charge with a minimum daily ledger balance of:	
\$500.00 or more .....	NONE
Below \$500.00 .....	\$8.00

**Interest Plus Checking**

The Interest Plus Checking account is a tiered-rate checking account. The interest rate tiers are as follows:

Balances between \$0-\$4,999
Balances between \$5,000-\$9,999
Balances between \$10,000-\$24,999
Balances between \$25,000-\$49,999
Balances between \$50,000-\$99,999
Balances between \$100,000 and above

Your account has unlimited transactions at no extra cost and earns interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time, and is not available for early withdrawal.

Minimum opening deposit .....	\$1,000.00
Monthly service charge with a balance of:	
\$1,000.00 or more .....	NONE
Below \$1,000.00 .....	\$10.00

Monthly statements are itemized and include imaged checks.

**SAVINGS ACCOUNTS**

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. The minimum deposit required to open a BancorpSouth savings account varies by account type. See individual account descriptions for details.

**Money Market Select**

The Money Market Select account is a tiered-rate money market account. The interest rate-tiers are as follows:

Balances between \$0-\$9,999
Balances between \$10,000-\$24,999
Balances between \$25,000-\$49,999
Balances between \$50,000-\$99,999
Balances between \$100,000-\$149,999
Balances between \$150,000-\$499,999
Balances between \$500,000 and above

The Money Market Select account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals.

Minimum opening deposit .....	\$1,000.00
Minimum balance .....	\$10,000.00
Monthly service charge with a balance of:	
\$10,000.00 or more .....	NONE
Below \$10,000.00 .....	\$10.00

There will be a \$10.00 charge for each withdrawal in excess of six per month, excluding ATM withdrawals and over-the-counter transactions. Monthly statements are itemized and include imaged checks. A BancorpSouth Checking account is required to open this account.

**Personal Money Market**

The Personal Money Market account is a tiered rate money market account. The interest rate tiers are as follows:

Balances between \$0-\$2,499
Balances between \$2,500-\$4,999
Balances between \$5,000 and above

The Personal Money Market account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals.

Minimum opening deposit .....	\$1,000.00
Monthly service charge with a balance of:	
\$1,000.00 or more .....	NONE
Below \$1,000.00 .....	\$10.00

There will be a \$10.00 charge for each withdrawal in excess of six per month, excluding ATM withdrawals and over-the-counter transactions. Monthly statements are itemized and include imaged checks.

**Classic Savings**

A competitive interest rate is paid on the collected balance using the daily balance method. The rate of interest is determined solely by the Bank and is subject to change on a weekly basis. Interest is compounded daily and credited semiannually. Deposits and withdrawals can be made at any time. If you close your account prior to the interest being credited, you will receive interest through the closing date. Minimum deposit required to open a Classic Savings account is \$100.00. Only a \$25.00 opening deposit is required for children 15 and under to open a “Savings Bug” (classic savings) account. All other account details apply.

**Select Savings Account**

The Select Savings account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on semiannual compound and credited semiannually. Accrued interest is available for early closing withdrawals. A BancorpSouth checking account is required to open this account. This account is not available for businesses.

Minimum opening deposit .....	\$1,000.00
Semiannual service charge with a balance of:	
\$1,000.00 or more .....	NONE
Below \$1,000.00 .....	\$15.00

Additional information and fees for Classic and Select Savings Accounts:

Additional “Memo” statements will be produced if the account has an EFT transaction during the month. This is a snapshot statement and will reflect all activity since the last scheduled semiannual statement. There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle, excluding ATM withdrawals or over-the-counter transactions. Additional deposits can be made at any time.

**Christmas Club**

Christmas Club accounts earn interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated on the daily ledger balance using the daily balance method. Interest is accrued daily and credited yearly in November when a check for the balance is issued to you. If you close your Christmas Club account before the interest is credited, you forfeit all accrued interest. If the principal balance of your Christmas Club account is \$250.00 or less on the day designated by the Bank for crediting interest to Christmas Club accounts, you forfeit all accrued interest. If you make a withdrawal from your Christmas Club account prior to the date in November when a check for the balance of the account is issued to you, you will be charged a fee of \$5.00 for each such withdrawal.

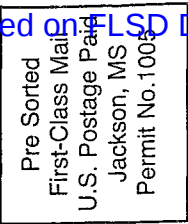
SERVICE FEES	
Check Printing Charges .....	Charges will vary based on check design
Official Checks .....	\$6.00
Each Overdraft (OD) Item .....	\$32.00
Each Insufficient (NSF) Funds Item .....	\$32.00
Each Stop Payment .....	\$32.00
Each Returned Deposit Item .....	\$5.00
Each Returned Check Redeposited .....	\$3.00
Each Returned Check Special Handling .....	\$7.50
Each Deposit Correction .....	\$3.00
Special Statement .....	\$7.50
Debit Card Replacement Fee .....	\$5.00
Research Fees:	
Research Per Hour .....	\$20.00
Photocopies (each) .....	\$1.00
Collection Item Fee .....	\$2.00 per item plus \$ .20 per \$100.00 with a \$20.00 maximum
Dormant Checking Account Charges	
An \$8.50 per month fee will be charged on dormant checking accounts in addition to regular applicable fees. “Dormant Accounts” are defined by applicable law.	
Dormant Saving Account Charges	
A savings account with a balance below \$100 will be charged an \$8.50 monthly fee if dormant in excess of 730 days.	
Account Closure Fee .....	\$25.00 (for checking accounts closed within 90 days of opening.)
Wire Transfer Fees:	
Outgoing .....	\$15.00
Incoming .....	\$12.00
Foreign .....	\$50.00
Telephone Funds Transfers:	
Automated via InfoLine .....	NO CHARGE
Assisted by branch personnel .....	\$3.00
Overdraft Protection Equity Credit Line Transfer Fee (Unless secured by Real Estate) .....	\$5.00
Overdraft Protection Credit Card Transfer Fee .....	3% of the transfer amount, minimum \$5.00 and maximum \$30.00
Safe Deposit Box Drilling Fee .....	\$40.00
Legal Processing (including levies and garnishments) .....	Up to \$125.00 (see other Important Information Section)
Continued on Back	

# EXHIBIT 11

**Plus Package**  
The Plus Package is a package of benefits and savings which may be added to any BancorpSouth personal checking account. A fee of \$4.50 for individuals less than 60 years of age or \$3.50 for individuals 60 and better applies and will be deducted from your BancorpSouth personal checking account on a monthly basis. If you have previously enrolled in the program and are being charged a fee of \$4.50 per month, please notify a BancorpSouth representative upon attaining the age of 60, and we will gladly adjust your monthly fee to the appropriate rate.

**OTHER IMPORTANT INFORMATION**

- The Daily Balance Method of paying interest uses the daily balance in calculating the interest on your account. This method applies a daily periodic rate to the principal in the account each day. When you deposit checks into any account at BancorpSouth, interest begins to accrue no later than the business day we receive credit for the item.
- The Daily Ledger Balance reflects all deposits and withdrawals regardless of actual collection of funds.
- On checking accounts, federal regulations allow the bank to create transaction and savings sub-accounts which exist only on the books of the bank and which allow the bank to make transfers at the close of each working day. This puts the bank in a more favorable position concerning reserve requirements and ultimately allows us to maintain the most competitive pricing on your checking account. The activity of the sub-accounts will not be reflected on your bank statement and will not affect your account balance or the interest, fees and features of your checking account.
- Electronic debits such as Automated Teller Machine and MasterCard® Debit Card along with InfoLine transfers are not included in your debit item count for calculating service charges.
- All fees and charges are subject to applicable law.
- If your account is made subject to garnishment, execution, levy or any similar legal process, or if your account is made subject to any legal proceeding in which the Bank is required to respond, appear or provide records, we may charge you for each such garnishment, execution, levy or proceeding a fee of up to \$125.00. This fee is in addition to any cost and expenses, including reasonable attorney's fees, which we incur in connection with any of the foregoing.
- You may not use your account in connection with any business of placing, receiving or otherwise knowingly transmitting bets or wagers by any means which involves the use, at least in part, of the internet, or for any other transaction which is prohibited by Federal Reserve Regulation GG.



Account  
Information  
Statement



Effective Date: May 10, 2010



period continues. There is no limit to the amount of Overdraft Item, Insufficient Funds Item or Continuous Overdraft Fees (collectively, “Overdraft-related Fees”) which you may incur.

Order of Payment

If more than one Transaction (whether check, ACH, ATM, debit card, bank fee, overdraft-related fee or any other transaction) is presented for payment against your account on the same banking day and the available balance is insufficient to pay them all, we may decide to pay any or all of them in any order we choose. When we pay Transactions, we generally choose to pay the largest Transaction first and the smallest Transaction last. Our choosing this order of payment for Transactions may result in greater Overdraft-related Fees than if we had chosen to pay them in some other order or had chosen not to pay them. We may also choose to first pay Transactions which are payable to BancorpSouth and our affiliates.

Avoiding Overdraft-related Fees

The best way to avoid Overdraft-related Fees is to manage your account so that you do not overdraw it. Otherwise, you may avoid Overdraft-related Fees through one of the Overdraft Protection products offered by BancorpSouth. Credit Card Overdraft Protection works by charging your BancorpSouth MasterCard® or VISA® credit card for cash advances in the amounts of Transactions drawn against insufficient funds, with resulting deposits of the cash advance amounts into your account to cover such Transactions, up to the available cash advance limit of your credit card. Credit card fees, interest charges, and cash advance charges will be assessed to your credit card account in accordance with your credit card terms and conditions. You may also avoid Overdraft-related Fees by establishing a BancorpSouth Equity Credit Line, which is a line of credit. This form of Overdraft Protection works by charging your Equity Credit Line in the amounts of Transactions drawn against insufficient funds, with resulting deposits of these amounts into your account to cover such Transactions, up to the available credit limit of your Equity Credit Line. An Overdraft Equity Credit Line fee and interest charges will be charged to your Equity Credit Line in accordance with the terms of your Equity Credit Line agreement. You may also avoid Overdraft-related Fees by linking your account to another checking or savings account you have with BancorpSouth. This form of Overdraft Protection works by debiting from your other account the amounts of Transactions drawn against insufficient funds, with resulting deposits of these amounts into your account to cover such Transactions, up to the available balance of your other account. A transfer fee will be charged. It is still possible for your account to become overdrawn and to incur Overdraft-related Fees even if you use an Overdraft Protection product, such as when your credit card or Equity Credit Line reaches its applicable limit or the available balance of your linked account is depleted and you continue to make Transactions on your account. Call a BancorpSouth customer service representative at 1-888-797-7711 to ask about our Overdraft Protection products. Also, ask a customer service representative for a copy of our flier, “How to Avoid Paying Bank Fees.”

MasterCard® Debit Card

BancorpSouth MasterCard® Debit Card is the convenient plastic card that looks like a credit card but works like a check, deducting your purchases from your checking account. MasterCard® Debit Card is good

for cash purchases anywhere debit MasterCard® is accepted. Plus, you get a receipt with every transaction so there is no problem keeping track of what you have spent. Monthly, all transactions are reported on your checking account statement along with any checks you have written. A MasterCard® Debit Card serves as your ATM card, so you only have one “checking account card” to carry with you.

MasterCard® Debit Card Fee .....NO CHARGE  
There is a fee of \$1.50 per transaction when you use your MasterCard® Debit Card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a MasterCard® Debit Card transaction made at its ATM. There is a fee of one percent (1%) of the transaction amount if you use your MasterCard® Debit Card for a transaction in a foreign country. If your transaction in a foreign country is in a currency other than U.S. dollars, the rate used for converting the transaction to U.S. dollars will be the wholesale market rate or any government-mandated rate in effect on the date that MasterCard processes the transaction or any other rate or method prescribed by the then-current MasterCard regulations. Currency conversion may occur on a date other than the date of the transaction, and the conversion rate may be affected accordingly.

Internet Banking and Bill Pay

Internet Banking is free with any personal BancorpSouth checking or Money Market account. Internet Banking allows you to access balance inquiries, view your statement information and your canceled checks (even if your statement doesn't have check images), transfer between accounts, and make payments on your BancorpSouth line of credit or loan.

Free Bill Pay is also available with any personal BancorpSouth checking account when you sign up for Internet Banking if you have a combination of either online statement and debit card or direct deposit and debit card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in Internet Banking, and then sign up for Bill Pay through Internet Banking. (The Free Bill Pay option listed above is standard for all customers who register for Bill Pay after August 21, 2006. If you currently have Bill Pay and would like to change your billing method, please ask your local customer service representative or call our InfoLine at 1-888-797-7711.)

24-Hour Banking

You may access your BancorpSouth checking account day and night at literally thousands of ATMs across the United States with our automated teller card. At BancorpSouth ATM locations you may make deposits as well as withdrawals, loan payments and transfers between accounts.

24-Hour Banking Card Fee .....\$1.00 per month  
There is a fee of \$1.50 per transaction when you use your 24-Hour Banking card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a 24-Hour Banking card transaction made at its ATM.

Certificate of Deposit

BancorpSouth Certificates of Deposit offer competitive returns on investments that can be tailored to fit your exact needs. Early withdrawal penalties apply to all Certificates of Deposit.  
Minimum opening deposit.....\$1,000.00



This disclosure of fees and charges applies to accounts at

BancorpSouth. We think it is important for you to have a full understanding of these fees and charges.

We welcome your questions in person or by phone. The answers are as close as your nearest BancorpSouth office or by using InfoLine, 1-888-797-7711, our 24-hour account information line.

Bold text in the following indicates changes from the last edition of the Account Information Statement.

NON-INTEREST CHECKING ACCOUNTS

The minimum deposit required to open any BancorpSouth non-interest bearing checking account is \$50.00.

Regular Checking

An \$800.00 minimum daily ledger balance avoids any monthly service charge. When the minimum daily ledger balance falls below \$800.00 during a statement cycle, the monthly service charge will be \$8.50.

BancSmart Free Checking

The BancSmart Free Checking account has no monthly maintenance fee, no per check charge and no minimum monthly balance. Combined with a savings account, free Internet Banking, online statements, combined statements and other services, BancSmart Free Checking is a complete bundle of products positioned to help you start your relationship with BancorpSouth. To receive Bill Pay free of charge, you must have a combination of either online statement and debit card or direct deposit and debit card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in Internet Banking and then sign up for Bill Pay. It is not required that you have Internet Banking or Bill Pay to receive BancSmart Free Checking.

Free Checking for Students\*

Students love this account because there is no minimum balance requirement, no monthly service charge, and no per check charge ... it's "Free" through age 24.

Second Chance Checking\*

Second Chance Checking is a special checking account for those individuals who may not have a perfect check-writing history with ChexSystems. (If you've ever had a checking account that was overdrawn when it was closed or have written bad checks in the past, your name may appear on the national ChexSystems list used by banks to approve individuals for checking accounts.) BancorpSouth doesn't approve everyone for a Second Chance Checking account, only those individuals that don't have a significant ChexSystems history.

Second Chance Checking helps you to build your good check writing history and work toward a standard BancorpSouth checking account - many without a monthly fee. If your account is in good standing after one year (no overdrafts or bad checks), you may request a standard BancorpSouth checking account.

Second Chance Checking gives you unlimited check-writing privileges with a standard monthly service charge and is subject to BancorpSouth's standard deposit policies and fees and may be closed anytime for any reason of delinquency (bad check writing, overdrafts, etc.) or fraud.

Monthly service charge regardless of balance .....\$6.99

\*Accounts receive a monthly statement. Check images remain on file

at the bank. Copies may be requested with no charge for the first five (5) items. In excess of five, per item copy charge is \$1.00.

INTEREST BEARING CHECKING ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum deposit required to open BancorpSouth interest checking accounts varies by account type. See individual account descriptions for details.

Performance Checking

Performance Checking is our special rate bonus checking account which earns a Bonus Rate on your balance from \$0-\$30,000 and special ATM benefits when you meet each of the following 4 requirements during your statement period on your Performance Checking account: 1. Have at least 1 ACH debit or credit; 2. Have at least 12 debit card purchase transactions; 3. Be enrolled in online statement; 4. Be enrolled in Internet Banking.

If you meet all 4 of the requirements during a statement period, then your Performance Checking account balance from \$0 to \$30,000 will earn a Bonus Rate Annual Percentage Yield (APY) and that portion of your Performance Checking account balance in excess of \$30,000 will earn a Standard Rate APY. Additionally, if you meet all 4 of the requirements at all times during a statement period, then at the end of each statement period, for the first 5 ATM transactions you make at a non-BancorpSouth ATM during that period, we will refund the \$1.50 non-BancorpSouth ATM fee and will credit your account an additional \$2.00 against charges imposed by the owner of the non-BancorpSouth ATM (a total of \$3.50 in refunds and credits for the first 5 such transactions during the statement period). ATM fee refunds and credits will never exceed \$17.50 in any statement period. If you do not meet all 4 of these requirements at all times during the statement period, then you will earn the Standard Rate on all balances. Personal accounts only. Rates are subject to change at the bank's discretion without notice. Fees may reduce earnings.

Minimum opening deposit .....\$50.00  
Unlimited Deposits and Withdrawals  
No minimum balance or monthly service charge

Heritage Checking

Heritage Checking is BancorpSouth's preferred services account for our friends who are 50 and over. Heritage Checking accounts earn interest at a competitive rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned daily on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Heritage Checking account before the interest is credited, you will not receive the accrued interest for that period. In addition to earning interest, Heritage Checking accounts include common carrier accidental death insurance as well as discounts and special savings.

Minimum opening deposit .....\$50.00  
Monthly Service Charge with a minimum daily ledger balance of:  
\$500.00 or more .....NONE  
Below \$500.00 .....\$8.00

Interest Plus Checking

The Interest Plus Checking account is a tiered-rate checking account. The interest rate tiers are as follows:  
Balances between \$0-\$4,999  
Balances between \$5,000-\$9,999



Balances between \$10,000-\$24,999	
Balances between \$25,000-\$49,999	
Balances between \$50,000-\$99,999	
Balances \$100,000 and above	
Your account has unlimited transactions at no extra cost and earns interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time and is not available for early withdrawal.	
Minimum opening deposit	\$1,000.00
Monthly service charge with a balance of:	
\$1,000.00 or more	NONE
Below \$1,000.00	\$10.00
Monthly statements are itemized and include imaged checks.	

SAVINGS ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. The minimum deposit required to open a BancorpSouth savings account varies by account type. See individual account descriptions for details.

Money Market Select

The Money Market Select account is a tiered-rate money market account. The interest rate tiers are as follows:	
Balances between \$0-\$9,999	
Balances between \$10,000-\$24,999	
Balances between \$25,000-\$49,999	
Balances between \$50,000-\$99,999	
Balances between \$100,000-\$149,999	
Balances between \$150,000-\$499,999	
Balances \$500,000 and above	

The Money Market Select account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals.

Minimum opening deposit	\$1,000.00
Minimum balance	\$10,000.00
Monthly service charge with a balance of:	
\$10,000.00 or more	NONE
Below \$10,000.00	\$10.00
There will be a \$10.00 charge for each withdrawal in excess of six per month. Monthly statements are itemized and include imaged checks. A BancorpSouth checking account is required to open this account.	

Personal Money Market

The Personal Money Market account is a tiered-rate money market account. The interest rate tiers are as follows:	
Balances between \$0-\$2,499	
Balances between \$2,500-\$4,999	
Balances \$5,000 and above	
The Personal Money Market account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals.	
Minimum opening deposit	\$1,000.00
Monthly service charge with a balance of:	
\$1,000.00 or more	NONE

Below \$1,000.00	\$10.00
There will be a \$10.00 charge for each withdrawal in excess of six per month. Monthly statements are itemized and include imaged checks.	

Classic Savings

Interest is paid on the collected balance using the daily balance method. The rate of interest is determined solely by the Bank and is subject to change on a weekly basis. Interest is compounded daily and credited semiannually. Deposits and withdrawals can be made at any time. If you close your account prior to the interest being credited, you will receive interest through the closing date. Minimum deposit required to open a Classic Savings account is \$50.00. Only a \$25.00 opening deposit is required for children 15 and under to open a "Savings Bug" (Classic Savings) account. All other account details apply. There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle.

Select Savings Account

The Select Savings account earns interest at a rate determined solely by the Bank and is subject to change. Interest is calculated based on semi-annual compound and credited semiannually. Accrued interest is available for early closing withdrawals. A BancorpSouth checking account is required to open this account. This account is not available for businesses.	
Minimum opening deposit	\$1,000.00
Semiannual service charge with a balance of:	
\$1,000.00 or more	NONE
Below \$1,000.00	\$15.00

Additional information and fees for Classic and Select Savings Accounts:  
Additional "Memo" statements will be produced if the account has an EFT transaction during the month. This is a snapshot statement and will reflect all activity since the last scheduled semiannual statement. There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle.

Performance Savings

Performance Savings is our special rate bonus savings account which earns a Bonus Rate on your entire balance when you meet each of the following requirements during your interest cycle on your Performance Savings account:	
1. Transfer at least \$50 into your Performance Savings account each interest cycle electronically via ACH or Internet Banking Transfer.	
2. Combine your Performance Savings statement with your BancorpSouth Checking account statement (you will no longer receive a separate statement for your Performance Savings account).	
If you meet both the requirements above during your statement period, your entire balance for that interest cycle will earn the Bonus Rate Annual Percentage Yield (APY). Performance Savings not only pays you a Bonus Rate, but also helps you save with the \$50 per interest cycle transfer requirement. A Performance Checking account is required to open as part of our "Performance Banking" package of services. Interest is paid monthly on the collected balance in the account using the daily balance method of interest calculation. Rates are subject to change at the bank's discretion without notice. Fees may reduce earnings.	
Minimum opening deposit	\$50.00
Minimum monthly balance	\$50.00
Monthly service charge if balance falls below minimum	\$2.50

There will be a \$5.00 charge for each withdrawal in excess of six during the monthly interest cycle.

Christmas Club

Christmas Club accounts earn interest at a rate determined solely by the Bank and is subject to change weekly. Interest is calculated on the daily ledger balance using the daily balance method. Interest is accrued daily and credited yearly in November when a check for the balance is issued to you. If you close your Christmas Club account before the interest is credited, you forfeit all accrued interest. If the principal balance of your Christmas Club account is \$250.00 or less on the day designated by the Bank for crediting interest to Christmas Club accounts, you forfeit all accrued interest. If you make a withdrawal from your Christmas Club account prior to the date in November when a check for the balance of the account is issued to you, you will be charged a fee of \$5.00 for each such withdrawal.

SERVICE FEES

Check Printing Charges	Charges will vary based on check design
Official Checks	\$6.00
Each Overdraft (OD) Item	\$35.00
Each Insufficient (NSF) Funds Item	\$35.00
Continuous Overdraft Fee	\$25.00
for each period of ten (10) days or longer that your account is continuously in overdraft, charged on the tenth (10th) day	
Overdraft Equity Credit Line Fee	\$7.50 per transfer
Overdraft Transfer Fee from Credit Card	See your credit card agreement
Overdraft Transfer Fee from Eligible Deposit Account	\$7.50 per transfer
Each Stop Payment	\$35.00
Each ACH Stop Payment of Future Items	\$35.00
and then a \$5.00 monthly charge for each month after the sixth month in which stop payment remains in effect	
Each Returned Deposit Item	\$7.00
Each Returned Check Redeposited	\$3.00
Each Returned Check Special Handling	\$7.50
Each Deposit Correction	\$3.00
Special Statement	\$7.50
Debit Card Replacement Fee	\$5.00
Research Fees:	
Research Per Hour	\$20.00
Photocopies (each)	\$1.00
Collection Item Fee	the cost of processing the collection letter with a \$20 minimum.
Dormant Checking Account Charges	\$8.50
An \$8.50 per month fee will be charged on dormant accounts. "Dormant Accounts" are defined by applicable law.	
Dormant Savings Account Charges	\$8.50
An \$8.50 per month fee will be charged on dormant accounts. "Dormant Accounts" are defined by applicable law.	
90 Day Account Closure Fee	\$25.00
(Fee charged on checking accounts closed within 90 days of opening.)	
Wire Transfer Fees:	
Outgoing	\$15.00

Incoming	\$12.00
Foreign	\$50.00
Telephone Funds Transfers:	
Automated via InfoLine	NO CHARG
Assisted by branch or InfoLine personnel	\$3.00
Safe Deposit Box Drilling Fee -	
Missouri	\$85.00
All other states	\$75.00
Legal Processing	Up to \$125.00
(see Other Important Information section)	

ABOUT OVERDRAFTS

An "overdraft" occurs any time a check, ACH, ATM, debit card, bank fee (including any overdraft-related fee) or any other transaction (collectively, a "Transaction") is presented for payment against an account and the available balance of the account is insufficient to pay the Transaction. When an overdraft occurs, we may, at our discretion, refuse the Transaction, or alternatively, we may choose to pay the Transaction, in which case a negative account balance will result.

Overdraft Payment Service

BancorpSouth's Overdraft Payment Service is a service whereby we determine whether to pay a Transaction in overdraft. This determination is strictly discretionary with us. Our Overdraft Payment Service is not a contract or agreement with you. We are not required to pay any Transaction in overdraft, even if we have paid overdrafts many times previously and even if we have permitted an account to remain in an overdrawn status for an extended period. We use a variety of factors in determining whether to pay a Transaction in overdraft, including, but not necessarily limited to, how long your account has been open, how many times and in what amounts your account has been previously overdrawn, how much money you have in your account on average, whether your account is or has been subject to garnishment or other legal action, and whether you have defaulted on any agreements with us (including loan agreements). You may remove your account from our Overdraft Payment Service in which case we will refuse to pay most Transactions drawn against insufficient funds. Removing your account from our Overdraft Payment Service does not guarantee that your account cannot be overdrawn. For example, certain Transactions such as pre-authorized electronic debits and bank fees may continue to be paid from your account and may cause your account to be overdrawn. Call a BancorpSouth customer service representative at 1-888-797-7711 to ask about removing your account from our Overdraft Payment Service.

Overdraft-related Fees

Certain fees apply to our Overdraft Payment Service and to accounts which otherwise become overdrawn. If we decide to pay a Transaction in overdraft, you will be charged an Overdraft (OD) Item fee for each such Transaction. If we decide not to pay a Transaction into overdraft, you will be charged an Insufficient Fund (NSF) Item fee for each refused Transaction. If your account remains in overdraft for ten (10) consecutive days, then on the tenth (10th) day you will be charged a Continuous Overdraft fee. Only one Continuous Overdraft fee will be charged for each continuous period of overdraft of ten (10) days or more, regardless of how long such

Continued on Back

# EXHIBIT 12

**From:** Jagers, Jeff  
**Sent:** 10/24/2007 03:58:12 pm  
**To:** Patterson, Aubrey; Kelley, Jim  
**Cc:** 'Pat Caldwell'; 'Larry Bateman'; Hubbard, Clyde; Harder, Gary  
**Bcc:**  
**Subject:** BancorpSouth's Payment Decision Practices

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In response to several questions related to BancorpSouth's payment decision practices, below is a recap of responses:

During the month of September, 170,100 customer transactions incurred an NSF/OD fee. Of this total, 1.3% of the transactions were for an amount of \$2 or less; 6.43% of the transactions were for an amount between \$2.01 and \$5; 11.77% of the transactions were for an amount between \$5.01 and \$10 and the remaining 80.5% were for an amount greater than \$10. BancorpSouth does not have a minimum transaction threshold value, all transactions paid in overdraft or returned due to insufficient funds generate a fee. The attached spreadsheet provides a summary of this data.

Currently, BancorpSouth processes all customer initiated transactions in a single posting group, paying the highest value transaction first and the lowest value last, this is traditionally referred to as 'high to low'.

**Payment processing alternative 1 - pay transactions in check number order**

As most consumers utilize multiple payment channels, the order in which the customer initiates a transaction can be difficult to determine. As recently as just a few years ago, consumers primary payment channel was the paper check. Today, the fastest growing payment channel is the debit card, followed by online bill pay and ACH. The paper check volume is rapidly declining. Many of the industry research groups have stated that more than 50% of consumer transactions are now performed electronically. As most transactions do not have a check number this alternative would be impractical.

**Payment processing alternative 2 - pay in random order**

Programmatically, this alternative would be impossible. Our software requires a systematic order of posting transactions. The systematic approach can be as simple or complicated as the bank desires. Currently, we utilize a simple process that is easily explained and communicated to our customers. If the posting order is changed to resemble a 'rambling' posting order we would be required to develop a support mechanism that could be utilized by branch and call center staff to research and explain the posting order of each transaction on each day that created an nsf/od fee.

**Payment processing alternative 3 - pay low to high**

Several factors would need to be considered including the risk associated with different payment channels. Since BancorpSouth currently pays high to low, the risk factors across the different channels is less critical. If the lower value transactions offset the funds first, certain risk factors might create a need to return a larger percentage of the items. Balancing the risk of certain types of transactions is required. In most cases of a returned item, the customer will become inconvenienced with both an NSF fee from the bank and a return fee from the 'merchant'. The bank's nsf/od revenue is estimated to decrease at least 17.5%. Based on the 2008 budget forecast this will represent a decrease of more than \$12 million. As a reference, in 2002 our bank changed the payment posting sequence from high to low by category of transaction type to high to low with all customer initiated transactions in one category. The effect was an 11% increase in revenue. If a detailed analysis is required, we will need to engage a specialized consultant that can model multiple posting sequences across a period of time. Several consulting groups have the technology to support this type of engagement.

In reference to questions related to customer communications, we currently market a 'How to Avoid Fees' brochure to our customers which includes avoiding NSF/OD fees. We do not monitor and communicate to a targeted group of customers using parameters such as number of times the account is overdrawn. We can do this if requested.

In closing, we have a conference call scheduled with the FDIC on Thursday, October 25th. This is a follow-up call related to the data gathering survey that the FDIC is spearheading. As your schedule permits, we are available to discuss the specifics of this email as well as provide an update of the FDIC data gathering project.

Jeff

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# EXHIBIT 13

## Lindsey, Michael

From: Jagers, Jeff  
Sent: Monday, November 08, 2010 2:24 PM  
To: Patterson, Aubrey  
Cc: Lewis, Gordon R; Ray, Greg, Lindsey, Michael, Pat Caldwell, Les Alvis  
Subject: 2011 Budget for NSF/OD related fees - Swift and FDIC impact  
Attachments: 2011 budget specific accounts (2) xls

This email is a high level summary of the 2011 gross NSF/OD numbers and potential impact of Swift case and/or FDIC guidance.

In preparation for the budget meeting Tuesday morning, below is some background info:

1. The new Continuous OD fee of \$25 after ten days started around May 15<sup>th</sup> – this fee generated about \$1,050,000 thru end of 3<sup>rd</sup> quarter
2. Increased NSF/OD fee from \$32 to \$35 on May 12<sup>th</sup> – this increase generated about \$1,900,000 thru end of 3<sup>rd</sup> quarter
3. Reg E on existing accounts took effect on August 15th

The following numbers relate to gross NSF/OD related fees as of **September 30th**:

Year to date 2009	Year to date 2010
\$47.5 million	\$48.3 million
Q3 2009	Q3 2010
\$17.2 million	\$17 million
September 2009	September 2010
\$6 million	\$5 million the budget for September 2010 was \$4.9 million

The following numbers relate to **projected 4<sup>th</sup> quarter**:

October 2009	October 2010
\$5.75 million	\$4.98 million
Q4 2009	Q4 2010 projected*****
\$16.9 million	\$14.4 million the budget for Q4 2010 is \$13.75 million

If no changes by customer or bank, best case scenario for 2011 is projected to be \$57.6 million (\$4.8 million per month avg)

Current risk factors are:

Customer opt-in decisions at new accounts – about 55% of new account customers are choosing to opt-out

Existing Customer changing decision from opt-in to opt-out – as a result of reg E, 17% of the NSF/OD transactions are not being assessed a fee

New FDIC guidelines – Scenario 1 – implement a cap of 5 fees per day per account(3% decrease in fees);

Scenario 2 – implement a best practice of not assessing a fee on accounts overdrawn less than \$5(4% decrease in fees);

Scenario 3 – change posting order to low to high(decrease of 20% in fees);

Scenario 4 – implement a maximum of 6 OD fees per year(as of October 15<sup>th</sup> we had 40,293 accounts that had more than 6 fees – decrease fees \$23.5 million)

\*\*\*\*\*If multiple changes were to be implemented, the overall impact would not be the sum of all as some transactions fall into multiple scenarios.\*\*\*\*\*

Lawsuit factors related to legal issues surrounding Swift case

At this time, the only firm commitment we made to the FDIC relates to customer communications at different thresholds. This would include adding some language to the actual notices, adding a link to our website on 'How to Avoid OD Fees' and sending special letters to customers that reach thresholds reminding them of our other OD protection services. Lee Mc has a project underway to address this commitment to the FDIC.

As to posting order, the Fed survey that was done as part of Reg E specifically noted that customers place a greater emphasis of importance to their check and ACH transactions. In that light, completely changing to a low to high may also carry some risk. Based on what we know from the Fed study, negatively impacting a customer by changing to low to high and returning a large dollar check or ACH could provide a different class of customer to claim unfair practice..... Just a thought.

FYI, the new deposit products are now being sold in all branches. We are working on a plan to migrate existing customers to the new products. Derek has additional meetings scheduled on this effort later this week. The current 2011 budget has an increase of \$2.5 million in Service Charges. The actual run rate by end of the year is a \$5 million increase in Service Charges.

Attached is a spreadsheet with info on each scenario.

Jeff

# EXHIBIT 14



## ***BancorpSouth***

### **DEPOSIT OPERATIONS**

### **OVERDRAFT MATRIX**

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#### **OVERDRAFT PARAMETER MATRIX**

The Overdraft matrix is designed to automate the decision-making process and aid in the paying of items for customers. Certain account criteria such as the age of the account, account balances, and NSF history are important factors. The goal is to make decisions to pay as many items as possible on each customer's account without undue risk to the bank. By paying more items the customer is sent a message that the relationship is important and the bank is trying to maintain the relationship by paying the items. Internal accounts, trust accounts, employee accounts, public fund accounts, accounts already covered by Overdraft Protection, accounts properly coded as Bankruptcy or Debtor In Possession, and accounts with a status other than normal status will be excluded from the overdraft matrix. Each account will be analyzed monthly to provide an updated OD limit. If an account is overdrawn for 8 consecutive days the OD limit will automatically change to zero. The matrix overdraft limit **should not** be disclosed to the customer. This is an internal process and should be transparent to the customer.

If the customer objects to their items being paid, you can, with authorization, turn off the Matrix Overdraft decision for their account. The branch will once again have to review each exception item as it occurs and manually return the items to prevent any overdrafts (Refer to page 16.18.1). These same procedures will be utilized if there is a need to establish a permanent Overdraft Limit.

Return items will always be at the discretion of the Bank. The review of NSF items will still be the responsibility of the Bank and the procedure for reviewing these items has not changed. (Refer to IMNS Procedures 16.1 for detailed instructions). The procedure to view the items paid into the overdraft for an account remain the same. The ultimate decision is still at the discretion of the Bank. (Refer to IMNS procedures 16.1 for detailed instructions).

Procedures have been developed to have the system permanently waive the NSF/OD Fees (Refer to page 16.18.3 for detailed instructions).

# **BancorpSouth**

## **DEPOSIT OPERATIONS**

## **OVERDRAFT LIMIT**

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### **REQUEST FOR ASSIGNING A PERMANENT OD LIMIT**

The OD limit that is assigned to a checking account is based on such account criteria as age of account, average deposit balance and NSF/OD history. Each account will be analyzed monthly to provide an updated OD limit. The branch will be able to request an account's OD limit be changed to a different Overdraft limit than is assigned by the OD Matrix. This amount could also be changed to a zero OD limit. The request to change an OD limit must be processed using the "Request for Assigned OD Limit Form". The Regional President and the Bank President must sign this form before it is forwarded to Central Deposit Services at the Tupelo Operations Center.

Complete the form as follows:

- Overdraft Codes: Put an X next to the OD limit you wish to assign to your customer's account.
- If you want your customer to have unlimited OD availability, put an "X" next to A – All, no limit – pay all.
- If you want your customer to have a \$0 OD limit, place an "X" next to N – cannot overdraw.
- If you must assign a limit not covered by the standard OD codes, place an "X" next to 0 – Use OD Amount and fill in the requested OD \$ amount in the field assigned.
- Requested By: The loan officer or branch manager requesting this OD limit change.
- Branch: The location of the branch where the account is housed.
- Account Number: The customer's checking account number affected by the OD limit.
- Date Opened: The date the account was opened.
- Account Title: The customer's or business name tied to this account.
- Account Balance: The average monthly balance of this account.
- Total Relationship: The total amount of accounts this customer retains with the Bank. Next – Break down the loans and deposits the customer holds.
- Reason for Request: State the reason you wish to raise or lower the customer's OD limit.

16.18.1

02/28/2002

# EXHIBIT 15

#### YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS AGREEMENT

**AGREEMENT** - These terms govern the operation of this account unless varied or supplemented in writing by amendment as provided herein. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so that the singular includes the plural and the plural includes the singular. As used in this agreement, the words "we," "our," or "us" mean BancorpSouth Bank and the words "you" or "your" mean the account owner(s). This account may not be transferred, pledged or assigned without our written consent, and we reserve the right to withhold such consent for any reason.

Much of our relationship with our deposit customers is regulated by state and federal law, especially the law relating to negotiable instruments, the law regulating the methods of transferring property upon death and the rights of surviving spouses and dependents, the law pertaining to estate and other succession taxes, the law regarding electronic funds transfer, and the law regarding the availability of deposited funds. This body of law is too large and complex to be reproduced here.

The purpose of this form is to:

- (1) summarize the rules applicable to the more common transactions;
- (2) establish rules to govern transactions or circumstances which the law does not regulate; and
- (3) establish rules for certain events or transactions which the law already regulates but permits variation by agreement.

**LIABILITY** - Each of you agrees, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges that may be imposed. You authorize us to deduct these charges as accrued directly from the account balance. You also agree to pay additional reasonable charges we may impose for services you request which are not contemplated by this agreement. Each of you also agrees to be jointly and severally (solidarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from this account, and the costs we incur to collect the deficit including our reasonable attorneys' fees.

**DEPOSITS** - Any items, other than cash, accepted for deposit (including items drawn "on us") will be given provisional credit only until collection is final (and actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars). Applicable law may require us to make your deposits available for withdrawal before payment becomes final or before the expiration of other banks' deadlines to return your deposited items to us for refund. You agree that our making all or any part of a deposit available to you for withdrawal is not a waiver of our right to charge back to this account any deposited item which is returned to us unpaid or for refund; instead, we may charge back to this account, and you will be responsible for, all such items. Subject to any other limitations, interest will be paid only on collected funds, unless otherwise provided by law. We are not responsible for transactions initiated by mail or outside depository until we actually record them. All transactions received after our daily cut-off time on a business day we are open (a "banking day"), or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next following banking day. Our daily cut-off time varies from location to location and is posted at each of our locations.

**WITHDRAWALS** - Any one of you who signs this form, including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us. However, we reserve the right to limit the amount of any withdrawal in cash where, for example, currency in the amount of the withdrawal is not available at our branch or your withdrawal exceeds the amount we allow via automatic teller machine or if the cash supply of the automatic teller machine is depleted. Each of you authorizes each other person signing this form to endorse any item payable to you or your order for deposit to this account or any other transaction with us. You agree that our right to charge a check against this account does not depend on the date of the check. Therefore, we may charge a check against this account before the date of the check or at any time thereafter, provided, however, that we may, but are not required to, refuse to pay a check which appears on its face to be more than six months old. In any event, we will not be liable to you for charging against this account a check before its date or after it is more than six months old. The fact that we may honor withdrawal requests which overdraw the finally collected account balance does not obligate us to do so. Withdrawals will first be made from

collected funds, and we may, unless prohibited by law, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement, or which exceeds any frequency limitation. Even if we honor a nonconforming request, we may close the account in the event of repeated abuse of the stated limitations. We will use the date a transaction is completed by us (as opposed to the day you initiate it) to apply the frequency limitations. On interest bearing accounts other than time deposits, we reserve the right to require at least seven days' written notice before any withdrawal or transfer.

**ACH, WIRE AND FUNDS TRANSFERS** - We may decline to process any wire or funds transfer which is not subject to Regulation E or the Electronic Funds Transfer Act until you enter into a separate Funds Transfer Agreement with us. If we process any wire or funds transfer for you before you enter into a separate Funds Transfer Agreement, with respect to each such transfer you will be bound by the terms of this section. You agree to be bound by all rules and regulations governing any system through which any transfer occurs, including, but not limited to, any ACH rules, NACHA rules and the rules and regulations pertaining to Fedwire, the electronic transfer system of the Federal Reserve Banks. We may make wire or funds transfers by any means available to us, including, but not limited to, through our correspondent banks or by internal book entry. We have no obligation to notify you of incoming wire or funds transfers. Any credit for incoming wire or funds transfers is provisional until we have received final payment. If we do not receive final payment, we may reverse the credit. We may permit any of you or any authorized signer to order wire or other funds transfers from this account by telephone, in person, by written instruction, or by any other means acceptable to us, subject to any time deadlines or other conditions or procedures which we may establish. Wire and funds transfers are made only through the use of identifying numbers for the recipient bank and account, without regard to any names which may be furnished for any recipient bank or account. You must furnish the correct identifying numbers to us in connection with each wire or funds transfer. Funds will be wired or transferred in accordance with the identifying numbers you furnish us (or the identifying numbers which you use, if you are originating an ACH transaction, even if an identifying number is incorrect or is inconsistent with any name you may use or furnish us. In such event, we will not be responsible for your error, the transfer will not be considered an unauthorized transaction, and any loss will be entirely yours. Any instructions you may give us in connection with a wire or funds transfer will not be binding on us unless we have agreed to such instructions in writing. You must strictly observe all deadlines we impose for the processing of wire and funds transfers. We will not be responsible for any delay or other consequences which result from your failure to comply with any of these deadlines. You have no right to cancel or change any wire or funds transfer after you submit it to us. Any attempt by us to cancel or change or any wire or funds transfer at your request will not constitute the assumption of any duty by us. You assume all risk associated with international wire or funds transfers. We will not be liable to you in any way in connection with an international wire or funds transfer, whether for failure of delivery, delayed delivery, fluctuations in exchange rates or for any other reason. If any incoming wire or funds transfer is denominated in a foreign currency, you authorize us to convert such to U. S. Dollars according to such exchange rate which we may select at our discretion. You acknowledge and agree that such exchange rate may not be the most favorable rate of exchange published and that you will be bound by our choice of exchange rate. If you provide your account number or any other account identifying information to any third party and such third party originates any funds transfer transaction on this account, you agree that we may treat such transaction as a transaction authorized by you.

**OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION** - You intend these rules to apply to this account depending on the form of ownership and beneficiary designation, if any, specified on page 1. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. **Single Party Account** - is owned by one person. **Multiple Party Account** - is owned by two or more persons jointly with right of survivorship and not as tenants in common, regardless of the conjunction ("or", "and") used



between the depositors' names. Each of you expressly agrees that the account is not owned as a tenancy by the entireties. Each of you intends that upon your death the balance in the account (subject to any previous pledge to which we have consented) will vest in and belong to the survivor(s) as the separate property and estate of such survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. Transactions on Multiple Party Accounts do not require the signatures of all account owners to transact on the account. Instead, any account owner may transact on the account to the exclusion of the other(s), and each of you authorize each other of you to do so without further consent. If this Agreement is governed by the laws of the state of Louisiana, the owners of a Multiple Party Account are co-owners of the account, and all or any part of any deposit may be paid to any one of you, whether any other of you is living or not, and any such payment to any of you shall constitute receipt and acquittance and shall fully release and discharge us from the claims of any person to funds of the deceased depositor for the payment made. **Pay On Death Account** - Pay-On-Death beneficiaries acquire the right to withdraw only if: (1) all persons creating the account die, (2) the beneficiary is then living, and (3) we are not otherwise required by law to make payment to some other person. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account and may transact on it according to the Multiple Party Account rules stated above unless otherwise provided by law. The person(s) creating a Pay-On-Death Account reserves the right to: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the deposit at any time. If two or more of you create such a Pay-On-Death Account, you own the account according to the Multiple Party Account rules stated above until the last of you dies. **Fiduciary Account** - A Fiduciary Account, whether for a consumer or a commercial purpose, is one in which the person controlling the account does so for the benefit of another. Examples of fiduciaries are trustees, executors, conservators, custodians for minors, representative payees and court-appointed guardians. For purposes of this agreement, guardians such as parents or other relatives who have not been court-appointed or persons who have not complied with necessary provisions of any applicable transfer to minors laws are not fiduciaries. We are not a fiduciary in connection with this account. For fiduciary accounts, we will usually require, in the case of trustees, a trust resolution according to our form, and in all other cases documents evidencing the fiduciary's authority. We have no duty to inspect any will or trust document, and you agree that we will not be bound by any limitations imposed in a will or trust document. You agree that a Fiduciary Account is a general deposit and not a special deposit. **Corporate, Partnership, LLC, Government and other Organizational Accounts** - We will usually require a separate resolution in a form acceptable to us designating the person permitted and conditions required for withdrawal from any account in the name of a legal entity such as a partnership, corporation, LLC, governmental entity or other organization.

**STOP PAYMENTS** - A stop payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it before our stop payment cut off time. Our stop payment cut off time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law. A stop payment order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item, if such other person has an equal or greater right to withdraw from this account than the person who signed the item in question. A release of the stop payment request may be made only by the person who initiated the stop payment.

**AMENDMENTS AND TERMINATION** - We may change any term of this agreement or any of the disclosures indicated on the first page of this agreement. Rules governing changes in interest rates have been provided separately. For other changes we will give you reasonable notice in writing or by any other method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you unless otherwise provided by law.

**STATEMENTS** - You must examine your statement of account with reasonable promptness. If you discover (or reasonably should have discovered) any forgeries, unauthorized payments, alterations or disputed transactions, you must promptly notify us of the relevant facts. Even if you do promptly notify us, you still may have to either share the loss with us or bear the loss entirely yourself (depending on whether you exercised ordinary care or substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items forged or altered by the same wrongdoer. You agree that the time you have to examine your statement and report to us will not, in any circumstance, exceed a total of 60 days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, unauthorized activity or any other errors or disputed transactions in this account within 60 days of when we make the statement available, you cannot assert a claim against us on any items in that statement, and the loss will be entirely yours.

You also agree to examine your statement with the same reasonable promptness to discover whether any deposit is missing or has been incorrectly credited. If your statement of account contains any error pertaining to any deposit, and if you fail to report such error to us within 60 days of when we make the statement available, you cannot assert a claim against us for such error, and any loss will be entirely yours.

The 60 day limitations set forth in this section are without regard to whether we exercised ordinary care.

If this account is a commercial purpose account, you additionally agree to take advantage of products and services we offer for the detection and prevention of fraud and unauthorized transactions, such as "Positive Pay" cash management products. If you fail to utilize any such product or service, you agree that you will be precluded from asserting any claim against us for any unauthorized transaction which could have been prevented by the proper use of such product or service.

We may require any report of errors on your statement to be put in writing by you and we may additionally require you to furnish us with an affidavit concerning the error on forms acceptable to us. If this account is a commercial purpose account, you agree to exhaust all rights against any insurance coverage you may have before making any claim against us. Our liability to you, if any, will be reduced by the amount of any insurance you are entitled to receive. You agree, upon request by us, to assign to us all insurance rights you may have in connection with any loss on your commercial purpose account.

**DIRECT DEPOSITS** - If, in connection with a direct deposit plan, we deposit any amount in this account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from this account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

**TEMPORARY ACCOUNTS** - If you intend for this account to be a Multiple Party Account, but all of you are not present at the time the account is opened, we may permit as many of you as are present to open the account either as a Single Party Account or a Multiple Party Account only in the name(s) of those who are present (the "Temporary Account"). At the same time we may permit as many of you as are present to also sign account documentation listing the names of all those intended to be owners of the Multiple Party Account, including those who are not present (the "Permanent Account"). However, we are not required to give effect to the Permanent Account documentation until all owners listed on such documentation have signed it and we have processed it, at which point the Permanent Account documentation shall supersede and replace the Temporary Account documentation. Notwithstanding the foregoing sentence, we may give the Permanent Account documentation retroactive effect to the date on which the Temporary Account was opened. We are not required to give any of you notice that the Permanent Account documentation has taken effect, nor are we required to give any intended owner notice that such intended owner's signature is needed on the Permanent Account documentation. If the Permanent Account documentation is not signed by all intended owners within 30 days following the opening of the Temporary Account, we may discard the Permanent Account documentation and will have no liability for doing so. A Temporary Account is subject to all of the terms and provisions of this agreement.

**SET OFF** - You each agree that we may without prior notice to you set off the funds in this account against any due and payable debt owed to us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note. This right of set-off applies regardless of the source of the deposit, and you consent that we may exercise this right of set-off against deposits which consist in whole or in part of government payments, including, but not limited to, Social Security and Veterans Administration payments. This right of set off does not apply to this account if: (a) it is an Individual Retirement Account or other tax deferred retirement account, or (b) the debtor's right of withdrawal arises only in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of set off.

**FACSIMILE SIGNATURES** - You authorize us, at any time, to charge you for all checks, drafts, or other orders or transactions, for the payment of money, that are drawn on us by facsimile signature, regardless of by whom or by what means the facsimile signature(s) may have been affixed.

**AUTHORIZED SIGNERS** - An authorized signer is someone you designate to conduct transactions on your behalf, but does not have any ownership or rights in the account unless the authorized signer is also named as a Pay on Death beneficiary, in which case the Pay-On-Death Account rules apply. Otherwise, the rights of an authorized signer cease upon your death but not upon your disability or incapacity; however, you agree that we will not be liable for honoring any transaction by an authorized signer after your death. We reserve the right to limit the number of authorized signers and to decline to permit authorized signers on certain types of accounts.

**ACCOUNTS OWNED BY MINORS** - If this is a Multiple Party Account and one or more of the account owners is a minor, all adult owners of the account jointly and severally agree that all transactions made on the account by any such minor shall be deemed to have been made by such adult owners, regardless of whether any such transaction may be void or voidable. EACH SUCH ADULT OWNER AGREES TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH ANY TRANSACTION MADE BY ANY SUCH MINOR.

**REFUSAL OF DEPOSITS** - We may refuse to accept any item, wire or electronic funds transfer for deposit or to send any item for collection, and we will have no liability to you or to any other person for such refusal.

**ORDER OF PAYMENT** - If more than one item or order is presented for payment against this account on the same day and the available balance of this account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

**ERRORS** - If there occurs any error on this account in your favor, such as crediting this account for any amount to which you are not entitled, charging this account for an amount less than the amount of an item or other order, or receipt of any direct deposit to which you are not entitled, you agree that we may adjust this account to correct the error and that, if there are insufficient funds in this account for such adjustment, you will immediately pay us the amount necessary to correct the error. You agree to pay our reasonable attorneys' fees and expenses in the event we sue you to recover the amount necessary to correct the error.

**DEPOSITS NOT MADE IN PERSON** - We are not responsible for transactions initiated by mail, outside depository or left with us for subsequent processing until we actually record them, and you accept and assume all risks inherent in initiating such transactions. For deposits so initiated, our determination of the amount of the deposit will be conclusive, and you waive any right to contest our determination.

**RESTRICTIVE LEGENDS** - For your own purposes you may print or write on checks or other items restrictive legends specifying the number of signatures required, the maximum amount for which the check or item is payable, the number of days the check or item is valid and similar restrictions. However, you agree that such restrictions shall not be binding on us, that we may disregard such restrictions and that we will have no liability to you or to any other person for paying any check or other item inconsistently with any restrictive legend that is printed or written thereon.

**CHECK CHARACTERISTICS** - If you use checks from sources other than vendors approved by us, or if you use check stock, security features or ink color which cause data to disappear or to become obscured when the check is converted into an image, you agree to bear any loss which results. We will not be liable for failing to honor a stop-payment order for an item issued on a check form from sources other than vendors approved by us.

**SECURITY INTEREST** - In addition to the rights of set-off which we have under this Agreement, you hereby grant to us a security interest in this account to secure payment of any obligation which you now owe us or which you may owe us at any time in the future, including your obligation to pay our attorneys' fees and expenses and your obligation to indemnify us as provided elsewhere in this Agreement. When any such obligation is due and payable to us, we may pay such obligation, or any part thereof, from this account without prior notice to you, and we will not be liable for the dishonor of any item or order which results from such exercise of our security interest. If this account has any pay-on-death beneficiary, the interests of such beneficiary shall be junior to our security interest and shall be subject to our right of set-off, even if we do not exercise our security interest or right of set-off until after your death.

**PAYMENT TO BENEFICIARIES** - Payment to pay-on-death beneficiaries shall be as provided by law. Notwithstanding anything in the Pay-on-Death Account rules stated above, we may require any pay-on-death beneficiary wishing to continue transactions with us to close this account and open a new account under such beneficiary's signature.

**INDEMNIFICATION BY FIDUCIARY** - IF THIS ACCOUNT IS A FIDUCIARY ACCOUNT (INCLUDING, BUT NOT LIMITED TO, AN ACCOUNT USED AS A CUSTODIAL ACCOUNT OR AS A REPRESENTATIVE PAYEE ACCOUNT TO RECEIVE PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION OR ANY OTHER GOVERNMENTAL PAYOR), YOU, THE FIDUCIARY, AGREE IN YOUR INDIVIDUAL CAPACITY TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH THIS ACCOUNT, WHETHER RESULTING FROM OVERDRAFT, ERROR IN YOUR FAVOR, RECLAMATION BY ANY GOVERNMENTAL PAYOR, ANY DISPUTE WITHIN THE SCOPE OF THE "ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY" SECTION BELOW OR ANY OTHER REASON. IN THE EVENT OF ANY SUCH LOSS, WE MAY ENFORCE THE FOREGOING INDEMNITY BY SETTING OFF THE AMOUNT OF SUCH LOSS AGAINST (OR BY EXERCISING ANY SECURITY INTEREST WE MAY HAVE IN) ANY OTHER ACCOUNT WITH US IN WHICH YOU, THE FIDUCIARY, HAVE AN INTEREST (UNLESS YOUR INTEREST IN SUCH ACCOUNT IS ONLY AS A FIDUCIARY), AND WE WILL NOT BE LIABLE TO YOU OR TO ANYONE ELSE FOR THE DISHONOR OF ANY ITEM OR ORDER ON SUCH OTHER ACCOUNT WHICH RESULTS FROM SUCH SET-OFF OR EXERCISE OF OUR SECURITY INTEREST.

**SIGNATURE BY MARK** - If any signature which appears on page 1 of this Agreement is by mark (such as an "X"), then you agree that we will have no liability whatsoever on claims by you or any other person based on forgery, unauthorized signature, alteration or the like.

**ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY** - IN THE EVENT OF ANY DISPUTE REGARDING THIS ACCOUNT, INCLUDING ANY DISPUTE OVER OWNERSHIP OF OR ENTITLEMENT TO THIS ACCOUNT OR THE CAPACITY OR AUTHORITY OF ANY PERSON TO TRANSACT ON THIS ACCOUNT, YOU AGREE TO PAY OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN THE EVENT THAT WE BECOME INVOLVED IN ANY PROCEEDING TO RESOLVE SUCH DISPUTE. IN THE EVENT OF SUCH DISPUTE WE MAY PAY THE AVAILABLE BALANCE OF THIS ACCOUNT INTO COURT, AND IN THAT EVENT YOU AGREE NOT TO MAKE ANY CLAIM AGAINST US. ADDITIONALLY, TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO ANY SUCH DISPUTE. YOU ALSO AGREE THAT WE SHALL BE ENTITLED TO RECOVER OUR REASONABLE ATTORNEY'S FEES AND EXPENSES IN CONNECTION WITH SUCH PAYMENT INTO COURT AND THAT WE MAY RECOVER SUCH FEES AND EXPENSES FROM THE BALANCE PAID INTO COURT.

IN THE EVENT OF ANY KIND OF CLAIM BY YOU AGAINST US IN CONNECTION WITH THIS ACCOUNT, YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES.

**GOVERNING LAW; PROCESS; REPRESENTATIVES** - This Agreement is governed by the laws of the state of the location of our branch identified on the first page of this form and by federal law and regulation. Notwithstanding this, we may honor any levy, attachment, garnishment, execution, subpoena, court order, administrative order (including child support order) or other legal process which names you or which encompasses you, this account or any tax identification number associated with this account, regardless of whether we are subject to the jurisdiction of the issuer of such, regardless of in which state such is served on us and regardless of how such is served on us. We are not required to raise any defense in your behalf. We may also comply with the directions of any executor, administrator, conservator, guardian, receiver, bankruptcy trustee, attorney-in-fact or any other such representative purporting to have authority over this account who furnishes us with apparently authentic copies of documents which confer such authority. We may refuse to deal with any such representative in our sole discretion, and we will not be liable to you for such refusal. You agree that we may place temporary or permanent holds on the balance of this account related to or otherwise in response to any such process or authority and that we shall be fully protected in doing so, even if we later determine that such process or authority is inapplicable to this account. YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ACTING OR NOT ACTING ON ANY SUCH PROCESS OR FOR ACTING OR NOT ACTING ON THE DIRECTIONS OF ANY SUCH REPRESENTATIVE OR FOR PLACING OR NOT PLACING TEMPORARY OR PERMANENT HOLDS, AND YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO SUCH ACTION OR INACTION.

**EFFECT OF TERMINATION OR AMENDMENT** - Termination of this account, whether by us or by you, does not relieve you of any obligation you may then owe us. We may accept deposits to this account after it has been closed in order to collect any deficit balance, and such acceptance will not constitute reinstatement of the account. Your use of this account after we give you notice of any amendment to this agreement constitutes your acceptance of such amendment. No amendment of this agreement is enforceable against us unless it is in writing and we have authored the writing or have signed it through an employee having authority to do so, such as a regional president. No practice or course of dealing in connection with this account which is at variance with this agreement shall constitute a modification or amendment of this agreement.

**OTHER TERMS** - This account is additionally governed by our Account Information Statement. You acknowledge receipt of a copy of the Account Information Statement and you agree to be bound by its terms, as amended by us from time to time, and to be responsible for all fees and charges set forth therein which apply to this account. You understand that the Account Information Statement does not necessarily set forth all possible fees and charges which apply to this account.

**SEVERABILITY** - In the event that any part of this agreement is determined to be unenforceable, such will not affect the other parts of this agreement, all of which shall remain fully enforceable.

**ARBITRATION** - IF THIS ACCOUNT IS A COMMERCIAL PURPOSE ACCOUNT, THEN YOU AGREE THAT ANY CLAIM, DISPUTE OR CONTROVERSY ("CLAIM") BY EITHER YOU OR US AGAINST THE OTHER, OR AGAINST THE EMPLOYEES, AGENTS OR ASSIGNS OF THE OTHER, ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT, THIS ACCOUNT OR ANY TRANSACTION, INCLUDING CLAIMS REGARDING THE APPLICABILITY OF THIS ARBITRATION CLAUSE OR THE VALIDITY OF ALL OR ANY PART OF THIS AGREEMENT, SHALL BE RESOLVED BY BINDING ARBITRATION BY THE NATIONAL ARBITRATION FORUM, UNDER THE CODE OF PROCEDURE IN EFFECT AT THE TIME THE CLAIM IS MADE OR FILED. RULES AND FORMS OF THE NATIONAL ARBITRATION FORUM MAY BE OBTAINED AND CLAIMS MAY BE FILED AT ANY NATIONAL ARBITRATION FORUM OFFICE, WWW.ARBITRATION-FORUM.COM OR POST OFFICE BOX 50191, MINNEAPOLIS, MINNESOTA 55405, TELEPHONE 1-800-474-2371. ANY ARBITRATION HEARING AT WHICH YOU APPEAR WILL TAKE PLACE IN THE CITY WHICH IS THE LOCATION OF OUR BRANCH AT WHICH THIS ACCOUNT WAS OPENED. THIS ARBITRATION AGREEMENT IS MADE PURSUANT TO A TRANSACTION INVOLVING INTERSTATE COMMERCE AND SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. SECTIONS 1-16. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. IN THE ABSENCE OF THIS ARBITRATION AGREEMENT YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS, BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.

# EXHIBIT 16



**YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS AGREEMENT**

**AGREEMENT** - These terms govern the operation of this account unless varied or supplemented in writing by amendment as provided herein. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so that the singular includes the plural and the plural includes the singular. As used in this agreement, the words "we," "our," or "us" mean BancorpSouth Bank and the words "you" or "your" mean the account owner(s). This account may not be transferred, pledged or assigned without our written consent, and we reserve the right to withhold such consent for any reason.

Much of our relationship with our deposit customers is regulated by state and federal law, especially the law relating to negotiable instruments, the law regulating the methods of transferring property upon death and the rights of surviving spouses and dependents, the law pertaining to estate and other succession taxes, the law regarding electronic funds transfer, and the law regarding the availability of deposited funds. This body of law is too large and complex to be reproduced here.

The purpose of this form is to:

- (1) summarize the rules applicable to the more common transactions;
- (2) establish rules to govern transactions or circumstances which the law does not regulate; and
- (3) establish rules for certain events or transactions which the law already regulates but permits variation by agreement.

**LIABILITY** - Each of you agrees, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges that may be imposed. You authorize us to deduct these charges as accrued directly from the account balance. You also agree to pay additional reasonable charges we may impose for services you request which are not contemplated by this agreement. Each of you also agrees to be jointly and severally (solidarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from this account, and the costs we incur to collect the deficit including our reasonable attorneys' fees.

**DEPOSITS** - Any items, other than cash, accepted for deposit (including items drawn "on us") will be given provisional credit only until collection is final (and actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars). Applicable law may require us to make your deposits available for withdrawal before payment becomes final or before the expiration of other banks' deadlines to return your deposited items to us for refund. You agree that our making all or any part of a deposit available to you for withdrawal is not a waiver of our right to charge back to this account any deposited item which is returned to us unpaid or for refund; instead, we may charge back to this account, and you will be responsible for, all such items. Subject to any other limitations, interest will be paid only on collected funds, unless otherwise provided by law. We are not responsible for transactions initiated by mail or outside depository until we actually record them. All transactions received after our daily cut-off time on a business day we are open (a "banking day"), or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next following banking day. Our daily cut-off time varies from location to location and is posted at each of our locations.

**WITHDRAWALS** - Any one of you who signs this form, including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us. However, we reserve the right to limit the amount of any withdrawal in cash where, for example, currency in the amount of the withdrawal is not available at our branch or your withdrawal exceeds the amount we allow via automatic teller machine or if the cash supply of the automatic teller machine is depleted. Each of you authorizes each other person signing this form to endorse any item payable to you or your order for deposit to this account or any other transaction with us. You agree that our right to charge a check against this account does not depend on the date of the check. Therefore, we may charge a check against this account before the date of the check or at any time thereafter, provided, however, that we may, but are not required to, refuse to pay a check which appears on its face to be more than six months old. In any event, we will not be liable to you for charging against this account a check before its date or after it is more than six months old. The fact that we may honor withdrawal requests which overdraw the finally collected account balance does not obligate us to do so. Withdrawals will first be made from

collected funds, and we may, unless prohibited by law, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement, or which exceeds any frequency limitation. Even if we honor a nonconforming request, we may close the account in the event of repeated abuse of the stated limitations. We will use the date a transaction is completed by us (as opposed to the day you initiate it) to apply the frequency limitations. On interest bearing accounts other than time deposits, we reserve the right to require at least seven days' written notice before any withdrawal or transfer.

**ACH, WIRE AND FUNDS TRANSFERS** - We may decline to process any wire or funds transfer which is not subject to Regulation E or the Electronic Funds Transfer Act until you enter into a separate Funds Transfer Agreement with us. If we process any wire or funds transfer for you before you enter into a separate Funds Transfer Agreement, with respect to each such transfer you will be bound by the terms of this section. You agree to be bound by all rules and regulations governing any system through which any transfer occurs, including, but not limited to, any ACH rules, NACHA rules and the rules and regulations pertaining to Fedwire, the electronic transfer system of the Federal Reserve Banks. We may make wire or funds transfers by any means available to us, including, but not limited to, through our correspondent banks or by internal book entry. We have no obligation to notify you of incoming wire or funds transfers. Any credit for incoming wire or funds transfers is provisional until we have received final payment. If we do not receive final payment, we may reverse the credit. We may permit any of you or any authorized signer to order wire or other funds transfers from this account by telephone, in person, by written instruction, or by any other means acceptable to us, subject to any time deadlines or other conditions or procedures which we may establish. Wire and funds transfers are made only through the use of identifying numbers for the recipient bank and account, without regard to any names which may be furnished for any recipient bank or account. You must furnish the correct identifying numbers to us in connection with each wire or funds transfer. Funds will be wired or transferred in accordance with the identifying numbers you furnish us (or the identifying numbers which you use, if you are originating an ACH transaction, even if an identifying number is incorrect or is inconsistent with any name you may use or furnish us. In such event, we will not be responsible for your error, the transfer will not be considered an unauthorized transaction, and any loss will be entirely yours. Any instructions you may give us in connection with a wire or funds transfer will not be binding on us unless we have agreed to such instructions in writing. You must strictly observe all deadlines we impose for the processing of wire and funds transfers. We will not be responsible for any delay or other consequences which result from your failure to comply with any of these deadlines. You have no right to cancel or change any wire or funds transfer after you submit it to us. Any attempt by us to cancel or change or any wire or funds transfer at your request will not constitute the assumption of any duty by us. You assume all risk associated with international wire or funds transfers. We will not be liable to you in any way in connection with an international wire or funds transfer, whether for failure of delivery, delayed delivery, fluctuations in exchange rates or for any other reason. If any incoming wire or funds transfer is denominated in a foreign currency, you authorize us to convert such to U. S. Dollars according to such exchange rate which we may select at our discretion. You acknowledge and agree that such exchange rate may not be the most favorable rate of exchange published and that you will be bound by our choice of exchange rate. If you provide your account number or any other account identifying information to any third party and such third party originates any funds transfer transaction on this account, you agree that we may treat such transaction as a transaction authorized by you.

**OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION** - You intend these rules to apply to this account depending on the form of ownership and beneficiary designation, if any, specified on page 1. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. **Single Party Account** - is owned by one person. **Multiple Party Account** - is owned by two or more persons jointly with right of survivorship and not as tenants in common, regardless of the conjunction ("or," "and") used

between the depositors' names. Each of you expressly agrees that the account is not owned as a tenancy by the entireties. Each of you intends that upon your death the balance in the account (subject to any previous pledge to which we have consented) will vest in and belong to the survivor(s) as the separate property and estate of such survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. Transactions on Multiple Party Accounts do not require the signatures of all account owners to transact on the account. Instead, any account owner may transact on the account to the exclusion of the other(s), and each of you authorize each other of you to do so without further consent. If this Agreement is governed by the laws of the state of Louisiana, the owners of a Multiple Party Account are co-owners of the account, and all or any part of any deposit may be paid to any one of you, whether any other of you is living or not, and any such payment to any of you shall constitute receipt and acquittance and shall fully release and discharge us from the claims of any person to funds of the deceased depositor for the payment made.

**Pay On Death Account** - Pay-On-Death beneficiaries acquire the right to withdraw only if: (1) all persons creating the account die, (2) the beneficiary is then living, and (3) we are not otherwise required by law to make payment to some other person. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account and may transact on it according to the Multiple Party Account rules stated above unless otherwise provided by law. The person(s) creating a Pay-On-Death Account reserves the right to: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the deposit at any time. If two or more of you create such a Pay-On-Death Account, you own the account according to the Multiple Party Account rules stated above until the last of you dies.

**Fiduciary Account** - A Fiduciary Account, whether for a consumer or a commercial purpose, is one in which the person controlling the account does so for the benefit of another. Examples of fiduciaries are trustees, executors, conservators, custodians for minors, representative payees and court-appointed guardians. For purposes of this agreement, guardians such as parents or other relatives who have not been court-appointed or persons who have not complied with necessary provisions of any applicable transfer to minors laws are not fiduciaries. We are not a fiduciary in connection with this account. For fiduciary accounts, we will usually require, in the case of trustees, a trust resolution according to our form, and in all other cases documents evidencing the fiduciary's authority. We have no duty to inspect any will or trust document, and you agree that we will not be bound by any limitations imposed in a will or trust document. You agree that a Fiduciary Account is a general deposit and not a special deposit.

**Corporate, Partnership, LLC, Government and other Organizational Accounts** - We will usually require a separate resolution in a form acceptable to us designating the person permitted and conditions required for withdrawal from any account in the name of a legal entity such as a partnership, corporation, LLC, governmental entity or other organization.

**STOP PAYMENTS** - A stop payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it before our stop payment cut off time. Our stop payment cut off time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law. A stop payment order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item, if such other person has an equal or greater right to withdraw from this account than the person who signed the item in question. A release of the stop payment request may be made only by the person who initiated the stop payment.

**AMENDMENTS AND TERMINATION** - We may change any term of this agreement or any of the disclosures indicated on the first page of this agreement. Rules governing changes in interest rates have been provided separately. For other changes we will give you reasonable notice in writing or by any other method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you unless otherwise provided by law.

**STATEMENTS** - You must examine your statement of account with reasonable promptness. If you discover (or reasonably should have discovered) any forgeries, unauthorized payments, alterations or disputed transactions, you must promptly notify us of the relevant facts. Even if you do promptly notify us, you still may have to either share the loss with us or bear the loss entirely yourself (depending on whether you exercised ordinary care or substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items forged or altered by the same wrongdoer. You agree that the time you have to examine your statement and report to us will not, in any circumstance, exceed a total of 60 days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, unauthorized activity or any other errors or disputed transactions in this account within 60 days of when we make the statement available, you cannot assert a claim against us on any items in that statement, and the loss will be entirely yours.

You also agree to examine your statement with the same reasonable promptness to discover whether any deposit is missing or has been incorrectly credited. If your statement of account contains any error pertaining to any deposit, and if you fail to report such error to us within 60 days of when we make the statement available, you cannot assert a claim against us for such error, and any loss will be entirely yours.

The 60 day limitations set forth in this section are without regard to whether we exercised ordinary care.

If this account is a commercial purpose account, you additionally agree to take advantage of products and services we offer for the detection and prevention of fraud and unauthorized transactions, such as "Positive Pay" cash management products. If you fail to utilize any such product or service, you agree that you will be precluded from asserting any claim against us for any unauthorized transaction which could have been prevented by the proper use of such product or service.

We may require any report of errors on your statement to be put in writing by you and we may additionally require you to furnish us with an affidavit concerning the error on forms acceptable to us. If this account is a commercial purpose account, you agree to exhaust all rights against any insurance coverage you may have before making any claim against us. Our liability to you, if any, will be reduced by the amount of any insurance you are entitled to receive. You agree, upon request by us, to assign to us all insurance rights you may have in connection with any loss on your commercial purpose account.

**DIRECT DEPOSITS** - If, in connection with a direct deposit plan, we deposit any amount in this account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from this account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

**TEMPORARY ACCOUNTS** - If you intend for this account to be a Multiple Party Account, but all of you are not present at the time the account is opened, we may permit as many of you as are present to open the account either as a Single Party Account or a Multiple Party Account only in the name(s) of those who are present (the "Temporary Account"). At the same time we may permit as many of you as are present to also sign account documentation listing the names of all those intended to be owners of the Multiple Party Account, including those who are not present (the "Permanent Account"). However, we are not required to give effect to the Permanent Account documentation until all owners listed on such documentation have signed it and we have processed it, at which point the Permanent Account documentation shall supersede and replace the Temporary Account documentation. Notwithstanding the foregoing sentence, we may give the Permanent Account documentation retroactive effect to the date on which the Temporary Account was opened. We are not required to give any of you notice that the Permanent Account documentation has taken effect, nor are we required to give any intended owner notice that such intended owner's signature is needed on the Permanent Account documentation. If the Permanent Account documentation is not signed by all intended owners within 30 days following the opening of the Temporary Account, we may discard the Permanent Account documentation and will have no liability for doing so. A Temporary Account is subject to all of the terms and provisions of this agreement.

**SET OFF** - You each agree that we may without prior notice to you set off the funds in this account against any due and payable debt owed to us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note. This right of set-off applies regardless of the source of the deposit, and you consent that we may exercise this right of set-off against deposits which consist in whole or in part of government payments, including, but not limited to, Social Security and Veterans Administration payments. This right of set off does not apply to this account if: (a) it is an Individual Retirement Account or other tax deferred retirement account, or (b) the debtor's right of withdrawal arises only in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of set off.

**FACSIMILE SIGNATURES** - You authorize us, at any time, to charge you for all checks, drafts, or other orders or transactions, for the payment of money, that are drawn on us by facsimile signature, regardless of by whom or by what means the facsimile signature(s) may have been affixed.

**AUTHORIZED SIGNERS** - An authorized signer is someone you designate to conduct transactions on your behalf, but does not have any ownership or rights in the account unless the authorized signer is also named as a Pay on Death beneficiary, in which case the Pay-On-Death Account rules apply. Otherwise, the rights of an authorized signer cease upon your death but not upon your disability or incapacity; however, you agree that we will not be liable for honoring any transaction by an authorized signer after your death. We reserve the right to limit the number of authorized signers and to decline to permit authorized signers on certain types of accounts.

**ACCOUNTS OWNED BY MINORS** - If this is a Multiple Party Account and one or more of the account owners is a minor, all adult owners of the account jointly and severally agree that all transactions made on the account by any such minor shall be deemed to have been made by such adult owners, regardless of whether any such transaction may be void or voidable. EACH SUCH ADULT OWNER AGREES TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH ANY TRANSACTION MADE BY ANY SUCH MINOR.

**REFUSAL OF DEPOSITS** - We may refuse to accept any item, wire or electronic funds transfer for deposit or to send any item for collection, and we will have no liability to you or to any other person for such refusal.

**ORDER OF PAYMENT** - If more than one item or order is presented for payment against this account on the same day and the available balance of this account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

**ERRORS** - If there occurs any error on this account in your favor, such as crediting this account for any amount to which you are not entitled, charging this account for an amount less than the amount of an item or other order, or receipt of any direct deposit to which you are not entitled, you agree that we may adjust this account to correct the error and that, if there are insufficient funds in this account for such adjustment, you will immediately pay us the amount necessary to correct the error. You agree to pay our reasonable attorneys' fees and expenses in the event we sue you to recover the amount necessary to correct the error.

**DEPOSITS NOT MADE IN PERSON** - We are not responsible for transactions initiated by mail, outside depository or left with us for subsequent processing until we actually record them, and you accept and assume all risks inherent in initiating such transactions. For deposits so initiated, our determination of the amount of the deposit will be conclusive, and you waive any right to contest our determination.

**RESTRICTIVE LEGENDS** - For your own purposes you may print or write on checks or other items restrictive legends specifying the number of signatures required, the maximum amount for which the check or item is payable, the number of days the check or item is valid and similar restrictions. However, you agree that such restrictions shall not be binding on us, that we may disregard such restrictions and that we will have no liability to you or to any other person for paying any check or other item inconsistently with any restrictive legend that is printed or written thereon.

**CHECK CHARACTERISTICS** - If you use checks from sources other than vendors approved by us, or if you use check stock, security features or ink color which cause data to disappear or to become obscured when the check is converted into an image, you agree to bear any loss which results. We will not be liable for failing to honor a stop-payment order for an item issued on a check form from sources other than vendors approved by us.

**SECURITY INTEREST** - In addition to the rights of set-off which we have under this Agreement, you hereby grant to us a security interest in this account to secure payment of any obligation which you now owe us or which you may owe us at any time in the future, including your obligation to pay our attorneys' fees and expenses and your obligation to indemnify us as provided elsewhere in this Agreement. When any such obligation is due and payable to us, we may pay such obligation, or any part thereof, from this account without prior notice to you, and we will not be liable for the dishonor of any item or order which results from such exercise of our security interest. If this account has any pay-on-death beneficiary, the interests of such beneficiary shall be junior to our security interest and shall be subject to our right of set-off, even if we do not exercise our security interest or right of set-off until after your death.

**PAYMENT TO BENEFICIARIES** - Payment to pay-on-death beneficiaries shall be as provided by law. Notwithstanding anything in the Pay-on-Death Account rules stated above, we may require any pay-on-death beneficiary wishing to continue transactions with us to close this account and open a new account under such beneficiary's signature.

**INDEMNIFICATION BY FIDUCIARY** - IF THIS ACCOUNT IS A FIDUCIARY ACCOUNT (INCLUDING, BUT NOT LIMITED TO, AN ACCOUNT USED AS A CUSTODIAL ACCOUNT OR AS A REPRESENTATIVE PAYEE ACCOUNT TO RECEIVE PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION OR ANY OTHER GOVERNMENTAL PAYOR), YOU, THE FIDUCIARY, AGREE IN YOUR INDIVIDUAL CAPACITY TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH THIS ACCOUNT, WHETHER RESULTING FROM OVERDRAFT, ERROR IN YOUR FAVOR, RECLAMATION BY ANY GOVERNMENTAL PAYOR, ANY DISPUTE WITHIN THE SCOPE OF THE "ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY" SECTION BELOW OR ANY OTHER REASON. IN THE EVENT OF ANY SUCH LOSS, WE MAY ENFORCE THE FOREGOING INDEMNITY BY SETTING OFF THE AMOUNT OF SUCH LOSS AGAINST (OR BY EXERCISING ANY SECURITY INTEREST WE MAY HAVE IN) ANY OTHER ACCOUNT WITH US IN WHICH YOU, THE FIDUCIARY, HAVE AN INTEREST (UNLESS YOUR INTEREST IN SUCH ACCOUNT IS ONLY AS A FIDUCIARY), AND WE WILL NOT BE LIABLE TO YOU OR TO ANYONE ELSE FOR THE DISHONOR OF ANY ITEM OR ORDER ON SUCH OTHER ACCOUNT WHICH RESULTS FROM SUCH SET-OFF OR EXERCISE OF OUR SECURITY INTEREST.

**SIGNATURE BY MARK** - If any signature which appears on page 1 of this Agreement is by mark (such as an "X"), then you agree that we will have no liability whatsoever on claims by you or any other person based on forgery, unauthorized signature, alteration or the like.



**ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY** - IN THE EVENT OF ANY DISPUTE REGARDING THIS ACCOUNT, INCLUDING ANY DISPUTE OVER OWNERSHIP OF OR ENTITLEMENT TO THIS ACCOUNT OR THE CAPACITY OR AUTHORITY OF ANY PERSON TO TRANSACT ON THIS ACCOUNT, YOU AGREE TO PAY OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN THE EVENT THAT WE BECOME INVOLVED IN ANY PROCEEDING TO RESOLVE SUCH DISPUTE. IN THE EVENT OF SUCH DISPUTE WE MAY PAY THE AVAILABLE BALANCE OF THIS ACCOUNT INTO COURT, AND IN THAT EVENT YOU AGREE NOT TO MAKE ANY CLAIM AGAINST US. ADDITIONALLY, TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO ANY SUCH DISPUTE. YOU ALSO AGREE THAT WE SHALL BE ENTITLED TO RECOVER OUR REASONABLE ATTORNEY'S FEES AND EXPENSES IN CONNECTION WITH SUCH PAYMENT INTO COURT AND THAT WE MAY RECOVER SUCH FEES AND EXPENSES FROM THE BALANCE PAID INTO COURT.

IN THE EVENT OF ANY KIND OF CLAIM BY YOU AGAINST US IN CONNECTION WITH THIS ACCOUNT, YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES.

**GOVERNING LAW; PROCESS; REPRESENTATIVES** - With regard to any account established online, this Agreement is governed by the laws of Mississippi and by federal law and regulation. Otherwise, this Agreement is governed by the laws of the state of the location of our branch identified on the first page of this form and by federal law and regulation. Notwithstanding this, we may honor any levy, attachment, garnishment, execution, subpoena, court order, administrative order (including child support order) or other legal process which names you or which encompasses you, this account or any tax identification number associated with this account, regardless of whether we are subject to the jurisdiction of the issuer of such, regardless of in which state such is served on us and regardless of how such is served on us. We are not required to raise any defense in your behalf. We may also comply with the directions of any executor, administrator, conservator, guardian, receiver, bankruptcy trustee, attorney-in-fact or any other such representative purporting to have authority over this account who furnishes us with apparently authentic copies of documents which confer such authority. We may refuse to deal with any such representative in our sole discretion, and we will not be liable to you for such refusal. You agree that we may place temporary or permanent holds on the balance of this account related to or otherwise in response to any such process or authority and that we shall be fully protected in doing so, even if we later determine that such process or authority is inapplicable to this account. YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ACTING OR NOT ACTING ON ANY SUCH PROCESS OR FOR ACTING OR NOT ACTING ON THE DIRECTIONS OF ANY SUCH REPRESENTATIVE OR FOR PLACING OR NOT PLACING TEMPORARY OR PERMANENT HOLDS, AND YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO SUCH ACTION OR INACTION.

**EFFECT OF TERMINATION OR AMENDMENT** - Termination of this account, whether by us or by you, does not relieve you of any obligation you may then owe us. We may accept deposits to this account after it has been closed in order to collect any deficit balance, and such acceptance will not constitute reinstatement of the account. Your use of this account after we give you notice of any amendment to this agreement constitutes your acceptance of such amendment. No amendment of this Agreement is enforceable against us unless it is in writing and we have authored the writing or have signed it through an employee having authority to do so, such as a regional president. No practice or course of dealing in connection with this account which is at variance with this agreement shall constitute a modification or amendment of this agreement.

**OTHER TERMS** - This account is additionally governed by our Account Information Statement. You acknowledge receipt of a copy of the Account Information Statement and you agree to be bound by its terms, as amended by us from time to time, and to be responsible for all fees and charges set forth therein which apply to this account. You understand that the Account Information Statement does not necessarily set forth all possible fees and charges which apply to this account.

**SEVERABILITY** - In the event that any part of this Agreement is determined to be unenforceable, such will not affect the other parts of this Agreement, all of which shall remain fully enforceable.

**ARBITRATION** - IF THIS ACCOUNT IS A COMMERCIAL PURPOSE ACCOUNT, THEN YOU AGREE THAT ANY CLAIM, DISPUTE OR CONTROVERSY ("CLAIM") BY EITHER YOU OR US AGAINST THE OTHER, OR AGAINST THE EMPLOYEES, AGENTS OR ASSIGNS OF THE OTHER, ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT, THIS ACCOUNT OR ANY TRANSACTION, INCLUDING CLAIMS REGARDING THE APPLICABILITY OF THIS ARBITRATION CLAUSE OR THE VALIDITY OF ALL OR ANY PART OF THIS AGREEMENT, SHALL BE RESOLVED BY BINDING ARBITRATION BY THE NATIONAL ARBITRATION FORUM, UNDER THE CODE OF PROCEDURE IN EFFECT AT THE TIME THE CLAIM IS MADE OR FILED. RULES AND FORMS OF THE NATIONAL ARBITRATION FORUM MAY BE OBTAINED AND CLAIMS MAY BE FILED AT ANY NATIONAL ARBITRATION FORUM OFFICE, WWW.ARBITRATION-FORUM.COM OR POST OFFICE BOX 50191, MINNEAPOLIS, MINNESOTA 55405, TELEPHONE 1-800-474-2371. ANY ARBITRATION HEARING AT WHICH YOU APPEAR WILL TAKE PLACE IN THE CITY WHICH IS THE LOCATION OF OUR BRANCH AT WHICH THIS ACCOUNT WAS OPENED. THIS ARBITRATION AGREEMENT IS MADE PURSUANT TO A TRANSACTION INVOLVING INTERSTATE COMMERCE AND SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. SECTIONS 1-16. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. IN THE ABSENCE OF THIS ARBITRATION AGREEMENT YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS, BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.

# EXHIBIT 17

Terms & Conditions :Layout 1 6/4/07 4:24 PM Page 1

# **Deposit Account Terms and Conditions**

*Effective August 1, 2007*



**BancorpSouth<sup>®</sup>**

Member FDIC

*Right Where You Are<sup>SM</sup>*

EFFECTIVE AUGUST 1, 2007, THE FOLLOWING TERMS AND CONDITIONS WILL SUPERSEDE AND REPLACE THE TERMS AND CONDITIONS WHICH HAVE PREVIOUSLY GOVERNED YOUR ACCOUNT AT THE SIGNATURE BANK. YOUR USE OF ANY ACCOUNT IN ANY WAY ON OR AFTER AUGUST 1, 2007, CONSTITUTES YOUR ACCEPTANCE OF AND AGREEMENT TO THE FOLLOWING NEW TERMS AND CONDITIONS.

**AGREEMENT** – These terms govern the operation of your account unless varied or supplemented in writing by amendment as provided herein. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so that the singular includes the plural and the plural includes the singular. As used in this agreement, the words "we," "our," or "us" mean BancorpSouth Bank, formerly known as The Signature Bank, and the words "you" or "your" mean the account owner(s). Your account may not be transferred, pledged or assigned without our written consent, and we reserve the right to withhold such consent for any reason. Much of our relationship with our deposit customers is regulated by state and federal law, especially the law relating to negotiable instruments, the law regulating the methods of transferring property upon death and the rights of surviving spouses and dependents, the law pertaining to estate and other succession taxes, the law regarding electronic funds transfer, and the law regarding the availability of deposited funds. This body of law is too large and complex to be reproduced here.

The purpose of this form is to:

(1) summarize the rules applicable to the more common transactions; (2) establish rules to govern transactions or circumstances which the law does not regulate; and (3) establish rules for certain events or transactions which the law already regulates but permits variation by agreement.

**LIABILITY** – Each of you agrees, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges that may be imposed. You authorize us to deduct these charges as accrued directly from the account balance. You also agree to pay additional reasonable charges we may impose for services you request which are not contemplated by this agreement. Each of you also agrees to be jointly and severally (solitarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from this account, and the costs we incur to collect the deficit including our reasonable attorneys' fees.

**DEPOSITS** – Any items, other than cash, accepted for deposit (including items drawn "on us") will be given provisional credit only until collection is final (and actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars). Applicable law may require us to make your deposits available for withdrawal before payment becomes final or before the expiration of other banks' deadlines to return your deposited items to us for refund. You agree that our making all or any part of a deposit available to you for withdrawal is not a waiver of our right to charge back to this account any deposited item which is returned to us unpaid or for refund; instead, we may charge back to this account, and you will be responsible for, all such items. Subject to any other limitations, interest will be paid only on collected funds, unless otherwise provided by law. We are not responsible for transactions initiated by mail or outside depository until we actually record them. All transactions received after our daily cut-off time on a business day we are open (a "banking day"), or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next following banking day. Our daily cut-off time varies from location to location and is posted at each of our locations.

**WITHDRAWALS** – Any one of you who has signed the signature page of your The Signature Bank account agreement, including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us. However, we reserve the right to limit the amount of any withdrawal in cash where, for example, currency in the amount of the withdrawal is not available at our branch or your withdrawal exceeds the amount we allow via automatic teller machine or if the cash supply of the automatic teller machine is depleted. Each of you authorizes each other person who has signed the signature page of your The Signature Bank account agreement to endorse any item payable to you or your order for deposit to this account or any other transaction with us. You agree that our right to charge a check against this account does not depend on the date of the check. Therefore, we may charge a check against this account before the date of the check or at any time thereafter, provided, however, that we may, but are not required to,



refuse to pay a check which appears on its face to be more than six months old. In any event, we will not be liable to you for charging against this account a check before its date or after it is more than six months old. The fact that we may honor withdrawal requests which overdraw the finally collected account balance does not obligate us to do so. Withdrawals will first be made from collected funds, and we may, unless prohibited by law, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement, or which exceeds any frequency limitation. Even if we honor a nonconforming request, we may close the account in the event of repeated abuse of the stated limitations. We will use the date a transaction is completed by us (as opposed to the day you initiate it) to apply the frequency limitations. On interest bearing accounts other than time deposits, we reserve the right to require at least seven days' written notice before any withdrawal or transfer.

**ACH, WIRE AND FUNDS TRANSFERS** – We may decline to process any wire or funds transfer which is not subject to Regulation E or the Electronic Funds Transfer Act until you enter into a separate Funds Transfer Agreement with us. If we process any wire or funds transfer for you before you enter into a separate Funds Transfer Agreement, with respect to each such transfer you will be bound by the terms of this section. You agree to be bound by all rules and regulations governing any system through which any transfer occurs, including, but not limited to, any ACH rules, NACHA rules and the rules and regulations pertaining to Fedwire, the electronic transfer system of the Federal Reserve Banks. We may make wire or funds transfers by any means available to us, including, but not limited to, through our correspondent banks or by internal book entry. We have no obligation to notify you of incoming wire or funds transfers. Any credit for incoming wire or funds transfers is provisional until we have received final payment. If we do not receive final payment, we may reverse the credit. We may permit any of you or any authorized signer to order wire or other funds transfers from this account by telephone, in person, by written instruction, or by any other means acceptable to us, subject to any time deadlines or other conditions or procedures which we may establish. Wire and funds transfers are made only through the use of identifying numbers for the recipient bank and account, without regard to any names which may be furnished for any recipient bank or account. You must furnish the correct identifying numbers to us in connection with each wire or funds transfer. Funds will be wired or transferred in accordance with the identifying numbers you furnish us (or the identifying numbers which you use, if you are originating an ACH transaction, even if an identifying number is incorrect or is inconsistent with any name you may use or furnish us. In such event, we will not be responsible for your error, the transfer will not be considered an unauthorized transaction, and any loss will be entirely yours. Any instructions you may give us in connection with a wire or funds transfer will not be binding on us unless we have agreed to such instructions in writing. You must strictly observe all deadlines we impose for the processing of wire and funds transfers. We will not be responsible for any delay or other consequences which result from your failure to comply with any of these deadlines. You have no right to cancel or change any wire or funds transfer after you submit it to us. Any attempt by us to cancel or change or any wire or funds transfer at your request will not constitute the assumption of any duty by us. You assume all risk associated with international wire or funds transfers. We will not be liable to you in any way in connection with an international wire or funds transfer, whether for failure of delivery, delayed delivery, fluctuations in exchange rates or for any other reason. If any incoming wire or funds transfer is denominated in a foreign currency, you authorize us to convert such to U. S. Dollars according to such exchange rate which we may select at our discretion. You acknowledge and agree that such exchange rate may not be the most favorable rate of exchange published and that you will be bound by our choice of exchange rate. If you provide your account number or any other account identifying information to any third party and such third party originates any funds transfer transaction on this account, you agree that we may treat such transaction as a transaction authorized by you.

**OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION** – You intend these rules to apply to this account depending on the form of ownership and beneficiary designation, if any, specified on the signature page of your The Signature Bank account agreement. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we

pay the account funds. Individual Account -- is owned by one person. Joint -- With Survivorship (and not as a Tenancy by the Entirety or as Tenants in Common) (hereinafter referred to as a "Multiple Party Account") -- is owned by two or more persons jointly with right of survivorship and not as tenants in common, regardless of the conjunction ("or", "and") used between the depositors' names. Each of you expressly agrees that the account is not owned as a tenancy by the entireties. Each of you intends that upon your death the balance in the account (subject to any previous pledge to which we have consented) will vest in and belong to the survivor(s) as the separate property and estate of such survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. Joint -- As Tenants in Common Without Survivorship (and not as Tenancy by the Entirety) -- will be automatically converted on August 1, 2007 to a Multiple Party Account, will become subject to the Multiple Party Account rules stated above, with survivorship, and will no longer be treated as owned by tenants in common. Husband and Wife as a Tenancy by the Entirety -- will be automatically converted on August 1, 2007 to a Multiple Party Account, will become subject to the Multiple Party Account rules stated above, with survivorship, and will no longer be treated as owned by tenants by the entirety. Transactions on Multiple Party Accounts do not require the signatures of all account owners to transact on the account. Instead, any account owner may transact on the account to the exclusion of the other(s), and each of you authorize each other of you to do so without further consent. Pay On Death Account -- Pay-On-Death beneficiaries acquire the right to withdraw only if: (1) all persons creating the account die, (2) the beneficiary is then living, and (3) we are not otherwise required by law to make payment to some other person. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account and may transact on it according to the Multiple Party Account rules stated above unless otherwise provided by law. The person(s) creating a Pay-On-Death Account reserves the right to: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the deposit at any time. If two or more of you create such a Pay-On-Death Account, you own the account according to the Multiple Party Account rules stated above until the last of you dies. Trust -- Separate Agreement (hereinafter referred to as a "Fiduciary Account") -- A Fiduciary Account, whether for a consumer or a commercial purpose, is one in which the person controlling the account does so for the benefit of another. Examples of fiduciaries are trustees, executors, conservators, custodians for minors, representative payees and court-appointed guardians. For purposes of this agreement, guardians such as parents or other relatives who have not been court-appointed or persons who have not complied with necessary provisions of any applicable transfer to minors laws are not fiduciaries. We are not a fiduciary in connection with this account. For fiduciary accounts, we will usually require, in the case of trustees, a trust resolution according to our form, and in all other cases documents evidencing the fiduciary's authority. We have no duty to inspect any will or trust document, and you agree that we will not be bound by any limitations imposed in a will or trust document. You agree that a Fiduciary Account is a general deposit and not a special deposit. Corporate, Partnership, LLC, Government and other Business Purpose Accounts -- We will usually require a separate resolution in a form acceptable to us designating the person permitted and conditions required for withdrawal from any account in the name of a legal entity such as a partnership, corporation, LLC, governmental entity or other organization.

**STOP PAYMENTS** -- A stop payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it before our stop payment cut off time. Our stop payment cut off time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law. A stop payment order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item, if such other person has an equal or greater right to withdraw from this account than the person who signed the item in question. A release of the stop payment request may be made only by the person who initiated the stop payment.

**AMENDMENTS AND TERMINATION** -- We may change any term of this agreement or any of the disclosures previously given to you. Rules governing changes in interest rates are provided separately. For other changes we will give you reasonable notice in writing or by any other method permitted by law. We

may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you unless otherwise provided by law.

**STATEMENTS** – You must examine your statement of account with reasonable promptness. If you discover (or reasonably should have discovered) any forgeries, unauthorized payments, alterations or disputed transactions, you must promptly notify us of the relevant facts. Even if you do promptly notify us, you still may have to either share the loss with us or bear the loss entirely yourself (depending on whether you exercised ordinary care or substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items forged or altered by the same wrongdoer. You agree that the time you have to examine your statement and report to us will not, in any circumstance, exceed a total of 60 days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, unauthorized activity or any other errors or disputed transactions in this account within 60 days of when we make the statement available, you cannot assert a claim against us on any items in that statement, and the loss will be entirely yours.

You also agree to examine your statement with the same reasonable promptness to discover whether any deposit is missing or has been incorrectly credited. If your statement of account contains any error pertaining to any deposit, and if you fail to report such error to us within 60 days of when we make the statement available, you cannot assert a claim against us for such error, and any loss will be entirely yours.

The 60 day limitations set forth in this section are without regard to whether we exercised ordinary care.

If this account is a commercial purpose account, you additionally agree to take advantage of products and services we offer for the detection and prevention of fraud and unauthorized transactions, such as "Positive Pay" cash management products. If you fail to utilize any such product or service, you agree that you will be precluded from asserting any claim against us for any unauthorized transaction which could have been prevented by the proper use of such product or service.

We may require any report of errors on your statement to be put in writing by you and we may additionally require you to furnish us with an affidavit concerning the error on forms acceptable to us. If this account is a commercial purpose account, you agree to exhaust all rights against any insurance coverage you may have before making any claim against us. Our liability to you, if any, will be reduced by the amount of any insurance you are entitled to receive. You agree, upon request by us, to assign to us all insurance rights you may have in connection with any loss on your commercial purpose account.

**DIRECT DEPOSITS** – If, in connection with a direct deposit plan, we deposit any amount in this account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from this account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

**SET OFF** – You each agree that we may without prior notice to you set off the funds in this account against any due and payable debt owed to us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note. This right of set-off applies regardless of the source of the deposit, and you consent that we may exercise this right of set-off against deposits which consist in whole or in part of government payments, including, but not limited to, Social Security and Veterans Administration payments. This right of set off does not apply to this account if: (a) it is an Individual Retirement Account or other tax deferred retirement account, or (b) the debtor's right of withdrawal arises only in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of set off.

**FACSIMILE SIGNATURES** – You authorize us, at any time, to charge you for all checks, drafts, or other orders or transactions, for the payment of money, that are drawn on us by facsimile signature, regardless of by whom or by what means the facsimile signature(s) may have been affixed.

**AUTHORIZED SIGNERS** – An authorized signer is someone you designate to conduct transactions on your behalf, but does not have any ownership or rights in the account unless the authorized signer is also named as a Pay on Death beneficiary, in which case the Pay-On-Death Account rules apply. Otherwise, the rights of an authorized signer cease upon your death but not upon your disability or incapacity; however, you agree that we will not be liable for honoring any transaction by an authorized signer after your death. We reserve the right to limit the number of authorized signers and to decline to permit authorized signers on certain types of accounts.

**ACCOUNTS OWNED BY MINORS** – If this is a Multiple Party Account and one or more of the account owners is a minor, all adult owners of the account jointly and severally agree that all transactions made on the account by any such minor shall be deemed to have been made by such adult owners, regardless of whether any such transaction may be void or voidable. EACH SUCH ADULT OWNER AGREES TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH ANY TRANSACTION MADE BY ANY SUCH MINOR.

**REFUSAL OF DEPOSITS** – We may refuse to accept any item, wire or electronic funds transfer for deposit or to send any item for collection, and we will have no liability to you or to any other person for such refusal.

**ORDER OF PAYMENT** – If more than one item or order is presented for payment against this account on the same day and the available balance of this account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

**ERRORS** – If there occurs any error on this account in your favor, such as crediting this account for any amount to which you are not entitled, charging this account for an amount less than the amount of an item or other order, or receipt of any direct deposit to which you are not entitled, you agree that we may adjust this account to correct the error and that, if there are insufficient funds in this account for such adjustment, you will immediately pay us the amount necessary to correct the error. You agree to pay our reasonable attorneys' fees and expenses in the event we sue you to recover the amount necessary to correct the error.

**DEPOSITS NOT MADE IN PERSON** – We are not responsible for transactions initiated by mail, outside depository or left with us for subsequent processing until we actually record them, and you accept and assume all risks inherent in initiating such transactions. For deposits so initiated, our determination of the amount of the deposit will be conclusive, and you waive any right to contest our determination.

**RESTRICTIVE LEGENDS** – For your own purposes you may print or write on checks or other items restrictive legends specifying the number of signatures required, the maximum amount for which the check or item is payable, the number of days the check or item is valid and similar restrictions. However, you agree that such restrictions shall not be binding on us, that we may disregard such restrictions and that we will have no liability to you or to any other person for paying any check or other item inconsistently with any restrictive legend that is printed or written thereon.

**CHECK CHARACTERISTICS** – If you use checks from sources other than vendors approved by us, or if you use check stock, security features or ink color which cause data to disappear or to become obscured when the check is converted into an image, you agree to bear any loss which results. We will not be liable for failing to honor a stop-payment order for an item issued on a check form from sources other than vendors approved by us.

**SECURITY INTEREST** – In addition to the rights of set-off which we have under this Agreement, you hereby grant to us a security interest in this account to secure payment of any obligation which you now owe us or which you may owe us at any time in the future, including your obligation to pay our attorneys' fees and expenses and your obligation to indemnify us as provided elsewhere in this Agreement. When any such obligation is due and payable to us, we may pay such obligation, or any part thereof, from this account without prior notice to you, and we will not be liable for the dishonor of any item or order which results from such exercise of our security interest. If this account has any pay-on-death beneficiary, the interests of such benefi-



ciary shall be junior to our security interest and shall be subject to our right of set-off, even if we do not exercise our security interest or right of set-off until after your death.

**PAYMENT TO BENEFICIARIES** – Payment to pay-on-death beneficiaries shall be as provided by law. Notwithstanding anything in the Pay-on-Death Account rules stated above, we may require any pay-on-death beneficiary wishing to continue transactions with us to close this account and open a new account under such beneficiary's signature.

**INDEMNIFICATION BY FIDUCIARY -- IF THIS ACCOUNT IS A FIDUCIARY ACCOUNT (INCLUDING, BUT NOT LIMITED TO, AN ACCOUNT USED AS A CUSTODIAL ACCOUNT OR AS A REPRESENTATIVE PAYEE ACCOUNT TO RECEIVE PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION OR ANY OTHER GOVERNMENTAL PAYOR).** YOU, THE FIDUCIARY, AGREE IN YOUR INDIVIDUAL CAPACITY TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH THIS ACCOUNT, WHETHER RESULTING FROM OVERDRAFT, ERROR IN YOUR FAVOR, RECLAMATION BY ANY GOVERNMENTAL PAYOR. ANY DISPUTE WITHIN THE SCOPE OF THE "ACCOUNT DISPUTE: INDEMNITY; LIMITATION ON LIABILITY" SECTION BELOW OR ANY OTHER REASON. IN THE EVENT OF ANY SUCH LOSS, WE MAY ENFORCE THE FOREGOING INDEMNITY BY SETTING OFF THE AMOUNT OF SUCH LOSS AGAINST (OR BY EXERCISING ANY SECURITY INTEREST WE MAY HAVE IN) ANY OTHER ACCOUNT WITH US IN WHICH YOU, THE FIDUCIARY, HAVE AN INTEREST (UNLESS YOUR INTEREST IN SUCH ACCOUNT IS ONLY AS A FIDUCIARY), AND WE WILL NOT BE LIABLE TO YOU OR TO ANYONE ELSE FOR THE DISHONOR OF ANY ITEM OR ORDER ON SUCH OTHER ACCOUNT WHICH RESULTS FROM SUCH SET-OFF OR EXERCISE OF OUR SECURITY INTEREST.

**SIGNATURE BY MARK** – If any signature which appears on the signature page of your The Signature Bank account agreement is by mark (such as an "X"), then you agree that we will have no liability whatsoever on claims by you or any other person based on forgery, unauthorized signature, alteration or the like.

**ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY** – IN THE EVENT OF ANY DISPUTE REGARDING THIS ACCOUNT, INCLUDING ANY DISPUTE OVER OWNERSHIP OF OR ENTITLEMENT TO THIS ACCOUNT OR THE CAPACITY OR AUTHORITY OF ANY PERSON TO TRANSACT ON THIS ACCOUNT, YOU AGREE TO PAY OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN THE EVENT THAT WE BECOME INVOLVED IN ANY PROCEEDING TO RESOLVE SUCH DISPUTE. IN THE EVENT OF SUCH DISPUTE WE MAY PAY THE AVAILABLE BALANCE OF THIS ACCOUNT INTO COURT, AND IN THAT EVENT YOU AGREE NOT TO MAKE ANY CLAIM AGAINST US. ADDITIONALLY, TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO ANY SUCH DISPUTE. YOU ALSO AGREE THAT WE SHALL BE ENTITLED TO RECOVER OUR REASONABLE ATTORNEY'S FEES AND EXPENSES IN CONNECTION WITH SUCH PAYMENT INTO COURT AND THAT WE MAY RECOVER SUCH FEES AND EXPENSES FROM THE BALANCE PAID INTO COURT. IN THE EVENT OF ANY KIND OF CLAIM BY YOU AGAINST US IN CONNECTION WITH THIS ACCOUNT, YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES.

**GOVERNING LAW; PROCESS; REPRESENTATIVES** – This Agreement is governed by the laws of the state of the location of our branch identified on the signature page of your The Signature Bank account agreement and by federal law and regulation. Notwithstanding this, we may honor any levy, attachment, garnishment, execution, subpoena, court order, administrative order (including child support order) or other legal process which names you or which encompasses you, this account or any tax identification number associated with this account, regardless of whether we are subject to the jurisdiction of the issuer of such, regardless of in which state such is served on us and regardless of how such is served on us. We are not required to raise any defense in your behalf. We may also comply with the directions of any executor, administrator, conservator, guardian, receiver, bankruptcy trustee, attorney-in-fact or any other such representative purporting to

have authority over this account who furnishes us with apparently authentic copies of documents which confer such authority. We may refuse to deal with any such representative in our sole discretion, and we will not be liable to you for such refusal. You agree that we may place temporary or permanent holds on the balance of this account related to or otherwise in response to any such process or authority and that we shall be fully protected in doing so, even if we later determine that such process or authority is inapplicable to this account. YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ACTING OR NOT ACTING ON ANY SUCH PROCESS OR FOR ACTING OR NOT ACTING ON THE DIRECTIONS OF ANY SUCH REPRESENTATIVE OR FOR PLACING OR NOT PLACING TEMPORARY OR PERMANENT HOLDS, AND YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO SUCH ACTION OR INACTION.

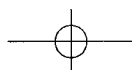
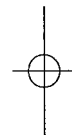
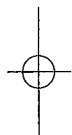
**EFFECT OF TERMINATION OR AMENDMENT** – Termination of this account, whether by us or by you, does not relieve you of any obligation you may then owe us. We may accept deposits to this account after it has been closed in order to collect any deficit balance, and such acceptance will not constitute reinstatement of the account. Your use of this account after we give you notice of any amendment to this agreement constitutes your acceptance of such amendment. No amendment of this agreement is enforceable against us unless it is in writing and we have authored the writing or have signed it through an employee having authority to do so, such as a regional president. No practice or course of dealing in connection with this account which is at variance with this agreement shall constitute a modification or amendment of this agreement.

**OTHER ITEMS** – This account is additionally governed by our Account Information Statement. You acknowledge receipt of a copy of the Account Information Statement and you agree to be bound by its terms, as amended by us from time to time, and to be responsible for all fees and charges set forth therein which apply to this account. You understand that the Account Information Statement does not necessarily set forth all possible fees and charges which apply to this account.

**SEVERABILITY** – In the event that any part of this agreement is determined to be unenforceable, such will not affect the other parts of this agreement, all of which shall remain fully enforceable.

**ARBITRATION** – IF THIS ACCOUNT IS A COMMERCIAL PURPOSE ACCOUNT, THEN YOU AGREE THAT ANY CLAIM, DISPUTE OR CONTROVERSY ("CLAIM") BY EITHER YOU OR US AGAINST THE OTHER, OR AGAINST THE EMPLOYEES, AGENTS OR ASSIGNS OF THE OTHER, ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT, THIS ACCOUNT OR ANY TRANSACTION, INCLUDING CLAIMS REGARDING THE APPLICABILITY OF THIS ARBITRATION CLAUSE OR THE VALIDITY OF ALL OR ANY PART OF THIS AGREEMENT, SHALL BE RESOLVED BY BINDING ARBITRATION BY THE NATIONAL ARBITRATION FORUM, UNDER THE CODE OF PROCEDURE IN EFFECT AT THE TIME THE CLAIM IS MADE OR FILED. RULES AND FORMS OF THE NATIONAL ARBITRATION FORUM MAY BE OBTAINED AND CLAIMS MAY BE FILED AT ANY NATIONAL ARBITRATION FORUM OFFICE, WWW.ARBITRATION-FORUM.COM OR POST OFFICE BOX 50191, MINNEAPOLIS, MINNESOTA 55405, TELEPHONE 1-800-474-2371. ANY ARBITRATION HEARING AT WHICH YOU APPEAR WILL TAKE PLACE IN THE CITY WHICH IS THE LOCATION OF OUR BRANCH AT WHICH THIS ACCOUNT WAS OPENED. THIS ARBITRATION AGREEMENT IS MADE PURSUANT TO A TRANSACTION INVOLVING INTER-STATE COMMERCE AND SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. SECTIONS 1-16. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. IN THE ABSENCE OF THIS ARBITRATION AGREEMENT YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS, BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.

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# EXHIBIT 18

#### YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS AGREEMENT

**AGREEMENT** - These terms govern the operation of this account unless varied or supplemented in writing by amendment as provided herein. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so that the singular includes the plural and the plural includes the singular. As used in this agreement, the words "we," "our," or "us" mean BancorpSouth Bank and the words "you" or "your" mean the account owner(s). This account may not be transferred, pledged or assigned without our written consent, and we reserve the right to withhold such consent for any reason.

Much of our relationship with our deposit customers is regulated by state and federal law, especially the law relating to negotiable instruments, the law regulating the methods of transferring property upon death and the rights of surviving spouses and dependents, the law pertaining to estate and other succession taxes, the law regarding electronic funds transfer, and the law regarding the availability of deposited funds. This body of law is too large and complex to be reproduced here.

The purpose of this form is to:

- (1) summarize the rules applicable to the more common transactions;
- (2) establish rules to govern transactions or circumstances which the law does not regulate; and
- (3) establish rules for certain events or transactions which the law already regulates but permits variation by agreement.

**LIABILITY** - Each of you agrees, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges that may be imposed. You authorize us to deduct these charges as accrued directly from the account balance. You also agree to pay additional reasonable charges we may impose for services you request which are not contemplated by this agreement. Each of you also agrees to be jointly and severally (solidarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from this account, and the costs we incur to collect the deficit including our reasonable attorneys' fees.

**DEPOSITS** - Any items, other than cash, accepted for deposit (including items drawn "on us") will be given provisional credit only until collection is final (and actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars). Applicable law may require us to make your deposits available for withdrawal before payment becomes final or before the expiration of other banks' deadlines to return your deposited items to us for refund. You agree that our making all or any part of a deposit available to you for withdrawal is not a waiver of our right to charge back to this account any deposited item which is returned to us unpaid or for refund; instead, we may charge back to this account, and you will be responsible for, all such items. Subject to any other limitations, interest will be paid only on collected funds, unless otherwise provided by law. We are not responsible for transactions initiated by mail or outside depository until we actually record them. All transactions received after our daily cut-off time on a business day we are open (a "banking day"), or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next following banking day. Our daily cut-off time varies from location to location and is posted at each of our locations.

**WITHDRAWALS** - Any one of you who signs this form, including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us. However, we reserve the right to limit the amount of any withdrawal in cash where, for example, currency in the amount of the withdrawal is not available at our branch or your withdrawal exceeds the amount we allow via automatic teller machine or if the cash supply of the automatic teller machine is depleted. Each of you authorizes each other person signing this form to endorse any item payable to you or your order for deposit to this account or any other transaction with us. You agree that our right to charge a check against this account does not depend on the date of the check. Therefore, we may charge a check against this account before the date of the check or at any time thereafter, provided, however, that we may, but are not required to, refuse to pay a check which appears on its face to be more than six months old. In any event, we will not be liable to you for charging against this account a check before its date or after it is more than six months old. The fact that we may honor withdrawal requests which overdraw the finally collected account balance does not obligate us to do so. Withdrawals will first be made from

collected funds, and we may, unless prohibited by law, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement, or which exceeds any frequency limitation. Even if we honor a nonconforming request, we may close the account in the event of repeated abuse of the stated limitations. We will use the date a transaction is completed by us (as opposed to the day you initiate it) to apply the frequency limitations. On interest bearing accounts other than time deposits, we reserve the right to require at least seven days' written notice before any withdrawal or transfer.

**ACH, WIRE AND FUNDS TRANSFERS** - We may decline to process any wire or funds transfer which is not subject to Regulation E or the Electronic Funds Transfer Act until you enter into a separate Funds Transfer Agreement with us. If we process any wire or funds transfer for you before you enter into a separate Funds Transfer Agreement, with respect to each such transfer you will be bound by the terms of this section. You agree to be bound by all rules and regulations governing any system through which any transfer occurs, including, but not limited to, any ACH rules, NACHA rules and the rules and regulations pertaining to Fedwire, the electronic transfer system of the Federal Reserve Banks. We may make wire or funds transfers by any means available to us, including, but not limited to, through our correspondent banks or by internal book entry. We have no obligation to notify you of incoming wire or funds transfers. Any credit for incoming wire or funds transfers is provisional until we have received final payment. If we do not receive final payment, we may reverse the credit. We may permit any of you or any authorized signer to order wire or other funds transfers from this account by telephone, in person, by written instruction, or by any other means acceptable to us, subject to any time deadlines or other conditions or procedures which we may establish. Wire and funds transfers are made only through the use of identifying numbers for the recipient bank and account, without regard to any names which may be furnished for any recipient bank or account. You must furnish the correct identifying numbers to us in connection with each wire or funds transfer. Funds will be wired or transferred in accordance with the identifying numbers you furnish us (or the identifying numbers which you use, if you are originating an ACH transaction, even if an identifying number is incorrect or is inconsistent with any name you may use or furnish us. In such event, we will not be responsible for your error, the transfer will not be considered an unauthorized transaction, and any loss will be entirely yours. Any instructions you may give us in connection with a wire or funds transfer will not be binding on us unless we have agreed to such instructions in writing. You must strictly observe all deadlines we impose for the processing of wire and funds transfers. We will not be responsible for any delay or other consequences which result from your failure to comply with any of these deadlines. You have no right to cancel or change any wire or funds transfer after you submit it to us. Any attempt by us to cancel or change or any wire or funds transfer at your request will not constitute the assumption of any duty by us. You assume all risk associated with international wire or funds transfers. We will not be liable to you in any way in connection with an international wire or funds transfer, whether for failure of delivery, delayed delivery, fluctuations in exchange rates or for any other reason. If any incoming wire or funds transfer is denominated in a foreign currency, you authorize us to convert such to U. S. Dollars according to such exchange rate which we may select at our discretion. You acknowledge and agree that such exchange rate may not be the most favorable rate of exchange published and that you will be bound by our choice of exchange rate. If you provide your account number or any other account identifying information to any third party and such third party originates any funds transfer transaction on this account, you agree that we may treat such transaction as a transaction authorized by you.

**OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION** - You intend these rules to apply to this account depending on the form of ownership and beneficiary designation, if any, specified on page 1. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. **Single Party Account** - is owned by one person. **Multiple Party Account** - is owned by two or more persons jointly with right of survivorship and not as tenants in common, regardless of the conjunction ("or", "and") used

between the depositors' names. Each of you expressly agrees that the account is not owned as a tenancy by the entireties. Each of you intends that upon your death the balance in the account (subject to any previous pledge to which we have consented) will vest in and belong to the survivor(s) as the separate property and estate of such survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. Transactions on Multiple Party Accounts do not require the signatures of all account owners to transact on the account. Instead, any account owner may transact on the account to the exclusion of the other(s), and each of you authorize each other of you to do so without further consent. If this Agreement is governed by the laws of the state of Louisiana, the owners of a Multiple Party Account are co-owners of the account, and all or any part of any deposit may be paid to any one of you, whether any other of you is living or not, and any such payment to any of you shall constitute receipt and acquittance and shall fully release and discharge us from the claims of any person to funds of the deceased depositor for the payment made.

**Pay On Death Account** - Pay-On-Death beneficiaries acquire the right to withdraw only if: (1) all persons creating the account die, (2) the beneficiary is then living, and (3) we are not otherwise required by law to make payment to some other person. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account and may transact on it according to the Multiple Party Account rules stated above unless otherwise provided by law. The person(s) creating a Pay-On-Death Account reserves the right to: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the deposit at any time. If two or more of you create such a Pay-On-Death Account, you own the account according to the Multiple Party Account rules stated above until the last of you dies.

**Fiduciary Account** - A Fiduciary Account, whether for a consumer or a commercial purpose, is one in which the person controlling the account does so for the benefit of another. Examples of fiduciaries are trustees, executors, conservators, custodians for minors, representative payees and court-appointed guardians. For purposes of this agreement, guardians such as parents or other relatives who have not been court-appointed or persons who have not complied with necessary provisions of any applicable transfer to minors laws are not fiduciaries. We are not a fiduciary in connection with this account. For fiduciary accounts, we will usually require, in the case of trustees, a trust resolution according to our form, and in all other cases documents evidencing the fiduciary's authority. We have no duty to inspect any will or trust document, and you agree that we will not be bound by any limitations imposed in a will or trust document. You agree that a Fiduciary Account is a general deposit and not a special deposit.

**Corporation, Partnership, Limited Partnership, Limited Liability Company (LLC), Unincorporated Association, Government and other Organizational Accounts** - We will usually require a separate resolution in a form acceptable to us designating the person permitted and conditions required for withdrawal from any account in the name of a legal entity such as a Corporation, Partnership, Limited Partnership, LLC, Unincorporated Association, governmental entity or other organization.

**STOP PAYMENTS** - A stop payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it before our stop payment cut off time. Our stop payment cut off time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law. A stop payment order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item, if such other person has an equal or greater right to withdraw from this account than the person who signed the item in question. A release of the stop payment request may be made only by the person who initiated the stop payment.

**AMENDMENTS AND TERMINATION** - We may change any term of this agreement or any of the disclosures indicated on the first page of this agreement. Rules governing changes in interest rates have been provided separately. For other changes we will give you reasonable notice in writing or by any other method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you unless otherwise provided by law.

**STATEMENTS** - You must examine your statement of account with reasonable promptness. If you discover (or reasonably should have discovered) any forgeries, unauthorized payments, alterations or disputed transactions, you must promptly notify us of the relevant facts. Even if you do promptly notify us, you still may have to either share the loss with us or bear the loss entirely yourself (depending on whether you exercised ordinary care or substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items forged or altered by the same wrongdoer. You agree that the time you have to examine your statement and report to us will not, in any circumstance, exceed a total of 60 days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, unauthorized activity or any other errors or disputed transactions in this account within 60 days of when we make the statement available, you cannot assert a claim against us on any items in that statement, and the loss will be entirely yours.

You also agree to examine your statement with the same reasonable promptness to discover whether any deposit is missing or has been incorrectly credited. If your statement of account contains any error pertaining to any deposit, and if you fail to report such error to us within 60 days of when we make the statement available, you cannot assert a claim against us for such error, and any loss will be entirely yours.

The 60 day limitations set forth in this section are without regard to whether we exercised ordinary care.

If this account is a commercial purpose account, you additionally agree to take advantage of products and services we offer for the detection and prevention of fraud and unauthorized transactions, such as "Positive Pay" cash management products. If you fail to utilize any such product or service, you agree that you will be precluded from asserting any claim against us for any unauthorized transaction which could have been prevented by the proper use of such product or service.

We may require any report of errors on your statement to be put in writing by you and we may additionally require you to furnish us with an affidavit concerning the error on forms acceptable to us. If this account is a commercial purpose account, you agree to exhaust all rights against any insurance coverage you may have before making any claim against us. Our liability to you, if any, will be reduced by the amount of any insurance you are entitled to receive. You agree, upon request by us, to assign to us all insurance rights you may have in connection with any loss on your commercial purpose account.

**DIRECT DEPOSITS** - If, in connection with a direct deposit plan, we deposit any amount in this account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from this account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

**TEMPORARY ACCOUNTS** - If you intend for this account to be a Multiple Party Account, but all of you are not present at the time the account is opened, we may permit as many of you as are present to open the account either as a Single Party Account or a Multiple Party Account only in the name(s) of those who are present (the "Temporary Account"). At the same time we may permit as many of you as are present to also sign account documentation listing the names of all those intended to be owners of the Multiple Party Account, including those who are not present (the "Permanent Account"). However, we are not required to give effect to the Permanent Account documentation until all owners listed on such documentation have signed it and we have processed it, at which point the Permanent Account documentation shall supersede and replace the Temporary Account documentation. Notwithstanding the foregoing sentence, we may give the Permanent Account documentation retroactive effect to the date on which the Temporary Account was opened. We are not required to give any of you notice that the Permanent Account documentation has taken effect, nor are we required to give any intended owner notice that such intended owner's signature is needed on the Permanent Account documentation. If the Permanent Account documentation is not signed by all intended owners within 30 days following the opening of the Temporary Account, we may discard the Permanent Account documentation and will have no liability for doing so. A Temporary Account is subject to all of the terms and provisions of this agreement.

**SET OFF** - You each agree that we may without prior notice to you set off the funds in this account against any due and payable debt owed to us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note. This right of set-off applies regardless of the source of the deposit, and you consent that we may exercise this right of set-off against deposits which consist in whole or in part of government payments, including, but not limited to, Social Security and Veterans Administration payments. This right of set-off does not apply to this account if: (a) it is an Individual Retirement Account or other tax deferred retirement account, or (b) the debtor's right of withdrawal arises only in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of set-off.

**FACSIMILE SIGNATURES** - You authorize us, at any time, to charge you for all checks, drafts, or other orders or transactions, for the payment of money, that are drawn on us by facsimile signature, regardless of by whom or by what means the facsimile signature(s) may have been affixed.

**AUTHORIZED SIGNERS** - An authorized signer is someone you designate to conduct transactions on your behalf, but does not have any ownership or rights in the account unless the authorized signer is also named as a Pay on Death beneficiary, in which case the Pay-On-Death Account rules apply. Otherwise, the rights of an authorized signer cease upon your death but not upon your disability or incapacity; however, you agree that we will not be liable for honoring any transaction by an authorized signer after your death. We reserve the right to limit the number of authorized signers and to decline to permit authorized signers on certain types of accounts.

**ACCOUNTS OWNED BY MINORS** - If this is a Multiple Party Account and one or more of the account owners is a minor, all adult owners of the account jointly and severally agree that all transactions made on the account by any such minor shall be deemed to have been made by such adult owners, regardless of whether any such transaction may be void or voidable. EACH SUCH ADULT OWNER AGREES TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH ANY TRANSACTION MADE BY ANY SUCH MINOR.

**REFUSAL OF DEPOSITS** - We may refuse to accept any item, wire or electronic funds transfer for deposit or to send any item for collection, and we will have no liability to you or to any other person for such refusal.

**ORDER OF PAYMENT** - If more than one item or order is presented for payment against this account on the same day and the available balance of this account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

**ERRORS** - If there occurs any error on this account in your favor, such as crediting this account for any amount to which you are not entitled, charging this account for an amount less than the amount of an item or other order, or receipt of any direct deposit to which you are not entitled, you agree that we may adjust this account to correct the error and that, if there are insufficient funds in this account for such adjustment, you will immediately pay us the amount necessary to correct the error. You agree to pay our reasonable attorneys' fees and expenses in the event we sue you to recover the amount necessary to correct the error.

**DEPOSITS NOT MADE IN PERSON** - We are not responsible for transactions initiated by mail, outside depository or left with us for subsequent processing until we actually record them, and you accept and assume all risks inherent in initiating such transactions. For deposits so initiated, our determination of the amount of the deposit will be conclusive, and you waive any right to contest our determination.

**RESTRICTIVE LEGENDS** - For your own purposes you may print or write on checks or other items restrictive legends specifying the number of signatures required, the maximum amount for which the check or item is payable, the number of days the check or item is valid and similar restrictions. However, you agree that such restrictions shall not be binding on us, that we may disregard such restrictions and that we will have no liability to you or to any other person for paying any check or other item inconsistently with any restrictive legend that is printed or written thereon.

**CHECK CHARACTERISTICS** - If you use checks from sources other than vendors approved by us, or if you use check stock, security features or ink color which cause data to disappear or to become obscured when the check is converted into an image, you agree to bear any loss which results. We will not be liable for failing to honor a stop-payment order for an item issued on a check form from sources other than vendors approved by us.

**SECURITY INTEREST** - In addition to the rights of set-off which we have under this Agreement, you hereby grant to us a security interest in this account to secure payment of any obligation which you now owe us or which you may owe us at any time in the future, including your obligation to pay our attorneys' fees and expenses and your obligation to indemnify us as provided elsewhere in this Agreement. When any such obligation is due and payable to us, we may pay such obligation, or any part thereof, from this account without prior notice to you, and we will not be liable for the dishonor of any item or order which results from such exercise of our security interest. If this account has any pay-on-death beneficiary, the interests of such beneficiary shall be junior to our security interest and shall be subject to our right of set-off, even if we do not exercise our security interest or right of set-off until after your death.

**PAYMENT TO BENEFICIARIES** - Payment to pay-on-death beneficiaries shall be as provided by law. Notwithstanding anything in the Pay-on-Death Account rules stated above, we may require any pay-on-death beneficiary wishing to continue transactions with us to close this account and open a new account under such beneficiary's signature.

**INDEMNIFICATION BY FIDUCIARY** - IF THIS ACCOUNT IS A FIDUCIARY ACCOUNT (INCLUDING, BUT NOT LIMITED TO, AN ACCOUNT USED AS A CUSTODIAL ACCOUNT OR AS A REPRESENTATIVE PAYEE ACCOUNT TO RECEIVE PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION OR ANY OTHER GOVERNMENTAL PAYOR), YOU, THE FIDUCIARY, AGREE IN YOUR INDIVIDUAL CAPACITY TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH THIS ACCOUNT, WHETHER RESULTING FROM OVERDRAFT, ERROR IN YOUR FAVOR, RECLAMATION BY ANY GOVERNMENTAL PAYOR, ANY DISPUTE WITHIN THE SCOPE OF THE "ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY" SECTION BELOW OR ANY OTHER REASON. IN THE EVENT OF ANY SUCH LOSS, WE MAY ENFORCE THE FOREGOING INDEMNITY BY SETTING OFF THE AMOUNT OF SUCH LOSS AGAINST (OR BY EXERCISING ANY SECURITY INTEREST WE MAY HAVE IN) ANY OTHER ACCOUNT WITH US IN WHICH YOU, THE FIDUCIARY, HAVE AN INTEREST (UNLESS YOUR INTEREST IN SUCH ACCOUNT IS ONLY AS A FIDUCIARY), AND WE WILL NOT BE LIABLE TO YOU OR TO ANYONE ELSE FOR THE DISHONOR OF ANY ITEM OR ORDER ON SUCH OTHER ACCOUNT WHICH RESULTS FROM SUCH SET-OFF OR EXERCISE OF OUR SECURITY INTEREST.

**SIGNATURE BY MARK** - If any signature which appears on page 1 of this Agreement is by mark (such as an "X"), then you agree that we will have no liability whatsoever on claims by you or any other person based on forgery, unauthorized signature, alteration or the like.



**ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY** - IN THE EVENT OF ANY DISPUTE REGARDING THIS ACCOUNT, INCLUDING ANY DISPUTE OVER OWNERSHIP OF OR ENTITLEMENT TO THIS ACCOUNT OR THE CAPACITY OR AUTHORITY OF ANY PERSON TO TRANSACT ON THIS ACCOUNT, YOU AGREE TO PAY OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN THE EVENT THAT WE BECOME INVOLVED IN ANY PROCEEDING TO RESOLVE SUCH DISPUTE. IN THE EVENT OF SUCH DISPUTE WE MAY PAY THE AVAILABLE BALANCE OF THIS ACCOUNT INTO COURT, AND IN THAT EVENT YOU AGREE NOT TO MAKE ANY CLAIM AGAINST US. ADDITIONALLY, TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO ANY SUCH DISPUTE. YOU ALSO AGREE THAT WE SHALL BE ENTITLED TO RECOVER OUR REASONABLE ATTORNEY'S FEES AND EXPENSES IN CONNECTION WITH SUCH PAYMENT INTO COURT AND THAT WE MAY RECOVER SUCH FEES AND EXPENSES FROM THE BALANCE PAID INTO COURT.

IN THE EVENT OF ANY KIND OF CLAIM BY YOU AGAINST US IN CONNECTION WITH THIS ACCOUNT, YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES.

**GOVERNING LAW; PROCESS; REPRESENTATIVES** - With regard to any account established online, this Agreement is governed by the laws of Mississippi and by federal law and regulation. Otherwise, this Agreement is governed by the laws of the state of the location of our branch identified on the first page of this form and by federal law and regulation. Notwithstanding this, we may honor any levy, attachment, garnishment, execution, subpoena, court order, administrative order (including child support order) or other legal process which names you or which encompasses you, this account or any tax identification number associated with this account, regardless of whether we are subject to the jurisdiction of the issuer of such, regardless of in which state such is served on us and regardless of how such is served on us. We are not required to raise any defense in your behalf. We may also comply with the directions of any executor, administrator, conservator, guardian, receiver, bankruptcy trustee, attorney-in-fact or any other such representative purporting to have authority over this account who furnishes us with apparently authentic copies of documents which confer such authority. We may refuse to deal with any such representative in our sole discretion, and we will not be liable to you for such refusal. You agree that we may place temporary or permanent holds on the balance of this account related to or otherwise in response to any such process or authority and that we shall be fully protected in doing so, even if we later determine that such process or authority is inapplicable to this account. YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ACTING OR NOT ACTING ON ANY SUCH PROCESS OR FOR ACTING OR NOT ACTING ON THE DIRECTIONS OF ANY SUCH REPRESENTATIVE OR FOR PLACING OR NOT PLACING TEMPORARY OR PERMANENT HOLDS, AND YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO SUCH ACTION OR INACTION.

**EFFECT OF TERMINATION OR AMENDMENT** - Termination of this account, whether by us or by you, does not relieve you of any obligation you may then owe us. We may accept deposits to this account after it has been closed in order to collect any deficit balance, and such acceptance will not constitute reinstatement of the account. Your use of this account after we give you notice of any amendment to this agreement constitutes your acceptance of such amendment. No amendment of this Agreement is enforceable against us unless it is in writing and we have authored the writing or have signed it through an employee having authority to do so, such as a regional president. No practice or course of dealing in connection with this account which is at variance with this agreement shall constitute a modification or amendment of this agreement.

**OTHER TERMS** - This account is additionally governed by our Account Information Statement. You acknowledge receipt of a copy of the Account Information Statement and you agree to be bound by its terms, as amended by us from time to time, and to be responsible for all fees and charges set forth therein which apply to this account. You understand that the Account Information Statement does not necessarily set forth all possible fees and charges which apply to this account.

**SEVERABILITY** - In the event that any part of this Agreement is determined to be unenforceable, such will not affect the other parts of this Agreement, all of which shall remain fully enforceable.

**ARBITRATION** - IF THIS ACCOUNT IS A COMMERCIAL PURPOSE ACCOUNT, THEN YOU AGREE THAT ANY CLAIM, DISPUTE OR CONTROVERSY ("CLAIM") BY EITHER YOU OR US AGAINST THE OTHER, OR AGAINST THE EMPLOYEES, AGENTS OR ASSIGNS OF THE OTHER, ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT, THIS ACCOUNT OR ANY TRANSACTION, INCLUDING CLAIMS REGARDING THE APPLICABILITY OF THIS ARBITRATION CLAUSE OR THE VALIDITY OF ALL OR ANY PART OF THIS AGREEMENT, SHALL BE RESOLVED BY BINDING ARBITRATION BY THE NATIONAL ARBITRATION FORUM, UNDER THE CODE OF PROCEDURE IN EFFECT AT THE TIME THE CLAIM IS MADE OR FILED. RULES AND FORMS OF THE NATIONAL ARBITRATION FORUM MAY BE OBTAINED AND CLAIMS MAY BE FILED AT ANY NATIONAL ARBITRATION FORUM OFFICE, WWW.ARBITRATION-FORUM.COM OR POST OFFICE BOX 50191, MINNEAPOLIS, MINNESOTA 55405, TELEPHONE 1-800-474-2371. ANY ARBITRATION HEARING AT WHICH YOU APPEAR WILL TAKE PLACE IN THE CITY WHICH IS THE LOCATION OF OUR BRANCH AT WHICH THIS ACCOUNT WAS OPENED. THIS ARBITRATION AGREEMENT IS MADE PURSUANT TO A TRANSACTION INVOLVING INTERSTATE COMMERCE AND SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. SECTIONS 1-16. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. **IN THE ABSENCE OF THIS ARBITRATION AGREEMENT YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS, BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.**

# EXHIBIT 19

# YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS AGREEMENT

**AGREEMENT** - These terms and conditions (this "Agreement") govern your deposit relationships with us unless varied or supplemented in writing by amendment as provided herein. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so that the singular includes the plural and the plural includes the singular. As used in this Agreement, the "account" means each deposit account you maintain with us other than Time Deposit (Certificate of Deposit) accounts and Individual Retirement Accounts; "we," "our," or "us" mean BancorpSouth Bank; "you" or "your" mean the owner(s) of the account; and "signature page" means the page(s) containing the signatures of the owner(s) of the account. This Agreement applies separately to each account. The account may not be transferred, pledged or assigned without our written consent, and we reserve the right to withhold such consent for any reason.

Much of our relationship with our deposit customers is regulated by state and federal law, especially the law relating to negotiable instruments, the law regulating the methods of transferring property upon death and the rights of surviving spouses and dependents, the law pertaining to estate and other succession taxes, the law regarding electronic funds transfer, and the law regarding the availability of deposited funds. This body of law is too large and complex to be reproduced here.

The purpose of this Agreement is to:

- (1) summarize the rules applicable to the more common transactions,
- (2) establish rules to govern transactions or circumstances which the law does not regulate; and
- (3) establish rules for certain events or transactions which the law already regulates but permits variation by agreement.

**LIABILITY** - Each of you agrees, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms and conditions set forth in this Agreement and the schedule of charges that may be imposed. You authorize us to deduct these charges as accrued directly from the account balance. You also agree to pay additional reasonable charges we may impose for services you request which are not contemplated by this Agreement. Each of you also agrees to be jointly and severally (solidarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from the account, and the costs we incur to collect the deficit including our reasonable attorneys' fees.

**DEPOSITS** - Any items, other than cash, accepted for deposit (including items drawn "on us") will be given provisional credit only until collection is final (and actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars). Applicable law may require us to make your deposits available for withdrawal before payment becomes final or before the expiration of other banks' deadlines to return your deposited items to us for refund. You agree that our making all or any part of a deposit available to you for withdrawal is not a waiver of our right to charge back to the account any deposited item which is returned to us unpaid or for refund; instead, we may charge back to the account, and you will be responsible for, all such items. Subject to any other limitations, interest will be paid only on collected funds, unless otherwise provided by law. All transactions received after our daily cut-off time on a business day we are open (a "banking day"), or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next following banking day. Our daily cut-off time varies from location to location and is posted at each of our locations.

**WITHDRAWALS** - Any one of you who signs the signature page, including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us. However, we reserve the right to limit the amount of any withdrawal in cash where, for example, currency in the amount of the withdrawal is not available at our branch or your withdrawal exceeds the amount we allow via automatic teller machine or if the cash supply of the automatic teller machine is depleted. Each of you authorizes each other person signing the signature page to endorse any item payable to you or your order for deposit to the account or any other transaction with us. You agree that our right to charge a check against the account does not depend on the date of the check. Therefore, we may charge a check against the account before the date of the check or at any time thereafter, provided, however, that we may, but are not required to, refuse to pay a check which appears on its face to be more than six months old. In any event, we will not be liable to you for charging against the

account a check before its date or after it is more than six months old. The fact that we may honor withdrawal requests which overdraw the finally collected account balance does not obligate us to do so. Withdrawals will first be made from collected funds, and we may, unless prohibited by law, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement, or which exceeds any frequency limitation. Even if we honor a nonconforming request, we may close the account in the event of repeated abuse of the stated limitations. We will use the date a transaction is completed by us (as opposed to the day you initiate it) to apply the frequency limitations. On interest bearing accounts other than time deposits, we reserve the right to require at least seven days' written notice before any withdrawal or transfer.

**ACH, WIRE AND FUNDS TRANSFERS** - We may decline to process any wire or funds transfer which is not subject to Regulation E or the Electronic Funds Transfer Act until you enter into a separate Funds Transfer Agreement with us. If we process any wire or funds transfer for you before you enter into a separate Funds Transfer Agreement, with respect to each such transfer you will be bound by the terms of this section. You agree to be bound by all rules and regulations governing any system through which any transfer occurs, including, but not limited to, any ACH rules, NACHA rules and the rules and regulations pertaining to Fedwire, the electronic transfer system of the Federal Reserve Banks. We may make wire or funds transfers by any means available to us, including, but not limited to, through our correspondent banks or by internal book entry. We have no obligation to notify you of incoming wire or funds transfers. Any credit for incoming wire or funds transfers is provisional until we have received final payment. If we do not receive final payment, we may reverse the credit. We may permit any of you or any authorized signer to order wire or other funds transfers from the account by telephone, in person, by written instruction, or by any other means acceptable to us, subject to any time deadlines or other conditions or procedures which we may establish. Wire and funds transfers are made only through the use of identifying numbers for the recipient bank and account, without regard to any names which may be furnished for any recipient bank or account. You must furnish the correct identifying numbers to us in connection with each wire or funds transfer. Funds will be wired or transferred in accordance with the identifying numbers you furnish us (or the identifying numbers which you use, if you are originating an ACH transaction), even if an identifying number is incorrect or is inconsistent with any name you may use or furnish us. In such event, we will not be responsible for your error, the transfer will not be considered an unauthorized transaction, and any loss will be entirely yours. Any instructions you may give us in connection with a wire or funds transfer will not be binding on us unless we have agreed to such instructions in writing. You must strictly observe all deadlines we impose for the processing of wire and funds transfers. We will not be responsible for any delay or other consequences which result from your failure to comply with any of these deadlines. You have no right to cancel or change any wire or funds transfer after you submit it to us. Any attempt by us to cancel or change or any wire or funds transfer at your request will not constitute the assumption of any duty by us. You assume all risk associated with international wire or funds transfers. We will not be liable to you in any way in connection with an international wire or funds transfer, whether for failure of delivery, delayed delivery, fluctuations in exchange rates or for any other reason. If any incoming wire or funds transfer is denominated in a foreign currency, you authorize us to convert such to U. S. Dollars according to such exchange rate which we may select at our discretion. You acknowledge and agree that such exchange rate may not be the most favorable rate of exchange published and that you will be bound by our choice of exchange rate. If you provide your account number or any other account identifying information to any third party and such third party originates any funds transfer transaction on the account, you agree that we may treat such transaction as a transaction authorized by you.

**OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION** - You intend these rules to apply to the account depending on the form of ownership and beneficiary designation, if any, specified on the signature page. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. **Single Party Account** - is owned by one person. **Multiple Party**



**Account** - is owned by two or more persons jointly with right of survivorship and not as tenants in common, regardless of the conjunction ("or", "and") used between the depositors' names. Each of you expressly agrees that the account is not owned as a tenancy by the entireties. Each of you intends that upon your death the balance in the account (subject to any previous pledge to which we have consented) will vest in and belong to the survivor(s) as the separate property and estate of such survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. Transactions on Multiple Party Accounts do not require the signatures of all account owners to transact on the account. Instead, any one account owner or authorized signer may transact on the account to the exclusion of the other(s), and each of you authorize each other of you to do so without further consent. If this Agreement is governed by the laws of the state of Louisiana, the owners of a Multiple Party Account are co-owners of the account, and all or any part of any deposit may be paid to any one of you, whether any other of you is living or not, and any such payment to any of you shall constitute receipt and acquittance and shall fully release and discharge us from the claims of any person to funds of the deceased depositor for the payment made. **Pay On Death Account** - Pay-On-Death beneficiaries acquire the right to withdraw only if: (1) all persons creating the account die, (2) the beneficiary is then living, and (3) we are not otherwise required by law to make payment to some other person. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own the account and may transact on it according to the Multiple Party Account rules stated above unless otherwise provided by law. Any one account owner or authorized signer may: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the deposit at any time. If two or more of you create such a Pay-On-Death Account, you own the account according to the Multiple Party Account rules stated above until the last of you dies. **Fiduciary Account** - A Fiduciary Account, whether for a consumer or a commercial purpose, is one in which the person controlling the account does so for the benefit of another. Examples of fiduciaries are trustees, executors, conservators, custodians for minors, representative payees and court-appointed guardians. For purposes of this Agreement, guardians such as parents or other relatives who have not been court-appointed or persons who have not complied with necessary provisions of any applicable transfer to minors laws are not fiduciaries. We are not a fiduciary in connection with the account. For fiduciary accounts, we will usually require, in the case of trustees, a trust resolution according to our form, and in all other cases documents evidencing the fiduciary's authority. We have no duty to inspect any will or trust document, and you agree that we will not be bound by any limitations imposed in a will or trust document. You agree that a Fiduciary Account is a general deposit and not a special deposit. **Corporation, Partnership, LLC, Government and other Organizational Accounts** - We will usually require a separate resolution in a form acceptable to us designating the person(s) permitted to make withdrawals from any account in the name of a legal entity such as a partnership, corporation, LLC, governmental entity or other organization.

**STOP-PAYMENTS** - A stop-payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it before our stop-payment cut off time. Our stop-payment cut off time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop-payment are provided by law. A stop-payment order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop-payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item, if such other person has an equal or greater right to withdraw from the account than the person who signed the item in question. A release of the stop-payment request may be made only by the person who initiated the stop-payment.

**AMENDMENTS AND TERMINATION** - We may change, in whole or in part, any term of this Agreement or any of the disclosures indicated on the signature page or previously given to you. Rules governing changes in interest rates have been provided separately. For other changes we will give you reasonable notice in writing or by any other method permitted by law. We may also close the account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you unless otherwise provided by law.

**STATEMENTS** - You must examine your statement of account with reasonable promptness. If you discover (or reasonably should have discovered) any forgeries, unauthorized payments, alterations or disputed transactions, you must promptly notify us of the relevant facts. Even if you do promptly notify us, you still may have to either share the loss with us or bear the loss entirely yourself (depending on whether you exercised ordinary care or substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items forged or altered by the same wrongdoer. You agree that the time you have to examine your statement and report to us will not, in any circumstance, exceed a total of 60 days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, unauthorized activity or any other errors or disputed transactions in the account within 60 days of when we make the statement available, you cannot assert a claim against us on any items in that statement, and the loss will be entirely yours.

You also agree to examine your statement with the same reasonable promptness to discover whether any deposit is missing or has been incorrectly credited. If your statement of account contains any error pertaining to any deposit, and if you fail to report such error to us within 60 days of when we make the statement available, you cannot assert a claim against us for such error, and any loss will be entirely yours.

The 60 day limitations set forth in this section are without regard to whether we exercised ordinary care.

If the account is a commercial purpose account, you additionally agree to take advantage of products and services we offer for the detection and prevention of fraud and unauthorized transactions, such as "Positive Pay" cash management products. If you fail to utilize any such product or service, you agree that you will be precluded from asserting any claim against us for any unauthorized transaction which could have been prevented by the proper use of such product or service.

We may require any report of errors on your statement to be put in writing by you and we may additionally require you to furnish us with an affidavit concerning the error on forms acceptable to us. If the account is a commercial purpose account, you agree to exhaust all rights against any insurance coverage you may have before making any claim against us. Our liability to you, if any, will be reduced by the amount of any insurance you are entitled to receive. You agree, upon request by us, to assign to us all insurance rights you may have in connection with any loss on your commercial purpose account.

**DIRECT DEPOSITS** - If, in connection with a direct deposit plan, we deposit any amount in the account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

**TEMPORARY ACCOUNTS** - If you intend for the account to be a Multiple Party Account, but all of you are not present at the time the account is opened, we may permit as many of you as are present to open the account either as a Single Party Account or a Multiple Party Account only in the name(s) of those who are present (the "Temporary Account"). At the same time we may permit as many of you as are present to also sign account documentation listing the names of all those intended to be owners of the Multiple Party Account, including those who are not present (the "Permanent Account"). However, we are not required to give effect to the Permanent Account documentation until all owners listed on such documentation have signed it and we have processed it, at which point the Permanent Account documentation shall supersede and replace the Temporary Account documentation. Notwithstanding the foregoing sentence, we may give the Permanent Account documentation retroactive effect to the date on which the Temporary Account was opened. We are not required to give any of you notice that the Permanent Account documentation has taken effect, nor are we required to give any intended owner notice that such intended owner's signature is needed on the Permanent Account documentation. If the Permanent Account documentation is not signed by all intended owners within 30 days following the opening of the Temporary Account, we may discard the Permanent Account documentation and will have no liability for doing so. A Temporary Account is subject to all of the terms and provisions of this Agreement.

**SET OFF** - You each agree that we may without prior notice to you set off the funds in the account against any due and payable debt owed to us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note. This right of set-off applies regardless of the source of the deposit, and you consent that we may exercise this right of set-off against deposits which consist in whole or in part of government payments, including, but not limited to, Social Security and Veterans Administration payments. This right of set-off does not apply to the account if: (a) it is an Individual Retirement Account or other tax deferred retirement account, or (b) the debtor's right of withdrawal arises only in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against the account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of set-off.

**FACSIMILE SIGNATURES** - You authorize us, at any time, to charge you for all checks, drafts, or other orders or transactions, for the payment of money, that are drawn on us by facsimile signature, regardless of by whom or by what means the facsimile signature(s) may have been affixed.

**AUTHORIZED SIGNERS** - An authorized signer is someone you designate to conduct transactions on your behalf, but does not have any ownership or rights in the account unless the authorized signer is also named as a Pay on Death beneficiary, in which case the Pay-On-Death Account rules apply. Otherwise, the rights of an authorized signer cease upon your death but not upon your disability or incapacity; however, you agree that we will not be liable for honoring any transaction by an authorized signer after your death. We reserve the right to limit the number of authorized signers and to decline to permit authorized signers on certain types of accounts.

**ACCOUNTS OWNED BY MINORS** - If this is a Multiple Party Account and one or more of the account owners is a minor, all adult owners of the account jointly and severally agree that all transactions made on the account by any such minor shall be deemed to have been made by such adult owners, regardless of whether any such transaction may be void or voidable. EACH SUCH ADULT OWNER AGREES TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH ANY TRANSACTION MADE BY ANY SUCH MINOR.

**REFUSAL OF DEPOSITS** - We may refuse to accept any item, wire or electronic funds transfer for deposit or to send any item for collection, and we will have no liability to you or to any other person for such refusal.

**ORDER OF PAYMENT** - Unless otherwise provided in the Account Information Statement (see OTHER TERMS section below), if more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

**ERRORS** - If there occurs any error on the account in your favor, such as crediting the account for any amount to which you are not entitled, charging the account for an amount less than the amount of an item or other order, or receipt of any direct deposit to which you are not entitled, you agree that we may adjust this account to correct the error and that, if there are insufficient funds in the account for such adjustment, you will immediately pay us the amount necessary to correct the error. You agree to pay our reasonable attorneys' fees and expenses in the event we sue you to recover the amount necessary to correct the error.

**DEPOSITS NOT MADE IN PERSON** - We are not responsible for transactions initiated by mail, outside depository or left with us for subsequent processing until we actually record them, and you accept and assume all risks inherent in initiating such transactions. For deposits so initiated, our determination of the amount of the deposit will be conclusive, and you waive any right to contest our determination.

**RESTRICTIVE LEGENDS** - For your own purposes you may print or write on checks or other items restrictive legends specifying the number of signatures required, the maximum amount for which the check or item is payable, the number of days the check or item is valid and similar restrictions. However, you agree that such restrictions shall not be binding on us, that we may disregard such restrictions and that we will have no liability to you or to any other person for paying any check or other item inconsistently with any restrictive legend that is printed or written thereon.

**CHECK CHARACTERISTICS** - If you use checks from sources other than vendors approved by us, or if you use check stock, security features or ink color which cause data to disappear or to become obscured when the check is converted into an image, you agree to bear any loss which results. We will not be liable for failing to honor a stop-payment order for an item issued on a check form from sources other than vendors approved by us.

**SECURITY INTEREST** - In addition to the rights of set-off which we have under this Agreement, you hereby grant to us a security interest in the account to secure payment of any obligation which you now owe us or which you may owe us at any time in the future, including your obligation to pay our attorneys' fees and expenses and your obligation to indemnify us as provided elsewhere in this Agreement. When any such obligation is due and payable to us, we may pay such obligation, or any part thereof, from the account without prior notice to you, and we will not be liable for the dishonor of any item or order which results from such exercise of our security interest. If the account has any pay-on-death beneficiary, the interests of such beneficiary shall be junior to our security interest and shall be subject to our right of set-off, even if we do not exercise our security interest or right of set-off until after your death.

**PAYMENT TO BENEFICIARIES** - Payment to pay-on-death beneficiaries shall be as provided by law. Notwithstanding anything in the Pay-on-Death Account rules stated above, we may require any pay-on-death beneficiary wishing to continue transactions with us to close the account and open a new account under such beneficiary's signature.

**INDEMNIFICATION BY FIDUCIARY** - IF THE ACCOUNT IS A FIDUCIARY ACCOUNT (INCLUDING, BUT NOT LIMITED TO, AN ACCOUNT USED AS A CUSTODIAL ACCOUNT OR AS A REPRESENTATIVE PAYEE ACCOUNT TO RECEIVE PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION OR ANY OTHER GOVERNMENTAL PAYOR), YOU, THE FIDUCIARY, AGREE IN YOUR INDIVIDUAL CAPACITY TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH THE ACCOUNT, WHETHER RESULTING FROM OVERDRAFT, ERROR IN YOUR FAVOR, RECLAMATION BY ANY GOVERNMENTAL PAYOR, ANY DISPUTE WITHIN THE SCOPE OF THE "ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY" SECTION BELOW OR ANY OTHER REASON. IN THE EVENT OF ANY SUCH LOSS, WE MAY ENFORCE THE FOREGOING INDEMNITY BY SETTING OFF THE AMOUNT OF SUCH LOSS AGAINST (OR BY EXERCISING ANY SECURITY INTEREST WE MAY HAVE IN) ANY OTHER ACCOUNT WITH US IN WHICH YOU, THE FIDUCIARY, HAVE AN INTEREST (UNLESS YOUR INTEREST IN SUCH ACCOUNT IS ONLY AS A FIDUCIARY), AND WE WILL NOT BE LIABLE TO YOU OR TO ANYONE ELSE FOR THE DISHONOR OF ANY ITEM OR ORDER ON SUCH OTHER ACCOUNT WHICH RESULTS FROM SUCH SET-OFF OR EXERCISE OF OUR SECURITY INTEREST.

**SIGNATURE BY MARK** - If any signature which appears on the signature page is by mark (such as an "X"), then you agree that we will have no liability whatsoever on claims by you or any other person based on forgery, unauthorized signature, alteration or the like.

**ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY** - IN THE EVENT OF ANY DISPUTE REGARDING THE ACCOUNT, INCLUDING ANY DISPUTE OVER OWNERSHIP OF OR ENTITLEMENT TO THE ACCOUNT OR THE CAPACITY OR AUTHORITY OF ANY PERSON TO TRANSACT ON THE ACCOUNT, YOU AGREE TO PAY OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN THE EVENT THAT WE BECOME INVOLVED IN ANY PROCEEDING TO RESOLVE SUCH DISPUTE. IN THE EVENT OF SUCH DISPUTE WE MAY PAY THE AVAILABLE BALANCE OF THE ACCOUNT INTO COURT, AND IN THAT EVENT YOU AGREE NOT TO MAKE ANY CLAIM AGAINST US. ADDITIONALLY, TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO ANY SUCH DISPUTE. YOU ALSO AGREE THAT WE SHALL BE ENTITLED TO RECOVER OUR REASONABLE ATTORNEY'S FEES AND EXPENSES IN CONNECTION WITH SUCH PAYMENT INTO COURT AND THAT WE MAY RECOVER SUCH FEES AND EXPENSES FROM THE BALANCE PAID INTO COURT.

IN THE EVENT OF ANY KIND OF CLAIM BY YOU AGAINST US IN CONNECTION WITH THE ACCOUNT, YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES.

**GOVERNING LAW; PROCESS; REPRESENTATIVES** - With regard to any account established online, this Agreement is governed by the laws of Mississippi and by federal law and regulation. Otherwise, this Agreement is governed by the laws of the state of the location of our branch identified on the signature page and by federal law and regulation. Notwithstanding this, we may honor any levy, attachment, garnishment, execution, subpoena, court order, administrative order (including child support order) or other legal process which names you or which encompasses you, the account or any tax identification number associated with the account, regardless of whether we are subject to the jurisdiction of the issuer of such, regardless of in which state such is served on us and regardless of how such is served on us. We are not required to raise any defense in your behalf. We may also comply with the directions of any executor, administrator, conservator, guardian, receiver, bankruptcy trustee, attorney-in-fact or any other such representative purporting to have authority over the account who furnishes us with apparently authentic copies of documents which confer such authority. We may refuse to deal with any such representative in our sole discretion, and we will not be liable to you for such refusal. You agree that we may place temporary or permanent holds on the balance of the account related to or otherwise in response to any such process or authority and that we shall be fully protected in doing so, even if we later determine that such process or authority is inapplicable to the account. YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ACTING OR NOT ACTING ON ANY SUCH PROCESS OR FOR ACTING OR NOT ACTING ON THE DIRECTIONS OF ANY SUCH REPRESENTATIVE OR FOR PLACING OR NOT PLACING TEMPORARY OR PERMANENT HOLDS, AND YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO SUCH ACTION OR INACTION.

**EFFECT OF TERMINATION OR AMENDMENT** - Termination of the account, whether by us or by you, does not relieve you of any obligation you may then owe us. We may accept deposits to the account after it has been closed in order to collect any deficit balance, and such acceptance will not constitute reinstatement of the account. Your use of the account after we give you notice of any amendment to this Agreement constitutes your acceptance of such amendment. No amendment of this Agreement is enforceable against us unless it is in writing and we have authored the writing or have signed it through an employee having authority to do so, such as a regional president. No practice or course of dealing in connection with the account which is at variance with this Agreement shall constitute a modification or amendment of this Agreement.

**OTHER TERMS** - The account is additionally governed by our Account Information Statement. You acknowledge receipt of a copy of the Account Information Statement and you agree to be bound by its terms, as amended by us from time to time, and to be responsible for all fees and charges set forth therein which apply to the account. You understand that the Account Information Statement does not necessarily set forth all possible fees and charges which apply to the account.

**SEVERABILITY** - In the event that any part of this Agreement is determined to be unenforceable, such will not affect the other parts of this Agreement, all of which shall remain fully enforceable.

**ARBITRATION** - IF THE ACCOUNT IS A COMMERCIAL PURPOSE ACCOUNT, THEN YOU AGREE THAT ANY CLAIM, DISPUTE OR CONTROVERSY ("CLAIM") BY EITHER YOU OR US AGAINST THE OTHER, OR AGAINST THE EMPLOYEES, AGENTS OR ASSIGNS OF THE OTHER, ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT, THE ACCOUNT OR ANY TRANSACTION, INCLUDING CLAIMS REGARDING THE APPLICABILITY OF THIS ARBITRATION CLAUSE OR THE VALIDITY OF ALL OR ANY PART OF THIS AGREEMENT, SHALL BE RESOLVED BY BINDING ARBITRATION BY THE NATIONAL ARBITRATION FORUM, UNDER THE CODE OF PROCEDURE IN EFFECT AT THE TIME THE CLAIM IS MADE OR FILED. RULES AND FORMS OF THE NATIONAL ARBITRATION FORUM MAY BE OBTAINED AND CLAIMS MAY BE FILED AT ANY NATIONAL ARBITRATION FORUM OFFICE, WWW.ARBITRATION-FORUM.COM OR POST OFFICE BOX 50191, MINNEAPOLIS, MINNESOTA 55405, TELEPHONE 1-800-474-2371. ANY ARBITRATION HEARING AT WHICH YOU APPEAR WILL TAKE PLACE IN THE CITY WHICH IS THE LOCATION OF OUR BRANCH AT WHICH THE ACCOUNT WAS OPENED. THIS ARBITRATION AGREEMENT IS MADE PURSUANT TO A TRANSACTION INVOLVING INTERSTATE COMMERCE AND SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. SECTIONS 1-16. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. **IN THE ABSENCE OF THIS ARBITRATION AGREEMENT YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS, BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.**

# EXHIBIT 20

**Deposit Account  
Terms and Conditions**

*Effective January 31, 2009*



**BancorpSouth**  
Member FDIC

*Right Where You Are*

**BXS Swift H-007064**



Thank you for banking with BancorpSouth.

From time to time, we update the Terms and Conditions which govern your BancorpSouth deposit accounts. Below are new Terms and Conditions which will become effective on January 31, 2009. These new Terms and Conditions replace the Terms and Conditions documents you have received previously. These new Terms and Conditions cover the use of all types of depository accounts you have with us, both consumer and commercial, except for Time Deposit and Individual Retirement Accounts. These new Terms and Conditions do not change the structure of any of your accounts or change any fees applicable to your accounts.

If you have any questions about these new Terms and Conditions, please call your local BancorpSouth office or our InfoLine at 888-797-7711.

#### YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS EFFECTIVE JANUARY 31, 2009

EFFECTIVE JANUARY 31, 2009, THE FOLLOWING TERMS AND CONDITIONS WILL SUPERSEDE AND REPLACE THE TERMS AND CONDITIONS WHICH HAVE PREVIOUSLY GOVERNED YOUR DEPOSIT ACCOUNTS (OTHER THAN TIME DEPOSIT AND INDIVIDUAL RETIREMENT ACCOUNTS) AT BANCORPSOUTH. YOUR USE OF ANY ACCOUNT IN ANY WAY ON OR AFTER JANUARY 31, 2009, CONSTITUTES YOUR ACCEPTANCE OF AND AGREEMENT TO THE FOLLOWING NEW TERMS AND CONDITIONS.

**AGREEMENT** -- These terms and conditions (this "Agreement") govern your deposit relationships with us unless varied or supplemented in writing by amendment as provided herein. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so that the singular includes the plural and the plural includes the singular. As used in this Agreement, the "account" means each deposit account you maintain with us other than Time Deposit (Certificate of Deposit) accounts and Individual Retirement Accounts; "we," "our," or "us" mean BancorpSouth Bank; "you" or "your" mean the owner(s) of the account; and "signature page" means the page(s) containing the signatures of the owner(s) of the account. This Agreement applies separately to each account. The account may not be transferred, pledged or assigned without our written consent, and we reserve the right to withhold such consent for any reason.

Much of our relationship with our deposit customers is regulated by state and federal law, especially the law relating to negotiable instruments, the law regulating the methods of transferring property upon death and the rights of surviving spouses and dependents, the law pertaining to estate and other succession taxes, the law regarding electronic funds transfer, and the law regarding the availability of deposited funds. This body of law is too large and complex to be reproduced here. The purpose of this Agreement is to:

- (1) summarize the rules applicable to the more common transactions;
- (2) establish rules to govern transactions or circumstances which the law does not regulate; and
- (3) establish rules for certain events or transactions which the law already regulates but permits variation by agreement.

**LIABILITY** -- Each of you agrees, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms and conditions set forth in this Agreement and the schedule of charges that may be imposed. You authorize us to deduct these charges as accrued directly from the account balance. You also agree to pay additional reasonable charges we may impose for services you request which are not contemplated by this Agreement. Each of you also agrees to be jointly and severally (solidarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from the account, and the costs we incur to collect the deficit including our reasonable attorneys' fees.

**DEPOSITS** -- Any items, other than cash, accepted for deposit (including items drawn "on us") will be given provisional credit only until collection is final (and actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars). Applicable law may require us to make your deposits available for withdrawal before payment becomes final or before the expiration of other banks' deadlines to return your deposited items to us for refund. You agree that our making all or any part of a deposit available to you for withdrawal is not a waiver of our right to charge back to the account any deposited item which is returned to us unpaid or for refund; instead, we may charge back to the account, and you will be responsible for, all such items. Subject to any other limitations, interest will be paid only on collected funds, unless otherwise provided by law. All transactions received after our daily cut-off time on a business day we are open (a "banking day"), or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next following banking day. Our daily cut-off time varies from location to location and is posted at each of our locations.

**WITHDRAWALS** -- Any one of you who signs the signature page, including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us. However, we reserve the right to limit the amount of any withdrawal in cash where, for example, currency in the amount of the withdrawal is not available at our branch or your withdrawal exceeds the amount we allow via automatic teller machine or if the cash supply of the automatic teller machine is depleted. Each of you authorizes each other person signing the signature page to endorse any item payable to you or your order for deposit to the account or any other transaction with us. You agree that our right to charge a check against the account does not depend on the date of the check. Therefore, we may charge a check against the account

before the date of the check or at any time thereafter, provided, however, that we may, but are not required to, refuse to pay a check which appears on its face to be more than six months old. In any event, we will not be liable to you for charging against the account a check before its date or after it is more than six months old. The fact that we may honor withdrawal requests which overdraw the finally collected account balance does not obligate us to do so. Withdrawals will first be made from collected funds, and we may, unless prohibited by law, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement, or which exceed any frequency limitation. Even if we honor a non-conforming request, we may close the account in the event of repeated abuse of the stated limitations. We will use the date a transaction is completed by us (as opposed to the day you initiate it) to apply the frequency limitations. On interest bearing accounts other than time deposits, we reserve the right to require at least seven days' written notice before any withdrawal or transfer.

**ACH, WIRE AND FUNDS TRANSFERS** -- We may decline to process any wire or funds transfer which is not subject to Regulation E or the Electronic Funds Transfer Act until you enter into a separate Funds Transfer Agreement with us. If we process any wire or funds transfer for you before you enter into a separate Funds Transfer Agreement, with respect to each such transfer you will be bound by the terms of this section. You agree to be bound by all rules and regulations governing any system through which any transfer occurs, including, but not limited to, any ACH rules, NACHA rules and the rules and regulations pertaining to Fedwire, the electronic transfer system of the Federal Reserve Banks. We may make wire or funds transfers by any means available to us, including, but not limited to, through our correspondent banks or by internal book entry. We have no obligation to notify you of incoming wire or funds transfers. Any credit for incoming wire or funds transfers is provisional until we have received final payment. If we do not receive final payment, we may reverse the credit. We may permit any of you or any authorized signer to order wire or other funds transfers from the account by telephone, in person, by written instruction, or by any other means acceptable to us, subject to any time deadlines or other conditions or procedures which we may establish. Wire and funds transfers are made only through the use of identifying numbers for the recipient bank and account, without regard to any names which may be furnished for any recipient bank or account. You must furnish the correct identifying numbers to us in connection with each wire or funds transfer. Funds will be wired or transferred in accordance with the identifying numbers you furnish us (or the identifying numbers which you use, if you are originating an ACH transaction), even if an identifying number is incorrect or is inconsistent with any name you may use or furnish us. In such event, we will not be responsible for your error; the transfer will not be considered an unauthorized transac-

tion, and any loss will be entirely yours. Any instructions you may give us in connection with a wire or funds transfer will not be binding on us unless we have agreed to such instructions in writing. You must strictly observe all deadlines we impose for the processing of wire and funds transfers. We will not be responsible for any delay or other consequences which result from your failure to comply with any of these deadlines. You have no right to cancel or change any wire or funds transfer after you submit it to us. Any attempt by us to cancel or change any wire or funds transfer at your request will not constitute the assumption of any duty by us. You assume all risk associated with international wire or funds transfers. We will not be liable to you in any way in connection with an international wire or funds transfer, whether for failure of delivery, delayed delivery, fluctuations in exchange rates or for any other reason. If any incoming wire or funds transfer is denominated in a foreign currency, you authorize us to convert such to U. S. Dollars according to such exchange rate which we may select at our discretion. You acknowledge and agree that such exchange rate may not be the most favorable rate of exchange published and that you will be bound by our choice of exchange rate. If you provide your account number or any other account identifying information to any third party and such third party originates any funds transfer transaction on the account, you agree that we may treat such transaction as a transaction authorized by you.

**OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION** -- You intend these rules to apply to the account depending on the form of ownership and beneficiary designation, if any, specified on the signature page. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. **Single Party Account** is owned by one person. **Multiple Party Account** is owned by two or more persons jointly with right of survivorship and not as tenants in common, regardless of the conjunction ("or", "and") used between the depositors' names. Each of you expressly agrees that the account is not owned as a tenancy by the entireties. Each of you intends that upon your death the balance in the account (subject to any previous pledge to which we have consented) will vest in and belong to the survivor(s) as the separate property and estate of such survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. Transactions on Multiple Party Accounts do not require the signatures of all account owners to transact on the account. Instead, any one account owner or authorized signer may transact on the account to the exclusion of the other(s), and each of you authorizes each other of you to do so without further consent. If this Agreement is governed by the laws of the state of Louisiana, the owners of a Multiple Party Account are co-owners of the account, and all or any part of any deposit may be paid to any one of you, whether any other of you is living or not, and any such payment to any of you shall constitute receipt and acquittance and shall fully release and discharge us from the claims of any person to funds of the deceased depositor.

for the payment made. Pay-On-Death Accounts Pay-On-Death beneficiaries acquire the right to withdraw only if: (1) all persons creating the account die, (2) the beneficiary is then living, and (3) we are not otherwise required by law to make payment to some other person. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own the account and may transact on it according to the Multiple Party Account rules stated above unless otherwise provided by law. Any one account owner or authorized signer may: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the deposit at any time. If two or more of you create such a Pay-On-Death Account, you own the account according to the Multiple Party Account rules stated above until the last of you dies.

**Fiduciary Account** - A Fiduciary Account, whether for a consumer or a commercial purpose, is one in which the person controlling the account does so for the benefit of another. Examples of fiduciaries are trustees, executors, conservators, custodians for minors, representative payees and court-appointed guardians. For purposes of this Agreement, guardians such as parents or other relatives who have not been court-appointed or persons who have not complied with necessary provisions of any applicable transfer to minors laws are not fiduciaries. We are not a fiduciary in connection with the account. For fiduciary accounts, we will usually require, in the case of trustees, a trust resolution according to our form, and in all other cases documents evidencing the fiduciary's authority. We have no duty to inspect any will or trust document, and you agree that we will not be bound by any limitations imposed in a will or trust document. You agree that a Fiduciary Account is a general deposit and not a special deposit. **Corporate, Partnership, LLC, Government and other Organizational Accounts** We will usually require a separate resolution in a form acceptable to us designating the person(s) permitted to make withdrawals from any account in the name of a legal entity such as a partnership, corporation, LLC, governmental entity or other organization.

**STOP-PAYMENTS** - A stop-payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it before our stop-payment cut-off time. Our stop-payment cut-off time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop-payment are provided by law. A stop-payment order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop-payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item, if such other person has an equal or greater right to withdraw from the account than the person who signed the item in question. A release of the stop-payment request may be made only by the person who initiated the stop-payment.

**AMENDMENTS AND TERMINATION** - We may change, in whole or in part, any term of this Agreement or any of the disclosures indicated on the signature page or previously given to you. Rules governing changes in interest rates have been provided separately.

for other changes we will give you reasonable notice in writing or by any other method permitted by law. We may also close the account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you unless otherwise provided by law.

**STATEMENTS** - You must examine your statement of account with reasonable promptness. If you discover (or reasonably should have discovered) any forgeries, unauthorized payments, alterations or disputed transactions, you must promptly notify us of the relevant facts. Even if you do promptly notify us, you still may have to either share the loss with us or bear the loss entirely yourself (depending on whether you exercised ordinary care or substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items forged or altered by the same wrongdoer. You agree that the time you have to examine your statement and report to us will not, in any circumstance, exceed a total of 60 days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, unauthorized activity or any other errors or disputed transactions in the account within 60 days of when we make the statement available, you cannot assert a claim against us on any items in that statement, and the loss will be entirely yours.

You also agree to examine your statement with the same reasonable promptness to discover whether any deposit is missing or has been incorrectly credited. If your statement of account contains any error pertaining to any deposit, and if you fail to report such error to us within 60 days of when we make the statement available, you cannot assert a claim against us for such error, and any loss will be entirely yours.

The 60 day limitations set forth in this section are without regard to whether we exercised ordinary care.

If the account is a commercial purpose account, you additionally agree to take advantage of products and services we offer for the detection and prevention of fraud and unauthorized transactions, such as "Positive Pay" cash management products. If you fail to utilize any such product or service, you agree that you will be precluded from asserting any claim against us for any unauthorized transaction which could have been prevented by the proper use of such product or service.

We may require any report of errors on your statement to be put in writing by you and we may additionally require you to furnish us with an affidavit concerning the error on forms acceptable to us. If the account is a commercial purpose account, you agree to exhaust all rights against any insurance coverage you may have before making any claim against us. Our liability to you, if any, will be reduced by the amount of any insurance you are entitled to receive. You agree, upon request by us, to assign to us all insurance rights you may have in connection with any loss on your commercial purpose account.

**DIRECT DEPOSITS** - If, in connection with a direct deposit plan, we deposit any amount in the account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

**TEMPORARY ACCOUNTS** - If you intend for the account to be a Multiple Party Account, but all of you are not present at the time the account is opened, we may permit as many of you as are present to open the account either as a Single Party Account or a Multiple Party Account only in the name(s) of those who are present (the "Temporary Account"). At the same time we may permit as many of you as are present to also sign account documentation listing the names of all those intended to be owners of the Multiple Party Account, including those who are not present (the "Permanent Account"). However, we are not required to give effect to the Permanent Account documentation until all owners listed on such documentation have signed it and we have processed it, at which point the Permanent Account documentation shall supersede and replace the Temporary Account documentation. Notwithstanding the foregoing sentence, we may give the Permanent Account documentation retroactive effect to the date on which the Temporary Account was opened. We are not required to give any of you notice that the Permanent Account documentation has taken effect, nor are we required to give any intended owner notice that such intended owner's signature is needed on the Permanent Account documentation. If the Permanent Account documentation is not signed by all intended owners within 30 days following the opening of the Temporary Account, we may discard the Permanent Account documentation and will have no liability for doing so. A Temporary Account is subject to all of the terms and provisions of this Agreement.

**SET-OFF** - You each agree that we may, without prior notice to you, set off the funds in the account against any due and payable debt owed to us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance due date for which we properly accelerate under the note. This right of set-off applies regardless of the source of the deposit, and you consent that we may exercise this right of set-off against deposits which consist in whole or in part of government payments, including, but not limited to, Social Security and Veterans Administration payments. This right of set-off does not apply to the account if: (a) it is an Individual Retirement Account or other tax-deferred retirement account, or (b) the debtor's right of withdrawal arises only in a representative capacity. We will not be liable for the dishonor of any check when the



dishonor occurs because we set off a debt against the account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of set-off.

**FACSIMILE SIGNATURES** -- You authorize us, at any time, to charge you for all checks, drafts, or other orders or transactions, for the payment of money, that are drawn on us by facsimile signature, regardless of by whom or by what means the facsimile signature(s) may have been affixed.

**AUTHORIZED SIGNERS** -- An authorized signer is someone you designate to conduct transactions on your behalf, but does not have any ownership or rights in the account unless the authorized signer is also named as a Pay-On-Death beneficiary, in which case the Pay-On-Death Account rules apply. Otherwise, the rights of an authorized signer cease upon your death but not upon your disability or incapacity; however, you agree that we will not be liable for honoring any transaction by an authorized signer after your death. We reserve the right to limit the number of authorized signers and to decline to permit authorized signers on certain types of accounts.

**ACCOUNTS OWNED BY MINORS** -- If this is a Multiple Party Account and one or more of the account owners is a minor, all adult owners of the account jointly and severally agree that all transactions made on the account by any such minor shall be deemed to have been made by such adult owners, regardless of whether any such transaction may be void or voidable. EACH SUCH ADULT OWNER AGREES TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH ANY TRANSACTION MADE BY ANY SUCH MINOR.

**REFUSAL OF DEPOSITS** -- We may refuse to accept any item, wire or electronic funds transfer for deposit or to send any item for collection, and we will have no liability to you or to any other person for such refusal.

**ORDER OF PAYMENT** -- Unless otherwise provided in the Account Information Statement (see OTHER TERMS section below), if more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

**ERRORS** -- If there occurs any error on the account in your favor, such as crediting the account for any amount to which you are not entitled, charging the account for an amount less than the amount of an item or other order, or receipt of any direct deposit to which you are not entitled, you agree that we may adjust this

account to correct the error and that, if there are insufficient funds in the account for such adjustment, you will immediately pay us the amount necessary to correct the error. You agree to pay our reasonable attorneys' fees and expenses in the event we sue you to recover the amount necessary to correct the error.

**DEPOSITS NOT MADE IN PERSON** -- We are not responsible for transactions initiated by mail, outside depository or left with us for subsequent processing until we actually record them, and you accept and assume all risks inherent in initiating such transactions. For deposits so initiated, our determination of the amount of the deposit will be conclusive, and you waive any right to contest our determination.

**RESTRICTIVE LEGENDS** -- For your own purposes you may print or write on checks or other items restrictive legends specifying the number of signatures required, the maximum amount for which the check or item is payable, the number of days the check or item is valid and similar restrictions. However, you agree that such restrictions shall not be binding on us, that we may disregard such restrictions and that we will have no liability to you or to any other person for paying any check or other item inconsistently with any restrictive legend that is printed or written thereon.

**CHECK CHARACTERISTICS** -- If you use checks from sources other than vendors approved by us, or if you use check stock, security features or ink color which cause data to disappear or to become obscured when the check is converted into an image, you agree to bear any loss which results. We will not be liable for failing to honor a stop-payment order for an item issued on a check form from sources other than vendors approved by us.

**SECURITY INTEREST** -- In addition to the rights of set-off which we have under this Agreement, you hereby grant to us a security interest in the account to secure payment of any obligation which you now owe us or which you may owe us at any time in the future, including your obligation to pay our attorneys' fees and expenses and your obligation to indemnify us as provided elsewhere in this Agreement. When any such obligation is due and payable to us, we may pay such obligation, or any part thereof, from the account without prior notice to you, and we will not be liable for the dishonor of any item or order which results from such exercise of our security interest. If the account has any Pay-On-Death beneficiary, the interests of such beneficiary shall be junior to our security interest and shall be subject to our right of set-off, even if we do not exercise our security interest or right of set-off until after your death.

**PAYMENT TO BENEFICIARIES** -- Payment to pay-on-death beneficiaries shall be as provided by law. Notwithstanding anything in the Pay-on-Death Account rules stated above, we may require any pay-on-death beneficiary wishing to continue transactions with us to close the account and open a new account under such beneficiary's signature.

**INDEMNIFICATION BY FIDUCIARY** -- IF THE ACCOUNT IS A FIDUCIARY ACCOUNT (INCLUDING, BUT NOT LIMITED TO, AN ACCOUNT USED AS A CUSTODIAL ACCOUNT OR AS A REPRESENTATIVE PAYEE ACCOUNT TO RECEIVE PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION OR ANY OTHER GOVERNMENTAL PAYOR), YOU, THE FIDUCIARY, AGREE IN YOUR INDIVIDUAL CAPACITY TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH THE ACCOUNT, WHETHER RESULTING FROM OVERDRAFT, ERROR IN YOUR FAVOR, RECLAMATION BY ANY GOVERNMENTAL PAYOR, ANY DISPUTE WITHIN THE SCOPE OF THE "ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY" SECTION BELOW OR ANY OTHER REASON. IN THE EVENT OF ANY SUCH LOSS, WE MAY ENFORCE THE FOREGOING INDEMNITY BY SETTING OFF THE AMOUNT OF SUCH LOSS AGAINST (OR BY EXERCISING ANY SECURITY INTEREST WE MAY HAVE IN) ANY OTHER ACCOUNT WITH US IN WHICH YOU, THE FIDUCIARY, HAVE AN INTEREST (UNLESS YOUR INTEREST IN SUCH ACCOUNT IS ONLY AS A FIDUCIARY), AND WE WILL NOT BE LIABLE TO YOU OR TO ANYONE ELSE FOR THE DISHONOR OF ANY ITEM OR ORDER ON SUCH OTHER ACCOUNT WHICH RESULTS FROM SUCH SET-OFF OR EXERCISE OF OUR SECURITY INTEREST.

**SIGNATURE BY MARK** -- If any signature which appears on the signature page is by mark (such as an "X"), then you agree that we will have no liability whatsoever on claims by you or any other person based on forgery, unauthorized signature, alteration or the like.

**ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY** -- IN THE EVENT OF ANY DISPUTE REGARDING THE ACCOUNT, INCLUDING ANY DISPUTE OVER OWNERSHIP OF OR ENTITLEMENT TO THE ACCOUNT OR THE CAPACITY OR AUTHORITY OF ANY PERSON TO TRANSACT ON THE ACCOUNT, YOU AGREE TO PAY OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN THE EVENT THAT WE BECOME INVOLVED IN ANY PROCEEDING TO RESOLVE SUCH DISPUTE. IN THE EVENT OF SUCH DISPUTE WE MAY PAY THE AVAILABLE BALANCE OF THE ACCOUNT INTO COURT, AND IN THAT EVENT YOU AGREE NOT TO MAKE ANY CLAIM AGAINST US. ADDITIONALLY, TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO ANY SUCH DISPUTE. YOU ALSO AGREE THAT WE SHALL BE ENTITLED TO RECOVER OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN CONNECTION WITH SUCH PAYMENT INTO COURT AND

THAT WE MAY RECOVER SUCH FEES AND EXPENSES FROM THE BALANCE PAID INTO COURT.

IN THE EVENT OF ANY KIND OF CLAIM BY YOU AGAINST US IN CONNECTION WITH THE ACCOUNT, YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES.

**GOVERNING LAW; PROCESS; REPRESENTATIVES** -- With regard to any account established online, this Agreement is governed by the laws of Mississippi and by federal law and regulation. Otherwise, this Agreement is governed by the laws of the state of the location of our branch identified on the signature page and by federal law and regulation. Notwithstanding this, we may honor any levy, attachment, garnishment, execution, subpoena, court order, administrative order (including child support order) or other legal process which names you or which encompasses you, the account or any tax identification number associated with the account, regardless of whether we are subject to the jurisdiction of the issuer of such, regardless of in which state such is served on us and regardless of how such is served on us. We are not required to raise any defense in your behalf. We may also comply with the directions of any executor, administrator, conservator, guardian, receiver, bankruptcy trustee, attorney-in-fact or any other such representative purporting to have authority over the account who furnishes us with apparently authentic copies of documents which confer such authority. We may refuse to deal with any such representative in our sole discretion, and we will not be liable to you for such refusal. You agree that we may place temporary or permanent holds on the balance of the account related to or otherwise in response to any such process or authority and that we shall be fully protected in doing so, even if we later determine that such process or authority is inapplicable to the account. YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ACTING OR NOT ACTING ON ANY SUCH PROCESS OR FOR ACTING OR NOT ACTING ON THE DIRECTIONS OF ANY SUCH REPRESENTATIVE OR FOR PLACING OR NOT PLACING TEMPORARY OR PERMANENT HOLDS, AND YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO SUCH ACTION OR INACTION.

**EFFECT OF TERMINATION OR AMENDMENT** -- Termination of the account, whether by us or by you, does not relieve you of any obligation you may then owe us. We may accept deposits to the account after it has been closed in order to collect any deficit balance, and such acceptance will not constitute reinstatement of the account. Your use of the account after we give you notice of any amendment to this Agreement constitutes your acceptance of such amendment. No amendment of this Agreement is enforceable against us unless it is in writing and we have

# EXHIBIT 21

# YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS AGREEMENT

**AGREEMENT** - These terms and conditions (this "Agreement") govern your deposit relationships with us unless varied or supplemented in writing by amendment as provided herein. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so that the singular includes the plural and the plural includes the singular. As used in this Agreement, the "account" means each deposit account you maintain with us other than Time Deposit (Certificate of Deposit) accounts and Individual Retirement Accounts; "we," "our," or "us" mean BancorpSouth Bank; "you" or "your" mean the owner(s) of the account; and "signature page" means the page(s) containing the signatures of the owner(s) of the account. This Agreement applies separately to each account. The account may not be transferred, pledged or assigned without our written consent, and we reserve the right to withhold such consent for any reason.

Much of our relationship with our deposit customers is regulated by state and federal law, especially the law relating to negotiable instruments, the law regulating the methods of transferring property upon death and the rights of surviving spouses and dependents, the law pertaining to estate and other succession taxes, the law regarding electronic funds transfer, and the law regarding the availability of deposited funds. This body of law is too large and complex to be reproduced here.

The purpose of this Agreement is to:

- (1) summarize the rules applicable to the more common transactions;
- (2) establish rules to govern transactions or circumstances which the law does not regulate; and
- (3) establish rules for certain events or transactions which the law already regulates but permits variation by agreement.

**LIABILITY** - Each of you agrees, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms and conditions set forth in this Agreement and the schedule of charges that may be imposed. You authorize us to deduct these charges as accrued directly from the account balance. You also agree to pay additional reasonable charges we may impose for services you request which are not contemplated by this Agreement. Each of you also agrees to be jointly and severally (solidarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from the account, and the costs we incur to collect the deficit including our reasonable attorneys' fees.

**DEPOSITS** - Any items, other than cash, accepted for deposit (including items drawn "on us") will be given provisional credit only until collection is final (and actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars). Applicable law may require us to make your deposits available for withdrawal before payment becomes final or before the expiration of other banks' deadlines to return your deposited items to us for refund. You agree that our making all or any part of a deposit available to you for withdrawal is not a waiver of our right to charge back to the account any deposited item which is returned to us unpaid or for refund; instead, we may charge back to the account, and you will be responsible for, all such items. Subject to any other limitations, interest will be paid only on collected funds, unless otherwise provided by law. All transactions received after our daily cut-off time on a business day we are open (a "banking day"), or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next following banking day. Our daily cut-off time varies from location to location and is posted at each of our locations.

**WITHDRAWALS** - Any one of you who signs the signature page, including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us. However, we reserve the right to limit the amount of any withdrawal in cash where, for example, currency in the amount of the withdrawal is not available at our branch or your withdrawal exceeds the amount we allow via automatic teller machine or if the cash supply of the automatic teller machine is depleted. Each of you authorizes each other person signing the signature page to endorse any item payable to you or your order for deposit to the account or any other transaction with us. You agree that our right to charge a check against the account does not depend on the date of the check. Therefore, we may charge a check against the account before the date of the check or at any time thereafter, provided, however, that we may, but are not required to, refuse to pay a check which appears on its face to be more than six months old. In any event, we will not be liable to you for charging against the

account a check before its date or after it is more than six months old. The fact that we may honor withdrawal requests which overdraw the finally collected account balance does not obligate us to do so. Withdrawals will first be made from collected funds, and we may, unless prohibited by law, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement, or which exceeds any frequency limitation. Even if we honor a nonconforming request, we may close the account in the event of repeated abuse of the stated limitations. We will use the date a transaction is completed by us (as opposed to the day you initiate it) to apply the frequency limitations. On interest bearing accounts other than time deposits, we reserve the right to require at least seven days' written notice before any withdrawal or transfer.

**ACH, WIRE AND FUNDS TRANSFERS** - We may decline to process any wire or funds transfer which is not subject to Regulation E or the Electronic Funds Transfer Act until you enter into a separate Funds Transfer Agreement with us. If we process any wire or funds transfer for you before you enter into a separate Funds Transfer Agreement, with respect to each such transfer you will be bound by the terms of this section. You agree to be bound by all rules and regulations governing any system through which any transfer occurs, including, but not limited to, any ACH rules, NACHA rules and the rules and regulations pertaining to Fedwire, the electronic transfer system of the Federal Reserve Banks. We may make wire or funds transfers by any means available to us, including, but not limited to, through our correspondent banks or by internal book entry. We have no obligation to notify you of incoming wire or funds transfers. Any credit for incoming wire or funds transfers is provisional until we have received final payment. If we do not receive final payment, we may reverse the credit. We may permit any of you or any authorized signer to order wire or other funds transfers from the account by telephone, in person, by written instruction, or by any other means acceptable to us, subject to any time deadlines or other conditions or procedures which we may establish. Wire and funds transfers are made only through the use of identifying numbers for the recipient bank and account, without regard to any names which may be furnished for any recipient bank or account. You must furnish the correct identifying numbers to us in connection with each wire or funds transfer. Funds will be wired or transferred in accordance with the identifying numbers you furnish us (or the identifying numbers which you use, if you are originating an ACH transaction), even if an identifying number is incorrect or is inconsistent with any name you may use or furnish us. In such event, we will not be responsible for your error, the transfer will not be considered an unauthorized transaction, and any loss will be entirely yours. Any instructions you may give us in connection with a wire or funds transfer will not be binding on us unless we have agreed to such instructions in writing. You must strictly observe all deadlines we impose for the processing of wire and funds transfers. We will not be responsible for any delay or other consequences which result from your failure to comply with any of these deadlines. You have no right to cancel or change any wire or funds transfer after you submit it to us. Any attempt by us to cancel or change any wire or funds transfer at your request will not constitute the assumption of any duty by us. You assume all risk associated with international wire or funds transfers. We will not be liable to you in any way in connection with an international wire or funds transfer, whether for failure of delivery, delayed delivery, fluctuations in exchange rates or for any other reason. If any incoming wire or funds transfer is denominated in a foreign currency, you authorize us to convert such to U. S. Dollars according to such exchange rate which we may select at our discretion. You acknowledge and agree that such exchange rate may not be the most favorable rate of exchange published and that you will be bound by our choice of exchange rate. If you provide your account number or any other account identifying information to any third party and such third party originates any funds transfer transaction on the account, you agree that we may treat such transaction as a transaction authorized by you.

**OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION** - You intend these rules to apply to the account depending on the form of ownership and beneficiary designation, if any, specified on the signature page. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. **Single Party Account** - is owned by one person. **Multiple Party**



**Account** - is owned by two or more persons jointly with right of survivorship and not as tenants in common, regardless of the conjunction ("or", "and") used between the depositors' names. Each of you expressly agrees that the account is not owned as a tenancy by the entireties. Each of you intends that upon your death the balance in the account (subject to any previous pledge to which we have consented) will vest in and belong to the survivor(s) as the separate property and estate of such survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. Transactions on Multiple Party Accounts do not require the signatures of all account owners to transact on the account. Instead, any one account owner or authorized signer may transact on the account to the exclusion of the other(s), and each of you authorize each other of you to do so without further consent. If this Agreement is governed by the laws of the state of Louisiana, the owners of a Multiple Party Account are co-owners of the account, and all or any part of any deposit may be paid to any one of you, whether any other of you is living or not, and any such payment to any of you shall constitute receipt and acquittance and shall fully release and discharge us from the claims of any person to funds of the deceased depositor for the payment made. **Pay-On-Death Account** - Pay-on-death beneficiaries acquire the right to withdraw only if: (1) all persons creating the account die, (2) the beneficiary is then living, and (3) we are not otherwise required by law to make payment to some other person. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own the account and may transact on it according to the Multiple Party Account rules stated above unless otherwise provided by law. Any one account owner or authorized signer may: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the deposit at any time. If two or more of you create such a Pay-On-Death Account, you own the account according to the Multiple Party Account rules stated above until the last of you dies. **Fiduciary Account** - A Fiduciary Account, whether for a consumer or a commercial purpose, is one in which the person controlling the account does so for the benefit of another. Examples of fiduciaries are trustees, executors, conservators, custodians for minors, representative payees and court-appointed guardians. For purposes of this Agreement, guardians such as parents or other relatives who have not been court-appointed or persons who have not complied with necessary provisions of any applicable transfer to minors laws are not fiduciaries. We are not a fiduciary in connection with the account. For fiduciary accounts, we will usually require, in the case of trustees, a trust resolution according to our form, and in all other cases documents evidencing the fiduciary's authority. We have no duty to inspect any will or trust document, and you agree that we will not be bound by any limitations imposed in a will or trust document. You agree that a Fiduciary Account is a general deposit and not a special deposit. **Corporation, Partnership, LLC, Government and other Organizational Accounts** - We will usually require a separate resolution in a form acceptable to us designating the person(s) permitted to make withdrawals from any account in the name of a legal entity such as a partnership, corporation, LLC, governmental entity or other organization.

**STOP-PAYMENTS** - A stop-payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it before our stop-payment cut off time. Our stop-payment cut off time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop-payment are provided by law. A stop-payment order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop-payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item, if such other person has an equal or greater right to withdraw from the account than the person who signed the item in question. A release of the stop-payment request may be made only by the person who initiated the stop-payment.

**AMENDMENTS AND TERMINATION** - We may change, in whole or in part, any term of this Agreement or any of the disclosures indicated on the signature page or previously given to you. Rules governing changes in interest rates have been provided separately. For other changes we will give you reasonable notice in writing or by any other method permitted by law. We may also close the account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you unless otherwise provided by law.

**STATEMENTS** - You must examine your statement of account with reasonable promptness. If you discover (or reasonably should have discovered) any forgeries, unauthorized payments, alterations or disputed transactions, you must promptly notify us of the relevant facts. Even if you do promptly notify us, you still may have to either share the loss with us or bear the loss entirely yourself (depending on whether you exercised ordinary care or substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items forged or altered by the same wrongdoer.

You agree that the time you have to examine your statement and report to us will not, in any circumstance, exceed a total of 60 days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, unauthorized activity or any other errors or disputed transactions in the account within 60 days of when we make the statement available, you cannot assert a claim against us on any items in that statement, and the loss will be entirely yours.

You also agree to examine your statement with the same reasonable promptness to discover whether any deposit is missing or has been incorrectly credited. If your statement of account contains any error pertaining to any deposit, and if you fail to report such error to us within 60 days of when we make the statement available, you cannot assert a claim against us for such error, and any loss will be entirely yours.

The 60 day limitations set forth in this section are without regard to whether we exercised ordinary care.

If the account is a commercial purpose account, you additionally agree to take advantage of products and services we offer for the detection and prevention of fraud and unauthorized transactions, such as "Positive Pay" cash management products. If you fail to utilize any such product or service, you agree that you will be precluded from asserting any claim against us for any unauthorized transaction which could have been prevented by the proper use of such product or service.

We may require any report of errors on your statement to be put in writing by you and we may additionally require you to furnish us with an affidavit concerning the error on forms acceptable to us. If the account is a commercial purpose account, you agree to exhaust all rights against any insurance coverage you may have before making any claim against us. Our liability to you, if any, will be reduced by the amount of any insurance you are entitled to receive. You agree, upon request by us, to assign to us all insurance rights you may have in connection with any loss on your commercial purpose account.

**DIRECT DEPOSITS** - If, in connection with a direct deposit plan, we deposit any amount in the account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

**TEMPORARY ACCOUNTS** - If you intend for the account to be a Multiple Party Account, but all of you are not present at the time the account is opened, we may permit as many of you as are present to open the account either as a Single Party Account or a Multiple Party Account only in the name(s) of those who are present (the "Temporary Account"). At the same time we may permit as many of you as are present to also sign account documentation listing the names of all those intended to be owners of the Multiple Party Account, including those who are not present (the "Permanent Account"). However, we are not required to give effect to the Permanent Account documentation until all owners listed on such documentation have signed it and we have processed it, at which point the Permanent Account documentation shall supersede and replace the Temporary Account documentation. Notwithstanding the foregoing sentence, we may give the Permanent Account documentation retroactive effect to the date on which the Temporary Account was opened. We are not required to give any of you notice that the Permanent Account documentation has taken effect, nor are we required to give any intended owner notice that such intended owner's signature is needed on the Permanent Account documentation. If the Permanent Account documentation is not signed by all intended owners within 30 days following the opening of the Temporary Account, we may discard the Permanent Account documentation and will have no liability for doing so. A Temporary Account is subject to all of the terms and provisions of this Agreement.

**SETOFF** - You each agree that we may, without prior notice to you, set off the funds in the account against any due and payable debt owed to us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note. This right of setoff applies regardless of the source of the deposit, and you consent that we may exercise this right of setoff against deposits which consist in whole or in part of government payments, including, but not limited to, Social Security and Veterans Administration payments. This right of setoff does not apply to the account if: (a) it is an Individual Retirement Account or other tax deferred retirement account, or (b) the debtor's right of withdrawal arises only in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against the account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff.

**FACSIMILE SIGNATURES** - You authorize us, at any time, to charge you for all checks, drafts, or other orders or transactions, for the payment of money, that are drawn on us by facsimile signature, regardless of by whom or by what means the facsimile signature(s) may have been affixed.

**AUTHORIZED SIGNERS** - An authorized signer is someone you designate to conduct transactions on your behalf, but does not have any ownership or rights in the account unless the authorized signer is also named as a pay-on-death beneficiary, in which case the Pay-On-Death Account rules apply. Otherwise, the rights of an authorized signer cease upon your death but not upon your disability or incapacity; however, you agree that we will not be liable for honoring any transaction by an authorized signer after your death. We reserve the right to limit the number of authorized signers and to decline to permit authorized signers on certain types of accounts.

**ACCOUNTS OWNED BY MINORS** - If this is a Multiple Party Account and one or more of the account owners is a minor, all adult owners of the account jointly and severally agree that all transactions made on the account by any such minor shall be deemed to have been made by such adult owners, regardless of whether any such transaction may be void or voidable. EACH SUCH ADULT OWNER AGREES TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH ANY TRANSACTION MADE BY ANY SUCH MINOR.

**REFUSAL OF DEPOSITS** - We may refuse to accept any item, wire or electronic funds transfer for deposit or to send any item for collection, and we will have no liability to you or to any other person for such refusal.

**ORDER OF PAYMENT** - Unless otherwise provided in the Account Information Statement (see OTHER TERMS section below), if more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

**ERRORS** - If there occurs any error on the account in your favor, such as crediting the account for any amount to which you are not entitled, charging the account for an amount less than the amount of an item or other order, or receipt of any direct deposit to which you are not entitled, you agree that we may adjust this account to correct the error and that, if there are insufficient funds in the account for such adjustment, you will immediately pay us the amount necessary to correct the error. You agree to pay our reasonable attorneys' fees and expenses in the event we sue you to recover the amount necessary to correct the error.

**DEPOSITS NOT MADE IN PERSON** - We are not responsible for transactions initiated by mail, outside depository or left with us for subsequent processing until we actually record them, and you accept and assume all risks inherent in initiating such transactions. For deposits so initiated, our determination of the amount of the deposit will be conclusive, and you waive any right to contest our determination.

**RESTRICTIVE LEGENDS** - For your own purposes you may print or write on checks or other items restrictive legends specifying the number of signatures required, the maximum amount for which the check or item is payable, the number of days the check or item is valid and similar restrictions. However, you agree that such restrictions shall not be binding on us, that we may disregard such restrictions and that we will have no liability to you or to any other person for paying any check or other item inconsistently with any restrictive legend that is printed or written thereon.

**CHECK CHARACTERISTICS** - If you use checks from sources other than vendors approved by us, or if you use check stock, security features or ink color which cause data to disappear or to become obscured when the check is converted into an image, you agree to bear any loss which results. We will not be liable for failing to honor a stop-payment order for an item issued on a check form from sources other than vendors approved by us.

**SECURITY INTEREST** - In addition to the rights of setoff which we have under this Agreement, you hereby grant to us a security interest in the account to secure payment of any obligation which you now owe us or which you may owe us at any time in the future, including your obligation to pay our attorneys' fees and expenses and your obligation to indemnify us as provided elsewhere in this Agreement. When any such obligation is due and payable to us, we may pay such obligation, or any part thereof, from the account without prior notice to you, and we will not be liable for the dishonor of any item or order which results from such exercise of our security interest. If the account has any pay-on-death beneficiary, the interests of such beneficiary shall be junior to our security interest and shall be subject to our right of setoff, even if we do not exercise our security interest or right of setoff until after your death.

**PAYMENT TO BENEFICIARIES** - Payment to pay-on-death beneficiaries shall be as provided by law. Notwithstanding anything in the Pay-On-Death Account rules stated above, we may require any pay-on-death beneficiary wishing to continue transactions with us to close the account and open a new account under such beneficiary's signature.

**INDEMNIFICATION BY FIDUCIARY** - IF THE ACCOUNT IS A FIDUCIARY ACCOUNT (INCLUDING, BUT NOT LIMITED TO, AN ACCOUNT USED AS A CUSTODIAL ACCOUNT OR AS A REPRESENTATIVE PAYEE ACCOUNT TO RECEIVE PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION OR ANY OTHER GOVERNMENTAL PAYOR), YOU, THE FIDUCIARY, AGREE IN YOUR INDIVIDUAL CAPACITY TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH THE ACCOUNT, WHETHER RESULTING FROM OVERDRAFT, ERROR IN YOUR FAVOR, RECLAMATION BY ANY GOVERNMENTAL PAYOR, ANY DISPUTE WITHIN THE SCOPE OF THE "ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY" SECTION BELOW OR ANY OTHER REASON. IN THE EVENT OF ANY SUCH LOSS, WE MAY ENFORCE THE FOREGOING INDEMNITY BY SETTING OFF THE AMOUNT OF SUCH LOSS AGAINST (OR BY EXERCISING ANY SECURITY INTEREST WE MAY HAVE IN) ANY OTHER ACCOUNT WITH US IN WHICH YOU, THE FIDUCIARY, HAVE AN INTEREST (UNLESS YOUR INTEREST IN SUCH ACCOUNT IS ONLY AS A FIDUCIARY), AND WE WILL NOT BE LIABLE TO YOU OR TO ANYONE ELSE FOR THE DISHONOR OF ANY ITEM OR ORDER ON SUCH OTHER ACCOUNT WHICH RESULTS FROM SUCH SETOFF OR EXERCISE OF OUR SECURITY INTEREST.

**SIGNATURE BY MARK** - If any signature which appears on the signature page is by mark (such as an "X"), then you agree that we will have no liability whatsoever on claims by you or any other person based on forgery, unauthorized signature, alteration or the like.

**ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY** - IN THE EVENT OF ANY DISPUTE REGARDING THE ACCOUNT, INCLUDING ANY DISPUTE OVER OWNERSHIP OF OR ENTITLEMENT TO THE ACCOUNT OR THE CAPACITY OR AUTHORITY OF ANY PERSON TO TRANSACT ON THE ACCOUNT, YOU AGREE TO PAY OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN THE EVENT THAT WE BECOME INVOLVED IN ANY PROCEEDING TO RESOLVE SUCH DISPUTE. IN THE EVENT OF SUCH DISPUTE WE MAY PAY THE AVAILABLE BALANCE OF THE ACCOUNT INTO COURT, AND IN THAT EVENT YOU AGREE NOT TO MAKE ANY CLAIM AGAINST US. ADDITIONALLY, TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO ANY SUCH DISPUTE. YOU ALSO AGREE THAT WE SHALL BE ENTITLED TO RECOVER OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN CONNECTION WITH SUCH PAYMENT INTO COURT AND THAT WE MAY RECOVER SUCH FEES AND EXPENSES FROM THE BALANCE PAID INTO COURT.

IN THE EVENT OF ANY KIND OF CLAIM BY YOU AGAINST US IN CONNECTION WITH THE ACCOUNT, YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES.

**GOVERNING LAW; PROCESS; REPRESENTATIVES** - With regard to any account established online, this Agreement is governed by the laws of Mississippi and by federal law and regulation. Otherwise, this Agreement is governed by the laws of the state of the location of our branch identified on the signature page and by federal law and regulation. Notwithstanding this, we may honor any levy, attachment, garnishment, execution, subpoena, court order, administrative order (including child support order) or other legal process which names you or which encompasses you, the account or any tax identification number associated with the account, regardless of whether we are subject to the jurisdiction of the issuer of such, regardless of in which state such is served on us and regardless of how such is served on us. We are not required to raise any defense in your behalf. We may also comply with the directions of any executor, administrator, conservator, guardian, receiver, bankruptcy trustee, attorney-in-fact or any other such representative purporting to have authority over the account who furnishes us with apparently authentic copies of documents which confer such authority. We may refuse to deal with any such representative in our sole discretion, and we will not be liable to you for such refusal. You agree that we may place temporary or permanent holds on the balance of the account related to or otherwise in response to any such process or authority and that we shall be fully protected in doing so, even if we later determine that such process or authority is inapplicable to the account. YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ACTING OR NOT ACTING ON ANY SUCH PROCESS OR FOR ACTING OR NOT ACTING ON THE DIRECTIONS OF ANY SUCH REPRESENTATIVE OR FOR PLACING OR NOT PLACING TEMPORARY OR PERMANENT HOLDS, AND YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO SUCH ACTION OR INACTION.

**EFFECT OF TERMINATION OR AMENDMENT** - Termination of the account, whether by us or by you, does not relieve you of any obligation you may then owe us. We may accept deposits to the account after it has been closed in order to collect any deficit balance, and such acceptance will not constitute reinstatement of the account. Your use of the account after we give you notice of any amendment to this Agreement constitutes your acceptance of such amendment. No amendment of this Agreement is enforceable against us unless it is in writing and we have authored the writing or have signed it through an employee having authority to do so, such as a regional president. No practice or course of dealing in connection with the account which is at variance with this Agreement shall constitute a modification or amendment of this Agreement.

**OTHER TERMS** - The account is additionally governed by our Account Information Statement. You acknowledge receipt of a copy of the Account Information Statement and you agree to be bound by its terms, as amended by us from time to time, and to be responsible for all fees and charges set forth therein which apply to the account. You understand that the Account Information Statement does not necessarily set forth all possible fees and charges which apply to the account.

**SEVERABILITY** - In the event that any part of this Agreement is determined to be unenforceable, such will not affect the other parts of this Agreement, all of which shall remain fully enforceable.

**ARBITRATION** - IF THE ACCOUNT IS A COMMERCIAL PURPOSE ACCOUNT, THEN YOU AGREE THAT ANY CLAIM, DISPUTE OR CONTROVERSY ("CLAIM") BY EITHER YOU OR US AGAINST THE OTHER, OR AGAINST THE EMPLOYEES, AGENTS OR ASSIGNS OF THE OTHER, ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT, THE ACCOUNT OR ANY TRANSACTION, INCLUDING CLAIMS REGARDING THE APPLICABILITY OF THIS ARBITRATION CLAUSE OR THE VALIDITY OF ALL OR ANY PART OF THIS AGREEMENT, SHALL BE RESOLVED BY BINDING ARBITRATION BY THE NATIONAL ARBITRATION FORUM, UNDER THE CODE OF PROCEDURE IN EFFECT AT THE TIME THE CLAIM IS MADE OR FILED. RULES AND FORMS OF THE NATIONAL ARBITRATION FORUM MAY BE OBTAINED AND CLAIMS MAY BE FILED AT ANY NATIONAL ARBITRATION FORUM OFFICE, WWW.ARBITRATION-FORUM.COM OR POST OFFICE BOX 50191, MINNEAPOLIS, MINNESOTA 55405, TELEPHONE 1-800-474-2371. ANY ARBITRATION HEARING AT WHICH YOU APPEAR WILL TAKE PLACE IN THE CITY WHICH IS THE LOCATION OF OUR BRANCH AT WHICH THE ACCOUNT WAS OPENED. THIS ARBITRATION AGREEMENT IS MADE PURSUANT TO A TRANSACTION INVOLVING INTERSTATE COMMERCE AND SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. SECTIONS 1-16. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. **IN THE ABSENCE OF THIS ARBITRATION AGREEMENT YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS, BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.**

# EXHIBIT 22



## YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS AGREEMENT

**AGREEMENT** - These terms and conditions (this "Agreement") govern your deposit relationships with us unless varied or supplemented in writing by amendment as provided herein. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so that the singular includes the plural and the plural includes the singular. As used in this Agreement, the "account" means each deposit account you maintain with us other than Time Deposit (Certificate of Deposit) accounts and Individual Retirement Accounts; "we," "our," or "us" mean BancorpSouth Bank; "you" or "your" mean the owner(s) of the account; and "signature page" means the page(s) containing the signatures of the owner(s) of the account. This Agreement applies separately to each account. The account may not be transferred, pledged or assigned without our written consent, and we reserve the right to withhold such consent for any reason.

Much of our relationship with our deposit customers is regulated by state and federal law, especially the law relating to negotiable instruments, the law regulating the methods of transferring property upon death and the rights of surviving spouses and dependents, the law pertaining to estate and other succession taxes, the law regarding electronic funds transfer, and the law regarding the availability of deposited funds. This body of law is too large and complex to be reproduced here.

The purpose of this Agreement is to:

- (1) summarize the rules applicable to the more common transactions;
- (2) establish rules to govern transactions or circumstances which the law does not regulate; and
- (3) establish rules for certain events or transactions which the law already regulates but permits variation by agreement.

**LIABILITY** - Each of you agrees, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms and conditions set forth in this Agreement and the schedule of charges that may be imposed. You authorize us to deduct these charges as accrued directly from the account balance. You also agree to pay additional reasonable charges we may impose for services you request which are not contemplated by this Agreement. Each of you also agrees to be jointly and severally (solidarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from the account, and the costs we incur to collect the deficit including our reasonable attorneys' fees.

**DEPOSITS** - Any items, other than cash, accepted for deposit (including items drawn "on us") will be given provisional credit only until collection is final (and actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars). Applicable law may require us to make your deposits available for withdrawal before payment becomes final or before the expiration of other banks' deadlines to return your deposited items to us for refund. You agree that our making all or any part of a deposit available to you for withdrawal is not a waiver of our right to charge back to the account any deposited item which is returned to us unpaid or for refund; instead, we may charge back to the account, and you will be responsible for, all such items. Subject to any other limitations, interest will be paid only on collected funds, unless otherwise provided by law. All transactions received after our daily cut-off time on a business day we are open (a "banking day"), or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next following banking day. Our daily cut-off time varies from location to location and is posted at each of our locations.

**WITHDRAWALS** - Any one of you who signs the signature page, including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us. However, we reserve the right to limit the amount of any withdrawal in cash where, for example, currency in the amount of the withdrawal is not available at our branch or your withdrawal exceeds the amount we allow via automatic teller machine or if the cash supply of the automatic teller machine is depleted. Each of you authorizes each other person signing the signature page to endorse any item payable to you or your order for deposit to the account or any other transaction with us. You agree that our right to charge a check against the account does not depend on the date of the check. Therefore, we may charge a check against the account before the date of the check or at any time thereafter, provided, however, that we may, but are not required to, refuse to pay a check which appears on its face to be more than six months old. In any event, we will not be liable to you for charging against the

account a check before its date or after it is more than six months old. The fact that we may honor withdrawal requests which overdraw the finally collected account balance does not obligate us to do so. Withdrawals will first be made from collected funds, and we may, unless prohibited by law, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement, or which exceeds any frequency limitation. Even if we honor a nonconforming request, we may close the account in the event of repeated abuse of the stated limitations. We will use the date a transaction is completed by us (as opposed to the day you initiate it) to apply the frequency limitations. On interest bearing accounts other than time deposits, we reserve the right to require at least seven days' written notice before any withdrawal or transfer.

**ACH, WIRE AND FUNDS TRANSFERS** - We may decline to process any wire or funds transfer which is not subject to Regulation E or the Electronic Funds Transfer Act until you enter into a separate Funds Transfer Agreement with us. If we process any wire or funds transfer for you before you enter into a separate Funds Transfer Agreement, with respect to each such transfer you will be bound by the terms of this section. You agree to be bound by all rules and regulations governing any system through which any transfer occurs, including, but not limited to, any ACH rules, NACHA rules and the rules and regulations pertaining to Fedwire, the electronic transfer system of the Federal Reserve Banks. We may make wire or funds transfers by any means available to us, including, but not limited to, through our correspondent banks or by internal book entry. We have no obligation to notify you of incoming wire or funds transfers. Any credit for incoming wire or funds transfers is provisional until we have received final payment. If we do not receive final payment, we may reverse the credit. We may permit any of you or any authorized signer to order wire or other funds transfers from the account by telephone, in person, by written instruction, or by any other means acceptable to us, subject to any time deadlines or other conditions or procedures which we may establish. Wire and funds transfers are made only through the use of identifying numbers for the recipient bank and account, without regard to any names which may be furnished for any recipient bank or account. You must furnish the correct identifying numbers to us in connection with each wire or funds transfer. Funds will be wired or transferred in accordance with the identifying numbers you furnish us (or the identifying numbers which you use, if you are originating an ACH transaction), even if an identifying number is incorrect or is inconsistent with any name you may use or furnish us. In such event, we will not be responsible for your error, the transfer will not be considered an unauthorized transaction, and any loss will be entirely yours. Any instructions you may give us in connection with a wire or funds transfer will not be binding on us unless we have agreed to such instructions in writing. You must strictly observe all deadlines we impose for the processing of wire and funds transfers. We will not be responsible for any delay or other consequences which result from your failure to comply with any of these deadlines. You have no right to cancel or change any wire or funds transfer after you submit it to us. Any attempt by us to cancel or change any wire or funds transfer at your request will not constitute the assumption of any duty by us. You assume all risk associated with international wire or funds transfers. We will not be liable to you in any way in connection with an international wire or funds transfer, whether for failure of delivery, delayed delivery, fluctuations in exchange rates or for any other reason. If any incoming wire or funds transfer is denominated in a foreign currency, you authorize us to convert such to U. S. Dollars according to such exchange rate which we may select at our discretion. You acknowledge and agree that such exchange rate may not be the most favorable rate of exchange published and that you will be bound by our choice of exchange rate. If you provide your account number or any other account identifying information to any third party and such third party originates any funds transfer transaction on the account, you agree that we may treat such transaction as a transaction authorized by you.

**OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION** - You intend these rules to apply to the account depending on the form of ownership and beneficiary designation, if any, specified on the signature page. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. **Single Party Account** - is owned by one person. **Multiple Party**

**Account** - is owned by two or more persons jointly with right of survivorship and not as tenants in common, regardless of the conjunction ("or", "and") used between the depositors' names. Each of you expressly agrees that the account is not owned as a tenancy by the entireties. Each of you intends that upon your death the balance in the account (subject to any previous pledge to which we have consented) will vest in and belong to the survivor(s) as the separate property and estate of such survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. Transactions on Multiple Party Accounts do not require the signatures of all account owners to transact on the account. Instead, any one account owner or authorized signer may transact on the account to the exclusion of the other(s), and each of you authorize each other of you to do so without further consent. If this Agreement is governed by the laws of the state of Louisiana, the owners of a Multiple Party Account are co-owners of the account, and all or any part of any deposit may be paid to any one of you, whether any other of you is living or not, and any such payment to any of you shall constitute receipt and acquittance and shall fully release and discharge us from the claims of any person to funds of the deceased depositor for the payment made. **Pay-On-Death Account** - Pay-on-death beneficiaries acquire the right to withdraw only if: (1) all persons creating the account die, (2) the beneficiary is then living, and (3) we are not otherwise required by law to make payment to some other person. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own the account and may transact on it according to the Multiple Party Account rules stated above unless otherwise provided by law. Any one account owner or authorized signer may: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the deposit at any time. If two or more of you create such a Pay-On-Death Account, you own the account according to the Multiple Party Account rules stated above until the last of you dies. **Fiduciary Account** - A Fiduciary Account, whether for a consumer or a commercial purpose, is one in which the person controlling the account does so for the benefit of another. Examples of fiduciaries are trustees, executors, conservators, custodians for minors, representative payees and court-appointed guardians. For purposes of this Agreement, guardians such as parents or other relatives who have not been court-appointed or persons who have not complied with necessary provisions of any applicable transfer to minors laws are not fiduciaries. We are not a fiduciary in connection with the account. For fiduciary accounts, we will usually require, in the case of trustees, a trust resolution according to our form, and in all other cases documents evidencing the fiduciary's authority. We have no duty to inspect any will or trust document, and you agree that we will not be bound by any limitations imposed in a will or trust document. You agree that a Fiduciary Account is a general deposit and not a special deposit. **Corporation, Partnership, LLC, Government and other Organizational Accounts** - We will usually require a separate resolution in a form acceptable to us designating the person(s) permitted to make withdrawals from any account in the name of a legal entity such as a partnership, corporation, LLC, governmental entity or other organization.

**STOP-PAYMENTS** - A stop-payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it before our stop-payment cut off time. Our stop-payment cut off time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop-payment are provided by law. A stop-payment order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop-payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item, if such other person has an equal or greater right to withdraw from the account than the person who signed the item in question. A release of the stop-payment request may be made only by the person who initiated the stop-payment.

**AMENDMENTS AND TERMINATION** - We may change, in whole or in part, any term of this Agreement or any of the disclosures indicated on the signature page or previously given to you. Rules governing changes in interest rates have been provided separately. For other changes we will give you reasonable notice in writing or by any other method permitted by law. We may also close the account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you unless otherwise provided by law.

**STATEMENTS** - You must examine your statement of account with reasonable promptness. If you discover (or reasonably should have discovered) any forgeries, unauthorized payments, alterations or disputed transactions, you must promptly notify us of the relevant facts. Even if you do promptly notify us, you still may have to either share the loss with us or bear the loss entirely yourself (depending on whether you exercised ordinary care or substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items forged or altered by the same wrongdoer.

You agree that the time you have to examine your statement and report to us will not, in any circumstance, exceed a total of 60 days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, unauthorized activity or any other errors or disputed transactions in the account within 60 days of when we make the statement available, you cannot assert a claim against us on any items in that statement, and the loss will be entirely yours.

You also agree to examine your statement with the same reasonable promptness to discover whether any deposit is missing or has been incorrectly credited. If your statement of account contains any error pertaining to any deposit, and if you fail to report such error to us within 60 days of when we make the statement available, you cannot assert a claim against us for such error, and any loss will be entirely yours.

The 60 day limitations set forth in this section are without regard to whether we exercised ordinary care.

If the account is a commercial purpose account, you additionally agree to take advantage of products and services we offer for the detection and prevention of fraud and unauthorized transactions, such as "Positive Pay" cash management products. If you fail to utilize any such product or service, you agree that you will be precluded from asserting any claim against us for any unauthorized transaction which could have been prevented by the proper use of such product or service.

We may require any report of errors on your statement to be put in writing by you and we may additionally require you to furnish us with an affidavit concerning the error on forms acceptable to us. If the account is a commercial purpose account, you agree to exhaust all rights against any insurance coverage you may have before making any claim against us. Our liability to you, if any, will be reduced by the amount of any insurance you are entitled to receive. You agree, upon request by us, to assign to us all insurance rights you may have in connection with any loss on your commercial purpose account.

**DIRECT DEPOSITS** - If, in connection with a direct deposit plan, we deposit any amount in the account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

**TEMPORARY ACCOUNTS** - If you intend for the account to be a Multiple Party Account, but all of you are not present at the time the account is opened, we may permit as many of you as are present to open the account either as a Single Party Account or a Multiple Party Account only in the name(s) of those who are present (the "Temporary Account"). At the same time we may permit as many of you as are present to also sign account documentation listing the names of all those intended to be owners of the Multiple Party Account, including those who are not present (the "Permanent Account"). However, we are not required to give effect to the Permanent Account documentation until all owners listed on such documentation have signed it and we have processed it, at which point the Permanent Account documentation shall supersede and replace the Temporary Account documentation. Notwithstanding the foregoing sentence, we may give the Permanent Account documentation retroactive effect to the date on which the Temporary Account was opened. We are not required to give any of you notice that the Permanent Account documentation has taken effect, nor are we required to give any intended owner notice that such intended owner's signature is needed on the Permanent Account documentation. If the Permanent Account documentation is not signed by all intended owners within 30 days following the opening of the Temporary Account, we may discard the Permanent Account documentation and will have no liability for doing so. A Temporary Account is subject to all of the terms and provisions of this Agreement.

**SETOFF** - You each agree that we may, without prior notice to you, set off the funds in the account against any due and payable debt owed to us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note. This right of setoff applies regardless of the source of the deposit, and you consent that we may exercise this right of setoff against deposits which consist in whole or in part of government payments, including, but not limited to, Social Security and Veterans Administration payments. This right of setoff does not apply to the account if: (a) it is an Individual Retirement Account or other tax deferred retirement account, or (b) the debtor's right of withdrawal arises only in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against the account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff.

**FACSIMILE SIGNATURES** - You authorize us, at any time, to charge you for all checks, drafts, or other orders or transactions, for the payment of money, that are drawn on us by facsimile signature, regardless of by whom or by what means the facsimile signature(s) may have been affixed.

**AUTHORIZED SIGNERS** - An authorized signer is someone you designate to conduct transactions on your behalf, but does not have any ownership or rights in the account unless the authorized signer is also named as a pay-on-death beneficiary, in which case the Pay-On-Death Account rules apply. Otherwise, the rights of an authorized signer cease upon your death but not upon your disability or incapacity; however, you agree that we will not be liable for honoring any transaction by an authorized signer after your death. We reserve the right to limit the number of authorized signers and to decline to permit authorized signers on certain types of accounts.

**ACCOUNTS OWNED BY MINORS** - If this is a Multiple Party Account and one or more of the account owners is a minor, all adult owners of the account jointly and severally agree that all transactions made on the account by any such minor shall be deemed to have been made by such adult owners, regardless of whether any such transaction may be void or voidable. EACH SUCH ADULT OWNER AGREES TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH ANY TRANSACTION MADE BY ANY SUCH MINOR.

**REFUSAL OF DEPOSITS** - We may refuse to accept any item, wire or electronic funds transfer for deposit or to send any item for collection, and we will have no liability to you or to any other person for such refusal.

**INTERNET GAMBLING TRANSACTIONS** - You may not use the account in connection with any business of placing, receiving or otherwise knowingly transmitting bets or wagers by any means which involves the use, at least in part, of the Internet, or for any other transaction which is prohibited by Federal Reserve Regulation GG.

**ORDER OF PAYMENT** - Unless otherwise provided in the Account Information Statement (see OTHER TERMS section below), if more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

**ERRORS** - If there occurs any error on the account in your favor, such as crediting the account for any amount to which you are not entitled, charging the account for an amount less than the amount of an item or other order, or receipt of any direct deposit to which you

are not entitled, you agree that we may adjust this account to correct the error and that, if there are insufficient funds in the account for such adjustment, you will immediately pay us the amount necessary to correct the error. You agree to pay our reasonable attorneys' fees and expenses in the event we sue you to recover the amount necessary to correct the error.

**DEPOSITS NOT MADE IN PERSON** - We are not responsible for transactions initiated by mail, outside depository or left with us for subsequent processing until we actually record them, and you accept and assume all risks inherent in initiating such transactions. For deposits so initiated, our determination of the amount of the deposit will be conclusive, and you waive any right to contest our determination.

**RESTRICTIVE LEGENDS** - For your own purposes you may print or write on checks or other items restrictive legends specifying the number of signatures required, the maximum amount for which the check or item is payable, the number of days the check or item is valid and similar restrictions. However, you agree that such restrictions shall not be binding on us, that we may disregard such restrictions and that we will have no liability to you or to any other person for paying any check or other item inconsistently with any restrictive legend that is printed or written thereon.

**CHECK CHARACTERISTICS** - If you use checks from sources other than vendors approved by us, or if you use check stock, security features or ink color which cause data to disappear or to become obscured when the check is converted into an image, you agree to bear any loss which results. We will not be liable for failing to honor a stop-payment order for an item issued on a check form from sources other than vendors approved by us.

**SECURITY INTEREST** - In addition to the rights of setoff which we have under this Agreement, you hereby grant to us a security interest in the account to secure payment of any obligation which you now owe us or which you may owe us at any time in the future, including your obligation to pay our attorneys' fees and expenses and your obligation to indemnify us as provided elsewhere in this Agreement. When any such obligation is due and payable to us, we may pay such obligation, or any part thereof, from the account without prior notice to you, and we will not be liable for the dishonor of any item or order which results from such exercise of our security interest. If the account has any pay-on-death beneficiary, the interests of such beneficiary shall be junior to our security interest and shall be subject to our right of setoff, even if we do not exercise our security interest or right of setoff until after your death.

**PAYMENT TO BENEFICIARIES** - Payment to pay-on-death beneficiaries shall be as provided by law. Notwithstanding anything in the Pay-On-Death Account rules stated above, we may require any pay-on-death beneficiary wishing to continue transactions with us to close the account and open a new account under such beneficiary's signature.

**INDEMNIFICATION BY FIDUCIARY** - IF THE ACCOUNT IS A FIDUCIARY ACCOUNT (INCLUDING, BUT NOT LIMITED TO, AN ACCOUNT USED AS A CUSTODIAL ACCOUNT OR AS A REPRESENTATIVE PAYEE ACCOUNT TO RECEIVE PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION OR ANY OTHER GOVERNMENTAL PAYOR), YOU, THE FIDUCIARY, AGREE IN YOUR INDIVIDUAL CAPACITY TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH THE ACCOUNT, WHETHER RESULTING FROM OVERDRAFT, ERROR IN YOUR FAVOR, RECLAMATION BY ANY GOVERNMENTAL PAYOR, ANY DISPUTE WITHIN THE SCOPE OF THE "ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY" SECTION BELOW OR ANY OTHER REASON. IN THE EVENT OF ANY SUCH LOSS, WE MAY ENFORCE THE FOREGOING INDEMNITY BY SETTING OFF THE AMOUNT OF SUCH LOSS AGAINST (OR BY EXERCISING ANY SECURITY INTEREST WE MAY HAVE IN) ANY OTHER ACCOUNT WITH US IN WHICH YOU, THE FIDUCIARY, HAVE AN INTEREST (UNLESS YOUR INTEREST IN SUCH ACCOUNT IS ONLY AS A FIDUCIARY), AND WE WILL NOT BE LIABLE TO YOU OR TO ANYONE ELSE FOR THE DISHONOR OF ANY ITEM OR ORDER ON SUCH OTHER ACCOUNT WHICH RESULTS FROM SUCH SETOFF OR EXERCISE OF OUR SECURITY INTEREST.



**SIGNATURE BY MARK** - If any signature which appears on the signature page is by mark (such as an "X"), then you agree that we will have no liability whatsoever on claims by you or any other person based on forgery, unauthorized signature, alteration or the like.

**ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY** - IN THE EVENT OF ANY DISPUTE REGARDING THE ACCOUNT, INCLUDING ANY DISPUTE OVER OWNERSHIP OF OR ENTITLEMENT TO THE ACCOUNT OR THE CAPACITY OR AUTHORITY OF ANY PERSON TO TRANSACT ON THE ACCOUNT, YOU AGREE TO PAY OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN THE EVENT THAT WE BECOME INVOLVED IN ANY PROCEEDING TO RESOLVE SUCH DISPUTE. IN THE EVENT OF SUCH DISPUTE WE MAY PAY THE AVAILABLE BALANCE OF THE ACCOUNT INTO COURT, AND IN THAT EVENT YOU AGREE NOT TO MAKE ANY CLAIM AGAINST US. ADDITIONALLY, TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO ANY SUCH DISPUTE. YOU ALSO AGREE THAT WE SHALL BE ENTITLED TO RECOVER OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN CONNECTION WITH SUCH PAYMENT INTO COURT AND THAT WE MAY RECOVER SUCH FEES AND EXPENSES FROM THE BALANCE PAID INTO COURT.

IN THE EVENT OF ANY KIND OF CLAIM BY YOU AGAINST US IN CONNECTION WITH THE ACCOUNT, YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES.

**GOVERNING LAW; PROCESS; REPRESENTATIVES** - With regard to any account established online, this Agreement is governed by the laws of Mississippi and by federal law and regulation. Otherwise, this Agreement is governed by the laws of the state of the location of our branch identified on the signature page and by federal law and regulation. Notwithstanding this, we may honor any levy, attachment, garnishment, execution, subpoena, court order, administrative order (including child support order) or other legal process which names you or which encompasses you, the account or any tax identification number associated with the account, regardless of whether we are subject to the jurisdiction of the issuer of such, regardless of in which state such is served on us and regardless of how such is served on us. We are not required to raise any defense in your behalf. We may also comply with the directions of any executor, administrator, conservator, guardian, receiver, bankruptcy trustee, attorney-in-fact or any other such representative purporting to have authority over the account who furnishes us with apparently authentic copies of documents which confer such authority. We may refuse to deal with any such representative in our sole discretion, and we will not be liable to you for such refusal. You agree that we may place temporary or permanent holds on the balance of the account related to or otherwise in response to any such process or authority and that we shall be fully protected in doing so, even if we later determine that such process or authority is inapplicable to the account. YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ACTING OR NOT ACTING ON ANY SUCH PROCESS OR FOR ACTING OR NOT ACTING ON THE DIRECTIONS OF ANY SUCH REPRESENTATIVE OR FOR PLACING OR NOT PLACING TEMPORARY OR PERMANENT HOLDS, AND YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO SUCH ACTION OR INACTION.

**EFFECT OF TERMINATION OR AMENDMENT** - Termination of the account, whether by us or by you, does not relieve you of any obligation you may then owe us. We may accept deposits to the account after it has been closed in order to collect any deficit balance, and such acceptance will not constitute reinstatement of the account. Your use of the account after we give you notice of any amendment to this Agreement constitutes your acceptance of such amendment. No amendment of this Agreement is enforceable against us unless it is in writing and we have authored the writing or have signed it through an employee having authority to do so, such as a regional president. No practice or course of dealing in connection with the account which is at variance with this Agreement shall constitute a modification or amendment of this Agreement.

**OTHER TERMS** - The account is additionally governed by our Account Information Statement. You acknowledge receipt of a copy of the Account Information Statement and you agree to be bound by its terms, as amended by us from time to time, and to be responsible for all fees and charges set forth therein which apply to the account. You understand that the Account Information Statement does not necessarily set forth all possible fees and charges which apply to the account.

**SEVERABILITY** - In the event that any part of this Agreement is determined to be unenforceable, such will not affect the other parts of this Agreement, all of which shall remain fully enforceable.

**ARBITRATION** - IF THE ACCOUNT IS A COMMERCIAL PURPOSE ACCOUNT, THEN YOU AGREE THAT ANY CLAIM, DISPUTE OR CONTROVERSY ("CLAIM") BY EITHER YOU OR US AGAINST THE OTHER, OR AGAINST THE EMPLOYEES, AGENTS OR ASSIGNS OF THE OTHER, ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT, THE ACCOUNT OR ANY TRANSACTION, INCLUDING CLAIMS REGARDING THE APPLICABILITY OF THIS ARBITRATION CLAUSE OR THE VALIDITY OF ALL OR ANY PART OF THIS AGREEMENT, SHALL BE RESOLVED BY BINDING ARBITRATION BY THE NATIONAL ARBITRATION FORUM, UNDER THE CODE OF PROCEDURE IN EFFECT AT THE TIME THE CLAIM IS MADE OR FILED. RULES AND FORMS OF THE NATIONAL ARBITRATION FORUM MAY BE OBTAINED AND CLAIMS MAY BE FILED AT ANY NATIONAL ARBITRATION FORUM OFFICE, WWW.ARBITRATION-FORUM.COM OR POST OFFICE BOX 50191, MINNEAPOLIS, MINNESOTA 55405, TELEPHONE 1-800-474-2371. ANY ARBITRATION HEARING AT WHICH YOU APPEAR WILL TAKE PLACE IN THE CITY WHICH IS THE LOCATION OF OUR BRANCH AT WHICH THE ACCOUNT WAS OPENED. THIS ARBITRATION AGREEMENT IS MADE PURSUANT TO A TRANSACTION INVOLVING INTERSTATE COMMERCE AND SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. SECTIONS 1-16. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. IN THE ABSENCE OF THIS ARBITRATION AGREEMENT YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS, BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.

# EXHIBIT 23

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
CASE NO. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT  
OVERDRAFT LITIGATION  
MDL No. 2036

THIS DOCUMENT RELATES TO:

Swift v. BancorpSouth, Inc.  
N.D. FL Case No. 1:10-cv-00090-SPM  
S.D. FL Case No. 1:10-cv-23872-JLK

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DEPOSITION OF MICHAEL LINDSEY

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TAKEN AT THE INSTANCE OF THE PLAINTIFF  
IN THE BANCORPSOUTH CONFERENCE CENTER  
387 WEST MAIN STREET, TUPELO, MISSISSIPPI  
ON MAY 10, 2012, BEGINNING AT 9:00 A.M.

(APPEARANCES NOTED HEREIN)  
Reported by: LUANNE FUNDERBURK, CSR 1046

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ADVANCED COURT REPORTING  
P.O. BOX 761  
TUPELO, MS 38802-0761  
(662) 690-1500



1           A.    I believe that's the date the transaction  
2 was initiated.

3           Q.    And then there's a transaction that's for  
4 \$53.04 on that same day. It says POS debit, and then  
5 it says I guess it's February 7, 2010; is that  
6 correct?

7           A.    That's correct.

8           Q.    So what is the difference between the date  
9 that says February 7, 2010, and the February 8th date  
10 to the left?

11          A.    The difference would be one day.

12          Q.    Okay. What's the significance of the --  
13 why is it a different day if the transaction was on  
14 February 7 according to when it was initiated, I  
15 guess that's a Murphy -- I'm assuming Murphy Oil --  
16 why is that there and then why is there a February  
17 8th date which is a different date?

18                   MR. TAYLOR: Object to the form.

19          A.    I would say that that transaction occurred  
20 on a different date. When we received it for posting  
21 is outside the control -- outside the control of  
22 BancorpSouth.

23          Q.    So, this statement has the transactions  
24 that would debit an account in two separate sections;  
25 is that correct?

1 MR. TAYLOR: Object to the form but  
2 answer if you understand.

3 Q. (Mr. Streisfeld) I'm not trying to make it  
4 complicated. May be the way I asked it, but --

5 A. Yes, I believe the debits are in two  
6 separate sections.

7 Q. What would those two sections be that there  
8 are debits reflected on this bank statement?

9 A. One is labeled checks and the other being  
10 labeled other debits on Page 2.

11 Q. Is there anything reflected on this bank  
12 statement that identifies the interplay between check  
13 debits and the other debits to explain how those  
14 things go together in any particular way?

15 MR. TAYLOR: Object to the form.

16 A. I'm not sure I really understand what  
17 you're asking.

18 Q. (Mr. Streisfeld) So, you have transactions  
19 that are debiting the account that are checks,  
20 correct?

21 A. Correct.

22 Q. And those are summarized and organized in a  
23 manner independent of the way that the other debit  
24 section is organized; is that correct?

25 A. They are separate.

1 Q. And is there anything that brings those two  
2 sections together in terms of the way in which you  
3 would be depicting the information as to how the  
4 account -- these transactions posted to the account  
5 within this time frame?

6 MR. TAYLOR: Object to the form.

7 A. The customer's check register.

8 Q. (Mr. Streisfeld) The customer's -- assuming  
9 that a customer has a check register?

10 A. Correct.

11 Q. And if the customer were relying upon this  
12 bank statement to try to figure out, you know, the  
13 interplay between how their checks posted and how  
14 their other debits posted, how would they do that on  
15 this statement?

16 MR. TAYLOR: Object to the form.

17 A. I don't know what you're trying to -- what  
18 the customer -- what you're proposing the customer  
19 would try to be doing.

20 Q. (Mr. Streisfeld) Well, one of the issues in  
21 this case pertains to the concept that one would be  
22 able to understand how all the posting is happening  
23 and would understand that the posting of all  
24 transactions on a daily basis during the class period  
25 would be high to low, largest to smallest

1 transactions, but it seems to me from my review of  
2 this bank statement, that the bank separates the  
3 checks into one section of the statement versus  
4 another section where it's talking about the other  
5 debits, which are going to have all the debit card  
6 transactions in it, correct?

7 A. Yes.

8 MR. TAYLOR: Object to the form.

9 Q. (Mr. Streisfeld) So, the question is, is  
10 there in providing information -- the purpose of a  
11 bank statement is to provide information about  
12 account activity during a particular snapshot time  
13 period, correct?

14 A. Historical activity.

15 Q. Historical activity. And do the statements  
16 here, does it provide any information as to the  
17 posting order of transactions that debit an account?

18 A. Yeah. Each one of those, even though  
19 they're in two sections, have a date beside them and  
20 it was disclosed that they processed in a high to low  
21 format.

22 Q. Where was it disclosed that they processed  
23 in a high to low format?

24 A. In the account opening documents, which  
25 would be account information statement and -- I know

1 it's in the account information statement. It may be  
2 also in the signature card.

3 Q. Okay. But assuming that you're not at the  
4 time referring to the account information statement,  
5 this document is not identifying for the customer  
6 that the order in which the transactions were posted  
7 to the account was a combination of checks and other  
8 debits, correct?

9 MR. TAYLOR: Object to the form.

10 A. There is no combined list. It is in two  
11 separate sections back to back.

12 Q. (Mr. Streisfeld) And it doesn't tell the  
13 customer that you're posting high to low, correct.

14 A. The statement does not declare that, as  
15 previously disclosed.

16 Q. You say it was previously disclosed?

17 A. Previously disclosed in the other documents  
18 that we referenced.

19 Q. And do those documents, meaning -- I assume  
20 by that you mean the account information statement,  
21 correct?

22 A. Correct.

23 Q. And perhaps signature card, correct?

24 A. Correct. Perhaps.

25 Q. And to your knowledge between 2002 and

1 charges were assessed against Mr. Swift and his wife  
2 on this bank statement on October 15th?

3 MR. TAYLOR: Object to the form.

4 A. I do not.

5 MR. TAYLOR: Were you asking can he  
6 figure it out or are you asking --

7 MR. STREISFELD: I asked him did he  
8 know which transactions there were and he said he  
9 doesn't know.

10 Q. (Mr. Streisfeld) All right. I'm going to  
11 show you a document which we'll mark as -- actually,  
12 not going to use this whole package. So, we'll mark  
13 this as Exhibit 13.

14 (Exhibit No. 13 - Notice of Charge  
15 for Overdrawn Account - marked for identification).

16 Q. (Mr. Streisfeld) Do you recognize that  
17 document? What is this document?

18 A. This is a copy it appears of a report of a  
19 notice for overdrawn account for the plaintiff.

20 Q. Okay. And does the document depict  
21 anywhere the posting order that the bank used to  
22 arrive at the decision to impose in this case three  
23 overdraft charges?

24 A. The notice does not disclose any posting  
25 orders.



1           Q.    To your knowledge between October of 2002  
2           and August of 2010, whether the format of an  
3           overdraft notice such as this changed in any way?

4           A.    I would have no knowledge of the format  
5           change.

6           Q.    Do you know whether the bank ever had a  
7           policy to identify the posting order that was applied  
8           to consumer accounts on individual overdraft notices  
9           when they were being sent to consumer account  
10          holders?

11          A.    I'm not aware of any time that a posting  
12          order was disclosed on a notice.

13          Q.    Does that mean -- who would I ask if I  
14          wanted to confirm what the bank's policy was other  
15          than you? What I'm trying to do is I'm trying to  
16          confirm what I think is the case, that at no point  
17          between October of 2000 -- strike that. At no point  
18          in time between January of 2002 and August of 2010  
19          did the bank have a policy to disclose its posting  
20          order for debiting an account on overdraft notices;  
21          is that correct?

22                       MR. TAYLOR: Object to the form.

23          A.    Yes.

24          Q.    (Mr. Streisfeld) In preparation for  
25          today -- I'll say it a little bit differently. In

# DEPOSITION EXHIBIT 11

WOPR 555

TRINA N SWIFT OR  
TERRY S SWIFT

18/14

STATEMENT DATE

02/23/12

ACCOUNT NUMBER

INFOLINE 1-866-787-7711

\*\*\*\*\* CHECKING ACCOUNT SUMMARY \*\*\*\*\*

PREVIOUS BALANCE	231.09	AVERAGE BALANCE	576
+ 7 CREDITS	3,290.83	YTD INTEREST PAID	.00
- 67 DEBITS	3,592.86	FEE THIS PERIOD	.00
- SERVICE CHARGES	.00		
+ INTEREST PAID	.00		
ENDING BALANCE	70.74-00		

\*\*\*\*\*

* TOTAL FOR THIS PERIOD	* TOTAL YEAR-TO-DATE
* TOTAL OVERDRAFT FEES	* .00
* TOTAL RETURNED ITEM FEES	* .00

\*\*\*\*\*

\*\*\*\*\* CHECKING ACCOUNT TRANSACTIONS \*\*\*\*\*

DEPOSITS AND OTHER CREDITS

DATE	AMOUNT	TRANSACTION DESCRIPTION	CHK NO/ATM CD
01/28	600.38	DEPOSIT	
01/29	2.16	BANCORPSCOUTH REWARDS	
02/04	1,272.33	LAWRENCE MEM PAYROLL	
02/12	305.00	DEPOSIT	
02/16	203.00	BANCORPSCOUTH WEB TRANS	
02/18	905.95	LAWRENCE MEM PAYROLL	
02/19	10.00	POS CREDIT	021910
		MASTERCARD CASH THANK YOU	MO

CHECKS

DATE	CHECK NO	AMOUNT	DATE	CHECK NO	AMOUNT
02/01	990*	151.00	02/08	1581	8.13
02/02	1574*	100.00	02/11	1583*	10.00
02/02	1576*	27.75	02/11	1584	10.00
02/02	1577	123.13	02/11	1585	10.00
02/04	1578	10.00	02/12	1586	62.57
02/04	1579	10.00	02/11	1587	103.85
02/04	1580	10.00	02/11	999999*	10.00



NOPR 555

TRINA N SWIFT OR  
TERRY S SWIFT

18/14  
PAGE 2

STATEMENT DATE  
02/23/10  
ACCOUNT NUMBER

OTHER DEBITS

DATE	AMOUNT	TRANSACTION DESCRIPTION	CHK NO/ATM CD
01/28	48.89	POS DEBIT 012810 WAL-MART #0071 POCAHONTAS	AR
01/29	119.35	POS DEBIT 012910 WAL-MART #0071 POCAHONTAS	AR
01/29	39.22	POS DEBIT 012910 FLASH MARKET #11 POCAHONTAS	AR
01/29	24.75	POS DEBIT 012910 FLASH MARKET #11 POCAHONTAS	AR
02/01	20.00	ATM W/D BCS 1411 HWY 67 POCAHONTAS	AR
02/02	21.21	POS DEBIT 020210 WAL-MART #0071 POCAHONTAS	AR
02/02	20.00	POS DEBIT 020210 RIVERSIDE EXPRES POCAHONTAS	AR
02/04	24.73	POS DEBIT 020410 MURPHY6590ATWALM POCAHONTAS	AR
02/04	10.64	POS DEBIT 020410 WENDYS3597 PARAGOULD	AR
02/05	40.00	ATM W/D BCS 1411 HWY 67 POCAHONTAS	AR
02/05	35.00	POS DEBIT 020510 GOODWILL STORE # JONESBORO	AR
02/05	18.85	POS DEBIT 020510 HIRO JAPANESE CV JONESBORO	AR
02/08	201.64	AT&T PAYMENT	
02/08	55.96	POS DEBIT 020810 WAL-MART #0071 POCAHONTAS	AR
02/08	53.04	POS DEBIT 020710 MURPHY6590ATWALM POCAHONTAS	AR
02/08	34.72	POS DEBIT 020810 KROGER #445 JONESBORO	AR
02/08	19.26	POS DEBIT 020810 NFI*WWW.NETFLIX.NETFLIX.COM	CA
02/08	14.84	POS DEBIT 020710 WAL-MART #0071 POCAHONTAS	AR
02/09	131.16	PROG N WESTERN INS PREM	
02/12	210.01	CPENERGY ARKLA ARK ACH EB	
02/12	100.34	POS DEBIT 021210 WAL-MART #0071 POCAHONTAS	AR
02/12	50.09	POS DEBIT 021210 WAL-MART #0071 POCAHONTAS	AR
02/16	157.98	POS DEBIT 021610 WAL-MART #0071 POCAHONTAS	AR

NOFR 553

TRINA N SWIFT OR  
TERRY S SWIFT

12/14  
PAGE 3

STATEMENT DATE  
02/23/10  
ACCOUNT NUMBER

\* \* \* \* \* CHECKING ACCOUNT TRANSACTIONS \* \* \* \* \*

\*\*\*\*\* DEBITS

DATE	AMOUNT	TRANSACTION DESCRIPTION	CHK NO/ATM CD
02/16	60.00	POS DEBIT 021410 NATURALLY ENCHAN WEST PLAINS	MC
02/16	59.99	POS DEBIT 021510 WAL-MART #0071 POCAHONTAS	AR
02/16	58.00	FITNESS WORX ABC CLUB FEES	
02/16	48.14	POS DEBIT 021410 MURPHY6590ATWALM POCAHONTAS	AR
02/16	37.68	POS DEBIT 021610 WAL-MART #0071 POCAHONTAS	AR
02/16	28.91	POS DEBIT 021510 RANCHO BRAVO POCAHONTAS	AR
02/16	24.96	POS DEBIT 021410 VISTAPRINT 953N9 300-721-6214	MA
02/16	22.70	POS DEBIT 021510 CATO - CATO PLUS POCAHONTAS	AR
02/17	25.53	POS DEBIT 021710 KROGER #445 JONESBORO	AR
02/18	200.00	TRANSFER DR RANDELM CO - POCAHONTAS TO CHK 1119532537	
02/18	100.00	POS DEBIT 021810 BOTANICAL FUN 04175973727	MO
02/18	56.74	MODERN WOODMEN INSPREMIUM	
02/18	48.34	POS DEBIT 021810 FLASH MARKET #11 POCAHONTAS	AR
02/18	12.42	POS DEBIT 021810 FUJI JAPANESE ST JONESBORO	AR
02/19	91.19	POS DEBIT 021910 WAL-MART #0071 POCAHONTAS	AR
02/22	69.10	POS DEBIT 022210 GEARHEAD OUTFITT JONESBORO	AR
02/22	72.59	POS DEBIT 022110 A EAGLE OUTFITROJ JONESBORO	AR
02/22	66.00	HSBC ONLINE WEB PAYMENT	
02/22	53.63	POS DEBIT 022110 KROGER #445 JONESBORO	AR
02/22	41.90	POS DEBIT 022210 THE OLIVE GARDEN JONESBORO	AR
02/22	41.02	POS DEBIT 022210 WAL-MART #0071 POCAHONTAS	AR

NOER 555

PRIMA N SWIFT OR  
TERRY S SWIFT

12/14

PAGE 4

STATEMENT DATE  
02/23/10  
ACCOUNT NUMBER

\*\*\*\*\* CHECKING ACCOUNT TRANSACTIONS \*\*\*\*\*

OTHER DEBITS

DATE	AMOUNT	TRANSACTION DESCRIPTION	CHK NO/ATM CD
02/22	40.53	POS DEBIT	012110
		WATCO EXPRESS POCAHONTAS	AR
02/22	37.95	POS DEBIT	022210
		ZAZZLE.COM 98009819890	CA
02/22	30.00	POS DEBIT	022110
		POCAHONTAS FMYL POCAHONTAS	AR
02/22	15.48	POS DEBIT	022110
		WAL-MART #0071 POCAHONTAS	AR
02/22	15.21	POS DEBIT	022210
		RANCHO BRAVO POCAHONTAS	AR
02/22	15.14	POS DEBIT	022110
		PRICE CHOPPER 38 POCAHONTAS	AR
02/23	41.04	POS DEBIT	022310
		WAL-MART #0071 POCAHONTAS	AR
02/23	32.48	POS DEBIT	022310
		FAMILY DOLLAR #4 POCAHONTAS	AR
02/23	20.00	HSEC CARD SRVCS ONLINE PMT	

\*\*\*\*\* DAILY BALANCE SUMMARY \*\*\*\*\*

DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
01/27	231.29	02/05	1242.64	02/17	134.05
01/28	782.78	02/08	856.05	02/18	522.51
01/29	602.62	02/09	724.89	02/19	541.32
02/01	431.62	02/11	581.01	02/22	22.78
02/02	129.53	02/12	458.00	02/23	-0.7400
02/04	1336.49	02/16	159.64		

\*\*\*\*\* RELATED ACCOUNT \*\*\*\*\* ACCT. NO.

\*\*\*\*\* CHECKING ACCOUNT SUMMARY \*\*\*\*\*

PREVIOUS BALANCE		AVERAGE BALANCE	
-	2 CREDITS	500.00	125
-	1 DEBITS	200.00	YTD INTEREST PAID
-	SERVICE CHARGES	.00	.00
-	INTEREST PAID	.00	FEES THIS PERIOD
ENDING BALANCE	336.98		.00

\*\*\*\*\*



NOPR \$\$\$

TRINA N SWIFT OR  
TERRY S SWIFT

28/14  
PAGE 5

STATEMENT DATE  
02/23/10  
ACCOUNT NUMBER

	* TOTAL FOR THIS PERIOD *	* TOTAL YEAR-TO-DATE *
*TOTAL OVERDRAFT FEES *	.00 *	.00 *
*TOTAL RETURNED ITEM FEES*	.00 *	.00 *

\* \* \* \* \* CHECKING ACCOUNT TRANSACTIONS \* \* \* \* \*

DEPOSITS AND OTHER CREDITS

DATE.....	AMOUNT.	TRANSACTION DESCRIPTION	CHK NO./ATM CD
02/12	300.00	DEPOSIT	
02/18	200.00	TRANSFER CR RANDOLPH CO - POCAHONTAS	
		FROM CHK 0005060990	

OTHER DEBITS

DATE.....	AMOUNT.	TRANSACTION DESCRIPTION	CHK NO./ATM CD
02/16	200.00	BANCORPSOUTH WEB TRANS	

\* \* \* \* \* DAILY BALANCE SUMMARY \* \* \* \* \*

DATE.....	BALANCE	DATE.....	BALANCE	DATE.....	BALANCE
01/27	6.98	02/16	106.98	02/18	306.98
02/12	306.98				

# **DEPOSITION EXHIBIT 13**

NNNN 01000 00000000000000

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT

THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST YOUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: [REDACTED]  
BALANCE: 105.26-  
3 ITEM(S) FOR: 128.74  
HANDLING CHARGE: 96.00

TRINA N SWIFT OR  
TERRY S SWIFT  
[REDACTED]

ANCCORPSOUTH BRANCH - 555 DATE OF NOTICE 06/05/07

ITEM	AMOUNT	ITEM	AMOUNT	ITEM	AMOUNT
0	15.12	1228	93.62	1229	20.00
			TRINA N SWIFT OR		
			TERRY S SWIFT		

\*724552716092\*

UTO IMM001 555 AR POCAHONTAS



# EXHIBIT 24

**From:** Larry Bateman  
**Sent:** 09/20/2005 08:14:19 am  
**To:** Hubbard, Clyde; Jagers, Jeff  
**Cc:**  
**Bcc:**  
**Subject:** FW: questions

---

-----Original Message-----

From: Lewis, Gordon R. [mailto:Gordon.Lewis@bxs.com]  
Sent: Monday, September 19, 2005 5:48 PM  
To: Larry Bateman (Larry Bateman)  
Cc: byrd.williams@bxs.com  
Subject: questions

BATEMAN

OUR GOAL IS TO TAKE CARE OF CUSTOMERS AS QUICKLY AND EFFICIENTLY AS POSSIBLE. OFTEN WE ARE UNABLE TO GIVE THE WORLD CLASS SERVICE OUR CUSTOMERS NEED AND EXPECT BECAUSE WE CAN'T GET ANSWERS FROM CORPORATE DEPARTMENTS. CAN WE INSTITUTE A CODE OF CONDUCT UNDER WHICH CORPORATE DEPARTMENTS WOULD COMMIT TO RESPONDING TO QUESTION FROM THE BANKS WITHIN A VERY SHORT TIME?

HOW WILL SMALL BANKS CONTINUE TO KEEP UP WITH THE HIGH COST OF TECHNOLOGICAL CHANGES, AND WHAT CAN WE DO TO TURN UP THE HEAT ON THESE INSTITUTIONS TO IMPROVE OUR COMPETITIVE POSITION?

WHAT CHANGES IN OUR OPERATIONS SHOULD WE EXPECT OVER THE NEXT 5 YEARS? SYSTEMS AND ORGANIZATION?

WHAT WILL BE THE IMPACT OF CHECK 21 ON OUR BANK AND CUSTOMERS IN 2006 AND BEYOND?

PLEASE EXPLAIN THE RATIONALE BEHIND OUR POLICY OF POSTING LARGEST ITEMS FIRST. WHAT CAN BE DONE TO PROTECT OUR BANK FROM LOSS AND OUR TELLERS FROM CRITICISM IN SITUATIONS WHERE TRANSIT ITEMS COME THROUGH AND PAY AHEAD OF ITEMS WE HANDLED PROPERLY DURING OPERATING HOURS?

Gordon Lewis  
Regional President/Texas & Louisiana  
BancorpSouth  
2400 North  
Nacogdoches, TX 75961  
(936)552-3200

# EXHIBIT 25



**From:** Ray, Greg  
**Sent:** 09/17/2010 03:19:48 pm  
**To:** Lewis, Gordon R.  
**Cc:** Jagers, Jeff  
**Bcc:**  
**Subject:** FW: internet banking comments

---

This is starting to get embarrassing...

**From:** Caswell, Derek  
**Sent:** Friday, September 17, 2010 12:31 PM  
**To:** Ray, Greg  
**Subject:** FW: internet banking comments

Below are some detailed comments from a customer regarding internet banking and the lack of real time. The customer switch from Regions to us. I've forwarded this to Michael and Mandy Wright also,

Thanks

Derek

Derek Caswell  
BancorpSouth  
First Vice President - Retail Banking  
5217 Maryland Way, Suite 403  
Brentwood, TN 37027  
(P) 615-370-2270 (C) 662-322-8234  
(F) 615-377-6620

**From:** Coleman, Steven  
**Sent:** Friday, September 17, 2010 11:33 AM  
**To:** Caswell, Derek  
**Subject:** FW: Question for you

I've already responding to here, but here is another example of a customer complaining about real time online

banking.

Steven Coleman

BancorpSouth - Retail Banking

steven.coleman@bxs.com

(P) 662-620-3834

(F) 662-620-4333

From: Harvey, Beth  
Sent: Friday, September 17, 2010 11:21 AM  
To: Coleman, Steven  
Cc: Davis, Tammie S.; Lockhart, Sandra  
Subject: FW: Question for you

Steven not sure I'm sending this to the right person, but we get this type of questions presented to us quite frequently about our Online banking. Just wanted to pass this on from one of our customers that is very tech savvy. Not sure what is coming in the future with our Online banking, but hopefully we are looking towards some upgrades. By the way this customer used to bank with Regions.

Thanks.

Beth Harvey

From: Davis, Tammie S.  
Sent: Tuesday, September 14, 2010 2:34 PM  
To: Harvey, Beth  
Subject: Fw: Question for you

Help!! Do you have any ideas of how I can make him feel better @ our on-line services?

---

From: Larry Martin <larry.martin@gadberry.net>  
To: Davis, Tammie S.

Sent: Tue Sep 14 14:16:12 2010  
Subject: Question for you

Tammie,

Do you use Bancorp South on-line banking? If so, what is your opinion of the product?

I think you know that I moved my accounts to Bancorp South because of you.....because a personal relationship with a banker is more important to me than bells and whistles. That said, I have to tell you that Bancorp's on-line banking is a significant step backward from Regions. Since switching to the on-line product I have observed the following:

- Transfer of funds from one Bancorp account to another can take as much as 36 hours. So, when it says next day what this means is that if I transfer at 2:15 p.m. on 9/14 the transfer is not processed until sometime during the night of 9/15 and does not post to my account until the a.m. of 9/16. This is a major pain point for me since I frequently move funds....including my personal payroll.
- Accurate, timely account balances are very difficult to determine. Example - when I make an on-line payment, whether it is deducted from my balance depends on who the payee is. For example, my contribution to my church doesn't post until the check is actually deposited. So, you know how confusing that can be if the church holds two month's checks and then goes to the bank. Ouch!
- Account balances are also difficult to understand because, apparently, transactions that are in queue are deducted from the balance but you cannot see them. Whattha? If they are known to the software then why not let the customer know what's pending. In addition, the balance amounts in the Summary screen are often out-of-synch with the balances on the Recent Transactions screen

It is my understanding that Bancorp licenses a 3rd party product (Intuit?) for the on-line product. For what it's worth, you should pass along to whomever that the current solution is poor and is a significant detractor for the bank. Are there any future plans for your on-line banking that you can share with me. I hope so.

Larry

# EXHIBIT 26

**From:** Lee McAllister  
**Sent:** 10/14/2003 10:20:20 am  
**To:** 'Mary Ann Briggs'  
**Cc:** 'Jeff Jagers'  
**Bcc:**  
**Subject:** RE: Posting Priority

---

Mary Ann,

My understanding is that we still have some posting priorities as noted on pages 116 and 117 in the Appendix section of the Deposit Operations Manual. Most of these are internal force post or internal transactions or are required to have priority per Regulation E.

Jeff is on this reply and can add comments or correction to my response.

Hope this clarifies for your response to those questioning.

Thanks  
Lee

-----Original Message-----

From: Mary Ann Briggs [mailto:maryann.briggs@bxs.com]  
Sent: Tuesday, October 14, 2003 10:05 AM  
To: Lee McAllister  
Subject: Posting Priority

Lee, can you confirm if the posting priority has now changed where we pay high to low, regardless of the Tran Code? You may want to read the following string of emails.

Thanks,  
Mary Ann

-----Original Message-----

From: Cathy Talbot [mailto:cathy.talbot@bxs.com]  
Sent: Tuesday, October 14, 2003 9:53 AM  
To: Mary Ann Briggs  
Subject: RE: O/D

You may want to check on it for clarification to the branches.

I was told high to low, no t/c priority.

""Makes it easier to explain to customers why one item paid and another did not"".

(Of course, it also helps fees.)

I had talked to Janice Phillips for clarification and then

Michael Lindsey mentioned it in a meeting.

Let me know if I'm wrong.

-----Original Message-----

From: Mary Ann Briggs [mailto:maryann.briggs@bxs.com]  
Sent: Tuesday, October 14, 2003 9:16 AM  
To: cathy.talbot@bxs.com  
Subject: RE: O/D

I don't remember being told this. I thought items paid high to low, but certain tran codes paid first, like ACH & ATM were before checks.

Looking at page 117 of the Deposit Manual in the Appendix, it states, ""Debit transactions post from highest to lowest dollar amount."" But then it has the Post Priority listed.

Mary Ann

-----Original Message-----

From: Cathy Talbot [mailto:cathy.talbot@bxs.com]  
Sent: Tuesday, October 14, 2003 8:59 AM  
To: maryann.briggs@bxs.com  
Subject: FW: O/D

Did you know this?

-----Original Message-----

From: Cathy Talbot [mailto:cathy.talbot@bxs.com]  
Sent: Tuesday, October 14, 2003 8:59 AM  
To: jan.washburn@bxs.com  
Subject: O/D

Answer to your question about t/c 41 paying when we did not think it should ---

Items are now paid by High Dollar to Low Dollar, regardless of transaction code. (effective 3-4 months ago).

We learn something new everyday!!!!

# EXHIBIT 27



**From:** Bowen, Janice  
**Sent:** 11/13/2006 12:06:08 pm  
**To:** Jagers, Jeff  
**Cc:**  
**Bcc:**  
**Subject:** FW: OD Matrix

---

Jeff, this is the response I had for Lois Ann last week on the email you received from her. I do not think she understands how the matrix works and it looks to me looking at the examples she gave, the dollar amount for the smaller ave ytd coll bal amounts is in line with the one with the larger ave ytd coll balance. That is the reason I told her to go thru the Help Desk - Kathy Sellers could enlighten her more on the matrix. janice

---

**From:** Bowen, Janice  
**Sent:** Thursday, November 09, 2006 8:14 AM  
**To:** Jackson, Lois  
**Subject:** RE: OD Matrix

Hi, Lois Ann! I would suggest you turn this is as a problem with the Help Desk if you think the Matrix is not working correctly. I do not know anything about any changes to the Matrix - I do know that with each statement cycle, the OD limit can change - it is recalculated based on certain factors. Sorry, I cannot help you this time. Have a great day, Lois Ann! janice

---

**From:** Jackson, Lois  
**Sent:** Wednesday, November 08, 2006 4:29 PM  
**To:** Bowen, Janice  
**Subject:** OD Matrix

Ms. Janice....

Need a little ""help"" .... sure appreciate any words of wisdom you can give me! It has been a beautiful day in Arkansas!!

Lois Ann

Question:

Looks like the Matrix has been RELOADED again. That happens periodically.

Response:

Comments:

In looking at NSF's and OD reports today the thing that jumps out is some of the customers have overdraft limits that far exceed their Avg. YTD collected balances.

Examples:

Avg. YTD Coll. Bal. OD Limit

327 1500  
58 350  
67 350  
70 350

Explain???? ----

When these limits are applied along with charges, we end up with a charge off, in some cases, that are substantially more than we would agree to if possible.

???? How should I respond???

How often are the changes to the Matrix made?

Are these regular changes to the Matrix necessary?

# **EXHIBIT 28**

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
CASE NO. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT )  
OVERDRAFT LITIGATION )

MDL No. 2036 )

THIS DOCUMENT RELATES TO: )

Swift vs. BancorpSouth, Inc. )

N.D. FL Case No. 1:10-cv-00090-SPM )

S.D. FL Case No. 1:10-cv-23872-JLK )

THE DEPOSITION OF  
DEREK CASWELL  
Taken on Behalf of the Plaintiffs  
August 17, 2012  
9:00 A.M. - 1:00 P.M.

Meschelle Manley Deen, LCR #610

My license expires: 6/30/14

1 have her last name, that you don't know who  
2 Lea, the header teller, is. But she writes:  
3 "Customers are getting overdrafts because it  
4 takes too long for a deposit to post to their  
5 account when doing a transfer on HomeSite."

6 Since this was forwarded to you, do  
7 you have any understanding as to what Lea was  
8 talking about in this email?

9 A. I don't. And, again, a teller --

10 Q. A teller?

11 A. -- is a teller, yeah.

12 Q. So in your view, a teller may not  
13 have a true understanding as to what is going  
14 on, particularly with regard to the posting  
15 of transactions at BancorpSouth?

16 A. Correct.

17 Q. Have you received other emails apart  
18 from this one complaining of -- well,  
19 complaining of lack of real-time visibility  
20 of transactions on the HomeSite?

21 MR. TAYLOR: Object to the  
22 form.

23 THE WITNESS: (Witness does not  
24 respond.)

25 ///

1 Q. Sure.

2 A. Right.

3 Q. People that actually work in the  
4 debit card area?

5 A. Right. Yeah.

6 Q. And that's in processing --

7 A. It's part of operations, is what I  
8 was getting at.

9 Q. But apart from those three discrete  
10 areas, it's your view that the knowledge that  
11 there is a delay when some merchants swipe a  
12 debit card to the time when the transaction  
13 settles -- is that knowledge not widely known  
14 throughout the employees of BancorpSouth?

15 MR. TAYLOR: Object to the  
16 form.

17 THE WITNESS: What is your  
18 specific question again on that one?

19 BY MR. KAPLAN:

20 Q. Well, that is my specific question.  
21 You told me three subdepartments of  
22 BancorpSouth where employees have, you think,  
23 an understanding that when some merchants  
24 swipe a card, there is a delay before the  
25 transaction is settled, right?

1 A. Those are the ones that deal with it  
2 day to day, right.

3 Q. Right.

4 A. They are the ones that would have a  
5 better understanding of that. I can't say  
6 what people know and what they don't know  
7 throughout the bank.

8 Q. Right.

9 A. I'm not them. But are other people  
10 aware that when they go to a restaurant that  
11 it takes longer in the bank? Yes.

12 Q. But you're sure that William Beacom  
13 doesn't know that?

14 MR. TAYLOR: Object to the  
15 form.

16 THE WITNESS: No. What I said  
17 was that Bill doesn't know the operational  
18 aspects of that.

19 BY MR. KAPLAN:

20 Q. Okay.

21 A. And I don't know exactly, you know,  
22 the circumstance, on top of that.

23 Q. Well, judging by this email that was  
24 forwarded to you and that you subsequently  
25 forwarded, do you think that William Beacom



1 has an accurate understanding as to how  
2 transactions in the debit card department are  
3 updated on on-line banking?

4 A. I can't speak for him, but I know  
5 that he doesn't deal with it day to day, so I  
6 would say the operational piece of it and  
7 exactly how debit card transactions post, all  
8 of them, that's not his responsibility.

9 Q. So you wouldn't expect him to know  
10 that level of knowledge about debit cards?

11 A. I would expect him to know general  
12 [verbatim], such as it takes longer at a  
13 restaurant, but, you know, what filed as this  
14 and what does that and the operational  
15 aspects, no.

16 Q. And you certainly wouldn't expect the  
17 customers of BancorpSouth to have that  
18 knowledge, right?

19 MR. TAYLOR: Object to the  
20 form.

21 THE WITNESS: (Witness does not  
22 respond.)

23 BY MR. KAPLAN:

24 Q. I mean, you know, if a regional  
25 banking president doesn't have it, you

1 wouldn't expect a customer of BancorpSouth to  
2 have that knowledge, would you?

3 MR. TAYLOR: Same objection.

4 THE WITNESS: (Witness does not  
5 respond.)

6 BY MR. KAPLAN:

7 Q. Would you?

8 A. I guess -- can you ask that a little  
9 bit differently?

10 Q. You don't understand the question?

11 A. No.

12 Q. If a regional banking president of  
13 BancorpSouth isn't able to understand all of  
14 the operations of debit card transaction  
15 settlements, how would you expect a  
16 BancorpSouth customer to understand that?

17 MR. TAYLOR: Object to the  
18 form.

19 THE WITNESS: I mean, I did say  
20 that an employee of BancorpSouth wouldn't  
21 understand the operational aspects of that,  
22 but they would have the same information and  
23 be able to determine the same balance  
24 information and how that information comes  
25 across as the customer. You're talking, one,

1 technology, which is back office -- okay? --  
2 and you're talking, two, just general  
3 information.

4 BY MR. KAPLAN:

5 Q. Well, is Mr. Beacom talking about  
6 back-office technology in this email?

7 MR. TAYLOR: Object to the  
8 form.

9 THE WITNESS: It's him -- him  
10 writing the email.

11 BY MR. KAPLAN:

12 Q. Yeah. Well, correct me if I'm wrong,  
13 but I asked you is there any way that William  
14 Beacom, as a regional banking president,  
15 would not have an understanding as to how  
16 debit card transactions post on the on-line  
17 banking system, and you said that it's  
18 definitely likely that he doesn't know,  
19 right?

20 MR. TAYLOR: Object to the  
21 form.

22 BY MR. KAPLAN:

23 Q. Am I mischaracterizing your  
24 testimony?

25 A. Somewhat. I mean, what I said was

1       were -- the full background on all of them.

2       So that's -- I mean, that's still my answer,  
3       that these are many forwarded emails at a  
4       point in time, and -- and that's it.

5       Q.       And that's it?

6       A.       I mean, that's what they are. And I  
7       went through the first one, and I said that  
8       this one, in terms of the merchant, looks  
9       like it's a merchant issue.

10      Q.       The first one?

11      A.       This one from Kathryn Dekker.

12      Q.       Kathryn Dekker, a customer service  
13      representative?

14      A.       Right.

15      Q.       And a customer service representative  
16      is somebody who works in the bank, at a  
17      branch?

18      A.       That's correct, yeah.

19      Q.       They open the accounts?

20      A.       Uh-huh.

21      Q.       And talk to customers?

22      A.       That's correct.

23      Q.       So it's your view that Kathryn Dekker  
24      doesn't understand how debit card  
25      transactions post, and that's why she

1 forwarded this complaint?

2 MR. TAYLOR: Object to the  
3 form.

4 THE WITNESS: I can't speak on  
5 behalf of Kathryn Dekker.

6 BY MR. KAPLAN:

7 Q. Well, what did you think was  
8 incorrect in Ms. Dekker's email?

9 MR. TAYLOR: Object to the  
10 form.

11 THE WITNESS: In terms of  
12 specifically what the -- the merchant issue  
13 she's talking about?

14 BY MR. KAPLAN:

15 Q. Yes.

16 A. She's talking about -- well, again, I  
17 can't speak on behalf of Kathryn --

18 Q. Sure.

19 A. -- but restaurants can settle  
20 differently than big-box businesses like a  
21 Wal-Mart, and there can be a delay in those  
22 coming in.

23 Q. And you know that?

24 A. Yeah.

25 Q. But Kathryn Dekker doesn't apparently

1 know that?

2 A. Well, I don't know what she knows or  
3 she doesn't know, and I also don't know if  
4 she's specifically referencing that or some  
5 other instance or anything else. There is  
6 nothing that shows my specific communication  
7 with Kathryn that says, "Hey, Kathryn.  
8 What's up?"

9 Q. But you were able to come to an  
10 understanding -- that was your take on her  
11 email, right? It was that it was the product  
12 of her not understanding?

13 A. It could be a -- let's see. (Witness  
14 reviewing document.)

15 Q. There's a question pending. If you  
16 want, I can have it read back.

17 A. Yeah. Just go ahead again.

18 (Court reporter read back the  
19 requested question.)

20 THE WITNESS: You know, I can't  
21 say what she understands and what she doesn't  
22 understand. All I can say is that in terms  
23 of this statement right here, what she could  
24 be talking about is the delay of the merchant  
25 processing -- settling the payment.

1 BY MR. KAPLAN:

2 Q. Right. She could be talking about  
3 that?

4 A. Uh-huh.

5 MR. KAPLAN: Do you want to  
6 take a break?

7 MR. TAYLOR: You can finish --

8 THE WITNESS: Yeah. Let's just  
9 finish this one.

10 BY MR. KAPLAN:

11 Q. When she writes, "Historically, we  
12 have told the customer that the reason that  
13 they don't show on the account right away" --  
14 and I assume she's talking about -- you and I  
15 both assume she's talking about debit card  
16 transactions, right?

17 A. Uh-huh.

18 Q. -- "is because the merchant hasn't  
19 batched, which is incorrect," is she wrong so  
20 far -- in what she's saying, so far as you  
21 can tell?

22 MR. TAYLOR: I'll object to the  
23 form. I'm confused where the double  
24 negatives are in that question.

25 MR. KAPLAN: It's the actual --



1 the text itself isn't --

2 MR. TAYLOR: I understand. I  
3 got lost.

4 THE WITNESS: (Witness does not  
5 respond.)

6 BY MR. KAPLAN:

7 Q. If you don't understand the question,  
8 I can rephrase.

9 A. Yeah. Go ahead.

10 Q. So let's look at the first sentence  
11 of this paragraph: "Historically, we have  
12 told the customer that the reason that they  
13 don't show on the account" -- and we have  
14 agreed that that's debit transactions --  
15 "right away is because the merchant hasn't  
16 batched, which is incorrect."

17 So in that particular sentence, is  
18 there anything that Kathryn is saying that,  
19 in your view, is not correct?

20 A. I don't know what "we" is, first of  
21 all. I don't know the definition of "we." I  
22 know it's not -- I mean, from my  
23 understanding, I don't know on whose behalf  
24 she's speaking, on the part of. That could  
25 be her branch. I don't have -- I have never

1 seen anything in writing that says  
2 "BancorpSouth says this." So that's one.

3 And then, again, she's talking about  
4 big businesses. I've said Wal-Mart.  
5 Restaurants are different, and every  
6 restaurant is different.

7 Q. And she goes on to write: "With my  
8 own personal accounts at other institutions,  
9 I could be sitting at the restaurant and  
10 swipe my card as credit, and then immediately  
11 go on-line and see the charge pending."

12 Do you have any reason to believe  
13 that Ms. Dekker is confused in that sentence?

14 MR. TAYLOR: Let me just object  
15 to the form. But you can answer, if you  
16 know.

17 THE WITNESS: Again, I don't  
18 have an example here. I don't have any  
19 account information. I can't tell you if  
20 it's -- if she's going to the same exact  
21 restaurant each time, if she's going to a  
22 different restaurant, if she's doing it on  
23 Friday and not Monday, or, you know, the days  
24 of the week, if she's doing it on a weekend.  
25 There's not enough information in here for me

1 like a Wal-Mart that's -- it just depends on  
2 the type of merchant, again.

3 Q. It does. And my question to you is,  
4 in looking at this email, is it at least  
5 apparent to you, Derek Caswell, that Kathryn  
6 Dekker doesn't understand how the debit  
7 transactions post?

8 A. You know, I can't really speak on her  
9 behalf. I do see flaws in her response --

10 Q. Yeah.

11 A. -- but I don't know what her full  
12 understanding is overall, and, again, I don't  
13 know what this is in relation to.

14 Q. Fair enough.

15 A. What specific issue, like, with the  
16 customer.

17 Q. Right. So if Kathryn Dekker, a  
18 customer service representative of  
19 BancorpSouth, is sending an email which  
20 contains flaws in her description of how  
21 debit card transactions post, how is a  
22 customer of BancorpSouth to understand how  
23 debit card transactions post?

24 MR. TAYLOR: Object to the  
25 form.

1 THE WITNESS: You're going to  
2 have to ask a specific question.

3 BY MR. KAPLAN:

4 Q. That is my specific question.

5 MR. TAYLOR: I object to the  
6 form.

7 THE WITNESS: (Witness does not  
8 respond.)

9 BY MR. KAPLAN:

10 Q. You can't answer the question?

11 MR. TAYLOR: If I object, that  
12 doesn't mean you don't answer. That's  
13 just -- it's a place order [verbatim].

14 THE WITNESS: Okay. You said  
15 how are customers supposed to --

16 BY MR. KAPLAN:

17 Q. -- understand how debit transactions  
18 post?

19 A. Well, just like when you write a  
20 check, you have your check ledger, and that  
21 check doesn't go in right away. It goes  
22 through the process. You know that you have  
23 spent that money; you have authorized that  
24 you have spent that money, and it's going to  
25 go through.

1           On a debit card, you know you have  
2   that money; you have authorized that you have  
3   that money; you have authorized the  
4   transaction. And the information, in terms  
5   of your balance, is available on Internet  
6   banking, it's available through the call  
7   center, and now mobile banking to see where  
8   you are at that point in time.

9           It's up to the customer to know what  
10   your transactions are and to balance it out.  
11   And it's, you know, fairly easy. We have  
12   many customers that don't have an issue with  
13   that, and, you know -- and that's, you know,  
14   how it is.

15   Q.     It sounds simple, doesn't it?

16   A.     Yeah.

17   Q.     Does Kathryn Dekker understand that  
18   it's that simple?

19           MR. TAYLOR: Object to the  
20   form.

21           THE WITNESS: I can't speak on  
22   behalf of Kathryn.

23   BY MR. KAPLAN:

24   Q.     How about Alana Corey, CSR --

25           MR. TAYLOR: Same objection.

1 BY MR. KAPLAN:

2 Q. -- she doesn't seem to understand it  
3 either, does she?

4 A. I can't speak on their behalf. And  
5 these are all, again, forwarded emails.

6 Q. Well, Alana Corey writes: "It has  
7 been the cause of customers' accounts closing  
8 and the cause of several upset customers.  
9 They know it is our updating and not the  
10 merchants, because they use the same  
11 merchants with different banks and it updates  
12 instantly."

13 Did I read that correctly?

14 A. Which page?

15 Q. It's page 2, of 76.

16 A. That's what it says, yeah.

17 Q. Okay. And you and I talked about  
18 that before, and you said it sounded to you  
19 as if Alana Corey didn't understand how debit  
20 card transactions posted for some merchants,  
21 right?

22 A. That could be a possibility.

23 Q. Okay. And so Alana Corey, a CSR -- a  
24 customer service representative of  
25 BancorpSouth -- if she doesn't understand how

1 some merchants post debit card transactions,  
2 how are BancorpSouth's customers supposed to  
3 understand how some merchants post debit card  
4 transactions?

5 MR. TAYLOR: Object to the  
6 form.

7 THE WITNESS: I mean, Alana  
8 isn't the customer, first of all.

9 BY MR. KAPLAN:

10 Q. That's true.

11 A. So Alana doesn't know that the  
12 customer -- you know, if Alana would have  
13 known -- well, I should put it this way:  
14 Alana didn't know the customer's balance the  
15 morning that she went to Wal-Mart. Alana  
16 didn't know that the customer did ten  
17 transactions equaling \$110 and the customer  
18 knew that morning that she had -- he or  
19 she had \$100.

20 I can fairly assume that Alana, if it  
21 was her account, she would -- I mean, she  
22 does have access to the same information as a  
23 customer and the same balance information and  
24 can manage her account the same way.

25 Q. So how would Alana knowing the



# EXHIBIT 29

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case No. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT	)
OVERDRAFT LITIGATION	)
	)
MDL No. 2036	)
<i>Fourth Tranche</i>	)
_____	)
	)
THIS DOCUMENT RELATES TO:	)
	)
<i>Shane Swift v. BancorpSouth, Inc.,</i>	)
S.D. Fla. Case No. 1:10-cv-23872-JLK	)
_____	)

**PLAINTIFF SHANE SWIFT'S OBJECTIONS AND  
RESPONSES TO DEFENDANT BANCORPSOUTH BANK'S  
FIRST CONTINUING INTERROGATORIES TO PLAINTIFF**

Pursuant to Fed. R. Civ. P. 26 and 33, Plaintiff, Shane Swift ("Plaintiff") hereby responds to Defendant, BancorpSouth Bank's ("BancorpSouth" or "Defendant") First Continuing Interrogatories to Plaintiff ("interrogatories").

**GENERAL OBJECTIONS**

1. Plaintiff objects to each discovery request that asks for interrogatory response or the identification of documents that are inconsistent with what Judge James Lawrence King has already determined to be the proper scope of discovery for requests served on plaintiffs in his Opinion Setting Standards for Resolution of Discovery Interrogatories and Production of Documents dated December 15, 2010 (D.E. #1016).

2. Plaintiff objects to each discovery request to the extent it calls for documents or other information that are protected from discovery by the attorney-client privilege, work

product doctrine, or any other applicable privilege. Any inadvertent disclosure of privileged information shall not be deemed a waiver by Plaintiff of any applicable privilege or doctrine.

3. Plaintiff's discovery and investigation with respect to the issues in this case are ongoing. The following responses and objections are provided without prejudice to Plaintiff's right to revise or supplement their responses or objections based on subsequent discovery or investigation.

4. Plaintiff objects to each discovery request to the extent it seeks confidential or private personal or business information. To the extent that documents and other information requested by Defendant are not protected from discovery based on attorney-client privilege or work product doctrine, and are otherwise discoverable, they will be produced subject to an appropriate protective order.

5. Plaintiff objects to each discovery request to the extent that it begs the question and/or assumes facts which have not been admitted. By responding to these requests, Plaintiff does not admit, concede or agree with any explicit or implicit assumption made in the requests.

6. Plaintiff's identification of documents and other information in response to these requests is not intended and should not be construed as (a) an admission that the produced documents or other information are relevant or admissible; (b) a waiver of any of these General Objections; or (c) a waiver of any specific objections asserted in response to individual discovery requests. Plaintiff reserves all proper objections regarding the competency, relevancy, materiality, privilege, authenticity and/or admissibility as evidence, for any purpose, of any and all documents and other information produced by Plaintiff in this litigation.

7. Plaintiff objects to the "Definitions," "Instructions," and to each discovery request to the extent they purport to impose any requirement or discovery obligation on Plaintiff

greater than or different from those imposed by Rule 26 or 33 of the Federal Rules of Civil Procedure and the applicable rules of this Court.

8. Plaintiff objects to the definition of “you” and “your” to the extent it calls for information protected by the attorney-client privilege or work product doctrine, and to the extent it seeks documents or information relating to accounts held by anyone other than Plaintiff.

9. Plaintiff objects to each discovery request to the extent it seeks information about accounts other than those that are the subject of this litigation, or accounts other than Plaintiff’s BancorpSouth debit card and/or checking account.

10. Plaintiff objects to the interrogatories to the extent that they are premature contention interrogatories subject to later response under Federal Rules of Civil Procedure 26(a) and 33(a)(2). Plaintiff reserves the right to respond more fully later, or to supplement or amend any response after a sufficient opportunity for discovery.

11. Plaintiff objects to the interrogatories to the extent that they are unlimited in scope and time.

12. Plaintiff objects to the interrogatories to the extent that they use an overbroad definition of the term “identify,” and to the extent that the use of the term in certain interrogatories does not comport with any of the stated definitions.

13. Plaintiff objects to the interrogatories to the extent that they contain discreet subparts, and therefore, could exceed the allowable number of interrogatories under Rule 33 of the Federal Rules of Civil Procedure and/or under any applicable court order.

14. Plaintiff objects to the interrogatories to the extent that they seek information that Defendants already have in their possession, and are otherwise cumulative or duplicative of information in Defendant’s possession custody or control, or of information already requested or

sought in these interrogatories or contained in documents produced in response to Defendant's requests for production.

15. Plaintiff objects to the interrogatories to the extent that they request opinions or legal conclusions, for example, seeking "every material detail" calls for a legal conclusion about certain facts that might be omitted or included.

16. Plaintiff objects to the interrogatories to the extent that certain interrogatories seek "all" or "every" piece of information as overbroad and unduly burdensome, and as calling for information that is either irrelevant, or cumulative or duplicative of information already provided in these interrogatories, or of information provided in documents produced in response to Defendant's requests for production.

17. Plaintiff objects to any interrogatory that seeks legal argument that will be the subject of later proceedings in this case.

#### **RESPONSES TO INTERROGATORIES**

1. Identify each person, other than BancorpSouth or its employees, or your counsel, who has knowledge of or information concerning any of the facts alleged in the Complaint and, for each person identified, state the facts of which that person has knowledge or information and identify any documents that reflect, support, or evidence such facts.

#### **RESPONSE:**

Plaintiff and Plaintiff's wife, Trina Swift, as the joint account holders of the account at issue in this lawsuit, have knowledge of facts alleged in the Complaint, including the debit card transactions made under their BancorpSouth accounts, their management of those accounts, and documents or other communications sent by Defendant relating to their accounts.

Earnings Performance Group, a third party consultant retained by BancorpSouth, assisted BancorpSouth with developing and implementing its high-to-low re-sequencing policy.

FDR, a third party which Defendant identifies in its discovery responses to date was involved in authorizing certain debit card transactions.

2. Other than documents provided to you by BancorpSouth or that you know to be in BancorpSouth's possession, identify each and every other document, tangible object or other item of real, documentary or demonstrative evidence which contains, or may contain, material or information which is, which may be, or which you contend substantiates or supports each of your contentions involved in this case, and identify the person presently having possession, custody or control of each item listed.

**RESPONSE:**

Pursuant to Federal Rule of Civil Procedure 33(d), Plaintiff will produce documents responsive to Defendant's First Continuing Request for Production of Documents to Plaintiff. The responsive documents are in the possession of Plaintiff.

3. Identify all persons from whom you have obtained written or oral statements regarding the subject matter of this litigation, the date each such statement was taken or made, the person who obtained the statement and specify the information contained within said statement.

**RESPONSE:**

None, other than the deposition of Jeff Jaggers taken on October 12, 2011.

4. Identify each agent, person, corporation, firm, association or other entity that has been retained by you to conduct or has otherwise conducted an investigation to determine any of the facts pertaining to any of the issues in this case; describe the nature of each such

investigation; the date(s) that any investigation was started and completed; and the identity of the person to whom the results were submitted.

**RESPONSE:**

Plaintiff has retained attorneys from Kopelowitz Ostrow, P.A., and Chitwood Harley Harnes LLP to investigate Plaintiff's claims and file a class action lawsuit on his behalf. In light of interrogatory number 5, below, Plaintiff interprets this interrogatory as not seeking information regarding any expert witnesses.

5. Identify all expert witnesses you expect to call, whether live or by affidavit or deposition, in any trial or evidentiary hearing in this action, or whose testimony you intend to present in support of your motion to certify a class in this action or in support of any alleged damages, and state the subject matter on which the expert is expected to testify, the substance of the facts and opinions for the expert's expected testimony, all bases for each opinion, and all information considered by such expert (including, but not limited to, data, treatises, compilations, or other opinions) in arriving at his opinion.

**RESPONSE:**

At this time, Plaintiff has not determined the experts he expects to call at the trial or any evidentiary hearing in this action. Plaintiff will comply with Court's Scheduling Order Pertaining to "Fourth Tranche" Cases (D.E. # 1340) regarding the disclosure of expert witnesses for trial. Plaintiff has retained Art Olsen of Cassis Technology, LLC, 903 N. 130<sup>th</sup> Street #108, Seattle, WA 98133, as an expert in support of his Motion for Class Certification. See Mr. Olsen's declaration filed in support of Plaintiff's Motion for Class Certification for the subject matter, the substance of the facts and opinions, the bases for the opinions, and all information considered by Mr. Olsen in arriving at his expert opinions to date.



6. If you contend that BancorpSouth, its agents or representatives, or any of its predecessor's agents or representatives, have made any admissions against interest with respect to any of the allegations contained in the Complaint, state with specificity and particularity all such admissions against interest, identify the maker of each such admission, identify the substance of each such admission, identify the date each such admission was made, and identify all persons who witnessed or who possess information regarding each such admission.

**RESPONSE:**

Plaintiff objects to this interrogatory on the grounds that it seeks information protected by the word-product doctrine. In addition, Plaintiff objects because a response to this interrogatory calls for a legal conclusion. Subject to and without waiving the foregoing, Plaintiff contends the deposition transcript of Jeff Jaggers taken in this case contains admissions against BancorpSouth.

7. Identify each person whom you expect to call or whom you may call as a witness at the trial of this case and, for each such person, provide a detailed summary of the facts, matters, or opinions about which each such witness will or may testify in this case.

**RESPONSE:**

At this time, Plaintiff has not determined each person who he expects to call at the trial of this case. Plaintiff will comply with Court's Scheduling Order Pertaining to "Fourth Tranche" Cases (D.E. # 1340) regarding the disclosure of lay witnesses expected to testify at trial. Plaintiff refers Defendant to the Trial Plan submitted with his Motion for Class Certification, which provides some detail as to witnesses that he would intend to call at trial.

8. Identify all persons (other than Plaintiff's legal counsel) who participated in preparing the response to these Interrogatories.

**RESPONSE:**

In addition to Plaintiff's legal counsel, Plaintiff, Shane Swift, participated in preparing the responses to these interrogatories.

9. With respect to your BancorpSouth account statements that have been produced to you and are attached to BancorpSouth's First Requests for Admissions to Plaintiff, identify each individual fee that you contend was assessed by BancorpSouth unfairly, unconscionably, unlawfully or in bad faith.

**RESPONSE:**

Plaintiff objects to this interrogatory because a response to this interrogatory calls for a legal conclusion. Subject to and without waiving the foregoing, Plaintiff relies on the analysis of his expert, Art Olsen, as to overdraft fees that were assessed by BancorpSouth as a result of re-sequencing for which Plaintiff seeks relief in this lawsuit.

10. With respect to your BancorpSouth account statements that have been produced to you and are attached to BancorpSouth's First Requests for Admissions to Plaintiff, identify each individual fee for which you seek recovery or restitution in this lawsuit.

**RESPONSE:**

See response to interrogatory #9.

11. For each individual fee identified in your response to the preceding Interrogatory, state all facts on which you base your contention that the fee was assessed unfairly, unconscionably, unlawfully or in bad faith.

**RESPONSE:**

See response to interrogatory #9. In summary, Plaintiff now understands that Defendant assessed and collected overdraft fees for debit card transactions based on the bank re-ordering

debit card transactions to high-to-low, which increased the frequency of overdraft fees being assessed.

12. If you have had any account in last 5 years at another financial institution to which overdraft fees or charges were assessed, and if so, please identify the financial institution and type of account.

**RESPONSE:**

In supplement to the General Objections above, Plaintiff objects to this interrogatory on the grounds that it is inconsistent with Section A. of the Opinion Setting Standards For Resolution of Discovery Interrogatories and Production of Documents dated December 15, 2010 (D.E. #1016), which Plaintiff contends should be applicable to this case. In response to the first tranche banks' request that the plaintiffs produce information regarding their finances on accounts that are not at issue in this litigation, the Court denied the banks' motion to compel ruling that such requests were irrelevant and unduly burdensome. Accordingly, Plaintiff objects to this interrogatory on the grounds that it is unduly burdensome, irrelevant, and not likely to lead to the discovery of admissible evidence.

13. Describe each and every fact that you contend supports your allegations in the complaint that you have incurred or suffered damages "as a result" of BancorpSouth's conduct.

**RESPONSE:**

Plaintiff objects to this interrogatory as having the potential to invade the attorney-client and work product privileges to identify every fact that Plaintiff contends supports his claims. The request is also unduly burdensome as it would require the Plaintiff to list every fact that could be inferred from the review of the thousands of pages of documents produced to date by Defendant, as well as the facts revealed by way of Defendant's written discovery responses and

the deposition testimony of Jeff Jaggers, in his capacity as Defendant's Federal Rule of Civil Procedure 30(b)(6) deponent. Plaintiff additionally incorporates and relies on the Court's comments and rulings regarding contention interrogatories set forth in the order dated December 16, 2010 (D.E. # 1016), and the standards the Court imposed in that Order. Discovery is ongoing, and as such, Plaintiff does not know each and every fact that supports his allegations in the Complaint that he has suffered damages as a result of BancorpSouth's conduct.

Plaintiff's Motion for Class Certification and related Appendices, inclusive of exhibits, the deposition of Jeff Jaggers, and the declaration of Art Olsen provide facts supportive of the allegations in Complaint. Plaintiff will comply with any other Order issued by the Court regarding the identification of trial exhibits.

14. Identify each and every lawsuit to which you have ever been a party, or in which you have ever given testimony under oath, in which a financial institution was also a party or the subject matter involved a product offered by a financial institution. Identify any such lawsuit by stating the name of the lawsuit, the date on which it was filed, and the court in which it is or was pending.

**RESPONSE:**

None. Plaintiff also notes the ruling that the Court made in its December 16, 2010 Order (D.E. # 1016 at 9-10) regarding inquiries into other litigation to which Plaintiff may have been a party.

15. Identify all receipts referred to in footnote 3 of your Complaint.

**RESPONSE:**

Pursuant to Federal Rule of Civil Procedure 33(d), Plaintiff will produce documents responsive to this request.

16. Identify all receipts in your possession from third-parties for transactions in which overdraft fees were charged to you by BancorpSouth as shown on the account statements that have been produced to you and are attached to BancorpSouth's First Requests for Admissions to Plaintiff.

**RESPONSE:**

Pursuant to Federal Rule of Civil Procedure 33(d), Plaintiff will produce documents that are responsive to this request that he possesses, but does not believe he maintains possession of every receipt for every transaction for which Defendant charged him an overdraft fee.

17. Identify the earliest date when you became aware that BancorpSouth engaged in “reorder[ing] debits from highest to lowest” as you allege in Paragraph 35 of the Complaint.

**RESPONSE:**

In supplement to the General Objections above, Plaintiff objects to this interrogatory on the grounds that it is vague, inasmuch as Plaintiff cannot be expected to know what the Defendant means by “when you became aware.” The interrogatory is also objectionable because it mischaracterizes the allegation in paragraph 35 of the Complaint, which reads: “The Deposit Agreement fails to indicate that the Bank will always reorder debits from highest to lowest.”

18. Identify the earliest date when you became aware that BancorpSouth might pay a debit card transaction although the transaction resulted in your account becoming overdrawn.

**RESPONSE:**

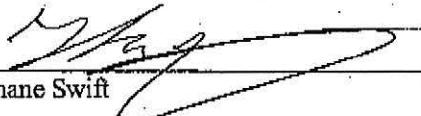
In supplement to the General Objections above, Plaintiff objects to this interrogatory on the grounds that it is vague, inasmuch as Plaintiff cannot be expected to know what the Defendant means by “when you became aware.” Subject to and without waiving the foregoing, Plaintiff does not recall when he first became aware that BancorpSouth “might pay a debit card


transaction although the transaction resulted in your account becoming overdrawn.” Plaintiff is aware that the Defendant did from time to time pay debit card transactions for which the bank assessed overdraft fees because the bank indicated funds in his account were insufficient to pay for such debit card transactions. However, he was not aware until shortly before this lawsuit was filed that Defendant had assessed certain overdraft fees on his account as a result of re-ordering debit card transactions on his account from highest to lowest.


**VERIFICATION**

STATE OF ARKANSAS           )  
  )ss:  
COUNTY OF RANDOLPH       )

The undersigned, Shane Swift, states that he has reviewed the foregoing Responses to Defendant BancorpSouth Bank's First Continuing Interrogatories to Plaintiff and that the answers given are true and correct to the best of his knowledge, information and belief.

  
Shane Swift

SUBSCRIBED and sworn to before me this 6 day of Jan 2011.   
2012

  
Notary Public

MY COMMISSION EXPIRES: 3-29-17





**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE NO. 1:09-MD-02036-JLK**

<b>IN RE: CHECKING ACCOUNT</b>	)
<b>OVERDRAFT LITIGATION</b>	)
	)
<b>MDL No. 2036</b>	)
<i>Fourth Tranche</i>	)
_____	)
	)
<b>THIS DOCUMENT RELATES TO:</b>	)
	)
<i>Shane Swift v. BancorpSouth, Inc.,</i>	)
<b>S.D. Fla. Case No. 1:10-cv-23872-JLK</b>	)
_____	)

**CERTIFICATE OF SERVICE**

I hereby certify that on December 30, 2011, I served the foregoing Objections and Responses to BancorpSouth Bank's First Continuing Interrogatories to Plaintiff by electronic mail on the following:

Eric Jon Taylor  
Darren E. Gaynor  
PARKER, HUDSON,  
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/s/ Jeffrey M. Ostrow  
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*Counsel for Plaintiff and the Proposed Classes*

# EXHIBIT 30

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case No. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT  
OVERDRAFT LITIGATION

MDL No. 2036  
Fourth Tranche

---

THIS DOCUMENT RELATES TO:

Shane Swift v. BancorpSouth, Inc.,  
S.D. Fla. Case No. 1:10-cv23872-JLK

---

DEPOSITION OF SHANE SWIFT

WEDNESDAY, JANUARY 18, 2012  
200 SOUTHWEST FIRST AVENUE  
FORT LAUDERDALE, FLORIDA 33301  
10:00 a.m. - 2:00 p.m.

APPEARANCES:

On behalf of BancorpSouth:  
Eric Jon Taylor, Esquire  
and Darren E. Gaynor, Esquire  
Parker, Hudson, Rainer & Dobbs, LLP  
1500 Marquis Two Tower  
285 Peachtree Center Avenue N.E.  
Atlanta, Georgia 30303  
(404) 523-5000  
etaylor@phrd.com

On behalf of Shane Swift:  
Jeffrey M. Ostrow, Esquire  
and Jason H. Alperstein, Esquire  
Kopelowitz, Ostrow, Ferguson, Weiselberg  
200 Southwest First Avenue, Suite 1200  
Fort Lauderdale, Florida 33301  
(954) 525-4100  
alperstein@kolawyers.com  
- - -

1 Q. How many?

2 A. One, I believe.

3 Q. I apologize. I didn't --

4 A. One. I'm sorry.

5 Q. In your own words, tell me what this  
6 lawsuit is about.

7 A. This lawsuit is about unfair  
8 resequencing of A.T.M. and debit card transactions.

9 Q. What do you think is unfair about  
10 resequencing of A.T.M. and debit card transactions?

11 A. It's a manipulation of the customer or  
12 the consumer by a financial institution who has  
13 professionals working for them as opposed to, you  
14 know, the ordinary working man. Anything else?

15 Q. Oh, I wasn't sure you were done. It's  
16 also kind of hard to see your face. You're kind of in  
17 the shadows.

18 A. Oh, I'm sorry.

19 Q. No, it's not -- it's just I wasn't sure  
20 you were done. If I'm staring at you, it's because  
21 I'm not sure you're done.

22 A. Okay.

23 Q. You're using the word, unfair, and I'm  
24 trying to get at what is unfair in your mind about  
25 resequencing of A.T.M. and debit transactions?

1 MR. OSTROW: Form.

2 A. Excuse me?

3 BY MR. TAYLOR:

4 Q. We should have gone over that, also.

5 A. It is -- it's a program manipulation of  
6 transactions that take place by somebody or two people  
7 using their debit cards on a daily basis where nothing  
8 is immediately done at that time, you know.

9 I believe that if somebody makes a  
10 transaction that -- you know, in chronological order  
11 on a certain day with the dated receipt through a  
12 weekend that if that happens on the next business day  
13 that there shouldn't be a resequencing of highest to  
14 lowest, let's say, a half dozen transactions done that  
15 weekend from lowest to highest, let's say, in  
16 chronological order over the weekend.

17 Q. Done?

18 A. I'm done.

19 Q. Okay.

20 A. You wanted an example, right?

21 Q. Well, I want to know what --

22 A. What I believe, yes. Well, that's an  
23 example of what I believe.

24 Q. I want to make sure I'm understanding  
25 you.

1 A. Okay.

2 Q. Is it your belief and I'll use your  
3 example that over a weekend if you had transactions in  
4 which you used your debit card --

5 A. Okay.

6 Q. That the transactions should not be  
7 reordered in any way?

8 A. They should not be reordered in an  
9 unfair resequenced way over and over and over and  
10 over, let's say hypothetically, say, every weekend or  
11 every time or every day when that card is used.

12 Q. Do you think that there is a fair  
13 resequencing?

14 A. A fair resequencing?

15 Q. Right.

16 A. Not to manipulate --

17 MR. OSTROW: Form.

18 THE WITNESS: -- for the gain, for the  
19 gain of the financial institution, you know,  
20 as you know, to mess with the livelihood of  
21 the customer, you know, as opposed to yes, you  
22 know, it would be fair to sequence everything  
23 in order.

24 BY MR. TAYLOR:

25 Q. And what I guess I'm trying to get at

1 and make sure I'm clear on is you used the word,  
2 unfair resequencing. In your mind, is there a fair  
3 resequencing?

4 A. A fair resequencing, no. I believe  
5 there's a fair sequencing.

6 MR. OSTROW: Form.

7 THE WITNESS: Not a fair resequencing.

8 BY MR. TAYLOR:

9 Q. Is what you're saying that you think  
10 transactions ought to be handled chronologically?

11 A. Yes, in realtime. Well, is the  
12 question still out there?

13 Q. Tell me when you're done.

14 A. Okay. Go ahead.

15 Q. I was thinking of your example of the  
16 weekend.

17 A. Okay.

18 Q. And let's say that there are -- for  
19 ease of math, let's say there are ten transactions and  
20 they occur at different times.

21 Is what you're saying that if the bank  
22 orders those transactions in any way other than first  
23 transaction first, last transaction last, is any other  
24 way unfair in your mind?

25 A. Not any other way is unfair. The only



1 Q. Yes.

2 A. I'm concerned about the resequencing of  
3 the overdrafts, not the overdrafts, themselves. The  
4 whole concern with an overdraft is the resequencing  
5 of -- that's the only thing I'm concerned about with  
6 the overdraft, not the -- the only thing I'm concerned  
7 with in this is the resequencing of transactions made  
8 by debit cards and -- debit card and A.T.M.  
9 transactions.

10 Q. Do you believe that resequencing is  
11 always harmful to BancorpSouth customers?

12 A. Do I believe that resequencing is  
13 always harmful to BancorpSouth customers?

14 Q. Yes.

15 A. It's always harmful. I believe unfair  
16 resequencing is harmful to BancorpSouth customers.

17 Q. Let me put it this way. Do you think  
18 that resequencing from high to low is always unfair to  
19 BancorpSouth customers?

20 A. Read that over again.

21 (Thereupon, the above referred to  
22 question was read back as above recorded by  
23 the court reporter.)

24 THE WITNESS: I believe that the  
25 resequencing of high to low for the

1 manipulation of -- to manipulate an account of  
2 the customer is unfair to the customer. Could  
3 you read back what I said?

4 (Thereupon, the above referred to  
5 answer was read back as above recorded by  
6 the court reporter.)

7 THE WITNESS: Ask that question again.

8 BY MR. TAYLOR:

9 Q. I'm trying to ask it as a yes or no  
10 question. You can always feel free to explain your  
11 answer, but I meant to ask it as a yes or no.

12 A. So ask that question again. I'll give  
13 you a yes or no answer.

14 MR. OSTROW: Well, hold on a second.  
15 You answer the question. If that's your  
16 answer, that's your answer. If he asks you a  
17 yes or no question, you answer yes or no. If  
18 he gives you an open-ended question, respond  
19 the way you did.

20 THE WITNESS: Okay. Okay. Let's start  
21 over with the question or not or we can keep  
22 that going on.

23 BY MR. TAYLOR:

24 Q. Do you believe that reordering  
25 transactions from high to low is always unfair to

1 BancorpSouth customers?

2 A. Yes.

3 Q. Do you think that all BancorpSouth  
4 customers would agree with you?

5 MR. OSTROW: Form.

6 A. Rephrase that question.

7 BY MR. TAYLOR:

8 Q. Do you have any reason to believe that  
9 all BancorpSouth customers would agree with you that  
10 reordering transactions from high to low is unfair?

11 A. Do I have any reason? Yes, I have any  
12 reason to believe that.

13 Q. What reason do you have to believe that  
14 all BancorpSouth customers would agree with you?

15 A. Because it is their money that is  
16 getting deducted with those fees.

17 Q. I want to make sure that you understand  
18 my question. We weren't talking about overdrafts. We  
19 were talking about reordering.

20 So would you agree with me that  
21 reordering doesn't necessarily lead to an overdraft,  
22 right?

23 A. Yes.

24 Q. If you have enough money in your  
25 account to cover any transactions you take part in

1 Q. Did I understand you right earlier when  
2 you said you're self-employed and you're doing  
3 recording and D. J.'g now?

4 A. Yes.

5 Q. Is that mostly day work or night work?

6 A. Mostly both.

7 Q. Okay. When did you first decide to  
8 file this lawsuit?

9 A. It would be --

10 MR. OSTROW: If your answer is going --  
11 is a result of any conversations you and I had  
12 once you and I started talking about your  
13 case, then I'm going to --

14 BY MR. TAYLOR:

15 Q. I'm not asking for the conversations,  
16 but I think I'm entitled to know when he decided.  
17 That's not privileged.

18 A. So the question is when did I decide  
19 to?

20 Q. Right. I'm not asking you for anything  
21 Mr. Ostrow told you or any other attorney.

22 A. Start actions toward this; is that the  
23 question?

24 Q. When did you decide to file this  
25 lawsuit was, I think, the question?

1 MR. OSTROW: I'm fine with the answer  
2 either way. I'll withdraw the objection. I  
3 think you're technically correct.

4 MR. TAYLOR: Yes, I'm trying to ask  
5 questions so I don't get an objection because  
6 I don't want to know what I'm not entitled to  
7 know.

8 MR. OSTROW: No, it's not that juicy  
9 so don't worry about it.

10 A. In '09 when I started doing research on  
11 my account and finding out that the overdraft charges  
12 I was receiving was a -- the extra overdraft charges  
13 that I received was because of resequencing.

14 BY MR. TAYLOR:

15 Q. Tell me what you mean by extra  
16 overdraft charges.

17 A. Caused by resequencing. I gathered up  
18 receipts from my bank account, printouts or you  
19 know -- and I looked at my receipts as opposed to the  
20 statement and the date of the receipts to the date of  
21 the statement and as further research was done, I  
22 started noticing that overdraft charges -- not  
23 overdraft charges, but the transactions were being  
24 resequenced from out of chronological order.

25 So I was concerned with that, so I

1 sought counsel. I sought counsel. I sought counsel  
2 to see if this was the right way to perform business  
3 by a financial institution.

4 Q. This was from when in '09?

5 A. There's a date -- it's in the documents  
6 somewhere, the exact date, but I don't recall the  
7 exact date.

8 Q. I don't mean the exact date you filed  
9 the lawsuit. I mean the analysis you're talking  
10 about.

11 A. That would be in the documents. It's  
12 in there somewhere. I mean I don't even know the  
13 month.

14 MR. TAYLOR: Let me see if I can help  
15 you. Would you please mark that as Exhibit 1?

16 (Thereupon, Exhibit No. 1 was marked  
17 for identification.)

18 BY MR. TAYLOR:

19 Q. Mr. Swift, let me show you what I asked  
20 the court reporter to label as Exhibit 1. Can you  
21 identify this, please?

22 A. Yes. You want me to say yes or no if I  
23 can identify it?

24 Q. Can you identify it for the record?

25 A. Yes.

1 BY MR. TAYLOR:

2 Q. After an overcharge charge was  
3 incurred, you were notified, right?

4 A. I was notified, yes.

5 Q. Every time, right?

6 A. Yes, to my knowledge.

7 Q. That's all we're talking about. Again,  
8 I'm not trying to make you guess and I'm not trying  
9 to --

10 A. Okay.

11 Q. Again, you paid all of them, right?  
12 You paid all the overdraft charges?

13 A. They were automatically taken out of my  
14 account, so they were paid.

15 Q. So you paid?

16 A. To the best of my knowledge, yes.

17 Q. Including this hundred and sixty  
18 dollars, right?

19 A. Oh, yes. The hundred and sixty dollars  
20 was paid.

21 Q. But you didn't complain to BancorpSouth  
22 about these hundred and sixty dollars in charges,  
23 right?

24 A. No.

25 Q. You didn't ask them to waive any of



1 filed.

2 Q. You've read all the documents that have  
3 been filed in the Swift lawsuit?

4 A. I read all the documents that have been  
5 filed in this lawsuit of Swift versus BancorpSouth,  
6 Inc.

7 Q. Okay. Are you aware of the M.D.L., the  
8 multi-district litigation that the Swift lawsuit is  
9 in?

10 A. Yes, but --

11 Q. When you say you've read all the  
12 documents, you don't mean all the documents in the  
13 M.D.L.; you mean all the documents in the Swift  
14 lawsuit?

15 A. All the documents that were sent to me  
16 for me to sign.

17 Q. Got you. Okay. I just wanted to get a  
18 feel for that and I have a feeling. If this case ever  
19 gets set for trial down the road, are you prepared to  
20 spend two or three weeks at trial?

21 A. I will be prepared.

22 Q. Two or three weeks away from work and  
23 family, you're willing to do that?

24 A. Yes, I'll do that.

25 Q. Are you willing to do that because

1 you've been promised any special reward for doing  
2 that?

3 A. No promise of any special reward.

4 Q. Make sure you let me finish my question  
5 before you answer, okay?

6 THE WITNESS: (Gesturing)

7 BY MR. TAYLOR:

8 Q. You have to say yes so she can write it  
9 down. She can't write down thumbs up.

10 A. Yes.

11 MR. OSTROW: He responded. He said no  
12 promise of special reward.

13 MR. TAYLOR: Okay. There was something  
14 after that. He was saying yes, the thumbs up.  
15 It was just --

16 MR. OSTROW: I thought the yes was  
17 telling you he wouldn't speak over you.

18 MR. GAYNOR: It was.

19 BY MR. TAYLOR:

20 Q. If the class is certified in this case,  
21 notice will have to be sent to the class you  
22 represent; do you understand that?

23 A. Oh, yes.

24 Q. Do you understand that you are  
25 responsible for sending that notice out?

1 MR. OSTROW: Form.

2 A. I wouldn't know if I was responsible.

3 But I'm fine with it.

4 BY MR. TAYLOR:

5 Q. All right. Going back to the Complaint  
6 and if you shift back to Page 21, am I right that what  
7 you noted when you looked at this statement was that  
8 the transactions were ordered high to low even though  
9 all of them took place on May 5, right?

10 A. Yes.

11 Q. And you were able to learn that just by  
12 looking at the BancorpSouth statement, right?

13 A. Yes.

14 Q. You had had overdraft charges in the  
15 past, right?

16 A. Yes.

17 Q. Before May 2010?

18 A. Yes.

19 Q. And if you'd looked at the statements  
20 for those time periods, you could have seen if any of  
21 those were in high to low ordering, as well, right?

22 A. Yes, and that's what I did at this  
23 point. I went back and looked at all my statements.

24 Q. Tell me about that.

25 A. I found out that we kept our receipts

1 and that not everything was in chronological order.  
2 Everything was resequenced as far back as I could see.  
3 That's what put me into doing research on corrupt  
4 practices.

5 Q. You think this is a corrupt practice?

6 A. I believe it is a corrupt practice.

7 Q. It's a practice that you learned was  
8 the case as far back as you researched your account,  
9 right?

10 MR. OSTROW: Form.

11 A. Yes, as far as I researched the account  
12 from these dates back.

13 BY MR. TAYLOR:

14 Q. From May 2010 looking back, do you  
15 recall how far back?

16 A. From around these dates. I don't  
17 recall how far back, but I went as far as I could.

18 Q. A few years?

19 A. I couldn't recall that. Pretty far  
20 back.

21 Q. Did you go back based on what you  
22 actually had at the house or did you ask BancorpSouth  
23 for statements?

24 A. No. I took my receipts and my  
25 statements that I had at home.

1 Q. But you never looked before to see if  
2 transactions were ordered?

3 A. Not this particular -- I mean when I  
4 came to the conclusion that this is happening, no, I  
5 never investigated prior to this date, around these  
6 dates.

7 Q. Did you look at any documents other  
8 than the BancorpSouth monthly statements?

9 A. Not to my knowledge, just the  
10 statements and receipts. I believe those are  
11 basically the only two, maybe some printouts from the  
12 bank, which are the statements anyway.

13 Q. Did you look at any of the documents  
14 that you received when you opened the account?

15 A. Yes, I looked at those documents.

16 Q. Do you recall what documents you looked  
17 at?

18 A. I don't recall, but again, BancorpSouth  
19 took over American State Bank and they sent everything  
20 via mail.

21 Q. Via --

22 A. Mail and E-Mail to the best of my  
23 knowledge.

24 Q. Do you recall receiving a deposit  
25 agreement from BancorpSouth?

1 recollection in layman's terms, just your words, what  
2 did it say?

3 A. As in overdraft fees? Is that what  
4 you're getting at?

5 Q. No, the posting order.

6 A. I couldn't name that. I couldn't  
7 really even give all the wording.

8 Q. Do you recall reviewing the deposit  
9 agreement -- again, in your research, do you recall  
10 reviewing it and that it said that BancorpSouth  
11 reserved the right to post transactions in any order  
12 it chooses? Does that ring a bell?

13 A. I read that.

14 Q. When you were doing the research?

15 A. No.

16 Q. You read that when it was first sent to  
17 you?

18 A. I don't even recall when I read that,  
19 but I know I've seen it before. I think I've seen it  
20 before. Yes. Okay. Yes, I read it sometime. I  
21 don't know when, though.

22 Q. Do you recall if it was before or after  
23 your research?

24 A. Before my research here?

25 Q. Yes.

1 A. It would have been after.

2 Q. Okay. I'm just trying to kind of get a  
3 general idea of the time line here. Sometime in or  
4 around May 2010, you did some research, looking back,  
5 right?

6 A. Okay. Yes.

7 Q. Okay. As part of that research, you  
8 did find in your family records the deposit agreement,  
9 right?

10 A. Yes.

11 Q. But you're not sure if you read it at  
12 that time; is that fair?

13 A. That would be fair to say.

14 Q. Do you recall if when -- again, using  
15 that May time frame going back, did you find a  
16 document called an account information statement?

17 A. I can't recall that.

18 Q. I'm sorry?

19 A. I couldn't recall that.

20 Q. You don't recall one way or the other?

21 A. No, I don't.

22 Q. You filed for bankruptcy in 2004,  
23 right?

24 A. I believe, around that time.

25 Q. Around that time. That wrapped up --



# EXHIBIT 31

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT OVERDRAFT  
LITIGATION

MDL No. 2036

THIS DOCUMENT RELATES TO:  
FOURTH TRANCHE ACTIONS

Swift v. BancorpSouth, Inc.  
N.D. FL, C.A. No. 1:10-00090-SPM-AK  
S.D. Fla. Case No. 1:10-cv-23872-JLK

- - -

DEPOSITION OF

PAUL A. CARRUBBA

October 9, 2012  
2:10 p.m.

1500 Marquis II Tower  
285 Peachtree Center Avenue, NE  
Atlanta, Georgia

Pamela L. Porter, RPR, CCR-B-2160

- - -

1 Are you of the opinion that real time  
2 posting was not possible for BancorpSouth during the  
3 period of 2003 to 2010?

4 MR. GAYNOR: Object to the form.

5 THE WITNESS: I am of the opinion that  
6 given the volume of transactions, that  
7 BancorpSouth would not be a candidate for real  
8 time posting.

9 Can it be done from a technology  
10 standpoint? I suppose that it could. I have no  
11 idea what the cost associated with that would  
12 be. I have no idea what impact it would have on  
13 the financial institution to try go to a real  
14 time posting as opposed to batch posting. I  
15 don't know what those costs would be.

16 Would it have been technologically -- or  
17 was the technology there to do real time  
18 posting? I expect that it probably was.

19 But again, from an economic standpoint and  
20 from a processing standpoint, I just don't think  
21 it would have been a feasible option for the  
22 bank.

23 Q. (By Mr. Gilbert) One of the opinions  
24 you've expressed is that the posting sequence used by  
25 BancorpSouth is in accordance with reasonable

1 commercial standards within the banking industry and  
2 the UCC.

3 My question to you is: Is there anything  
4 in the UCC that addresses posting sequence relating to  
5 debit card transactions specifically?

6 A. The Uniform Commercial Code governs  
7 negotiable instruments, and the debit card is not a  
8 negotiable instrument. So the provision in the  
9 Uniform Commercial Code would be applicable to  
10 negotiable instruments.

11 Q. You're referring to 4-303?

12 A. Yes.

13 Q. So would you agree with me if 4-303 of the  
14 Uniform Commercial Code is not applicable to debit  
15 card transactions?

16 A. The provision itself I would agree with  
17 you is not applicable to debit cards. However, it  
18 certainly does not prohibit a bank from selecting any  
19 sequence that it wants to post any transaction.

20 But it specifically allows for a bank to  
21 post negotiable instruments or checks, drafts in any  
22 sequence that the bank selects.

23 Q. Part of your background and experience and  
24 writings involve the UCC Articles 3 and 4. I think I  
25 saw it in your CV.

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1 Are you aware of any provision in the UCC  
2 that addresses debit card transactions specifically?

3 A. No. Again, the Uniform Commercial Code  
4 addresses negotiable instruments.

5 Q. Okay. Would you agree with the statement  
6 that there is a fundamental distinction that exists  
7 between the bank's, this bank or any other bank's  
8 obligation to pay debit card transactions versus  
9 checks?

10 MR. GAYNOR: Object to the form.

11 THE WITNESS: I'm sorry. I don't  
12 understand the question you asked me.

13 Q. (By Mr. Gilbert) Do you agree that checks  
14 are considered, quote, "may pay," unquote, items,  
15 meaning that the bank, when a check is presented, has  
16 the discretion to decide that it wants to pay it or to  
17 refuse it and send it back?

18 A. What type of check?

19 Q. Good question. A typical personal check  
20 written on a demand deposit account, not a certified  
21 check or a cashier's check. But thank you for  
22 pointing that out.

23 A. A financial institution does have the  
24 right to decide not to pay a transaction if it is not  
25 properly payable. But as long as that transaction is