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Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

RE: Docket No. R-1399, RIN 7100-AD59 (Regulation Z)

Dear Ms. Johnson:

This comment letter is submitted by UBS Bank USA ("UBS Bank") in response to the Proposed Rule on Regulation Z published by the Board of Governors of the Federal Reserve System ("Board") on December 16, 2010 in volume 75, page 78636 of the *Federal Register* (the "Proposal"). The Proposal implements Section 1100E of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), which amends Section 104(3) of the Truth in Lending Act ("TILA") by establishing new dollar amount thresholds for exempt transactions. Effective July 21, 2011, the Dodd-Frank Act increases the general threshold amount from \$25,000 to \$50,000.¹ In addition, beginning December 31, 2011, the Dodd-Frank Act adjusts the threshold amount annually for inflation by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W").

BACKGROUND

UBS AG is a global financial services company with offices in more than 50 countries and more than 65,000 employees. Its primary business lines include wealth management, investment banking and asset management. Worldwide, UBS AG manages more than CHF 2.2 trillion (almost USD 2.3 trillion) in invested assets. In 2000, UBS AG expanded its full service brokerage activities in the United States through a merger with PaineWebber.

UBS Bank, which is wholly-owned by UBS AG, is an FDIC-insured Utah Industrial Bank that provides open-end credit accounts collateralized by securities accounts for consumer purposes ("Accounts"). The Accounts are "uncommitted lines" on which UBS Bank reserves the right to not make advances. Consumers receive advances on the Accounts by wire transfer or writing checks; the Accounts cannot be accessed by credit cards. Consumers are not allowed to

¹ The TILA exemption for loans in excess of the threshold amount does not apply to loans secured by real estate or a dwelling. This letter focuses primarily on open-end credit plans with securities account collateral and, in any event, does not attempt to address any issues associated with loans secured by real estate or a dwelling.

use the Accounts to purchase, carry or trade securities (*i.e.* it is not “purpose credit” under applicable credit regulations). No fees or charges are imposed on a consumer before the initial advance on the Account, and the consumer can cancel an Account before the initial advance without cost.

Many consumers obtain Accounts as a stand-by credit facility that can be accessed for cash flow or emergency needs. For example, consumers will many times use an Account to pay estimated tax payments pending receipt of income. Other consumers may use the Account as a temporary liquidity source from which to pay for a large purchase, such as an automobile. Borrowing against the value of a securities account allows the consumer to take advantage of purchase or investment opportunities without having to liquidate securities positions at potentially unfavorable times. Increasingly, consumers want to borrow on the basis of the equity in their securities account, given the decline in equity in consumer homes and tightness in residential mortgage lending.

The vast majority of the Accounts currently outstanding (*i.e.* in excess of 91%) have credit lines approved for amounts of \$100,000 or more. Historically, UBS Bank has required an initial advance on the Accounts of at least \$25,001, although that initial advance amount is being increased to an amount in excess of \$50,000 as a result of the Dodd-Frank Act changes to the threshold for the TILA exemption. Consistent with the “standby” nature of this product, UBS Bank currently does not require the minimum initial advance to be obtained at the time the Account is opened.

Given the current \$25,000 threshold for the TILA exemption and the minimum initial advance requirement on the Account, UBS Bank has not been required to comply with TILA in the past. Increasing the minimum initial advance to an amount in excess of \$50,000 generally does not appear problematic for the Accounts offered by UBS Bank. However, UBS Bank has many Accounts on which a minimum initial advance of \$25,000 has already been obtained. In addition, it would be impractical (if not impossible) for UBS to modify its systems and operations to become TILA compliant by July 21, 2011. UBS Bank thus is extremely interested in those aspects of the Proposal relating to the transition rules from the \$25,000 to \$50,000 threshold amount for open-end credit plans opened before July 21, 2011, and UBS Bank’s ability to continue to offer the Accounts using its current systems and procedures for Accounts opened beginning on July 21, 2011.

DISCUSSION

As discussed below, UBS Bank applauds the Board for recognizing that many creditors offering credit lines with securities account collateral are not in a position to offer a TILA compliant product, and for proposing a reasonable transition rule for applying the \$25,000 threshold exemption to Accounts opened before July 21, 2011. However, we are extremely concerned about the likely very adverse impact on consumers and creditors offering credit lines with securities account collateral that will result if the Proposal to require a minimum initial advance at account opening is adopted, and strongly urge the Board to not adopt it or to provide for modifications to minimize the potentially harmful consequences of such a requirement. UBS

Bank believes that a minimum initial advance, whenever obtained, sufficiently implements the purpose of the “large dollar” exemption; we also suggest some modifications to the Proposal in case the Board generally requires the minimum initial advance at account opening.

Transition Rule for Accounts Opened Before July 21, 2011

Under the Proposal, if an open-end account is opened before July 21, 2011, and the account agreement requires a minimum initial advance in excess of \$25,000, the TILA exemption applies until at least July 21, 2012. *See* proposed Comment 3(b)-6.i. Moreover, such an open-end account will continue to be exempt after July 21, 2012, notwithstanding subsequent increases in the threshold amount for the exemption, if the consumer obtains an initial advance of more than \$25,000 before July 21, 2012.

As noted in the Proposal, many creditors offering open-end credit with securities accounts as collateral have not been required to be TILA compliant because the credit plans require an initial advance in excess of \$25,000. UBS Bank applauds the Board for recognizing the special nature of lines with securities account collateral, and strongly supports the Board’s proposal to provide a reasonable time period (*e.g.* one year from the July 21, 2011 effective date) for consumers to obtain an initial advance and establish that the credit plan is exempt under the \$25,000 exemption threshold in place at the time the plan was opened. Such a transition period is in the best interest of consumers as it will not force creditors which are not in a position to be TILA compliant on July 21, 2011 to terminate credit plans to avoid being in violation of TILA. Moreover, UBS Bank believes that the one-year period in which it will be determined whether the credit plan will continue to be exempt (either because of the initial advance of at least \$25,000 during that period or the commitment of the creditor to provide a firm commitment to lend at least the threshold amount) should prove to be workable in most instances.

Initial Advance at Account Opening for Accounts Beginning July 21, 2011

For purposes of an open-end credit account, the Official Staff Commentary currently sets forth two alternatives under which the account will be considered to be a loan in excess of \$25,000: either the initial advance exceeds this threshold amount, or the creditor makes a firm commitment to lend \$25,000. The Proposal would, in addition to increasing the threshold amount from \$25,000 to \$50,000, require that an initial advance would count towards satisfying an extension of credit in excess of the threshold amount only if the initial advance is made at the time the account is opened. As explained more fully below, UBS Bank respectfully submits that:

- (1) A creditor that requires an initial advance in excess of the threshold should be exempt from TILA even if the advance is not made at account opening;
- (2) If the Board generally requires a minimum initial advance at account opening, that requirement should not apply if the consumer has the right to cancel the account before the initial advance without cost; and

(3) If the Board adopts a requirement that the initial advance be at account opening, without an exception for consumers who can cancel without cost before the initial advance, that requirement should not apply before December 31, 2012.

UBS Bank believes that failure to adopt one or more of these recommendations will have an extremely adverse impact on the ability of UBS Bank to offer the Accounts, ultimately to the detriment of consumers who are intended to be protected by TILA.

I. A Creditor that Requires An Initial Advance in Excess of the Threshold Amount Should Be Exempt Even if the Advance Is Not Made At Account Opening

A. The Basis of the Exemption for Loans Over the Threshold Amount Does Not Require the Minimum Initial Advance to Be Made At Account Opening.

The basis of the exemption for loans in excess of the threshold amount is that the loans are considered sufficiently large that the borrowers who obtain them do not need TILA disclosures or other consumer protections. An open-end account on which the initial advance is required to exceed the threshold amount satisfies this criteria, regardless of whether that initial advance is made at account opening or later. Indeed, banks like UBS Bank must, under safety and soundness requirements, determine that borrowers have the ability to repay credit extended and cannot merely make a loan on the basis of collateral value.

The Proposal indicates concern that not requiring the minimum initial advance at account opening could cause uncertainty whether the account is exempt at account opening. However, UBS Bank does not believe that there should be any such uncertainty if the Board clearly indicates that the TILA exemption applies to open-end plans on which the creditor contractually requires a minimum initial advance in excess of the threshold amount, regardless of when that initial advance is made. In that situation, there will be a clear rule that can be applied at account opening to determine whether the exception applies: did the contract require a minimum initial advance in excess of the threshold amount? The application of the minimum initial advance test would be analogous to the application of the firm commitment test where the relevant inquiry at account opening would be whether the creditor made a firm commitment to lend an amount in excess of the threshold amount.

Under both of the minimum initial advance and firm commitment tests there is a possibility that the consumer may not obtain any credit, let alone an advance for more than the threshold amount. In fact, the likelihood that a consumer will obtain an advance of more than the threshold amount may actually be higher with respect to open-end plans with a minimum initial advance than for plans on which the creditor makes a firm commitment to lend more than the threshold amount. If there is a contractual requirement for a minimum initial advance of more than the threshold amount, all accounts on which there is any credit extended will have received an advance of more than the threshold amount; under the firm commitment requirement, consumers may choose to obtain initial and subsequent advances of less than the threshold amount.

However, neither the minimum initial advance nor firm commitment tests are based on the fact that the consumer will necessarily obtain an advance in excess of the threshold amount. Rather, in either of these situations, the credit facility should be considered a loan of more than the threshold amount because the creditor has underwritten the consumer for such a large dollar borrowing and consumers obtaining such credit accounts are deemed, under TILA, to not need the consumer protections of the statute. Moreover, in the case of the initial advance test, it should be irrelevant if the consumer does not obtain the initial advance of more than the threshold amount for some period of time after the account is opened since the only time that the consumer protections under TILA should be needed are when the consumer obtains credit, and in that event the contract ensures that the initial advance will be in excess of the threshold amount. For example, a consumer does not need disclosures about the cost of credit if the consumer opens an open-end credit plan and never uses it to obtain an initial advance.

Indeed, the timing requirements for providing disclosures, as set forth in section 226.5(b)(1) of Regulation Z, further support the conclusion that an initial advance in a required amount that exceeds the threshold amount should exempt an open end credit plan, even if that initial advance is not made when the plan is first opened. Under this provision, creditors are not required to provide a disclosure at the time an account is “opened,” but rather only before the “first transaction is made under the plan.” Thus, initial disclosures would never be required under the interpretation urged by UBS Bank because they are not required until the first transaction and, by contract, that initial advance would exceed the threshold amount.

Finally, requiring a minimum initial advance at the time the account is opened is not necessary to prevent creditors from trying to fit accounts under the exemption when those accounts should be subject to TILA as a policy matter. For example, creditors that intend to lend less than the threshold amount could not achieve that result if the contract requires a minimum initial advance that exceeds the threshold amount. If the creditor made an initial advance that did not exceed the threshold amount, notwithstanding the contractual obligations, that would be a change in the basis on which the exemption applied and, as in similar instances, the exemption would cease to apply. For example, the Proposal currently addresses the situation in which a creditor initially makes a firm commitment to lend more than the threshold amount but ceases to do so and requires the creditor to begin to comply with TILA. *See* proposed Comment 3(b)-2.iv. The same result should apply if the creditor eliminates (or ceases to enforce) a requirement for a minimum initial advance of more than the threshold amount.

B. An Advance At Account Opening, A Firm Commitment to Lend and TILA Compliance Are Not Viable Alternatives.

UBS Bank submits that the alternatives other than reliance on the minimum initial advance in excess of the threshold amount are not viable alternatives. More specifically, requiring a minimum initial advance at account opening, providing a firm commitment to lend, and complying with TILA are all problematic for open-end plans with securities account collateral. It is thus imperative that the minimum initial advance provisions be implemented in a workable fashion. If such provisions prove unworkable, consumers will suffer as many of these credit plans will no longer be available.

Consumers do not want to be required to obtain an initial advance at account opening. The general nature of an open-end account is that it provides flexibility to consumers to determine when to borrow, repay and re-borrow. A large portion of consumers obtain open-end plans with securities account collateral so that they have a readily available source of credit for cash flow needs and unexpected emergencies. Although some consumers may open an Account and immediately obtain a minimum initial advance, it is also common for consumers to not obtain an initial advance on UBS Bank's Accounts in the first year after account opening. We respectfully submit that the Proposal should not encourage consumers to borrow funds merely to meet a requirement that the initial advance be made at account opening, especially when a requirement of a minimum initial advance (whenever obtained) adequately ensures that the line is a "large loan" and thus should be exempt.

Similarly, the firm commitment to lend an amount in excess of the threshold amount is not a viable alternative for many creditors with respect to their open-end credit plans. To start with, for open-end plans with securities accounts as collateral, like UBS Bank's Accounts, a committed line is a fundamentally different loan product from an uncommitted line, and is relatively rare except in unusual special circumstances. The credit agreement for a committed line will typically contain individually negotiated and complicated contractual provisions regarding eligible collateral, the advance rate against such collateral, and the conditions to obtaining advances; such extensive documentation is not required (or used) for uncommitted lines. Similarly, committed lines typically require the consumer to provide 48 to 72 hours advance notice so that the detailed contractual conditions to an advance can be verified; in contrast, consumers with uncommitted lines like an Account regularly obtain same day advances by merely writing a check or submitting a request for an advance. In short, the uncommitted line with a securities account as collateral tends to be a more automated and less expensive loan product than a committed line, which tends to be more individually tailored and administered and more expensive.

More generally, a committed line will be significantly more expensive for consumers, and thus the Proposal will have the undesirable effect of increasing prices for consumers to the extent that it drives creditors to provide committed lines rather than uncommitted lines. To start with, banks are required to maintain capital against the unfunded portion of committed lines; that substantial cost is not incurred by banks providing uncommitted lines. In addition, for credit plans with securities collateral, committed lines are significantly more labor intensive and thus more expensive for consumers. We believe that a credit plan with securities collateral that is committed could have significantly higher interest rates on outstanding borrowings than an uncommitted line. Moreover, creditors offering committed lines typically charge 20 basis points or more on the unfunded portion of a committed line, whereas there usually are no such charges on the unfunded portion of an uncommitted line.

The increased cost of committed lines with securities collateral is even more inappropriate for consumers in light of the fact that creditors rarely fail to advance uncommitted lines if the consumer has adequate value in the securities account. In UBS Bank's experience, there have been only a handful of advances that were not made when requested, compared to

literally tens of thousands of advance requests that were funded. In many respects, UBS Bank's reservation of a contractual commitment to fund an advance is similar to a bank's reservation of the contractual right to require seven days' advance notice of withdrawal from a savings account; it is in the contract but seldom, if ever, exercised. In our experience, most consumers are comfortable with an uncommitted line and choose the lower cost of such products over the structure of a committed line. The relatively unusual exception, in connection with credit plans with securities account collateral, is where a third party imposes a requirement of a committed line on the consumer. For example, a consumer may need a committed line to meet requirements imposed to participate in an auction where the auction house wants to ensure that the advance will be made to complete a purchase.

Finally, TILA compliance by July 21, 2011, is not a viable alternative for creditors that have not traditionally been subject to the statute. UBS Bank and many other banks affiliated with securities firms that offer credit plans with securities account collateral do not offer consumer loan products (except through private label and other outsourcing arrangements). Thus, many of these banks would be required to create a TILA compliance program from scratch. This is an extremely significant undertaking, even if the bank is willing to outsource certain functions to third parties, because of the need to integrate existing billing and accounting systems for the loans and securities accounts into new systems used to provide relevant disclosures. Developing compliance procedures for the detailed requirements of periodic disclosures and billing error resolution, for example, is likely to be difficult and time consuming. It is not practicable (or probably even possible) to develop such compliance procedures by July 21, 2011.

II. If the Board Generally Requires Minimum Initial Advance At Account Opening, That Requirement Should Not Apply if the Consumer Has the Right to Cancel the Account Before the Minimum Initial Advance Without Cost.

UBS Bank does not charge consumers any application fee, standby fee, annual fee or other charges for merely applying for or opening an Account. Moreover, consumers can cancel an Account at any time before an initial advance without incurring any fees or costs. Consumers who open an Account and cancel the Account before obtaining an initial advance do not need TILA protections because there has not, by definition, been any extension of credit for which such protections apply and they have not incurred any fees or charges. The TILA protections are needed, if ever, only when a consumer incurs costs with respect to the credit account and, with respect to UBS Bank's Accounts, that occurs only after the consumer obtains an initial advance (which will exceed the threshold amount).

UBS Bank believes that the TILA exemption should apply if the creditor requires an initial advance in excess of the threshold amount, even if that advance is not made at account opening and even if the consumer might be charged a fee before the initial advance on the account, for the reasons described above. However, UBS Bank would support a provision in Regulation Z that provides two ways the minimum initial advance could establish application of the exemption: either (i) as the Proposal currently provides, the minimum initial advance is made at account opening, or (ii) if the minimum initial advance can be obtained after account

opening, the consumer can cancel the open-end plan at any time before the initial advance is obtained and receive a refund of any fees or charges imposed. UBS Bank believes that this modification to the Proposal would be consistent with the approach that the Board has taken in other circumstances to ensure consumers receive appropriate consumer protections, *see e.g.* § 226.5(b)(1)(iii) (account opening disclosures for telephone transactions are timely if, among other things, consumers can cancel the contract), and would also address its concerns about requiring the minimum initial advance at account opening.

III. If the Board Adopts A Requirement that the Initial Advance Be At Account Opening, Without An Exception for Cancellation Without Cost Before the Initial Advance, Compliance With that Requirement Should Not Be Required Until December 31, 2012.

Finally, UBS Bank requests that the Board delay implementation of a requirement that a minimum initial advance be made at account opening for a reasonable time if it chooses to impose such a requirement and does not provide an exception for accounts that may be cancelled before the initial advance without cost. In this circumstance, as described above, creditors will be required to become TILA compliant and this will be a substantial undertaking for creditors like UBS Bank that has not previously been covered by the statute. Given the enormity of the undertaking, a delayed effective date until December 31, 2012 is appropriate.

To be clear, UBS Bank is requesting a delayed effective date only for any requirement that the minimum initial advance occur at account opening. As directed by the Dodd-Frank Act, the threshold amount would increase from \$25,000 to \$50,000 for accounts opened after July 21, 2011. Moreover, any increase in the threshold amount by virtue of increases in the CPI-W would take effect after December 31, 2011, in accordance with the statutory changes. However, until December 31, 2012, an open-end credit account would be exempt from TILA if the creditor required an initial advance in excess of the threshold amount because the requirement that such initial advance be made at account opening would not apply before such date.

We also note that nothing in the Dodd-Frank Act precludes the Board from providing such a delayed effective date. The Dodd-Frank Act does not address the issue of how to determine the loan amount for an open-end credit plan, let alone whether a minimum initial advance must occur at account opening. The statute merely changed the threshold amounts that apply once the loan amount of an open-end credit plan is determined and, as noted above, UBS Bank is recommending that those new threshold amounts apply even if the minimum initial advance is not made at account opening.

If the Board determines to provide additional time for creditors to comply with the advance at account opening requirement, there will be an issue of whether the applicable threshold amount is determined on the basis of the threshold amount at the time that the account is opened or the time the first advance is actually made. UBS Bank believes it should be workable for creditors to comply with the threshold amount at the time the minimum initial advance is actually made, rather than when the account is opened. This approach should reduce any concerns the Board may have regarding the time period between account opening and the

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time the first advance is actually made. Moreover, creditors should be able to address the contingency of an increase in the threshold amount between account opening and the first advance by requiring a minimum initial advance in excess of the threshold at account opening (*i.e.* build in a reasonable cushion for future increases in the threshold amount).

CONCLUSION

UBS Bank appreciates the opportunity to comment on the Proposal. The issues described above are extremely important to UBS Bank and its customers. We believe that, as outlined above, there are modifications to the Proposal that will maintain appropriate consumer protections and urge the Board to make such modifications to prevent unnecessary disruption to our business and avoidable problems for our customers. Of course, please do not hesitate to contact the undersigned, or Jim Huizinga at Sidley Austin LLP (202.736.8681) who has been working with UBS Bank on these issues, if you have any questions or we can provide any further assistance on this matter.

Sincerely,



Steven Stewart
Senior Vice President and Chief Credit Officer
UBS Bank USA

cc: Anthony D'Andrea
Craig Darvin
Jim Huizinga