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March 28, 2005

Attention: Jennifer J. Johnson
Secretary, Board of Governors
of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. R-1217
Advance Notice of Proposed Rulemaking (Open-end (revolving) credit under Regulation Z)

Ladies and Gentlemen:

Wells Fargo & Company and its affiliates ("Wells Fargo"), including Wells Fargo Bank, N.A. and Wells Fargo Financial, Inc., appreciate the opportunity to comment on the advance notice of proposed rulemaking regarding open-end (revolving) credit under Regulation Z. Wells Fargo is a financial services company that owns and operates national banks in 23 Western and Midwestern states, the nation's leading retail mortgage lender, and one of the nation's leading finance companies.

The Federal Reserve Board (the "Board") has undertaken a significant task in seeking to update Regulation Z, and Wells Fargo looks forward to participating in the staged review process. We encourage the Board to look beyond regulatory disclosure requirements as the sole means of enhancing consumers' ability to meaningfully compare the cost of credit, but at the same time resist establishing different or additional disclosures without demonstrable benefit to consumers. Open-end credit is by its nature complicated, and it is used by consumers with varying levels of financial sophistication. It is to the benefit of both consumer and lenders that disclosures be provided in a clear and understandable manner, while still maintaining the efficiency of our country's credit system. To that end, Wells Fargo offers the following comments to the Board's Advance Notice of Proposed Rulemaking.

Q1 Scope of Review
While certainly the task of reviewing Regulation Z for the four topics identified in this ANPR (open-end credit, non-home secured; predatory mortgage lending; closed-end mortgage credit; home equity lines of credit and adjustable-rate mortgage loans) will be an enormous task, our concern is that due consideration needs to be given to the ramifications of recommended changes in one area on the other types of credit affected. In particular, some of our non-home secured lines of credit and our home equity lines of credit are boarded on the same servicing platform such that changes for one type of product but without changes to the other types of product would become extremely difficult and expensive to manage from a technological standpoint.

Q2-Q12 Format of Disclosures
As the Board noted in its comments, Regulation Z has provided creditors with great flexibility in designing account-opening, periodic statement, and other open-end disclosures. While there may

be ways to enhance consumers' understanding of the disclosures required at account-opening, in periodic statements, on the credit card application, and for subsequent disclosures, additional mandates regarding format are not generally warranted. Creditors generally have sufficient incentive to provide the required disclosures in a manner reasonably understandable by their customers based on customer satisfaction and retention goals and the desire to avoid the risk of litigation. Increased financial literacy among consumers generally would also increase understanding of the disclosures. Increased

consumer understanding of disclosures is a worthy goal, but perhaps not one that can be addressed solely through formatting rules or type size requirements. Particularly with periodic statement processing, formatting changes can be very expensive to implement and without a clear benefit to the majority of consumers, dismantling the flexibility with which the Board has regulated for more than twenty-five years may not be justified. Additionally, the Board already requires that certain terms appear more conspicuously than others, so there is a limit to the use of formatting tools such as bolding or underlining if creditors are to continue to make the terms "finance charge" and "APR", for instance, more conspicuous than the other required disclosures.

In response to specific formatting questions, we would not favor a requirement that fees be grouped on periodic statements (Q5), in part due to the expense of reprogramming the periodic statements, but primarily due to the fact that our periodic statements (as well as the account-opening disclosures and application disclosures) already provide information as to the nature and amount of the fee. It is not clear to us that grouping the fees is inherently clearer to consumers than itemizing the fee in connection the transaction that generated the fee, thus reinforcing the connection between the transaction and its corresponding fee.

In keeping with the Board's desire to have more "effective" disclosures, not just more disclosures, we would suggest certain changes to the Schumer box (Q7). As card products become more complicated, the Schumer box is losing its effectiveness as a device that highlights the most important terms applicable to a particular product. The Board should clarify that minimum and maximum APRs for variable rate accounts are not required to be disclosed in the table. "Purchase transaction fee" disclosures ought to be required only if the creditor imposes such a fee on every "purchase" made with the card. The Board should re-consider whether the method used for determining the balance subject to finance charges is important enough to merit inclusion in the table. Balance transfer and cash advance fees may be required to appear in the Schumer box (Q8), but the Board should consider relaxing the requirement that all the disclosures in the Schumer box appear on the same page, given the type size requirements and extent of all the information that must be disclosed.

Q13-Q42 <u>Content of Disclosures</u>
Although later questions address the issue of the "historical" APR, the impact of classifying a fee as a "finance charge" or an "other charge" (Q13-Q20) becomes the most significant in the context of the historical APR. Once a fee is characterized as a "finance charge", in most cases the creditor is required to include this fee in its calculation of the "effective APR" disclosed on the consumer's billing statement. The Board should re-consider whether this disclosure is meaningful to consumers. In our experience, the effective APR disclosure only serves to confuse customers, and it is virtually impossible for customer service representatives to explain how it is calculated. The Board should determine that significant fees imposed as part

of the plan, such as late and overlimit fees and cash advance transaction fees, must be disclosed in the account-opening agreement, without labeling them as "finance charges". Other service fees that are charged only at the election of the customer, such as expedited card delivery fees, need not be included at all in the initial disclosures, but rather disclosed at the time the creditor makes the service available to the customer.

Because we don't believe customers attach much significance to whether a given fee is a finance charge or not and because the "historical" APR has proved to be a source of confusion to most customers, we would advocate for an approach in which no transaction fee is deemed a finance charge, and "finance charge" would only include interest. The difficulty with any classification scheme for distinguishing "finance charge" from "other charge" is finding the proper balance between sufficient flexibility to accommodate new fees and sufficient direction to arrive at a consistent result. (Q16-Q18) Under the current framework, some creditors may view a fee as a finance charge; others may not. Customers need to know what the interest rate will be and what fees of significance (annual membership fee, for instance) may be imposed. Currently, the commentary would render an annual membership fee as a finance charge if the amount of the fee will depend on account usage or non-usage. Creditors are left to guess as to how to interpret this requirement, but the information that is most critical to the consumer is the amount of the fee and under what circumstances it will be charged, not whether or not it is a finance charge.

With respect to the issues presented by home equity lines of credit (Q19), we do believe that home equity lines do present additional, if not unique, issues in that the types and number of fees categorized as finance charges and other charges is much greater, thus increasing the need for accurate classification of such fees. However, home equity lines of credit and other open-end lines of credit are boarded and serviced by the same systems, so there is a great need for consistent treatment of the same type of fee across the various products.

The utility of the "historical" APR in the context of open-end lines of credit (Q23-25) continues to be doubtful. It does not provide consumers with an accurate understanding or comparison basis for the cost of the given transaction because 1) the transaction may be carried on the customer's balance for longer than the one month in which the fee was charged and incorporated into the "historical" APR; and 2) the APR varies greatly depending on the size of the balance, which can have the effect of diluting the impact of the fees and charges incurred that billing cycle. If the purpose of disclosure is to provide a guide to customers of the financial impact of their credit choices and to allow them to modify their behavior accordingly, then the disclosure of the fee as a dollar amount on the periodic statement in which the particular credit choice was made (preceded by an explanation in the line of credit agreement of how the fee is calculated if it is not a flat dollar amount or specifically agreed to by the customer at the time the customer chooses to use the service for which the fee is charged) is more direct than through the use of the "historical" APR. However, if the "historical" APR remains legislatively mandated, it provides all the more incentive to establish a clear categorization between finance charges and other charges so that all creditors will be operating under the same rules.

Increasing the interest rate on an account due to the customer's default or delinquency, or on other conditions identified in the line agreement (Q26-Q27) is an effective risk management tool. The customer has already received notice of the conditions that will trigger the increased pricing in the line agreement, and advance notice of the rate increase after the conditions have occurred will only detract from the efficacy of increased pricing as a risk management tool as increased notice would delay the creditor's ability to impose the increased fee. Occasional courtesy reminders to customers of the conditions triggering increased pricing is certainly possible, but advance notice to the particular customers affected would be expensive and delay the use of increased pricing as a risk management tool.

Balance calculation methods (Q28-Q30) are extremely complicated, with many creditors relying on the model language provided by the Board to comply with Regulation Z's requirement that the balance calculation method be disclosed. A particular method may somewhat affect customers who maintain a balance differently than those who pay off their balance most billing cycles, and while some customers invariably fall into one category or another, many customers revolve for some part of the year and are able to pay their balance in full at other times of the year. This means that it would be difficult for a customer to make a meaningful choice of creditor based on the creditor's balance calculation method without that customer having a very clear idea about how he or she intends to use the line of credit. That said, if a creditor can accurately abbreviate the description of the balance calculation method (or perhaps rely on model language), there would seem to be no reason not to permit the use of the abbreviated version on periodic statements.

With respect to payment allocation (Q34-Q36), to the extent creditors already disclose which types of transactions are paid first (for instance, lower APR transactions paid before higher APR transactions), additional disclosures would function merely as courtesy reminders. As the Board has already raised the issue of "information overload," additional disclosures regarding payment allocation would seem to pose precisely this risk.

The Board should be encouraged to consider "tolerances" in the context of "overstatement" of APR or a rate and of change in terms notices (Q37). With respect to "overstatement," currently, any variation above the Reg. Z tolerance is an actionable violation even if the misstatement was to the consumer's benefit. For change in terms tolerances, we note that the rules applicable to home equity lines of credit generally don't permit creditors to change the terms governing the account, except in limited circumstances. Such changes are permitted when the effect of the change is minimal or inconsequential. This same concept should be applied to unsecured, open-end credit. For example, suppose a creditor wanted to change its policy with regard to minimum payment calculations and begin to "round up" the amount of amount of the payment in whole dollars. The effect of such a change would be less than $1.00, yet the current rules would require the creditor to provide advance notice.

Accurate and meaningful cost estimates (Q38) are difficult to obtain in the absence of specific proposals, but we would anticipate that any significant changes related to the definition of "finance charge" and "other charge" and other changes to the periodic statement would be extremely expensive. The largest components of the expense would be the system development necessary to implement the change, and then the training, particularly at the customer service level, to ensure that we can effectively communicate the changes to our customers. In addition, the production of new application disclosures, new agreements and possibly change in terms notices would add to the expense.

A waiver from coverage under Regulation Z (Q42) would be beneficial for certain high net worth customers because often their credit needs are not standard and it becomes difficult to provide the necessary disclosures given the product parameters that are supported by the servicing system. Moreover, high net worth customers are often not credit shopping in the way that most customers are since many high net worth customers keep a majority of their assets at one financial institution and can therefore command very attractive pricing from that one institution, thus eliminating the need to compare the costs of various open-end credit plans offered by different creditors.

Q43-Q51 Substantive Protections
With respect to the substantive protections provided in the billing disputes provisions (Q43), Wells Fargo suggests a number of changes to enhance the efficacy and fairness of the process. First, we would request that the time period for resolving a billing error be extended to 120 days to coincide with association chargeback rules. Alternatively, if the time period is left at 90 days, we could benefit from language that: (1) either gives the creditor the right to go beyond the 90 days in rare cases such as where the creditor is waiting on information from a merchant (which could be up to 120 days); or (2) permits a creditor to re-bill a customer's account after the 90 days and after a final decision has been made, but only in rare circumstances where the creditor has received new information from a merchant that clearly shows a charge was authorized. This second option would be consistent with the current rule that permits a cardholder to re-assert a billing error in cases where new information is available.

Second, the Board should clarify the rule regarding the cardholder's right to assert claims or defenses by (i) requiring cardholders to make timely assertions of such claims or defenses and (ii) allowing the creditor to resolve the claim or defense against the cardholder if the creditor endeavors to charge the transaction back, but the card network finds in favor of the merchant.

Third, there should be a time limit on the right to make a claim of unauthorized use. We would suggest one year from the date the alleged unauthorized use occurred; and perhaps that time limit could be tolled in cases where the cardholder can show s/he could not have reasonably discovered the unauthorized use. In addition, under the current rules, it is very difficult for a creditor to prove a charge was authorized by the cardholder because the burden is on the creditor and the cardholder is not required to assist the creditor in the investigation. We would request revisions that would permit a creditor to be able to properly deny "bogus" claims, while still preserving the rights of cardholders making bona fide unauthorized use allegations.

We would support the extension of the protections of the unauthorized use provisions to convenience checks issued on credit card accounts (Q45), but not the claims and defenses provisions of Regulation Z because convenience check transactions are not covered by the card networks' chargeback processes.

We would also support the proposal to revise Regulation Z to permit the issuance of additional cards (Q46). Creditors should be able to send new devices such as "mini cards" to customers without having to wait until the renewal date of the existing card. The regulations should not prescribe that such cards be sent in an "unactivated" condition. Creditors issuing cards have strong economic incentives to control fraud, together with the fact that cardholders cannot be held liable for unauthorized use provide adequate protection.

Cut-off hours for the purposes of determining prompt crediting of payments (Q47-Q51) differ for the many different channels through which customers may make payments. Some channels that may appear more efficient for a customer actually are more labor or system intensive for the creditor to process, and hence the need for an earlier cut-off period. As long as information is provided to customers either in the line of credit agreement, periodic statement, or at the channel level (i.e. ATM or online) and the customer is provided a sufficient number of alternative ways to make a payment, it would seem there is little need for additional regulation in this area. If the Board were to require creditors to credit payments as of the date they are received, regardless of the time, a great number of systems would be impacted, and the expense to comply with such a rule would be enormous. Again, assuming a creditor provides a variety of ways to pay and explains any time limitations associated with each of those ways, each customer can certainly make a choice as to the most efficient way for that customer to make the required payment.

Q52-Q58 Additional Issues

With respect to adjusting exceptions based on de minimis amounts (Q53), if the Board determines that the "effective APR" disclosure is to be preserved, it should raise the minimum finance charge threshold to at least $1.00, which is the current industry standard. The Board should also adopt de minimis standards applicable to certain minor changes in account terms, as previously noted in our response to Q37. In addition, it should permit a creditor to change the terms of a customer's account, without prior notice, if the change is specifically agreed to by the customer and the creditor can document that it obtained the customer's consent. Currently, many card issuers have retention programs whereby they offer to lower a customer's interest rate to prevent the customer from closing his or her account. It would greatly simplify matters if the Board were to recognize that such changes may be made without requiring prior written notice from the creditor.

As the Board reviews our comments and those of the industry and other interested parties, Wells Fargo looks forward to continuing the dialogue in an effort to enhance the regulatory framework in use today, as well as improve consumers' overall financial literacy through increased education and advocacy of responsible and informed credit usage.

Sincerely,

Lydia P. Crawford
Senior Counsel