macy's inc

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To the Federal Reserve Board:

Thank you for the opportunity to respond to the proposed rule, Docket No. R-1286, amending Regulation Z, which implements the Truth in Lending Act, and the staff commentary to the regulation. These comments are on behalf of FDS Bank, a Federal Savings Bank located in Mason, Ohio and an issuer of proprietary retail credit cards for Macy's and Bloomingdale's.

The Board should be commended for its thorough and detailed analysis of Regulation Z and its thoughtful proposal to amend the regulation. Having reviewed the proposal, we appreciate the opportunity to voice our concerns with portions of the proposed rule and offer some alternatives for the Board to consider. Given the length of the proposal, we will withhold most supporting comments and limit our comments to those sections where we have concerns with the proposal and those sections where we request additional guidance from the Board on implementation of a revised Regulation Z.

In the commentary to section 226.2(a)(4), the definition of a billing cycle, the Board proposed to add language to the commentary that the equal cycle requirement does not apply to "the first billing cycle on an open-end account." However, in the section-by-section analysis, the Board comments that it, ". . .[B]elieves that such a variance for a first cycle, within reason, would not harm consumers and would facilitate compliance." We felt it was unclear whether the Board was commenting on the number of days from when an applicant was approved for an open-end account until the first time the account cycles or the number of days from the generation of the first statement until the generation of the second statement. Credit card issuers establish the cycle date for new accounts based on a wide variety of business and/or system reasons. The Board has not incorporated their vague "within reason" comment into the language proposed for the commentary and we encourage the Board to clarify that the equal cycle requirement does not apply to the first billing cycle of an open-end account, meaning the period of time from approval of the application under the first time the account cycles. We fail to understand how a consumer is harmed if their new account cycles soon after the account is opened. In addition, we request that the Board provide guidance on the applicability of this concept to a reopened credit account. If a consumer applies to reopen a previously closed account, the cycle date for the account was previously established and would not change if the account were reopened. We believe this is analogous to the first billing cycle of a new open-end account and we request that the Board exempt that scenario from the equal cycle requirement.

The Board seeks to simplify the determination of which credit card fees are considered a Finance Charge by replacing some language in the commentary to section

226.4(a). While we believe this proposal would help credit card issuers with the analysis of whether a particular fee is considered a Finance Charge, we also support the Board's proposal to eliminate the Fee-Inclusive APR from the periodic statement. If the Board determines to remove the Fee-Inclusive APR from the periodic statement as well as removing the "Finance Charge" or "Transaction Charge" designation from the transaction descriptors, we believe that whether or not the Board labels a fee as a Finance Charge will have little relevance for either the credit card issuer or the consumer. As the Board appears to validate through it's focus groups, consumers equate the term Finance Charge to the interest charged to their account based on the periodic rate. The concept of certain fees being designated as a Finance Charge and providing a Fee-Inclusive APR does not help a consumer who is shopping for an open-end credit account or one who is evaluating the cost of an existing account. Our experience indicates that the effective APR confuses the average consumer (or at least those that notice it) and may cause consumers to abandon one account for a more expensive account based on their faulty interpretation of the effective APR.

The Board intends to define the term "Clear and Conspicuous – readily noticeable standard" in the commentary by indicating that an issuer must print disclosures in a minimum of a 10-point font to achieve that standard. Creating such a specific mandate for font size will likely increase the size of the disclosures and make them appear all the more impenetrable to consumers. Credit card issuers are criticized for the volume of disclosure provided today. Making those disclosures larger, and seemingly more voluminous, runs the risk of increasing such criticism. In addition, there is no guarantee that increasing the font size will cause these disclosures to be more noticeable. Our application disclosure box is currently printed in 8-point font and we believe it is clear and conspicuous based on the layout, font style, size and color. In addition, this font size allows for a more strategic use of white space, which makes the disclosure box more readable. We suggest the Board forego mandated font size requirements and encourage the regulatory agencies to provide guidance to individual lenders during compliance audits if there are concerns about their disclosures. “Clear and conspicuous” is a subjective concept best left in the purview of the auditors. Should the Board decide to implement this provision, the issuers would appreciate an appropriate implementation period to allow maximum utilization of existing stock as well as an appropriate time period to reformat all associated documents.

The Board requested comment on whether there are circumstances when creditors should be permitted to provide cost disclosures in an electronic format regardless of the requirements of the E-Sign Act. We support the concept of permitting electronic delivery of mandatory disclosures when a consumer requests a voluntary service electronically. For example, if a consumer goes to a creditor’s website and requests a replacement plastic, that creditor should be able to disclose a card replacement fee to the consumer at that time. Permitting such limited disclosures electronically allows a creditor to provide the convenience of requesting certain service over the Internet but does not require a consumer to agree to receive all their disclosures electronically. If the Internet browser and computer system of the consumer is sufficient to display the website to request the voluntary service then it is sufficient to display the fee disclosure, a primary concern of the E-Sign Act.

In section 226.5(a)(2)(iii) the Board details the proposed limitations on the use of the term "fixed" when used in a tabular format. While we have no comment on the proposed restrictions of the term "fixed" in disclosure boxes, we are concerned that these restrictions not be expanded to encompass verbal communications. As a retailer with more than 800 stores, we could provide training to our selling associates not to refer to a rate as a fixed rate but we would be very concerned that if a consumer asked, "Is that a variable rate?" the response could be, "No, it's a fixed rate." While such conversations are potentially rare in the retail environment, given the high rates of employee turnover and the use of seasonal and part-time employees, it would be a nearly impossible to maintain such a standard.

In section 226.5(b)(iii) the Board proposes new standards when a consumer contacts a merchant by telephone to purchase goods and the merchant offers credit to finance that purchase. The Board proposes that the creditor may permit the consumer immediate access to the credit if the account opening disclosures are provided as soon as reasonably practicable and the merchant permits the consumer to return any goods finance under the plan and provides consumers with a sufficient time to reject the plan and return the goods free of cost after receiving the written disclosures. For merchants, this would create the opportunity to provide consumers with extra benefits associated with financing a telephone purchase, such as a new account discount. However, the proposal raises several concerns. What is considered "sufficient time" to reject the plan? Merchants have carefully devised their refund policies and implementing this proposal gives consumers a way to defeat the merchant's refund policy. For example, if a merchant offers a 30-day refund policy and finances a purchase using this new disclosure delivery option, if the disclosures are received by mailed 15 days after the account is opened and the goods shipped, the consumer might claim that some period of time in excess of the 30-day refund policy still constitutes their "sufficient time" to reject the plan and return the goods free of cost. Also, clarification is requested on the concept of returning the goods "free of cost." Would this also include shipping expense? Is the merchant expected to pay for shipping to and from this dissatisfied consumer? On some items a merchant may charge a restocking fee for returned items and similar charges might exist with special order merchandise. It decreases the likelihood that this proposal would be implemented if the merchant were expected to absorb all expenses associated with the sale. It's possible that a merchant is able to offer financing beneficial to a consumer, but that merchant should also be able to implement their refund policy regardless of whether the consumer pays for the purchase with credit applied for during the telephone order or uses an existing credit account. Otherwise, this process would simply become a weapon to be used against a merchant by a fickle consumer. In the section-by-section analysis, the Board indicates that, "Alternatively, the retailer may delay shipping the goods until after the account disclosures have been provided," however, the merchant must also be compliant with FTC regulations regarding the timeliness of shipping merchandise.

The Board sought comment on whether the requirement to mail periodic statements at least 14 days before the grace period ends should be modified to require earlier delivery. We are not aware of significant consumer complaints regarding the delivery time of statements. Increasing this requirement by a couple days is unlikely to help in those rare situations when there is a postal delay in delivering a particular consumer's statement. In those situations, the creditor must work with the consumer to rectify the situation. However, requiring an earlier mail date may have a significant impact on a creditor (particularly smaller creditors) to modify their systems and procedures to create, print and mail statements earlier. It would also make it less likely that a creditor could recover from a system problem impacting statement production and still meet the regulatory timeframe for mailing statements. We encourage the Board not to change this aspect of the regulation.

In the section-by-section analysis, the Board indicates that it proposes to amend the commentary to section 226.5a(b)(1)(i) to prohibit the disclosure of rate floors and ceilings in the application disclosure table. We believe that a portion of consumers are sensitive to rate changes and having this information in the application disclosure box provides these consumers with valuable information, particularly regarding any floor for a variable rate. We are concerned that removing rate floors from the disclosure box could result in customer complaints if the rate should reach that floor. We recommend that creditors be allowed to disclose variable rate floors in the application and account opening disclosure boxes.

In section 226.5a(b)(1)(ii), the Board elaborates on new rules regarding introductory rates. Implementation of this proposal is clear as related to typical revolving accounts. However, there are other open-end features that can exist on an account. A consumer could apply for a deferred interest plan where the interest is withheld for a certain period of time. If the consumer has not paid that balance in full by the end of that period then the accrued interest from the date of the purchase is added to the balance on that account. There are also club plans, where the purchase amount is divided into 12 equal payments and as long as the customer makes timely payments there is no interest charged on the purchase. We would appreciate clarification if those types of plans would qualify as "introductory" APRs. We do not believe consumers think them of as introductory rates and creditors do not typically advertise them as an introductory rate.

In section 226.5(a)(b)(1)(vi), the Board proposes that if a rate and fee both apply to a balance transfer or cash advance transaction then the creditor must disclose in the application disclosure box that a fee applies when disclosing the rate and must cross-reference the fee. While we appreciate what the Board is attempting to accomplish with this additional disclosure, we are concerned that this cross-reference will add additional text to the disclosure boxes with questionable value and is unnecessary for the average consumer. We are concerned that increasing the density and complication of the text in the disclosure box will discourage consumers from reading the disclosures and make it more difficult to easily compare pricing among various products. In the model form, the fee disclosures are located proximately close to the APR disclosures and would certainly be noticed by the consumer even without the proposed cross-reference. In addition, balance transfer and cash advance fees are the industry standard and we suggest that consumers are readily aware that such fees exist for those types of transactions. We encourage the Board to consider removing this proposal.

In new section 226.5(a)(b)(15), the Board proposes a new disclosure in the application disclosure box related to payment application when an introductory APR is offered for balance transfers or cash advances. We believe that it is the industry standard to apply payments to the balance with the lowest APR first and we believe that the average consumer is familiar with this practice. While we believe this information should be disclosed in the text of the account opening disclosures (the cardholder agreement), we reiterate our concern that adding this paragraph to the disclosure boxes creates a lengthy disclosure that further discourages consumers from reviewing the disclosure box. If we are correct in our belief that this is a standard industry practice, this additional disclosure would not provide any comparison benefits between creditors since all creditors offering an introductory APR would have the same disclosure. We encourage the Board to reconsider this proposal.

The Board is proposing a reference in the disclosure boxes to a website hosted by the Board that will contain educational credit materials for consumers. We are concerned with the proposed location of this disclosure in the revised application and account opening disclosure boxes. We believe the disclosure would be more noticeable if it were placed in its own box located after the fees box with a space between the boxes such as the space in model form G-10(B) between the interest rate section and the fees section. The Board also requested comment on the potential content of this website. We would recommend that the site be very easy to read and perhaps utilize a bullet point format. We suggest a glossary of industry terms, an explanation of balance calculation methods and perhaps an example of how various methods affect a sample balance, information on credit scores and information on what a typical creditor knows about how a FICO score is calculated, information on credit reporting and creditor's obligations related to investigating a credit bureau reporting dispute, information on fee-inclusive APRs (if they survive) and how it is calculated and what it means. Explain that the terms on a credit card account can change and what the consumer can expect from a change in terms notice. Cross reference or link to other sites (such as the FTC) with additional information.

In section 226.5a(d)(2), the Board proposes that during a telephone application a creditor need not provide verbal account disclosures in certain circumstances as long as the disclosure are provided in writing within 30 days. We believe the Board should clarify that written disclosures would only be necessary if the application for the account is approved. The Board also indicates that the application disclosure box must be provided within 30 days. However, if the Board chooses to proceed with the account opening disclosure box, the Board should indicate that the account opening disclosure box should be provided in writing rather than the application disclosure box. Otherwise, the creditor must provide both disclosures to these consumers, which would be redundant and potentially confusing to the consumer.

The Board goes on in section 226.5a(d)(3)(ii) to indicate that when these disclosures are sent, if the APR is variable then it must be accurate as of the time it is sent or the rate in effect as of a specific date within 30 days of being mailed. This represents a significant expense and operational complication for creditors. If the Board considers allowing the creditor to use the account opening disclosure box (which could be printed with the cardholder agreement) in this scenario, it would waste resources to have to destroy an unused quantity and reprint the forms every time the variable rate changed. In order to take advantage of this opportunity and comply with the regulation, we recommend the Board consider allowing the creditor to print the variable rate in effect as of a specific date and include the spread in the disclosure box. This will allow the consumer to calculate the current APR for themselves. It may be less costly if the Board proposed that the rate in effect as of a specific date be no more than six months from the date the disclosure is sent to the customer rather than 30 days.

In section 226.6(b)(2)(ii)(G) the Board, in discussing the account opening disclosure box, indicates that the box must contain the APR assigned to the customer's new account. As a retailer offering instant credit to a customer, this is an impossible proposition. First, the Board has indicated that a take-one application could include the application disclosure box or the account opening disclosure box to accommodate the instant credit situation. However, if a take-one application contains the account opening disclosure box then, under this proposal, that disclosure must also contain the APR actually assigned to that customer. If the creditor offers a variable rate or risk based pricing, how can the account opening disclosure box identify the rate assigned to any particular customer? Currently, our applicants could be assigned one of two rates if approved for a new account. Both rates are disclosed in our application and the register receipt that is generated for approved credit applications contains a reference for those customers that qualify for the higher rate. In order to provide instant credit where the customer is able to immediately use the credit account, the creditor needs the flexibility to provide the actual rate assigned to the customer not in the account opening disclosure box but on an ancillary document such as a register receipt. Outside of the instant credit situation, requiring the actual APR (within 30 days of mailing of the account opening disclosures) to be printed in the disclosure will be an operational and logistic hardship for creditors. If the account opening disclosure box were to be printed with the cardholder agreement, that would require frequent reprinting of those documents as well as managing multiple versions of the agreement. Not only would this be a significant expense for the creditor, but it also increases the risk that a consumer will receive an incorrect disclosure. As such, we advocate for the return of the spread to the disclosure box so the customer may calculate the current APR for themselves (keep in mind that the APR also appears on their periodic statement).

The account opening disclosure box is an entirely new disclosure proposed by the Board. We anticipate that creditors would want to print the box at the beginning of the cardholder agreement; however, if multiple versions of the box are required then it is likely that the box would be printed on a separate document. The box basically contains the same information that was presented to the customer in the application disclosure box and that same data is presented in greater detail in the cardholder agreement. By the time the account-opening disclosure box is delivered, the consumer has already been presented with the majority of this information in the application disclosure box and has decided they want the account. It is unlikely that the account-opening disclosure box will cause a consumer to reconsider their decision, if they review the disclosure at all.

We are also concerned that consumers may rely on such a box as the definitive reference tool for their account when it is in fact only accurate as of a point in time. The disclosure would be out of date once a variable rate change or change-in-terms occurs on the account. For accounts with a variable rate, the index and spread provide the customer with more valuable information over the life of an account than the actual APR as of a point in time. The account opening disclosure box could become an overly simplified outline that discourages a consumer from reviewing the more detailed cardholder agreement. We encourage the Board to consider the possibility of providing an index to the cardholder agreement in place of the account opening disclosure box. The index could be phrased in the form of questions that reference a particular section of the agreement. For example, "How is the APR on my account calculated? Review section 2." This would provide a sort of "search engine" access to the actual terms of the customer's account.

In section 226.7, the Board has proposed a significant redesign and standardization of cardholder statements. The Board must understand that modifications to the periodic statement represent a significant expenditure of time and finances on the part of a creditor. Modifications require substantial programming efforts in addition to thorough testing before the changes can be put into production. The changes proposed by the Board also assume that all lenders generate statements using a system with the flexibility to add sections to the statement as necessary, such as the proposed change-in-terms section or notice that the consumer has triggered a penalty rate. Some creditors, particularly smaller organizations, may still use a pre-printed statement form and then print the specific customer data in the pre-printed boxes on the form. There is no requirement that statements be printed using the more sophisticated and expensive printing methods that would be required to comply with many of the proposals put forth by the Board.

The Board is also proposing the grouping of payments and credits in one section of the statement and transactions in another section of the statement. We redesigned our periodic statement within the past few years and as part of that process we also made extensive use of focus groups to determine how we could best present account information on our statements. Our research indicated that our consumers prefer to have their transactions (including purchases, returns, payments and other credits) in chronological order. Our customers indicated that they prefer to see their returns and payments in relation to the purchases made on their account. Mandating formatting requirements for all aspects of the periodic statement limits the ability of creditors to present the information in the manner most desired by their customers and best suited for their credit programs. The average customers of an elite American Express account and a sub-prime secured account have significantly different expectations of their credit programs and creditors should have the flexibility to cater to their customer within reasonable boundaries. In addition, the Board's format leaves no room for information regarding loyal programs, which are considered valuable by many credit card users. If a creditor has significant flaws in their periodic statement then it should be the responsibility of that creditor's regulatory auditors to guide them with statement modifications. We encourage the Board to reconsider mandating the format of a creditor's communication with their customer.

In section 226.7(b)(6), the Board proposes that the creditor must display the total of interest and finance charges for the statement period and calendar year to date for each type of transaction. Retail credit accounts may include several account features on one account. For example, one account may include a revolving plan, a club plan and a major purchase plan. The revolving plan may allow for purchases, balance transfers and cash advances. One statement may be provided for all the features of the account. We request additional guidance on whether the totals requested by the Board would apply to each account feature (thus totals for revolving purchases, revolving cash advances and revolving balance transfers as well as separate totals for the club and major purchase plans) or if the totals should be for the entire account.

In section 226.7(b)(7) the Board seeks comment on the two proposals related to the effective APR. Consistent with our previous comment letter, we encourage the Board to remove the requirement to display an effective APR on the periodic statement. The Board clearly understands the creditor's point-of-view based on their outline of the controversy in the section-by-section analysis. All we can hope to do is reinforce to the Board our ongoing experience of customer confusion and frustration related to this disclosure as well as our belief that the customer will be better served by the separate disclosure of total fees and total interest charged to the account (or account feature) on each billing statement.

In section 226.7(b)(11) the Board proposes disclosure requirements related to a cut-off time for processing payments received by the creditor that day. The Board proposes that the creditor must list only the earliest cut-off time, without specifying the payment method associated with that time. We are concerned that if one lesser-used payment channel has the earliest cut-off time, listing only that cut-off time may alarm and mislead the majority of a creditor's customers. For example, we accept payments in our stores, by mail and over the phone. If a small minority of customers make their payments by phone and that channel had a cut-off time of 2:00 PM, indicating that as the cut-off time for all payments would alarm the majority of customers who make their payments in a store or by mail when those payment channels might have a later cut-off time. Such a disclosure could result in increased customer complaints to the creditor and the creditor's regulator. The Board should consider allowing flexibility to disclose more than one cut-off time and indicate the payment channel for each cut-off time. We also request guidance regarding the time zone for the payment notice. Would the Board find it acceptable to provide the notice in one time zone for all customers or must the cut-off time be based on the time zone of the customer? For example, if a creditor disclosed a cut-off time of 4:00 PM eastern time, in Hawaii that would equate to 10:00 AM. If the Board approved using one time zone then guidance is also needed if the cut-off time in the selected time zone is after 5:00 PM. In that situation, a cut-off time disclosure is not required under the proposal, but in some time zones that cut-off time would be before 5:00 PM.

The Board is also proposing a notice on the periodic statement regarding late payments. The proposed notice would list the late fee amount and the penalty APR that may apply if the customer does not make their payment by the payment due date. Throughout the industry, there is no uniform trigger among creditors for application of a penalty APR. Currently, our trigger is two late payments in any six-month period. Does that mean that we should only print the penalty APR information for those consumers who have been late at least once in past five months? Printing that information every month for every consumer could cause customer confusion and complaints when they have never been late on their account. The Board has phrased the sample notice using the word "may," but the least sophisticated consumer will not pick up on such subtleties and will be incensed that the creditor is "threatening" to increase their APR. Printing only the applicable sections of this notice each month would increase the complexity of programming the periodic statement.

The Board is proposing rules to implement the minimum payment disclosures mandated by the Bankruptcy Act. We seek clarification for a creditor who has multiple features on one account and generates one periodic statement for the entire account. If the creditor is providing the minimum payment warning, hypothetical example and toll-free number, must the disclosure be made for each account plan (such as revolving, club and major purchase) or may the disclosure be made once for the entire account? Would your guidance be different depending on whether the creditor on their toll-free number uses the Board prepared table to provide consumers with an estimate of how long it will take to repay the balance or provides the consumer with specific information for their account?

The Board proposes to exempt a credit card account with a fixed repayment period from the minimum payment warning notice requirement. However, the proposal does not provide this exemption to a credit account with multiple features. Thus, if the account has a revolving feature with a balance and a club feature with a balance that must be paid off in twelve equal payments, the minimum payment disclosure would be required for both features. The Board's rationale in the section-by-section analysis for excluding the minimum payment disclosure for accounts with only a fixed repayment period applies regardless of whether that is one feature of an account or the only feature on an account. The consumer agreed to pay off the balance with equal payments over a set time period and is aware of that schedule. These account types were not targets of this legislation and requiring the minimum payment disclosure for these features in a multi-feature plan will increase the length of statements and disclosures without providing valuable information to these consumers. The Board proposes to exclude the fixed repayment feature of a multi-feature account if it is the only feature with a balance, but taking advantage of such an exception would require increasingly complicated statement programming.

We suggest the Board also consider an exemption from the minimum payment warning notice disclosure for those statements where the minimum payment due is equal to the outstanding balance, although taking advantage of such an exception would require increasingly complicated statement programming.

If the creditor is providing the consumer with actual repayment disclosures either over the phone or on the statement, we request clarification in Appendix M2 that such disclosure may be based on the consumers current APR regardless of whether the consumer's account is currently subject to a penalty APR and regardless of the potential for the consumer to return to a non-penalty APR.

The Board is proposing new notice requirements before a penalty APR may be applied to a credit account. The Board indicates in the section-by-section analysis their belief that the consumer may not remember what triggers the penalty APR on an account so they need this notice in order to have time to search for replacement financing. First, we refer again to the sophisticated statement printing required to achieve the notice proposed by the Board. Those issuers using a pre-printed statement form would not be able to insert the change-in-terms notice into their statements. Also, if the Board is concerned about reeducating the consumer, would the Board consider an annual notice to the consumer that emphasizes the penalty APR triggers for their account? Annual notices are utilized for the billing error disclosure and privacy policy. Perhaps the penalty APR trigger notice could be provided with the annual privacy policy distribution. Alternatively, the trigger information could be printed every month on the back of the statement. These methods would educate the consumer on the penalty APR triggers for their account without necessitating a complicated change-in-terms process and notice period. Also, if a consumer decided to seek replacement financing; in this day of internet banking, instant credit, pre-qualified credit mailings, as well as extensive branch networks it would not take a consumer 45 (or even 30) days to locate replacement financing (if they qualify).

If the Board proceeds with the change-in-terms notice for implementation of penalty pricing (and changes-in-terms in general), we request that the Board consider a 30-day notification period rather than 45 days. If a creditor uses the periodic statement to provide the notification, since most credit card cycles are 30-days, mandating a 45-day notification period means the creditor must either wait 60 days to implement the penalty APR or must perform a mid-cycle rate change which can be a complicated and costly procedure.

In section 226.9(c)(2)(iii)(A)(4), the Board proposes that the new change-in-terms notice include, "The date the changes will become effective." In model form G-18(G), the Board demonstrates this proposal by disclosing, "The effective date of these changes is 5/10/07." It can be very difficult, both systemically and practically, to assign a specific date on the statement of when the change-in-terms will go into effect. Since credit card issuers typically have many account cycles throughout the month, and since the number of days in a billing cycle may vary slightly, it would be challenging to determine for each cycle the exact date that a change would go into effect for the customer. In addition, some creditors might not notify inactive cardholders about a change-in-terms until the cardholder uses their account and generates a statement. That would mean that the notice would require perpetual updating. We encourage the Board to allow a creditor to provide a description of the effective date rather than a specific date. For example, "These changes will become effective on the first day after your next billing period."

In section 226.9(c)(2)(v), the Board proposes that if the credit limit is reduced then the creditor must provide at least 45 days written or oral advance notice of the decrease before imposing an overlimit fee or penalty rate solely as a result of the consumer exceeding the newly decreased credit limit. We seek guidance on whether an adverse action letter issued under Regulation B would constitute sufficient notice to the consumer that their line was reduced? In addition, we seek guidance on whether the reduced credit limit being printed in the account activity section of the periodic statement would be sufficient notice to the consumer? Otherwise, we request additional guidance on what would qualify as sufficient notice. In addition, withholding fees for 45 days is systemically problematic. Since account cycles are typically 30 days, it would be systemically easier to withhold fees from the account for one cycle rather than an odd number of days. Thus, we request the Board consider allowing written notice on one statement and permitting the imposition of overlimit fees and penalty rates after the next account cycle.

If the Board proceeds with the proposal to provide a change-in-terms disclosure box for both changes-in-terms and the imposition of a penalty APR, we request guidance on how to proceed for those customers who would receive both disclosure boxes on a single statement. Does the Board recommend a particular order for the disclosures? Systemically, attempting to combine the disclosures would be exceedingly difficult.

In section 226.12, the Board considers the topic of unauthorized use and proposes including in the description of unauthorized use the situation where a transaction is initiated due to robbery or fraud. In the commentary, the Board describes a "reasonable investigation." We request that the Board consider allowing a creditor to require that a police report be filed. In a fraud/robbery situation, a victim can demonstrate the legitimacy of their claim by filing a police report. This report also assists the creditor in their attempt to prosecute the perpetrator if he/she is identified and apprehended.

In the commentary to section 226.13(a)(3), the Board proposes that when a consumer uses their credit card to make a purchase through a third-party payment intermediary, the consumer has billing dispute rights against the credit card issuer related to the goods or services provided by the merchant who was actually compensated by the third-party payment intermediary. We discourage the Board from implementing such an approach. In these situations, the credit card issuer, in fact the credit card network has no relationship with that merchant. That merchant has not agreed to meet the requirements of participating in the credit card network. That merchant does not have a contractual relationship with the credit card issuer or the consumer through their credit card account. The credit card issuer does not have access to any information regarding the transaction as it occurred between the third-party intermediary, the merchant and the consumer. Generally, the consumer has used the third-party intermediary because the merchant does not wish to accept payment from the credit card issuer or does not qualify to accept payment from the credit card issuer. As such, if the consumer has disputes regarding the transaction, it would be both appropriate and logical for the consumer to raise those disputes with the third-party intermediary, not the credit card issuer who is too far removed from the transaction to provide beneficial assistance to their customer. The credit card issuer should not bear any financial loss associated with such a transaction. If the Board has concerns about consumer rights in these situations then we recommend that the Board encourage the Federal Trade Commission to consider appropriate regulation of third-party intermediary payment networks. Transferring the burden of these disputes to credit card issuers will not provide this type of protection to those consumers who provide the third-party intermediary with cash to facilitate their purchases.

Also in that section of the commentary, the Board proposes to indicate that a consumer need not notify the merchant prior to asserting that goods or services were not accepted or delivered as agreed. As a merchant, we appreciate the opportunity to work directly with our customers to rectify any problems they may have with their purchase. If the consumer is not required to first attempt to resolve the dispute with the merchant, the Board is simply expanding the expense and complexity associated with resolving a dispute. If a consumer contacts a merchant and explains that their goods were not received then they may learn that the goods were returned as undeliverable, backordered, or an error may have occurred in processing the consumer's order. If a consumer is able to go directly to the creditor then the dispute must be analyzed by the creditor, the dispute must be input into an electronic system that forwards the dispute to the merchant who must then read and analyze the dispute. If, for example, the merchandise was inadvertently not sent, does the merchant then send the merchandise and reject the dispute or consider the dispute as a cancellation of the order? Likely, the merchant would attempt to reach out to their customer to explain what happened and determine how they wish the merchant to proceed. All this might have been avoided if the consumer had an initial contact with the merchant. We request that the Board reconsider eliminating advance notice to the merchant.

In the section-by-section analysis of the proposed regulation, the Board comments in section 226.13(c) regarding the time for resolution of a billing error notice, "The Board further notes that the 90-day maximum time frame would apply only in cases where a creditor's billing cycle is 45 days or more. Otherwise, the creditor must complete its investigation within the time period represented by two billing cycles. Thus, for example, if a creditor's billing cycle is 30 days, it would only have 60 days to conclude its investigation of alleged billing errors." That comment goes against comment 226.13(c)(2)-1 which indicates that if the creditor receives a billing error notice mid-cycle, the creditor, ". . . [H]as the remainder of that cycle plus the next two full billing cycles to resolve the error." Thus, if the creditor has a 30 day billing cycle, it would be possible to have as many as 89 days to resolve a billing error dispute. Changing this practice could impact the tracking mechanisms that creditors have in place for managing billing error disputes.

In section 226.16(b) the Board proposes that if an advertisement states a minimum monthly payment, that would trigger a disclosure of how long it would take to pay the debt in full and how much would eventually be paid, assuming that the consumer makes only the minimum payment required for each periodic statement. This disclosure must be as prominent as the minimum monthly payment. We request that the Board consider why they are pursuing such extensive disclosure. If it is due to the questionable practices of certain lenders then perhaps consumers would be better served if auditors from the banking regulators worked with those lenders. If not, we request that the Board consider other options to achieve the same result as this proposal. Perhaps the advertisement could include a small table that included sample dollar and payment amounts or the merchant could include a toll-free number where the consumer could call to obtain this information if desired. Minimum payment amounts are typically used in advertisements for big-ticket items. If a one-page advertisement contains 10 items and this disclosure were required for each item, it would reduce the impact of the total marketing message and negatively impact commerce. Also, given the nature of open-end credit such a disclosure is particularly deceptive. A consumer may make one purchase which the advertisement claims would be paid in full in two years but then make a subsequent purchase a year later that would further extend that payment period. The type of "closed-end" credit disclosure proposed by the Board is ill suited for an open-end account.

Finally, the Board seeks comment on how long they should permit for implementation of these numerous revisions to Regulation Z. We recommend that the Board allow at least 18 months for modification, printing and distribution of revised applications, cardholder agreements, billing error notices and account opening disclosures, taking into account that many lenders must prepare these disclosures in multiple languages. We recommend that the Board allow at least 24 months for planning, programming, testing and implementation of a revised periodic statement and all disclosures related to the periodic statement such as change-in-terms notices.

Thank you, again, for allowing us the opportunity to comment on this proposal and for considering our suggestions.

Sincerely,

Steven L. Franks