CREDIT MANAGEMENT GROUP, LLC

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

Re: Unfair or Deceptive Acts or Practices
Docket No. R-1314

Dear Ms. Johnson:

I am General Counsel for Credit Management Group, LLC, the marketer and servicer of the Rewards 660 Visa® credit card, issued by Dakota State Bank of Blunt, South Dakota. I am submitting this letter in response to certain of the proposed changes to Regulation AA, specifically the changes contained in proposed Section __.27—Unfair Acts or Practices Regarding Security Deposits and Fees for the Issuance or Availability of Credit. For the reasons discussed below, we believe that capping the fees that can be charged to our credit cards is an unreasonable and unnecessary restriction. The marketplace is the best judge of whether a particular fee structure is excessive. Complete and accurate disclosures of card terms, an approach we have consistently taken with our credit card, is the key to avoiding the possibility of unfair or deceptive practices by ensuring that consumers have the opportunity to make an informed decision about their interest in and ability to afford a particular credit card.

Our Program

The Rewards 660 credit card is a subprime card with an upfront fee structure higher than that of a traditional "prime" credit card, but similar to other subprime credit cards. As the discussion that follows explains, the upfront fee structure is necessitated both by the cost of servicing cardholder accounts and by the higher risk associated with the program's cardholders. The program is well managed and fairly administered and offers many features that are favorable to consumers, including benefits that are not provided by competing products. Conspicuous disclosures result in an informed group of cardholders who apply for the Rewards 660 card because they want or need it. When all of the program's features are considered together, as they should be, it is clear that the current fee structure is not unfair.

The Rewards 660 card is only available through an online application. The basic terms of the Rewards 660 program include the following:

1. The Rewards 660 credit card has a starting credit limit of $300.
2. Fees totaling $250 are charged to the credit card upon issuance: a one-time $95 Program Fee, a one-time $97 Account Set-Up Fee, a $48 Annual Fee, and a $10 monthly participation fee.
3. The minimum monthly payment is the greater of $40 or 5% of the new balance. This minimum payment is higher than other cards of this type but was established to avoid negative amortization.
4. Cardholders must make an initial payment of $40 in order to activate and use their card. Following this payment, the credit card has $90 of available credit. The initial payment serves to confirm a consumer's ability and willingness to repay the loans that will be made to them.
5. Cardholders are eligible to receive $75 credit limit increases as often as every three months if they make on-time payments and stay within their credit limit during that time. The increase is automatically granted upon qualification. There is no fee for these increases. The maximum credit limit after credit limit increases is $2,000.
6. The periodic annual percentage rate is fixed at 19.92% for both purchases and cash advances. There is no penalty or default rate of interest, and there is no universal default clause.

Great care was taken to make the promotional and product disclosures on the Rewards 660 application website and in collateral materials as complete, understandable and conspicuous as possible. The very first page of our online application prominently discloses that the starting credit limit will be $300 and that $250 of upfront fees will be charged to the card, leaving $50 of available credit. Applicants are specifically reminded of these and other important terms, and must acknowledge their awareness and understanding of these terms on the verification page of the application. The product rates, fees and terms are available through a link on all application pages, and consumers are required to scroll through them on the second page of the application. A list of frequently asked questions on the application website addresses important subjects, including costs of the program. In addition, a welcome letter and cardholder agreement detailing the program's fees, terms and conditions are sent to all approved applicants. Finally, important program terms, including costs and available credit, are repeated by a live customer service representative when cardholders call to activate their credit cards.

The Rewards 660 product was designed with two general principles in mind. First, credit scores are an inadequate, if not unreliable, predictor of how consumers to whom the Rewards 660 cards are marketed will perform. Relevant data is hard to come by as many consumers have either been forced to financial products that are not reported to the credit bureaus, or have actively gone "underground" in an attempt to avoid their creditors. Instead, these consumers' actual payment performance in the early stages of their account relationships is a more meaningful and reliable predictor of how they will perform in the future. This "performance-based underwriting" provides the foundation for offering credit limit increases to those cardholders who have demonstrated their ability to manage their accounts by paying on time and staying within their credit limits.

Second, until consumers have demonstrated their level of responsibility, their accounts must be structured so that the credit risk is minimized. This is primarily accomplished by limiting the initial available credit. Cardholders who are sincere and committed will manage their purchase activity so they stay within their credit limits; timely payments enable these cardholders to increase their available credit as they qualify for credit limit increases.

The program's fee structure is dictated by the risk profile of the cardholders for whom the product was designed and by the costs incurred in administering the program, especially with respect to account servicing and collections. While the pricing of the program reflects this increased risk, the overall program terms are beneficial to the consumer. They were developed to ensure that cardholders both understand the credit card product before they receive it, and that they may truly benefit from it thereafter. The relevant terms include the following which we view as "best practices":

1. No penalty interest rates are imposed upon default.

2. There is no universal default clause. Rewards 660 cardholders' performance on their Rewards 660 account determines the fees and other charges they face.

3. The relatively high minimum payment (the greater of $40 or 5% of the new balance) is designed to avoid negative amortization. Rewards 660 cardholders' average payments are $78.

4. Processing platform system settings decline authorizations (unless forced by the merchant) that would otherwise allow the account to go over limit and face the resulting over limit fee.

5. Late fees are not assessed unless the required payment is not posted by the first cycle following the due date set out in the periodic statement, giving cardholders an additional grace period of between 3 and 5 days.

6. Cardholders have free online account access that includes a variety of optional email account alerts.

7. If a cardholder cancels his or her account within 30 days from opening and does not use the card during this period, all fees are reversed. The cardholder owes nothing and faces no negative credit bureau reporting or other negative financial consequences.

8. All accounts that have no payment or purchase activity within approximately 60 days from opening are closed, and all fees are reversed. The cardholder owes nothing and no negative credit bureau reporting occurs.

9. Accounts with purchases but no payments within approximately 90 days from opening are closed. No finance charges or monthly participation fees are imposed after closure.

10. Collection strategies attempt to maximize payment, while minimizing the negative impact on cardholders, by offering cardholders various repayment and settlement options. Settlement procedures often include the waiver of fees.

11. To help cardholders avoid late payment fees and negative credit bureau reporting, email and telephone messages are sent to remind them of upcoming payment due dates. Similarly, we send reminders to cardholders about upcoming post-dated payment processing dates to ensure the availability of sufficient funds.

Our program is similar in many ways to other subprime credit card programs. However, certain features individually, and the program terms collectively, make it clear that our program offers significant benefits to consumers.

1. Access to Credit. The program provides a broad range of consumers who have bad credit or no credit histories with access to unsecured credit that is not otherwise readily available to them.

2. Credit Establishment and Credit Improvement Opportunities. Monthly credit bureau reporting gives consumers an opportunity to establish or improve their credit histories by making consistent on-time payments. An improved credit history provides the chance to enter the financial mainstream.

3. Card Utility. Since the program began in early 2005, cardholders have initiated nearly 5 million individual purchase transactions using their Rewards 660 credit cards. The average per transaction purchase amount is just under $21. This shows that a low limit, revolving credit card has utility from day to day. It also provides ongoing credit access until cardholders are ready to graduate to a prime credit card program. Our cardholders are using this credit to buy necessities such as gas and diapers. Another common transaction is the purchase of credit-related products or services.

4. Affordability. Cardholders have made a total of over 1.5 million payments on their accounts. Overall, those payments have averaged over $82 apiece, with only insignificant differences between average first payment and subsequent payment amounts. Not only can cardholders afford the $40 minimum payment, but they are willing to pay nearly twice that amount on average in order to enhance card utility between payment dates.

5. Credit Limit Increases. Over 31% of cardholders who made at least one payment on their account have qualified to receive one or more credit limit increases. Besides the added utility the additional credit provides, this shows that the incentive (credit limit increases based on positive performance) is working as designed. In addition, 93% of the accounts originated in 2005 that are still open have obtained credit limit increases, with the highest credit limit now $1,600.

6. Expensive Financing Alternatives. The credit products available to consumers with poor or no credit histories are limited. The Rewards 660 credit card is an attractive financing option as compared to other more expensive financing sources such as payday or title loans. Besides the added cost of these alternatives, some of those loan sources

will not provide revolving credit and will not report to the credit bureaus. Other credit cards fail to provide credit limit increases to consumers who perform responsibly.

g. Credit Education. A convenient access link to TransUnion's TrueCredit® credit management tools, including articles and worksheets, is included on the existing cardholder website at www.Rewards660.com. In addition, the FDIC has approved the placement of a link to the FDIC's Money Smart educational resource.

A subprime credit card such as ours is often a much more desirable source of credit for a consumer than other alternative credit products. There are a variety of legal subprime loan products available to consumers with substantially higher cost structures. Alternate credit products for consumers with poor past credit histories or no credit histories often consist of payday loans, automobile title loans, high cost home equity loans, and rent to own and pawn transactions. The effective annual percentage rate on closed-end payday loans typically exceeds 400% and is often much higher than that. Thus, a reasonably priced subprime credit card contains a finance charge structure favorable to the consumer as compared to other subprime lending products. The credit card may provide an alternative to writing a bad check while waiting for the next payday and the high returned check charges that may exceed the amount of the check.

Finally, the features of the Rewards 660 cardholder agreement encourage the consumer to make sizeable payments and thus minimize the periodic finance charges imposed in connection with the account. The program's minimum payment structure—the greater of $40 or 5% of the new balance—helps to limit periodic finance charges by accelerating the rate at which cardholders can reduce their account balances. The annual percentage rate on the card is 19.92% and is a fixed rate. There is no default annual percentage rate imposed on the consumer, and there is no cross default provision. A cardholder who carries a $300 balance on his or her card is charged less than $5 in periodic finance charges each month. While optional features, such as credit limit increases and cash advances, result in additional finance charges, the use of these features, and imposition of the related fees, are at the cardholder's discretion. Thus, the terms of the cardholder agreement are designed to promote minimizing periodic finance charges, while the fee-based finance charges imposed under the program may be avoided entirely if the cardholder chooses not to take advantage of the related optional program features.

Response to Proposed Rule §__.27

The current, longstanding practice of charging fees for the issuance or availability of credit to the account is not "unfair" as contemplated by the Federal Trade Commission Act. First, as the discussion above indicates, the charges themselves are imposed because of the way certain consumers have managed credit in the past. Whether due to circumstances or behavior, these consumers present a clear and real risk that must be addressed. Our fee structure, both in amount and assessment timing, is designed to allow us to manage that risk while serving what would otherwise be an under-served population. Removing that tool will certainly reduce the availability of this important form of credit. If any form of price control is necessary, it should be limited to prohibiting issuers from imposing finance charges on the upfront fees.

Second, assuming complete and accurate disclosure of the upfront fees and available credit, consumers can avoid the potential injury by making informed decisions about whether a credit card is an appropriate form of credit given their individual financial situations, and the particular credit cards for which they should apply. To the extent current practices do not already meet a reasonable standard, issuers should be required to make these disclosures clearly, completely and conspicuously. Standardizing the disclosure requirements would also level the playing field and allow the marketplace to determine if individual card products are over-priced.

Third, the potential injury is outweighed by a number of important, countervailing benefits.

- In today's world it is difficult to live without a credit card. Even if you pay cash for a motel room, airline ticket, car rental or movie rental, a credit card is typically required as security.

- Low limit credit cards afford consumers the opportunity to establish or re-establish their credit rating by making on-time payments and otherwise behaving responsibly. In time this enables them to qualify for lower cost forms of credit.

- Low limit credit cards have utility as evidenced by our average purchase ($21) and payment ($82) experience.

- In our program the initial cost of the credit is offset by the regular, automatically granted credit limit increases cardholders can obtain with consistent, responsible performance. The $300 initial starting credit limit can increase in $75 increments as often as every three months, contributing 25% more revolving credit for no corresponding fee. The cardholder's line of credit could be as high as $525 after a 12-month period, and the cardholder may access this credit line repeatedly. To the extent the cardholder pays off the outstanding balance, he can again re-borrow up to the amount of his credit limit. Thus, comparing the upfront fees to the starting credit limit paints an incomplete picture and fails to adequately consider the relatively low cost of the credit on an ongoing basis.

If the rule is adopted in a form that is substantially similar to that which has been proposed, certain modifications should be made to avoid unnecessary ambiguity and to prevent use of the rules to challenge current practices.

1. The commentary in the proposed rule indicates that "[p]roposed §__.27(a) would not, however, apply to security deposits and fees for the issuance or availability of credit that are not charged to the account. For example, an institution would not be prohibited from providing a credit card account that requires a consumer to pay a security deposit equal to the amount of credit extended if that deposit is not charged to the account." Any final rule that places restrictions on the amount of fees for the issuance or availability of credit that can be charged to an account should expressly

incorporate this proviso so it is clear that the restrictions do not apply to fees that are not charged to the account.

2. Any final rule, if adopted, should not declare the practice of charging fees for the issuance or availability of credit to the account as unfair or deceptive as it could lead to litigation under state laws. The Agencies should explore using other authority to promulgate the rules, including the Truth in Lending Act.

3. Any final rule should specifically state that it has prospective effect only to avoid the risk that current practices will be challenged by those who would otherwise claim that the rules have retroactive effect.

4. Any final rule should not go into effect sooner than 12 months from the adoption date. Because of the magnitude of this change, substantial time will be needed to develop, test and implement the mandated changes to the structure of credit card products.

Very truly yours,

Gary F. Albrecht