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September 21, 2009

Via Electronic Mail

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

Re: Regulation Z Interim Final Rule, Docket No. R-1364

Dear Ms. Johnson:

MasterCard Worldwide ("MasterCard")[1] submits this comment letter in response to the interim final rule ("Interim Rule") published by the Board of Governors of the Federal Reserve System ("Board") in the *Federal Register* on July 22, 2009, to amend Regulation Z and implement certain provisions of the Credit CARD Act of 2009 ("Act"). We appreciate the opportunity to provide the Board our comments on the Interim Rule.

In General

We understand that the Interim Rule is already effective, and that credit card issuers must comply with it regardless of the difficulties presented. We strongly urge the Board, however, to consider the comments it receives on the Interim Rule and issue any revisions to the Interim Rule as soon as reasonably possible. As we describe in more detail below, without clarification or revision to the Interim Rule in several areas, we believe that credit card issuers and consumers will be needlessly disadvantaged. We understand that the Board intends to issue a proposed rule implementing other provisions of the Act in the near future. If such a proposed rule cannot include appropriate revisions or clarifications of the Interim Rule, we believe the Board should issue such clarifications and revisions as soon as possible thereafter.

[1] MasterCard Worldwide (NYSE:MA) advances global commerce by providing a critical link among financial institutions and millions of businesses, cardholders and merchants worldwide. Through the company's roles as a franchisor, processor and advisor, MasterCard develops and markets secure, convenient and rewarding payment solutions, seamlessly processes more than 20 billion payments each year, and provides industry-leading analysis and consulting services that drive business growth for its banking customers and merchants. With more than one billion cards issued through its family of brands, including MasterCard®, Maestro® and Cirrus®, MasterCard serves consumers and businesses in more than 210 countries and territories, and is a partner to 25,000 of the world's leading financial institutions. With more than 25 million acceptance locations worldwide, no payment card is more widely accepted than MasterCard. For more information go to www.mastercard.com.

Time to Make Payments and Grace Periods

The Act amends Section 163 of the Truth in Lending Act ("TILA") to prevent a creditor from treating a payment on an open-end credit account as late unless the creditor has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers not later than 21 days before the payment due date. The Act also amends TILA to require that, if an open-end credit plan has a grace period, no finance charge can be imposed prior to the expiration of the grace period unless the periodic statement is mailed or delivered at least 21 days before the grace period expiration.

Policies and Procedures

We believe the Board has implemented these requirements as they relate to credit card issuers appropriately and effectively. In particular, the Interim Rule adopts a "reasonable policies and procedures" approach for purposes of complying not only with the late payment requirements, but also with the grace period requirements. Although the Act did not specifically provide for a "reasonable policies and procedures" approach with respect to the grace period requirement, we strongly agree with the Board when it noted in the Supplementary Information to the Interim Rule that such an approach "will facilitate compliance" for issuers. To implement a "strict liability" 21-day rule in connection with the grace period rule would be unworkable and unenforceable, forcing issuers to manage (and regulators to regulate) to an impossible and unmeasurable standard. Furthermore, the "reasonable policies and procedures" requirement will provide exactly the same protection to consumers as envisioned by Congress. Realistically, an issuer would not be able to do more than implement reasonable policies and procedures in an attempt to comply with a strict 21-day rule for grace periods. MasterCard therefore urges the Board to retain this approach in the final rule.

Circumstances Beyond a Creditor's Control

We note that the Act deleted a portion of TILA that excused creditors from the original "14-day rule" due to an act of God, war, natural disaster, strike, or other excusable or justifiable circumstance. The Supplementary Information states that the Board believes that a creditor's procedures for responding to any of those situations will now be evaluated under the general standard of having "reasonable policies and procedures," and that references to those circumstances have been eliminated by the Interim Rule. We agree that a creditor's response to acts of God, wars, and the like should be evaluated under the reasonable policies and procedures standards. We ask that the Board include this expectation in the Official Staff Commentary to Regulation Z ("Commentary"), however, to provide card issuers with more clarity regarding the Board's position, now and in the future.

Application of Effective Date

Although the point may be viewed by some as now moot, we commend the Board for its discussion as to how the effective date should be applied in connection with the new 21-day rules. Specifically, according to the Supplementary Information, the relevant date for purposes of determining compliance with the requirements is the date on which the periodic statement is

mailed or delivered, not the due date on the statement. This was the more appropriate manner in which to apply the new requirements, and we applaud the Board's approach.

Changes in Terms

The Act amended TILA to require credit card issuers to provide a 45-day notice for significant changes in terms as determined by the Board. The Interim Rule amends § 226.9(c) to provide that whenever a significant change to a term listed in § 226.9(c)(2)(ii) ("Specified Term") is made, or the required minimum payment is increased, the issuer must provide a written notice of the change ("CIT Notice") 45 days prior to the effective date of the change to each consumer who may be affected. A Specified Term is generally one which must be disclosed in a tabular format pursuant to the revised, though not yet effective, § 226.6. The Interim Rule provides specific content requirements for the notice, including a notice of a right to opt out. The Interim Rule provides that an issuer need not provide an opt-out right in connection with an increase in the minimum payment. The Interim Rule also provides exceptions to the notice requirement itself.

Favorable Changes

MasterCard urges the Board to provide an exception to the CIT Notice requirement when, all else equal, the changed term is beneficial to the consumer. For example, if a card issuer lengthens the grace period, or switches to a balance calculation method that is more favorable to the consumer, the CIT Notice requirement does not appear to serve a consumer protection purpose. Furthermore, a card issuer may not want to offer the consumer an opt-out right in such circumstances, as the exercise of such a right would generally not favor the consumer. We believe such an exception, if added, would be similar to the existing exception to the CIT Notice requirement pertaining to changes in terms when the change involves a reduction of any component of a finance charge, and to § 226.5b(f)(3)(iv) pertaining to home equity plans.

Notice Content

The Interim Rule requires that certain information be included in the CIT Notice. MasterCard believes the Board has provided reasonable and relatively concise information for the CIT Notice, and we believe it should be retained. We note, however, that the plain language of the Interim Rule suggests that the instructions for rejecting a change in terms would be required even if the issuer is not required to offer an opt-out right in certain circumstances, such as if the consumer is 60 days delinquent on the account. We ask the Board to clarify the application of the Interim Rule in these circumstances.

Expiration of Promotions: In General[2]

The Interim Rule requires that, at least in some circumstances, an issuer provide a CIT Notice in connection with an increase in the APR due to the expiration of a promotion. The Supplementary Information goes to great lengths to describe the consequences of the CIT Notice

[2] Although our comments are limited to the Interim Rule, we urge the Board to consider our comments on the difficulties of providing point of sale disclosures as it considers how to implement other portions of the Act in future rulemakings.

requirement in such circumstances, indicating that a cardholder would be given the right to opt out of the expiration of a promotion and essentially "lock in" the promotional APR (or deferred interest promotion). We do not believe that consumers should be permitted to opt out of the expiration of a promotion, nor do consumers expect to have such a right. Assuming a card issuer should be required to provide a CIT Notice in connection with the expiration of a promotion, we believe the Board should specifically exempt the expiration of promotions from any opt-out requirement.[3]

The Board does provide an exception to the CIT Notice requirement with respect to the increase of an APR due to the expiration of a promotion. Specifically, if a card issuer discloses, prior to the promotion period and in writing to the consumer, the length of the promotion period and the APR that would apply at the expiration of the promotion and the APR that applies after the expiration of the promotion does not exceed the APR disclosed ("Alternative Promotional Disclosure"), the card issuer need not provide a CIT Notice relating to the increase in APR due to the promotion's expiration.

Although we provide comments below that are specific to certain circumstances, we do have some general comments. First, MasterCard believes the Board should have indicated that the CIT Notice/Alternative Promotional Notice was not necessary for promotions entered into prior to the August 20, 2009, effective date provided in the Act. This approach would have been consistent with the approach taken regarding the 21-day rules, and it would have prevented millions of pieces of mail from being sent to cardholders for little or no reason. Even though card issuers have expended significant resources to comply with the Interim Rule (including the Board's transition rule), we believe the Board should amend the Interim Rule to provide that the Act and § 226.9(c)(2) apply only to those promotions which begin on or after August 20, 2009. Such an approach eliminates any ambiguities in the transition rule provided by the Board in the Supplementary Information, but does not adversely affect the efficacy of promotional disclosures provided prior to August 20, 2009.

We also note that the Alternative Promotional Disclosure applies only in connection with discounted APRs, although the CIT Notice requirement pertains to any Specified Term. We do not believe that an issuer should be required to provide a CIT Notice in connection with a discounted Specified Term if, at the end of the promotion, the Specified Term does not exceed the amount previously disclosed. If the CIT Notice requirement is retained in these circumstances, the issuer should be permitted to exclude the opt-out right. Alternatively, the Alternative Promotional Disclosure should be an option available to card issuers if the change in any Specified Term, not just the APR, is a result of the promotion's expiration.

Expiration of Promotions: In Person Point of Sale Issues

Although MasterCard appreciates the Board's effort and willingness to provide exceptions to the CIT Notice requirements in connection with the expiration of a promotion, we believe that it will be very difficult to provide the Alternative Promotional Disclosure in

[3] Congress delegated the opt-out process entirely to the Board. The statute does not mandate an opt-out right, much less one in every circumstance in which a CIT Notice is provided. The Board therefore has the ability to provide such exceptions to the requirements of the Interim Rule under the plain terms of TILA as amended by the Act.

connection with promotions that are offered at the point of sale in connection with the opening of a new account or use of an existing account.

At the outset, MasterCard respectfully suggests that the compliance burdens associated with the Alternative Promotional Disclosure are not accompanied by corresponding benefits to consumers. The Alternative Promotional Disclosure simply does not provide new information to the consumer that the consumer would not otherwise understand at the time of purchase. With respect to providing the "go to" APR on the promotion, the consumer has already received disclosures regarding the APR for the credit card account. These disclosures are effective, and will be made more so once the Board's revisions to Regulation Z are implemented. Indeed, there is no requirement to inform the consumer of the APR in connection with the billions of purchases that are subject to the nonpromotional APR. It is unclear why the consumer's understanding of the nonpromotional APR should be deemed to be deficient in connection with a promotional offer.

Not only is the "go to" APR disclosure redundant and unnecessary, but we are also unaware of consumers failing to understand the duration of a promotion. Indeed, the terms of promotions tend to be significantly highlighted as part of the promotion's advertisement. To the extent the consumer is relying on the advertisement to make a purchase, the appropriate disclosure focus should be on the advertisement itself. If the advertisement discloses the duration of the promotion sufficiently, and the Board has revised Regulation Z to ensure that the promotional period will be disclosed sufficiently if the advertisement is subject to § 226.16,[4] it is unclear why the consumer needs an additional written disclosure prior to the commencement of the promotion further explaining its duration. If the consumer was otherwise unaware of the promotion, and therefore did not rely on the terms of the promotion when deciding to make the purchase subject to the promotion, it is not clear why the consumer needs a written disclosure of its terms prior to its commencement. If the Board is concerned that the consumer may not recall the duration at a later time, a written disclosure provided after the commencement of the promotion (*e.g.*, on the first periodic statement after the commencement of the promotion) would satisfy this concern.[5]

We are concerned that the Board has not considered the operational and logistical difficulties card issuers and retailers will face if they must provide the Alternative Promotional Disclosure, as a practical matter, at the point of sale. As drafted, absent clarification or revision, this result could preclude card issuers and retailers from providing promotional offers that clearly benefit consumers.[6]

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[4] For those advertisements not subject to § 226.16, the Board could require that such advertisements, promotional materials, etc. pertaining to a discounted APR or other Specified Term include a clear and conspicuous disclosure of the duration of the promotion.

[5] The nature of the transition rule for purposes of complying with the Alternative Promotional Disclosure requirement suggests that, in fact, the Board intends the Alternative Promotional Disclosure to provide consumers with a more permanent reminder of the promotional terms, not to provide consumers with information they are expected to use to make a decision while standing at the point of sale. The disclosures provided as part of the transition rule serve only the former, but not the latter, purpose.

[6] Key Members of Congress stressed the benefits of promotional offers offered by card issuers and retailers when debating the Act. As the Board is well aware, Senator Chris Dodd, the primary author of the Act, and Senator

Regardless of the merits associated with the Alternative Promotional Disclosure, we believe it would be useful to provide the Board with significant detail regarding how point-of-sale credit programs operate. This detail is necessary for the Board to understand the relatively unique difficulties card issuers (and retailers) face in connection with some of the proposed disclosure requirements in the Interim Rule. First, it is critical for the Board to understand that many promotional arrangements between retailers and card issuers provide significant flexibility to the retailer to offer consumers the most competitive and appealing offers based on the retailer's objectives. For example, a card issuer may have a contract with a retailer that allows the retailer to choose to offer a variety of different promotions to consumers at any given time. The card issuer may simply provide the retailer with the infrastructure to offer a wide variety of promotions, with the retailer ultimately choosing which promotion(s) will be offered and when. The retailer may use this flexibility to offer promotions on relatively short notice to respond to market conditions, to respond to competitors' offers, or for other reasons. This flexibility benefits consumers because it allows retailers to update their promotional offerings to be the most competitive and appealing to consumers.

Furthermore, the Board must understand that not only may a retailer have literally dozens of possible promotions from which to choose, but the retailer has limited ability to generate a disclosure at the point of sale, especially the Alternative Promotional Disclosure. First, the retailer has very little information about the cardholder's account terms at the point of sale. Although a retailer and an issuer may have a co-brand agreement, that does not mean that the retailer's systems can access the bank's account management system to learn an account's terms. The retailer may glean an account number and other basic information from the swipe of a card's magnetic stripe, but the retailer will not have access to the cardholder's current APR, for example.[7] Second, the retailer may not have the ability to print information at the point of sale, even on the receipt tape. Therefore, as we illustrate by example below, any disclosures will likely be generic, preprinted, and not specific to a particular consumer.

For example, if a consumer were to make a purchase that qualifies for a promotion because the consumer uses a credit card co-branded with the retailer, the practical application of the Interim Rule could require the retailer to provide a written disclosure of the "go to" APR on the account and the duration of the promotion. As we describe above, the retailer will not necessarily know the "go to" APR on the account. The program could have multiple APRs due to risk-based pricing, default pricing, legacy pricing, or even special pricing as a customer accommodation (*e.g.* the issuer gives the cardholder an APR reduction to retain the cardholder). The retailer would not learn the cardholder's APR simply by accepting the card for payment, and would not necessarily have the ability to provide the "go to" APR at the point of sale.[8]

Richard Shelby had a colloquy on the Senate floor during the consideration of the Act. This colloquy highlighted the importance of preserving promotional offers at the point of sale.

[7] This result may be different from some account-opening processes in which the retailer may be provided specific information as part of a communication indicating that an application for a card co-branded with the retailer has been approved. The credit approval process, however, is separate from a routine purchase process.

[8] The Interim Rule is not entirely clear as to whether an issuer could have the retailer disclose an "up to" APR. If the Board were to clarify that such a disclosure meets the requirements of § 226.9(c)(2)(v)(B), the Board could mitigate one of the many logistical obstacles facing issuers and retailers.

Even if the retailer could provide some form of an APR disclosure at the point of sale, the requirement to provide the disclosure prior to the commencement of the promotion creates other compliance problems. Unless the Board provides guidance as to what it means for a promotion to "commence," we suspect many issuers and retailers will assume that a promotion commences as soon as the cardholder is liable for the purchase. This means that issuers and retailers would provide the Alternative Promotional Disclosure, in writing, to the consumer prior to signing for the credit card purchase. In other words, absent clarification otherwise, some issuers may conclude that a disclosure provided after the consumer signs for the purchase may not comply with the timing requirement.

There are very limited options for providing the consumer with a written disclosure prior to the consumer signing for the purchase. It may be possible for a retailer to print two receipts, each with the appropriate disclosures, and ask the consumer to return only the signed receipt. This would appear to comply, but it also assumes that the retailer could provide disclosures in this manner. Some retailers do not necessarily have sophisticated equipment at the point of sale that can print out such specialized disclosures. Others may actually be "too technologically advanced," requiring the consumer to sign an electronic signature pad instead of a printed receipt. This makes it difficult to provide the consumer with a customized disclosure before the consumer signs the pad.[9]

Therefore, for whatever reason, retailers may not be able to print a customized disclosure at the point of sale and provide it to the consumer prior to the commencement of the promotion. This means that such disclosures must be preprinted and provided prior to the commencement of the promotion. Strictly speaking, it appears that an issuer could provide a lengthy disclosure to its cardholders as part of an account statement indicating all of the possible promotions that could be offered in the future. This is not commercially reasonable. Not all consumers may receive an account statement with such a disclosure prior to making a promotional purchase, because not all cardholders necessarily receive periodic statements each month. Requiring an issuer to mail such disclosures separately to the cardholders who do not receive statements strikes us as having significant costs with little benefit. Even if the issuer were willing and able to send such massive disclosures to cardholders, it is not clear that the issuer could provide such disclosures in all circumstances. For example, a retailer may seek to unveil a new promotion on relatively short notice, not allowing the card issuer sufficient time to provide notices. Also, requiring card issuers to send significant amounts of mail each time a new promotion is developed is unreasonable.

The alternative for the card issuer and retailer is to provide a preprinted matrix of disclosures to the consumer prior to the commencement of the promotion. This matrix would likely disclose every possible type of promotion the retailer could offer and the "go to" APR as an "up to" disclosure.[10] This disclosure can be bulky, especially for larger retailers that may have a variety of promotions offered (or available to be offered) at any given time. It also assumes that the store clerk can sequence the check out process such that the consumer is

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[9] The signature pads tend not to be configured to provide efficiently or easily the amount of information envisioned in the Alternative Promotional Disclosure, even if E-SIGN consent were obtained at the point of sale.

[10] This assumes the card issuer can disclose the APR as an "up to" disclosure. There is simply no commercially reasonable mechanism to allow the retailer to disclose the actual APR on the cardholder's account at the point of sale.

provided the Alternative Promotional Disclosure prior to the commencement of the promotion. Even this is not a complete solution, however. For example, the matrix will have to be updated any time there is a new promotion that could be offered, and it is not clear how retailers that offer consumers the flexibility to use a "self checkout" aisle would be able to provide the appropriate disclosure prior to the commencement of the promotion.[11]

Expiration of Promotions: In Person Point of Sale Solutions

We have described a variety of problems associated with the Alternative Promotional Disclosure in a point of sale setting. We believe the Board could clarify that the Alternative Promotional Disclosure can be satisfied by providing the relevant information to the consumer in more than one disclosure and at any time prior to the commencement of the promotional period, including through advertising. This approach would comply with the plain language of the statute. TILA requires only that the issuer disclose the length of the promotional period and the "go to" APR. The law does not require that the information be disclosed together, nor that the information be disclosed in writing. Before a consumer can use a credit card, the card issuer will provide the disclosure of the "go to" APR for the account. Furthermore, the Board could require promotional material to inform the consumer of the duration of the promotion. The combination of these circumstances would result in compliance with the requirement as drafted by Congress.

In the alternative, we request that the Board clarify the timing and content requirements of the Alternative Promotional Disclosure. Specifically, a card issuer should be permitted to inform the consumer that once the promotion expires, the applicable APR will be the APR that applies to purchases on his or her account (which may also be the default APR). Furthermore, the Board should permit a card issuer to provide the disclosure on the receipt evidencing the purchase that is subject to the promotion (or in a similar manner in close temporal proximity to the purchase itself). As we have discussed, the consumer is already aware of the information to be disclosed in the Alternative Promotional Disclosure. Another disclosure of such information at the point of sale does not appear to have a significant incremental benefit because the Alternative Promotional Disclosure does not serve as the mechanism to inform the consumer of terms the consumer would use to decide whether to continue the transaction before becoming obligated. Rather, based on the apparent justification for the transition rule, the information serves as a reminder to the consumer of the promotion's terms, and therefore could be provided effectively on the receipt (or similar document). If these solutions were adopted, the consumer could receive relevant information at an appropriate time, which is a much better scenario than the consumer receiving dozens of preemptive disclosures in the mail, or a grid of disclosures while trying to get through the check out line.

Expiration of Promotions: Internet Transactions

We also ask the Board to consider the difficulties associated with providing the Alternative Promotional Disclosure in connection with an Internet purchase. For example, if a cardholder wants to take advantage of a promotion using a co-branded credit card, it appears the retailer would need to obtain E-SIGN consent from the cardholder, and then provide the

[11] Regardless of the final contents of Regulation Z, we ask the Board to clarify that, in circumstances involving a "self checkout" or similar process, the issuer may comply with the Alternative Promotional Disclosure requirements by making the Alternative Promotional Disclosure available in close proximity to the point of sale.

promotional disclosures electronically, before the consumer completes his or her purchase. This is unnecessary, and it will create significant problems for retailers offering promotions over the Internet. As a preliminary matter, the retailer will not necessarily know whether the consumer will receive the promotion until the consumer submits his or her credit card information to complete the purchase and the promotion has begun, because only then is the retailer aware of the consumer's payment choice. Furthermore, we do not believe that the promotional disclosure is of the type that should be subject to the E-SIGN requirements since the consumer will likely receive confirmation of the promotion in the first periodic statement. For these reasons, we ask the Board to exempt the Alternative Promotional Disclosure from the E-SIGN disclosure requirements, similar to how the Board has exempted other important disclosures (*e.g.*, those provided under § 226.5a) from the E-SIGN requirements in the past.

Expiration of Promotions: Telephone Sales

The requirement for the issuer to "disclose[]" the information in the Alternative Payment Disclosure in writing to consumers prior to the commencement of a promotion presents challenges to card issuers and retailers in connection with telephone sales. For example, it is not clear what the Board's expectations are with respect to how an issuer may provide the notice prior to the commencement of the promotion when the product purchased is shipped immediately (or soon after the order is placed). For example, the Interim Rule suggests that the information must actually be disclosed prior to the promotion. This is different than the terms the Board has used in other provisions in Regulation Z which require only that the disclosures be mailed or provided by a certain time, not that disclosure must be made (*i.e.*, received by the consumer) by a certain time.

We believe it would be appropriate to allow the card issuer to provide the Alternative Promotional Disclosure orally in connection with a telephone sale.[12] Alternatively, the Board could provide relief in connection with inbound telesales in a manner similar to the relief the Board provided in the revised Regulation Z for purposes of providing the account opening disclosures. Of course, the Board could also clarify that the Alternative Promotional Disclosure could be mailed on the day the consumer becomes liable for the purchase.[13]

Expiration of Promotions: Customer Retention/Courtesy

It is not uncommon for a cardholder to call a card issuer and ask for a reduction in APR to retain the cardholder's business. Depending on the circumstances, the issuer may be willing to grant the cardholder a temporary reduction in APR. We believe the card issuer should be permitted to grant the APR reduction immediately and provide the Alternative Promotional Disclosure orally in these circumstances.[14]

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[12] To the extent the Board believes the issuer must also provide the Alternative Promotional Disclosure in writing, the issuer could provide a written disclosure within a reasonable period of time after providing it orally.

[13] The last option, if adopted, would reinforce our belief that the Alternative Promotional Disclosure is meant to remind the consumer of the promotion's terms, not serve as a disclosure on which decisions are made.

[14] To the extent the Board believes the issuer must also provide the Alternative Promotional Disclosure in writing, the issuer could provide a written disclosure within a reasonable period of time after providing it orally.

There are also times when consumers believe that they should have qualified for a credit promotion when, in fact, perhaps they did not. For example, a consumer may be relying on an old promotional offer from memory not realizing that the offer had expired prior to the transaction. In these circumstances, although the consumer may not necessarily have qualified for the promotion, the card issuer may treat the transaction(s) in question as though the promotion applied as a courtesy to the customer. This adjustment happens as part of a customer service call, and the "commencement" of the promotion should not be unnecessarily delayed just so the issuer can provide a written disclosure in the mail. This provides no benefit to the consumer, but delays the commencement of the promotion the consumer requested. Issuers in this circumstance should be permitted to provide the Alternative Promotional Disclosure orally. We also note that the "commencement" for purposes of compliance should be the date on which the adjustment was made, even if the promotion is applied retroactively to the transaction date. To interpret the "commencement" to be the date of the transaction would make it impossible for an issuer to make the adjustment requested by the consumer without having to provide the CIT Notice and opt-out right. Such a result would make it less appealing for the card issuer to offer these types of courtesies.

Alternative Notice: Workouts

MasterCard applauds the Board for providing an exception to the CIT Notice requirement in connection with workouts. If cardholders could opt out of an expiration of a workout, card issuers would be far less likely to offer consumers these valuable options. If the Board is unwilling to provide a general exception to the CIT Notice requirement to workout situations, we believe the disclosure described in 226.9(c)(2)(v)(D) ("Alternative Workout Disclosure") is a reasonable alternative to the CIT Notice requirement.

We have several comments on how the Alternative Workout Disclosure can be improved, many of which are similar to our general comments on the Alternative Promotional Disclosure. For example, like the Alternative Promotional Disclosure, the Alternative Workout Disclosure is effective only for increases in APRs but not for a change of any other Specified Term. Therefore, if a card issuer were to eliminate late fees and over-limit fees in connection with a workout, but reinstate them because the cardholder has violated or completed the workout program, the card issuer would appear to be required to provide a CIT Notice, including an opt out. Such a result makes it less likely that the card issuer will be willing to change terms other than the APR in connection with a workout.

MasterCard also asks the Board to consider the circumstances under which workout arrangements are established. Workout arrangements are usually handled and established by customer service representatives over the phone, making it difficult for the issuer to provide the Alternative Workout Disclosure both in writing and prior to the commencement of the workout. Absent clarification by the Board, this requirement may serve to delay the commencement of a workout plan for consumers for the sole purpose of allowing the card issuer to provide the written disclosures in the mail. This does not serve anyone well, especially the consumer. We believe the issuer should be permitted to make the necessary disclosures orally at the time the workout is established, and to provide any necessary written disclosure within a reasonable time thereafter.

We also note that the Board did not provide any explicit transition rule with respect to workouts entered into prior to August 20, 2009. We assume that the Board does not intend for card issuers to provide cardholders with CIT Notices and opportunities to opt out if a workout entered into prior to August 20, 2009, expires or if the consumer defaults, but we ask the Board to provide clarification of its views.

Treatment of the Servicemembers Civil Relief Act

MasterCard is concerned that the Board has not provided clarification with respect to how issuers are expected to handle customer accommodations provided pursuant to the Servicemembers Civil Relief Act ("SCRA"). We do not believe that TILA or Regulation Z should serve to lock in the benefits of the SCRA, when the SCRA itself does not require the benefits to be indefinite. Absent a clarification from the Board, or a revision to the Interim Rule, it is not clear how an issuer would avoid the risk that an individual could lock in the benefits of the SCRA even when the SCRAs protections no longer apply. We believe SCRA situations should be addressed by the Board in a manner similar to workout programs. Whether the Board clarifies that the workout exception under § 226.9(c)(2)(v)(D) applies to SCRA circumstances, or whether the Board proposes a separate exception (as it did in its proposed Regulation Z clarifications), is less important than providing issuers certainty regarding how to handle SCRA situations. We believe that any clarification should be applicable as of August 20, 2009. Such clarification should provide compliance flexibility between August 20, 2009, and a reasonable period after the Board provides such clarification to prevent issuers from being held liable for technical violations that may have occurred beginning August 20, 2009, in the absence of clear guidance from the Board.

Decreases in Credit Limit

The credit limit is not a Specified Term, and therefore an increase or decrease to the credit limit does not require a CIT Notice. MasterCard agrees with this result, and urges the Board to retain it. The Interim Rule provides, however, that if a creditor decreases the credit limit, advance notice of the decrease must be provided before an over-limit fee or penalty rate may be assessed solely as a result of the consumer exceeding the newly decreased limit. The Interim Rule also provides that the notice may be given orally or in writing at least 45 days prior to imposing the fee or penalty and must state that the credit limit on the account has been or will be decreased. MasterCard generally believes that this requirement is reasonable.

Increases in APRs Due to Penalty, Default, or Delinquency

The Interim Rule amends Regulation Z by adding § 226.9(g) to require a card issuer to provide a written notice when the consumer's APR is increased due to delinquency or default, or due to a penalty specified in the account agreement (*e.g.*, late payment, exceeding the credit limit) ("Penalty Notice"). The Penalty Notice must be provided 45 days prior to the APR increase, but after the triggering event. The Interim Rule also describes the information a card issuer must include in the Penalty Notice.

An issuer is exempt from the Penalty Notice requirements in certain circumstances. For example, the Penalty Notice is not required if the increased APR is a result of the consumer's

default on a workout program provided that the card issuer provided certain written disclosures prior to the workout. For the reasons we discuss above in connection with the exception to the CIT Notice in connection with workouts, we do not believe an issuer should be required to provide a written disclosure prior to the workout. These arrangements are usually established by telephone, and the written notice requirement would result only in an unnecessary delay of the application of the workout terms. A creditor should be permitted to give the required disclosures orally in these circumstances so long as a written disclosure is provided within a reasonable period of time.

The Interim Rule provides that cardholders may not opt out of an increased penalty APR if they are 60 days delinquent. As with the CIT Notice, however, it appears that the Penalty Notice must reference an opt-out right even in those circumstances when the card issuer is not required to provide such a right. We also ask the Board to clarify that the Penalty Notice need not describe an opt-out right unless the card issuer is actually providing one.

Opt-Out Rights

Late Payment Exception

The Act provides that CIT Notices and Penalty Rate Notices include a "brief statement of the right of the obligor to cancel the account pursuant to rules established by the Board." The Act also provides that the closure of the account in response to a CIT Notice or Penalty Rate Notice is not a default, does not trigger an obligation to repay the account balance immediately or in a manner less favorable than that provided for "existing balances," and may not trigger the imposition of any other penalty or fee.

The Interim Rule provides an exception to the cardholder's opt-out right if the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment. According to the Commentary, however, this exception applies only if the CIT Notice or the Penalty Notice is sent *after* the consumer has become 60 days delinquent. In such circumstances, the card issuer must then wait 45 days before implementing the changed term or increase in APR. In effect, the Interim Rule requires card issuers to wait until a cardholder is at least 105 days delinquent before the card issuer may ignore the cardholder's request to opt out of a changed term. We do not believe this is fair to the card issuer in terms of risk management, nor is it fair to the vast majority of cardholders who will not be 60 days delinquent but who will pay an increased price for less credit availability due to the Interim Rule. It is also not necessary as a matter of consumer protection for those consumers who do pay 60 days or more late.

We believe the Board took a much more appropriate and reasonable approach in its earlier Regulation Z and Regulation AA rulemakings when it would have permitted a card issuer to provide the requisite notice regarding an increased APR on new transactions that also included a notice to the cardholder that if the cardholder became 30 days delinquent, the increased APR would apply to the existing balance as well. We believe it would be equally reasonable and appropriate to allow the Penalty Notice and CIT Notice to explain the cardholder's opt-out rights, but indicate that the new terms will be applied, regardless of the consumer's opt-out election, if the consumer becomes 60 days delinquent.

Technical Amendment

Section 226.9(h)(3) states that this "section" does not apply in certain circumstances. We assume that § 226.9(h)(3) is intended to exclude those circumstances from the opt-out requirement in paragraph (h), not to exclude those circumstances from § 226.9 entirely.

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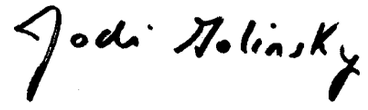
Once again, we appreciate the opportunity to comment on the Interim Rule. If you have any questions concerning our comments, or if we may otherwise be of assistance in connection with this issue, please do not hesitate to call me at (914) 249-5978 or our counsel at Sidley Austin LLP in connection with this matter, Michael F. McEneney at (202) 736-8368 or Karl F. Kaufmann at (202) 736-8133.

Sincerely,



Jodi Golinsky
Vice President &
Regulatory and Public Policy Counsel

cc: Michael F. McEneney, Esq.
Karl F. Kaufmann, Esq.