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

Re: Docket No. R-1364: Interim Final Rule for the Credit Card Accountability Responsibility and Disclosure Act of 2009

Dear Ms. Johnson:

Dreher Tomkies Scheiderer, LLP is pleased to submit comments in response to the Federal Reserve Board's interim final rule amending Regulation Z to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 that were effective on August 20, 2009. 74 Fed. Reg. 36077 (July 22, 2009).

We have been asked to submit comments on behalf of a financial institution that we represent in consumer finance matters. The institution is a medium-sized banking institution that provides a full array of financial products and services to its customers. These products include general-purpose and private-label credit cards. These cards offer consumers terms and conditions that are highly competitive in today's market and an issuer who places a high priority on customer satisfaction.

For the reasons discussed below, we respectfully request that the Board consider revising its requirement that issuers wait until all events triggering a penalty rate have occurred before providing the consumer with advance notice of the rate increase to permit issuers to provide such notices earlier in the process. The Board's requirement appears in the interim final rule as well as the final rules amending Regulation Z issued by the Board on December 18, 2008 to be effective July 1, 2010. 12 C.F.R. § 226.9(g)(2).

The Act neither expressly nor implicitly requires issuers to wait until all triggering events have occurred before providing notice of a rate increase to the penalty rate. The Act requires a written notice of any increase in an annual percentage rate to be provided at least 45 days before the increase takes effect. The Act also requires the notice to contain a brief statement of the obligor's right to cancel the account pursuant to rules established by the Board before the effective date of the rate increase. The Act does not require all contractual conditions precedent to the application of a penalty rate to have occurred before the issuer provides notice of an increase. Moreover, the Act's requirement that the consumer be reminded of the right to cancel the account demonstrates that Congress intended consumers to have the opportunity to avoid increases. Allowing notice of a rate increase to a penalty rate to be provided earlier could afford the consumer an opportunity to bring the account sufficiently compliant to avoid the increase if the credit card agreement so provided.

The Board's rule prohibiting issuers from providing penalty rate notices before all triggering events have occurred has resulted in an unfortunate unintended consequence. When the Board participated in the promulgation of Regulation AA to prevent unfair and deceptive credit card practices, it joined with other agencies in prohibiting the practice of "hair trigger" penalty repricing. *See* 74 Fed. Reg. 5498, 5557 (Jan. 29, 2009). Now, under the Board's triggering rule, issuers of cards with penalty rate triggers that are not "hair triggers" have had to consider instituting earlier triggers. Otherwise, such issuers may be close to determining that an account is uncollectible before the penalty rate may be applied to any balances.

To illustrate, if a credit card agreement provides that a penalty rate will apply if the consumer becomes 60 days past due, under the Board's triggering rule, the account will be at least 107 days past due before the penalty rate could apply (*i.e.*, 61 days plus the 45-day notice period), which effectively translates into 120 days past due if the issuer increases rates on the first day of a billing cycle. If the issuer in this illustration were permitted to provide the notice after the first missed payment, the consumer would have the opportunity to make the next payment on time, thereby avoiding application of the increased rate to any balances. In any event, under the terms of the credit card agreement, the penalty rate would not apply to any balances unless and until the account were to become 60 days past due under the terms of the credit card agreement. Thus, the consumer would be unharmed by and stand to benefit from the 45-day penalty rate notice being provided earlier in the process, which result seems in harmony with the intent of the Act.

Although not effective until February 22, 2010, the Act's general prohibition against increasing rates applicable to any outstanding balance is relevant to this discussion. Section 101(b) of the Act lists among the exceptions to this rule a rate increase that is due solely to the issuer not having received a minimum payment within 60 days after its due date. This provision of the Act suggests that Congress recognized that accounts could reach a level of delinquency that warrants application of an increased rate to outstanding balances, so that the risk posed by such seriously delinquent accounts will not be spread to other non-delinquent accounts. Nonetheless, under the Act, the issuer still must provide the 45-day advance written notice of a rate increase under this exception for seriously delinquent accounts. Consequently, come February, the Board's triggering rule will prohibit all issuers from applying a penalty rate to any outstanding balance on a seriously delinquent account until at least 107 (or possibly 120) days after the delinquency commences. Moreover, the Board's triggering rule will prohibit the issuer in our illustration above from applying a penalty rate to *any balance* on a seriously delinquent account until 107 (or possibly 120) days after the delinquency commences.

The Act's general prohibition against increasing rates on any account in the first year after the account is opened also is not effective until February 22, 2009 and yet is relevant to this discussion as it reflects the same exception discussed above. Section 101(d) of the Act lists among the exceptions to the rule against rate increases in the first year of an account an increase that is due solely to the issuer not having received a minimum payment within 60 days after its due date. Again, this exception is subject to the 45-day advance written notice of the increase. And again, the Board's triggering rule will prohibit all issuers from applying a penalty rate to any outstanding balance on a seriously delinquent account until 107 (or possibly 120) days after the delinquency commences. Consequently, come February, the Board's triggering rule will prohibit all issuers – not just the issuer in our illustration above – from applying a penalty rate to *any balance* on a seriously delinquent account until at least 107 (possibly 120) days after the delinquency commences if the delinquency occurs in the first year after the account is opened. The Board's triggering rule thus will impact all first-year accounts regardless of the issuer's contractual penalty-rate trigger. For purposes of illustration, we are appending to this letter a chart depicting the inordinate delay issuers will face in applying penalty rates to seriously delinquent accounts in the first year after they are opened.

For the reasons discussed above, we contend that the Board's rule requiring issuers to wait until all events triggering a penalty rate have occurred before providing the consumer with advance notice of the rate increase runs contrary to the intent of Congress as articulated in Section 101 of the Act. The Board's triggering rule prevents issuers from providing penalty rate notices early enough for consumers to avoid the rate increase if their agreements so provide. The Board's rule also unduly delays the application of penalty rates to seriously delinquent accounts.

We therefore respectfully recommend that the Board's triggering rule be revised to permit issuers to send the 45-day notice of a rate increase to the penalty rate anytime after commencement of the penalty rate trigger. This revision would in certain instances afford the consumer the opportunity to avoid the rate increase by bringing the account contractually compliant and in all instances permit issuers to apply penalty rates to seriously delinquent accounts without inordinate delay.

We appreciate the opportunity to offer comments on the Board's interim final rule. Please feel free to contact me if you have questions regarding our comments or need additional information.

Very truly yours,

Judith M. Scheiderer

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Enclosure

New Accounts (less than 12 months)
Delinquency Rate Effective Date