RUSSELL W. SCHRADER
Senior Vice President
Assistant General Counsel

July 23,2004

By Electronic Delivery

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

Re: Study on Disclosures of Debit Card Fees, Docket No. OP-1196

Dear Ms. Johnson:

This comment letter is submitted on behalf of Visa U.S.A. Inc. in response to a request for information made by the Federal Reserve Board ("FRB") in connection with its study about the disclosure of certain debit card fees. Specifically, the FRB has requested comment on whether existing disclosures required by the Electronic Fund Transfer Act ("EFTA") and its implementing regulation, Regulation E, adequately inform consumers of fees that may be imposed by a card issuing financial institution when a debit card is used to make a purchase from a merchant at the merchant's point of sale ("POS"). The FRB also seeks comment on the need for, and the potential benefits of, requiring additional disclosures in each periodic account statement to reflect fees imposed by the account-holding institution for such debit card use. Visa appreciates the opportunity to comment on these very important issues.

The Visa Payment System, of which Visa U.S.A.[1] is a **part,** is the largest consumer payment system, and the leading consumer e-commerce payment system, in the world, with more volume than all other major payment cards combined. Visa plays a pivotal role in advancing new payment products and technologies, including technology initiatives for protecting personal information and preventing identity theft and other fraud, for the benefit of its member financial institutions and their hundreds of millions of cardholders.

Currently, a number of laws and regulations address the disclosure of information related to ongoing or repetitive consumer financial transactions, including the Truth in Lending Act and Regulation Z (credit), the EFTA and Regulation E (electronic fund transfers ("EFT")) and the Truth in Savings Act and Regulation DD (deposit accounts). These laws and regulations include disclosure schemes that typically employ initial consumer disclosures as a means to describe the terms of the account at the time the account is opened for the consumer.

[1] **Visa U.S.A. is a membership organization comprised** of **U.S. financial institutions licensed to use the Visa service marks in connection with payment systems.**

VISA U.S.A. INC.
Post Office Box 194607
San Francisco, CA 94119-4607
U.S.A.
Phone 415 932 2178
Fax 415 932 2525

In addition, these disclosure schemes often provide for periodic account statements to record and document account activity. These periodic statements may only be fully understood when examined in connection with specific information contained in the initial disclosure materials. Other disclosure requirements, such as transaction receipts at the time of the transaction, may supplement the initial disclosures and periodic statement or may help consumers choose the type of transaction. These disclosure schemes contemplate that a consumer will use his or her initial account disclosure, in combination with other disclosures, to understand the information provided on the periodic account statement.

Disclosure under the EFTA and Regulation E

The EFTA and Regulation E impose disclosure obligations on financial institutions that provide EFT services to consumers, including "online" personal identification number ("PIN") debit transactions. For example, the EFTA and Regulation E require account-holding financial institutions to make disclosures to consumers regarding fees for POS transactions at three points in time: (1) in the initial disclosures provided at the time the consumer contracts for EFT services under section 905(a); (2) in periodic account statements provided under section 906(c); and (3) under certain conditions, on receipts provided at an electronic terminal at the time an EFT transaction is initiated.

We believe that these disclosures provide consumers with sufficient information to understand their account activity and to make informed choices about whether to engage in PIN-based or signature-based debit transactions. Accordingly, we believe that the benefits of requiring real-time disclosure of PIN debit transaction fees at the POS are minimal and are far outweighed by the enormous costs that would be involved in doing so. Similarly, we do not believe that additional disclosure in periodic statements for PIN-based debit transactions is needed for consumers to have adequate information about the fees for these transactions.

PIN Debit Fee Disclosures at POS

The implementation of real-time PIN debit transaction fee disclosures at the POS would require a substantial restructuring of current systems by all participants in the POS debit transactions processing industry. The implementation of such a scheme would require the modification of systems and hardware to accommodate real-time disclosure and would cost billions of dollars. A similar proposal was addressed and criticized by the Government Accountability Office ("GAO") in a July 2000 report regarding real-time fee disclosures at automated teller machines ("ATM").[2] The GAO, in its report, noted that the consequences of implementing real-time disclosure of ATM fees imposed by card issuing banks could produce unintended consequences that could offset any potential consumer benefits related to real-time fee disclosure.[3]

Moreover, we believe that far more costly upgrades would be required to deliver issuer-fee information at POS terminals than those required for the additional ATM disclosures

---

[2] ***Automated Teller Machines: Issues Related to Real-time Fee Disclosure,*** **GAO/GGD/AIMD-00-224 (July 2000).**
[3] ***Id.***

discussed in the GAO report. The cost of modifying the nation's estimated 371,000 ATM machines to make real-time disclosures of card issuer fees would be dwarfed by the cost of modifying or replacing the nation's estimated 8 million POS terminals to accommodate similar disclosures. In addition to these prohibitive retooling costs, technical barriers still would likely prevent real-time POS PIN debit transaction disclosures.

Implementation Barriers

Card-issuer transaction fees vary not only across, but also within, financial institutions. It would be difficult, if not impossible, to provide accurate fee-based disclosures in this context. For example, PIN debit transaction fees may vary based on a myriad of factors, including account types, the consumer's overall depth of relationship with the financial institution and the consumer's frequency of card usage. In an effort to individualize and tailor accounts to match consumer needs, fees may be imposed after a certain number of free transactions each month or may depend on the average minimum balance in the account during the month. The range of potential pricing schemes is virtually unlimited. For example, in some cases a flat fee may be imposed for POS transactions during a month regardless of whether those transactions are PIN or signature-based and regardless of the number of such transactions. Further, transaction fees may vary with rewards programs. Under some pricing schemes, the amount of any fee charged for a transaction may not be determined until well after the transaction has taken place.

Further, even if fee information associated with PIN debit transactions could be delivered to the POS, many, if not most, existing POS terminals could not support the additional programming necessary to implement the disclosure of PIN debit transaction fees. The implementation of a POS fee disclosure requirement would necessitate a review of each type of existing POS terminal to assess their current and potential capabilities. Merchants may not be able, or willing, to incur the cost of replacing or upgrading existing POS debit terminals and, even if they are, the lead-time to accomplish these requirements and upgrades may be substantial.

Moreover, assuming again that card issuers could supply such fee information, implicit in any incremental benefit that consumers might gain from the disclosure of PIN debit transaction fees at the POS is the view that, in general, consumers make better informed choices when they are aware of costs at the time of a purchase, rather than after the transaction has taken place. Under this view, the most effective real-time fee disclosure would require the display of fee information before the transaction is completed, giving consumers the option to accept or reject the transaction. Current messaging procedures for the request, authorization and settlement of PIN debit transactions require one transaction message. The provision of fee information to consumers before transaction completion would require that an additional, distinct transaction message be generated in order to retrieve the fee information from card issuers. This message would be followed by a conventional authorization message if the consumer decided to go forward with the transaction. We believe that the need for this additional transaction message would significantly increase traffic in current systems.

At best, this increased traffic would at least double the time required for transaction approval. The increased traffic may also require increased system capacity, at substantial cost in order to avoid additional delays. Longer transaction periods at the POS would slow check-out lines — substantially increasing consumer dissatisfaction and/or merchant costs to operate more check-out lines. Some merchants may simply discontinue their acceptance of PIN debit transactions entirely.

l or Enhanced Discl under Regulation E

The FRB also requests comment on whether the existing disclosures under Regulation E adequately inform consumers about PIN debit transaction fees. We believe that the appropriate test is whether additional, or more detailed, disclosures would provide consumers with a greater ability to choose whether or not to incur PIN debit transaction fees. We believe that the current disclosure scheme of Regulation E is fully adequate for this purpose. This fact is demonstrated by current consumer practices in choosing PIN and signature debit transactions. For example, banks that disclose fees for all PIN debit transactions, or offer rewards programs tied to signature debit transactions, tend to have significantly more signature debit, as opposed to PIN debit, transactions than other banks.

Initial Disclosures

Regulation E, section 205.7(a), requires financial institutions to make initial disclosures at the time a consumer contracts to receive EFT services, or before an EFT transaction is made involving the consumer's account. This disclosure must incorporate "[a]ny fees imposed by the financial institution for [EFTs] or for the right to make transfers."[4] Thus, financial institutions already must provide consumers with a full disclosure of any PIN debit transaction fees that may be charged to a consumer's account in the initial disclosures provided to those consumers.

Periodic Statement Disclosures

Regulation E, section 205.9(b)(3), requires that for each account to or from which an EFT can be made, a financial institution must send the consumer a periodic account statement that includes "[t]he amount of any fees assessed against the account during the statement period for [EFTs], [or] for the right to make [EFTs]." The fees disclosed in the periodic statement may include fees for EFTs, as well as for other, non-electronic services.[5] These fees may be shown on a consumer's monthly periodic statement individually or in an aggregate amount.[6] While Regulation E permits a financial institution to itemize per-transaction fees for each PIN debit transaction fee imposed, it does not require itemization.[7] The presence of transaction fees on periodic statements alerts consumers that they are incurring these fees. By consulting their initial disclosures, consumers can identify the transactions to which the fees apply and can change their behavior, if they so desire.

Itemization of PIN debit fees on periodic statements, statement information regarding the source of each such fee, or totals for PIN debit fees by period, or on a year-to-date basis, would

---

[4] 12 C.F.R. § 205.7(b)(5).
[5] 12 C.F.R. pt. 205, Supp. I, § 205.9(b)(3)-1.
[6] *Id.*
[7] *See id.*

add little to the ability of consumers to choose whether or not to incur PIN debit transaction fees, but could increase substantially the costs of providing statements. Moreover, disclosure of additional information would detract from the information that Congress has already determined to be important and appropriate for periodic statements. Itemization of individual PIN debit transaction fees could lengthen periodic statements, adding pages to statements and significantly increasing printing and mailing costs. For example, if financial institutions were required to itemize each individual fee charged in connection with PIN debit transactions, instead of aggregating these fees, consumers would be confronted with many additional itemized charges on their periodic account statements, and most of these entries would be essentially identical.

It is also important to note that PIN debit fees are typically lower than ATM fees and that PIN debit transactions often include cash-back features making PIN debits a low-cost alternative to ATM withdrawals. Furthermore, while we have not attempted to determine all of the specific ways in which financial institutions have chosen to inform consumers about the existence and impact of PIN debit transaction fees, we note that the pattern of PIN debit usage strongly suggests that consumers understand, and have reacted positively, to market-driven disclosures. Therefore, in light of the successful impact that voluntary industry disclosures have had with regard to consumer understanding of PIN debit transaction fees, as opposed to the significant burdens associated with additional or enhanced disclosures under the EFTA and Regulation E, we urge the FRB to oppose any additional disclosure requirement.

Similarly, a *summary* of the total amount of PIN debit transaction fees for the reporting period and/or for the calendar year-to-date would do little or nothing to facilitate informed consumer choice, but would add substantial costs and unnecessary information to account statements.

Electronic Terminal Receipt Disclosures

Regulation E, section 205.9(a), requires financial institutions to make a receipt available to a consumer at the time the consumer initiates an EFT, including at a POS terminal. This disclosure must provide the amount of the transfer along with other information, such as the date the transfer is initiated, the type of transfer and the terminal location. A transaction fee must be disclosed on the receipt **only** if the fee is included in the amount of the transfer.[8] If the fee is not included in the amount of the transfer, the receipt need not state the fee.[9] This receipt requirement makes sense because if the fee is not imposed by the terminal operator and, therefore, is not included in the actual transfer, it is not practical for the fee to be disclosed at the terminal.

---

[8] ***See*** 12 C.F.R. § 205.9(a)(1).
[9] ***See Id.***

Visa appreciates the opportunity to comment on this important matter. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (415) 932-2178.

Sincerely,

Russell W. Schrader
Senior Vice President and
Assistant General Counsel