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March 28, 2005

By Electronic Delivery

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-1217, Regulation Z—Advance Notice of Proposed Rulemaking

Dear Ms. Johnson:

This letter is submitted on behalf of Visa U.S.A. Inc., in response to the Federal Reserve Board's ("FRB") advance notice of proposed rulemaking ("ANPR") on the open-end credit rules of Regulation Z, which implements the Truth in Lending Act ("TILA"). Visa appreciates the opportunity to comment on this important ANPR. In addition to the thoughts contained in this letter, Visa submitted the attached letter to the FRB to help frame many of the questions raised in the ANPR.

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. In calendar year 2004, Visa U.S.A. card purchases exceeded a trillion dollars, with over 450 million Visa cards in circulation. 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 Visa's member financial institutions and their hundreds of millions of cardholders.

OVERALL RECOMMENDATIONS

- The FRB should not review Regulation Z in isolation; it should adopt a three-pronged approach.
    - Prong One—Fix current problems under Regulation Z, including shortening and simplifying disclosures, fixing mathematical anomalies in cost

[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.

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disclosures (such as the annual percentage rate ("APR"), finance and other charges) and highlighting only the key credit terms.

- Prong Two—Focus substantial efforts on providing meaningful educational initiatives that coordinate with and supplement required Regulation Z disclosures, such as an FRB-sponsored Web site containing a glossary of terms, explanations and examples.
- Prong Three—Consider non-regulatory and non-Truth in Lending Act ("TILA") related approaches, such as the issuance of agency guidance or best practices, to address specific creditor practices.

- As part of the review process, the industry and other interested parties should have ample opportunity to provide feedback on an ongoing basis in connection with each prong.

RECOMMENDED APPROACH TO REVIEW OF REGULATION Z

As the FRB reviews the open-end credit provisions of Regulation Z, we encourage the FRB to consider market developments and the alternative approaches that new technologies will support. In particular, the FRB should avoid viewing Regulation Z and TILA as the sole means of addressing issues related to open-end credit plans. While we believe that there are a number of provisions of Regulation Z that should be modified in order to facilitate informed credit shopping and to improve consumer understanding of open-end credit plans, we believe that it is imperative that the FRB consider the role of Regulation Z in a broader context.

For example, the ANPR highlights a number of the specific problems with the current credit card disclosure regime, but we believe it would be a mistake for the FRB to attempt to address all of the specific concerns listed in the ANPR through revisions to Regulation Z. Instead, we believe that the FRB's primary goal should be to enhance consumer understanding of open-end credit transactions and to facilitate the ability of consumers to make better informed credit decisions. To accomplish this goal, we recommend that the FRB's review include a three-pronged approach: (1) fixing Regulation Z; (2) educating consumers; and (3) exploring other non-TILA related approaches, such as the issuance of agency guidance or best practices, for addressing issues concerning open-end credit.

In particular, we recommend that the FRB reevaluate the list of issues raised in the ANPR and group those issues according to the method by which the issues are likely to be most effectively addressed. That is, the FRB should examine each issue and make a determination as to whether the FRB would more likely achieve one of its goals—enhancing consumer understanding, for example—by modifying Regulation Z, by educating consumers outside of Regulation Z, or by adopting another non-TILA related approach. Below, we have identified how we believe each issue should be addressed.

SPECIFIC COMMENTS ON THE ANPR

Q1. Scope of the review.

Because open-end and closed-end credit are fundamentally different, we support the FRB's approach to review the open-end and closed-end credit provisions separately. We recommend, however, that the FRB consider restructuring Regulation Z so that revisions to open-end credit do not impact the closed-end rules.

IMPROVING FORMAT OF DISCLOSURES

Q2. What formatting rules would enhance consumers' ability to notice and understand account-opening disclosures? Are rules needed to segregate certain key disclosures from contractual terms or other information so the disclosures are more clear and conspicuous? Should the rules require that certain disclosures be grouped together or appear on the same page? Are minimum type-size requirements needed, and if so, what should the requirements be?

The highlighting of key terms contained in the account-opening disclosures could significantly enhance a consumer's ability to understand the terms of his or her account, to make more informed decisions when using the account and to switch to a new account if the terms are not consistent with his or her expectations or desires. Highlighting certain key terms and grouping those terms together could help enhance a consumer's ability to understand account-opening disclosures and make those disclosures more meaningful and useful to consumers. Similar to the Schumer-box disclosures, the highlighted terms could give the consumer a snapshot of information that will help him or her make informed decisions in connection with use of the account and make decisions as to whether to continue with that account, or switch to another account at the same creditor or another creditor.

However, the number of terms highlighted must be limited to avoid overwhelming the consumer with information. In determining the key terms that should be highlighted, Visa believes that the FRB should: (1) only highlight terms where the information is essential for comparison shopping or where the information is likely to affect a typical consumer's account usage or behavior; and (2) only include disclosures where uniformity can be achieved and uniformity is beneficial. This approach would lead to shorter and simpler disclosures that would enhance consumer understanding by making it more likely that consumers will actually read and understand those disclosures. Increased consumer understanding, in turn, will assist consumers in making more informed decisions.

Q3. Are there ways to use formatting tools or other navigational aids for TILA's account-opening disclosures that will make the disclosures more effective for consumers throughout the life of the account? If so, provide suggestions.

We believe that the FRB should provide a model form for the initial disclosures and revise or replace the model forms contained in the existing regulation. We believe that

the model forms should be tested with consumers and should present only key information in a format that is understandable and meaningful to consumers. In this regard, while the initial Schumer-box disclosures facilitated credit shopping, those disclosures have become overly complex, thereby detracting from the key credit terms. In addition, while the model forms could utilize certain type sizes, bolding or grouping of key terms, we recommend that the FRB avoid mandating any specific formatting requirements in Regulation Z itself. In addition, model forms should provide a safe harbor for institutions that choose to use them.

However, while we believe that certain modifications to Regulation Z are appropriate, this question also has an educational component. To make the disclosures more effective for consumers throughout the life of the account, we believe that the FRB should consider including on certain disclosures a reference to an interactive, educational Web site. The Web site could provide consumers with important information about credit terms and practices and could enable consumers to access such information both before or after opening the account. Such educational information would greatly enhance the ability of consumers to understand TILA account-opening disclosures.

Q4. Format rules could require certain disclosures to be grouped together or appear on the same page where it would aid consumer's understanding. For example, some card issuers disclose a 25-day grace period on the back of the periodic statement that can be used to calculate the payment due date; the same card issuer might also show a "please pay by date" on the front of the periodic statement that is based on a 20-day period. Some consumers might assume the 20-day period reflects the due date; other consumers may ascertain the actual due date by looking on the back of the statement. Potential consumer confusion might be reduced by requiring creditors to disclose the grace period or the actual due date on the first page of the statement, adjacent to the "please pay by" date. Is such a rule desirable? Are there other disclosures that should be grouped together on the same page?

With respect to grace-period disclosures, the grouping together of the "please pay by" date, which is the date to avoid late payment fees, and the grace period date, which is the due date to avoid finance charges, could result in consumer confusion. The FRB should allow creditors flexibility to place information where it is understandable and should not arbitrarily mandate the grouping of terms.

More broadly, however, Visa believes that it may be appropriate to highlight certain key terms contained in the initial disclosure statement and group them in a manner similar to the Schumer box. Disclosures also must remind consumers that other terms of the open-end credit plan are important and that consumers must read the plan agreements to fully understand these terms as well. Except for the highlighted disclosures, we strongly believe that the FRB should not attempt to dictate the structure or format of plan agreements, other than to require that the required terms that are not part of the highlighted disclosures be presented in a clear and conspicuous manner.

Q5. Could the cost of credit be more effectively presented on periodic statements if less emphasis were placed on how fees are labeled, and all fees were grouped together on the periodic statement? Are there other approaches the FRB should consider? If so, provide suggestions.

We believe that creditors should not be required to group all fees together. There are various reasons for the specific placement of information on periodic statements and a "one-size-fits-all" approach is not appropriate.

Q6. How could the use of formatting tools or other navigational aids make the disclosures on periodic statements more effective for consumers?

See Answer to Question 3.

More broadly, however, we believe that education, rather than formatting, is the key to making periodic statements more effective. The FRB should consider revising Regulation Z to include a reference to an educational Web site, operated by the FRB on which consumers could be instructed on the purpose and content of periodic statements and how consumers should approach review of their statements. This approach would help consumers understand periodic statements, as well as other aspects of open-end credit plans.

Q7. Is the "Schumer box" effective as currently designed? Are there format issues the FRB should consider? If so, provide suggestions.

While the entire existing open-end credit disclosure regime should be reevaluated, we believe the Schumer-box disclosure format is generally effective, although the increasing volume of disclosures required for the Schumer box has begun to detract from the key credit terms included.

Q8. Balance transfer fees and cash advance fees may be disclosed inside the "Schumer box" or clearly and conspicuously elsewhere on or with the application.
12 CFR § 26.5a(a)(2)(i). Given the prevalence of balance transfer promotions in credit card applications and solicitations, should balance transfer fees be included in the Schumer box?

The Schumer-box disclosures should only highlight information that is essential for comparison shopping. The content of the Schumer-box disclosures should be based on an objective survey of consumer use of various account features, and only those key features should be included in the Schumer box.

Q9. Are there formatting tools or navigational aids that could more effectively link information in the account-opening disclosures with the information provided in subsequent disclosures, such as those accompanying convenience checks and balance transfer checks? If so, provide suggestions.

See Answer to Question 3.

In addition, we believe that linking account-opening disclosures with subsequent disclosures would be more appropriately addressed through educational efforts, than through formatting required by Regulation Z.

Q10. Should existing clauses and forms be revised to improve their effectiveness? If so, provide specific suggestions.

We believe that the FRB should revise the model clauses and forms contained in Regulation Z. The clauses and forms should contain understandable disclosures and should be tested with consumers.

Q11. Would additional model clauses or forms be helpful? If so, please identify the types of new model clauses and forms that the FRB should consider developing.

We believe that model forms and clauses are helpful compliance tools and we encourage the FRB to consider adding model forms for initial disclosures that can function as safe harbors. This would be helpful not only for consumers, but also for all financial institutions, particularly smaller institutions.

Q12. In developing any proposed revisions or additions to the model forms or clauses, the FRB plans to utilize consumer focus groups and other research. The FRB is aware of studies suggesting that, for example, bolded headings that convey a message are helpful, but using all capital letters is not. Is there additional information on the navigability and readability of different formats, and on ways in which formatting can improve the effectiveness of disclosures?

Rather than rely on suggestions contained in studies, Visa encourages the FRB to work with focus groups and other resources to determine which formats in fact improve the effectiveness of the disclosures.

IMPROVING CONTENT OF DISCLOSURES

Q13. How could the FRB provide greater clarity on characterizing fees as finance charges or "other charges" imposed as part of the credit plan? Under Regulation Z, finance charges include fees imposed as a condition of the credit as well as fees imposed "incident to" the credit. This includes "service, transaction, activity, and carrying charges." 12 CFR § 226.4(b)(2). What types of fees imposed in connection with open-end accounts should be excluded from the finance charge, and why? How would these fees be disclosed to provide uniformity in creditors' disclosures and facilitate compliance?

We believe that the FRB should significantly revise the characterization of fees under existing Regulation Z. Credit card issuers have taken different approaches to characterizing certain fees under section 226.4(a) of Regulation Z as "finance charges,"

which are defined as charges imposed as "an incident to or a condition of the extension of credit," and under section 226.6(b) of Regulation Z as "other charges," which are charges that are not considered finance charges, but are significant fees related to the plan, or as fees that do not need to be disclosed.

If a fee is treated as a finance charge in an open-end credit account, there are many significant consequences. Specifically, a creditor must itemize any finance charge by type in the initial disclosures under section 226.6(a). The finance charge also must be factored into the APR calculation and disclosed to the consumer on the periodic statement, as required by sections 226.7(g) and 226.14(c). In addition, under section 226.7(f), any finance charge must be itemized on the periodic statement for the cycle during which the fee is debited to the consumer's account. Furthermore, under section 226.9(c), if a fee for a service that is a finance charge is increased, a creditor must provide a change-in-terms notice in advance of the increase.

The benefit of these distinctions simply is not clear, and Visa recommends that the FRB reconsider the need for them. As a practical matter, we believe that for purposes of open-end credit, the FRB should focus on distinguishing between charges based on the amount and duration of credit, such as charges based on the application of a periodic rate to the outstanding balance, and fixed fees. In both cases, Regulation Z should only address changes that are necessarily incurred for using an element of the open-end credit plan. For example, we believe that for purposes of highlighting key terms, the relative importance of fees should be based on the frequency with which they are incurred by a typical consumer. To the extent permitted by TILA, we believe that Regulation Z should reflect these realities. At the same time, it is critical that fees that are to be considered finance charges be clearly identified as such in order to avoid unnecessary litigation. Accordingly, Visa recommends that the FRB establish clearer rules, and a standard that can be used to determine when charges paid by a consumer are and when they are not finance charges. Recent proposed changes to the official staff interpretation of Regulation Z ("Commentary") dealing with expedited payment fees are a step in the right direction. In particular, current rules, which provide that a charge is a finance charge if it is "imposed" by a creditor as "an incident to or a condition of the extension of credit," have been unclear to creditors, courts and others for years. As a result, there has been confusion by creditors and inconsistent treatment of charges paid by consumers.

Q14. How do consumers learn about the fees that will be imposed in connection with services related to an open-end account, and any changes in the applicable fees?

Consumers learn about the specific fees applicable to their open-end credit plans from required disclosures and from the terms of their credit agreements. With respect to fees for related services, however, it is a common practice for creditors to inform the consumer orally of these fees when the consumer makes the request for a service. Thus, we discourage the FRB from mandating the disclosure of fees for related services, as these fees are optional or voluntarily incurred by the consumer and, therefore, are not directly related to the extension of the credit. In addition, it is more effective for creditors to

explain such fees at the time the service is requested by the consumer. More broadly, we believe that consumers would have a better understanding of these fees if they had access to a Web site that included general information on the structure of open-end plans and the fees typically imposed in connection with such plans.

Q15. What significance do consumers attach to the label "finance charge," as opposed to "fee" or "charge?"

We believe that this question would be best addressed as an educational issue. While we believe consumers read information on fees, consumers today do not understand the significance of characterizations, such as finance charges and other charges. Thus, we believe that additional explanations of these terms in required disclosures would not be useful and that consumer understanding would be promoted more effectively through educational efforts.

Q16. Some industry representatives have suggested a rule that would classify fees as finance charges only if payment of the fee is required to obtain credit. How would creditors determine if a particular fee was optional? Would costs for certain account features be excluded from the finance charge provided that the consumer was also offered a credit plan without that feature? Would such a rule result in useful disclosures for consumers? Would consumers be able to compare the cost of the different plans? Would such a rule be practicable for creditors?

In open-end credit plans, finance charges should be limited to fees based on the amount and duration of the credit. Specifically, any fee that is based on the amount and duration of the credit, such as the periodic rate, is a necessary condition of the credit and, therefore, is not optional. Regulation Z should provide that fees for services not required by a creditor, such as fees akin to an expedited payment fee, and fees that do not directly affect the amount, availability or terms of the underlying credit, are not part of the open-end credit plan and, therefore, should not be disclosed under the plan as either a finance charge or other charge. Accordingly, where the choice to use the service or feature is made by the consumer and is not required by the creditor, a fee for use of that service should not be considered a finance charge or a part of the plan. Reflecting optional fees in the APR would impair consumer educational efforts about the APR because the fees are unrelated to a specific extension of credit and distort the APR.

Q17. Some industry representatives have suggested a rule that would classify a fee as a finance charge based on whether the fee affects the amount of credit available or the material terms of the credit. How would such a standard operate in practice? For example, how would creditors distinguish finance charges from "other charges?" What terms of a credit plan would be considered material?

See Answer to Question 18.

In addition, the FRB should not classify fees based on whether the fee affects the amount of credit available or the material terms of credit. This approach would require a creditor to make determinations about what is "material." Such an approach likely would cause problems similar to the problems that result from the current classification. Again, we encourage the FRB to reconsider whether such classifications are meaningful to consumers.

OTHER CHARGES

Q18. TILA requires the identification of other charges that are not finance charges and may be imposed as part of the plan. The staff Commentary interprets the rule as applying to "significant charges" related to the plan. Has that interpretation been effective in furthering the purposes of the statute? Would another interpretation be more effective? Criteria that have been suggested as relevant to determining whether the FRB should identify a charge as an "other charge" include: the amount of the charge; the frequency with which a consumer is likely to incur the charge; the proportion of consumers likely to incur the charge; and when and how creditors disclose the charge, if at all. Are those factors relevant? Are there other relevant factors?

Currently, the definition of other charges is, at best, unclear. Other charges should include any fixed fees that may be incurred as a necessary incident to usage of the plan. Fees for optional services should not be included in other charges. Such other charges should be highlighted as part of the initial disclosures or included in the plan agreement.

Furthermore, among required fixed fees, other charges should be limited to charges that are incurred by the typical consumer and should not include uncommon or less common fees.

Q19. What other issues should the FRB consider as it addresses these questions? For instance, in classifying fees for open-end plans generally, do home equity lines of credit present unique issues?

No comment at this time.

Q20. How important is it that the rules used to classify fees for open-end accounts mirror the classification rules for closed-end loans? For example, the approach of excluding certain finance charges from the effective APR for open-end accounts is not consistent with the approach recommended by the FRB for closed-end loans. In a 1998 report to the Congress concerning reform of closed-end mortgage disclosures, the FRB endorsed an approach that would include "all required fees" in the finance charge and APR.

We believe that open-end and closed-end credit are fundamentally different and, therefore, the rules for open-end credit should not mirror the rules for closed-end credit.

OVER-THE-LIMIT FEES

Q21. The staff Commentary to Regulation Z provides guidance on when a fee is properly excluded from the finance charge as a bona fide late payment charge, and when it is not. See Comment 4(c)(2)–1. Is there a need for similar guidance with respect to fees imposed for exceeding a credit limit, for example, where the creditor does not require the consumer to bring the account balance below the originally established credit limit, but imposes an over-the-credit-limit fee each month on a continuing basis?

We urge the FRB not to attempt to address this issue in Regulation Z by issuing guidance that would include some over-the-limit fees in the finance charge disclosure, while excluding over-the-limit fees for others. As noted above, because the same type of fee would be included in the finance charge disclosure in certain instances and excluded in others, this approach would likely result in consumer confusion, thereby hindering the ability of consumers to understand the costs of credit. If the FRB believes that consumers need to better understand the implications or consequences of not paying down the outstanding balance on the account enough to avoid being accessed another over-the-limit fee, we believe that this issue could be better addressed through consumer education, rather than complex disclosures. In addition, to the extent creditors are being misleading or deceptive in their application of over-the-limit fees, we believe that the FRB and other federal agencies should address these issues through their unfair and deceptive acts and practices authority.

We believe that the FRB should refrain from requiring additional disclosures about the conditions for assessing over-the-limit fees. The current disclosure of the dollar amount of the over-the-limit fee is adequate. The fee acts as a deterrent and is akin to a late payment fee. Moreover, most consumers prefer that the transaction be completed so as to avoid the embarrassment of having the transaction denied.

Q22. Because of technical limitations or other practical concerns, credit card transactions may be authorized in circumstances that do not allow the merchant or creditor to determine at the moment of the transaction whether the transaction will cause the consumer to exceed the previously established credit limit. How do card issuers explain to consumers their practice of approving transactions that might result in the consumer's exceeding the previously established credit limit for the account and being charged an over-the-credit limit fee? When are over-the credit-limit fees imposed; at the time of an approved transaction, or later such as at the end of the billing cycle? The FRB specifically requests comments on whether additional disclosures are needed regarding the circumstances in which over-the-credit-limit fees will be imposed.

We do not believe that additional disclosures required by Regulation Z would be the best approach to promoting consumer understanding of how over-the-limit fees are imposed. The imposition of over-the-limit fees is highly discretionary and fact specific. Different creditors have different practices for the imposition of over-the-limit fees. Some only charge a fee if the cardholder is over the limit at the end of the billing cycle; others

may charge a fee at the time of the transaction that puts the account holder over the limit. In either case, fees are frequently waived to the benefit of consumers. These practices reflect the uncertainty of real-time balances, the nature of over-the-limit fees and the different conditions for imposing these fees. For example, because there may be outstanding authorizations on the account, such as authorizations for hotel rooms, car rentals or preauthorized transfers, creditors may not know at the time of the transaction whether the consumer is over the limit. Further, even if a creditor knows that a consumer has exceeded his or her credit limit, a creditor may elect not to impose a fee unless the condition has persisted for some time or is a frequent occurrence.

Consumers are informed about over-the-limit fees in solicitations and initial disclosures. In addition, the imposition of the specific charge is reflected on the periodic statement. Disclosures about over-the-limit fees would not materially advance consumer understanding of over-the-limit fee practices. On the other hand, consumer understanding could be significantly advanced through FRB educational efforts.

HISTORICAL APR

Q23. Have changes in the market and in consumers' use of open-end credit since the adoption of TILA affected the usefulness of the historical APR disclosure? If so, how? The FRB seeks data relevant to determining the extent to which consumers understand and use the historical APR disclosed on periodic statements. Is there data on how disclosure of the historical APR affects consumer behavior? Is it useful to consumers to include in the historical APR transaction charges such as cash advance fees and fees to transfer balances from other accounts?

The disclosure of the historical APR provided on periodic statements as required under existing Regulation Z is more confusing than helpful. We believe that the FRB should completely re-evaluate the method of calculating the historical APR and address this issue under both the fixing Regulation Z and educating consumers prongs. In particular, we believe that the periodic statement APR should not include fees other than charges based on the amount and duration of credit, such as charges based on the application of a periodic interest rate to a balance. Under current Regulation Z, the historical APR includes some finance charges and excludes others. Footnote 33 of Regulation Z and section 226.14(c)-7 of the Commentary exempt certain fees from the APR calculation, such as account-opening fees and points. Therefore, the APR does not provide a figure that actually is useful to consumers for comparing accounts or for understanding the costs associated with credit. To the contrary, inclusion of such fees in the APR does not provide meaningful cost information to consumers, "skews" the APR, and confuses consumers. In addition to confusing consumers, skewed APRs resulting from the historical APR are costly for creditors to manage. They generate a significant amount of calls to customer service centers from angry and confused consumers.

As a result, we believe strongly that the FRB should eliminate the historical APR all altogether or, at a minimum, greatly expand the current list of fees that should not be included in the calculation of the historical APR.

Q24. Are there ways to improve consumers' understanding of the effective APR, such as by providing additional context for the disclosure? For example, should consumers be informed that the effective APR includes fees as well as interest, and that it assumes the fees relate to credit that was extended only for a single billing period?

Additional disclosures with respect to the historical APR, as it is used today, likely will only generate further consumer confusion and increase the costs for creditors who must explain the calculations to consumers. More fundamentally, we do not believe that any amount of additional educational efforts can resolve the current consumer confusion regarding the functioning of the historical APR.

Q25. Are there alternative frameworks for disclosing the costs of credit on periodic statements that might be more effective than disclosing individual fees and the effective APR? For example, would consumers benefit from a disclosure of the total dollar amount of all account-related fees assessed during the billing cycle, or the total dollar amount of fees by type? Would a cumulative year-to-date total for certain fees be useful for consumers?

We believe that billing statements should provide a simple, understandable description of the consumer's transactions that will help the consumer make decisions about his or her future use of the account. Providing totals of fees or totals of fees by type will only complicate disclosures, while providing information that is of little interest or value to consumers.

ADVANCE NOTICES AND DEFAULT RATES

Q26. Is mailing a notice 15 days before the effective date of a change in interest rates adequate to provide timely notice to consumers?

We believe that mailing a change-in-terms notice 15 days before the effective date of a change in interest rates should provide consumers with adequate notice and a reasonable opportunity to exercise the various options available, such as paying off or transferring the balance on the account before rate or fee changes become effective.

Q27. How are account-holders alerted to increased interest rates due to consumers' default on this account or another credit account? Are existing disclosure rules for increases to interest rates and other finance charges adequate to enable consumers to make timely decisions about how to manage their accounts? If not, provide suggestions.

Typically, cardholders learn that the default rate has been triggered by a change-in-terms notice or by the change in the rate reflected on the periodic statement.

Some creditors also include a statement message that tells the consumer that the default rate has been triggered. In addition, the specific event that triggered the default is either disclosed in the message or explained upon request. The questions received from consumers make it clear that they are aware of the APR increase, although this awareness can be impeded by the confusion caused by the existing historical APR disclosure.

BALANCE CALCULATION METHOD

Q28. How significantly does the balance calculation method affect the cost of credit given typical account use patterns?

The effect of balance calculation methods will depend on cardholder usage; however, the actual effect on the cost of credit is likely to be small. We believe that the best way to inform consumers about balance calculation methods is through general education about the effects of calculation methods and by a brief statement identifying the method used, like that currently included in the Schumer box.

Q29. Do consumers understand that different balance calculation methods affect the cost of credit, and do they understand which balance calculation methods are more or less favorable for consumers? Would additional disclosures at account-opening assist consumers and, if so, what type of disclosures would be useful?

We believe that the current detailed explanations of balance calculation methods are of little value to consumers and can detract from the disclosure of key account terms. Thus, the FRB should permit a more abbreviated description or identification of the balance calculation method in the initial disclosure statement and on the periodic statement, along with directions for finding further information, such as the credit agreement or an educational Web site maintained by the FRB.

Q30. Explanations of balance calculation methods are complex and may include contractual terms such as rounding rules. Precise explanations are required on account-opening disclosures and on periodic statements. Should the FRB permit more abbreviated descriptions on periodic statements, along with a reference to where consumers can obtain further information about the calculation method, such as the credit agreement or a toll-free telephone number?

See Answer to Question 29.

Due to the complex nature of balance calculation methods, Visa also believes that Regulation Z should not require details of balance calculation methods in either the Schumer box or initial disclosures, because more detailed information would not be particularly helpful to consumers either at the time of application or when account-opening disclosures are provided. We believe that this information is more effective when provided in connection with educational efforts. For example, a reference on disclosures to an educational Web site could provide consumers with detailed information about various

balance calculation methods, along with examples explaining how the various calculations could impact the cost of credit, which would be helpful to consumers. In addition, for creditors whose balance calculation methods are not described on the Web site, the FRB might permit, or even require inclusion of, references to a toll-free number where consumers can obtain explanations of balance calculation methods.

MINIMUM PAYMENT DISCLOSURES

Q31. Is it appropriate for the FRB to consider whether Regulation Z should be amended to require: (1) Periodic statement disclosures about the effects of making only the minimum payment (such as, disclosing the amortization period for their actual account balance assuming that the consumer makes only the minimum payment, or disclosing when making the minimum payment will result in a penalty fee for exceeding the credit limit); (2) account-opening disclosures showing the total of payments when the credit plan is specifically established to finance purchases that are equal or nearly equal to the credit limit (assuming only minimum payments are made)? Would such disclosures benefit consumers?

Q32. Is information about the amortization period for an account readily available to creditors based on current accounting systems, or would new systems need to be developed? What would be the costs of implementing such a rule?

Q33. Is there data on the percentage of consumers, credit cardholders in particular, that regularly or continually make only the minimum payments on open-end credit plans?

We discourage the FRB from requiring issuers to disclose detailed information relating to the effects of making only minimum payments on an account. Minimum payment disclosures are relevant to a relatively small portion of cardholders. Many consumers pay their accounts in full each month. Other consumers regularly make payments higher than the minimum. And, still others may make minimum payments from time to time, depending on their cash flow. We are not aware of reliable statistical information as to the number of cardholders that only make minimum payments, but believe that the number is far smaller than numbers that are often cited by advocates of such detailed disclosures. Instead, we believe that these numbers are based on consumers who may occasionally make minimum payments. Thus, to most consumers, such disclosures would be meaningless, if not misleading or confusing. In addition, requiring detailed and complex disclosures would only exacerbate the "disclosure overload" already prevalent under the current Regulation Z disclosure regime. Thus, we believe that given the cost that creditors, and consumers alike, would have to bear for such disclosures and the confusion that they are likely to create, it would be inappropriate for the FRB to require such disclosures where the benefit to consumers is tenuous. Rather, Visa believes that more focused consumer education is the best way to assist consumers in understanding the consequences of making minimum payments.

Finally, because information about the specific amortization periods for individual accounts is not readily available, new systems would have to be developed and the cost for such systems would be staggering.

PAYMENT ALLOCATION

Q34. What are the common methods of payment allocation and how much do they affect the cost of credit for the typical consumer?

Q35. Do creditors typically disclose their allocation methods, and if so, how?

Q36. Is it appropriate for the FRB to consider whether Regulation Z should be amended to require disclosure of the payment allocation method on the periodic statement? Would such a disclosure materially benefit consumers? Some creditors offer a low promotional rate, such as a 0% APR for cash advances for a limited time and a higher APR for purchases. Creditors typically do not allocate any payments to purchases until the entire cash advance is paid off. Are additional disclosures needed to avoid consumer confusion or misunderstanding? What would the cost be to creditors of providing such a disclosure? What level of detail would provide useful information while avoiding information overload?

Payment allocation methods vary widely and are complex. Although information about payment allocation is typically included in cardholder agreements, and while information about the effect that such methods may have on the cost of credit could be provided in connection with educating consumers, it would be neither practical nor useful to mandate payment allocation disclosures in Regulation Z.

Most creditors have very complex payment allocation methods, which factor in multiple plan components and cardholder options. While it is becoming industry practice to include in cardholder agreements information relating to a creditor's payment allocation methodology and its potential effect upon consumer credit accounts, we do not believe that such a complex and detailed disclosure should be included in Regulation Z disclosures. The extent to which a certain methodology would affect the cost of credit will depend on the credit plan components and features, the consumer's payment practices and the consumer's usage of the account.

Beyond cardholder agreements, issues concerning payment allocation methods are more appropriately addressed through consumer education. For example, the FRB can help consumers understand through examples and explanatory language about how the allocation of payments to lower APR balances, including promotional balances, can result in higher amounts of finance charges on the account. In addition, to the extent the FRB believes that certain payment allocation practices are unfair and deceptive, we recommend that the FRB consider whether the issuance of guidance or best practices would effectively address such concerns.

Q37. What tolerances should the FRB consider adopting pursuant to this provision? Should the FRB expressly permit an overstatement of the finance charge on open-end credit? Would that adequately address concerns over proper disclosure of fees? How narrow should any tolerance be to ensure TILA's goal of uniformity is preserved?

We believe that the FRB should expressly permit an overstatement of the finance charge in open-end credit. Finance charges on open-end credit are difficult to calculate because of the definition of finance charge, as well as the variety of rates and transactions that may be involved. The ability to overstate the finance charge would make it easier to disclose finance charges and reduce litigation.

Q38. In considering changes to the disclosures required by Regulation Z, the FRB seeks data relevant to the costs and benefits of the proposed revisions. Accordingly, commenters proposing revisions to the disclosure requirements are requested to provide data estimating the cost difference in complying with the existing rules compared to any proposed alternatives, including any one-time costs to implement the changes.

While Visa does not have precise data, we believe that the cost of implementing revisions to Regulation Z suggested by the ANPR would be substantial. For example, it would be necessary to incur disclosure design costs. In addition, creditors will incur other substantial compliance costs associated with ensuring that revisions are properly implemented, as well as training costs for employees in connection with ensuring proper compliance. Thus, it is critically important that revisions to Regulation Z be carefully considered to ensure that the benefits are meaningful and that the resulting costs can be justified by the benefits achieved.

Q39. Are there particular types of open-end credit accounts, such as subprime or secured credit card accounts, that warrant special disclosure rules to ensure that consumers have adequate information about these products?

Educating consumers about particular types of products would be far more appropriate and far more effective than requiring special disclosures based on arbitrary distinctions. Special disclosure requirements would significantly increase costs, and any theoretical benefits are likely to be elusive. Moreover, differing disclosure requirements will only impede the ability of consumers to comparison shop for credit accounts.

Q40. Are there additional issues the FRB should consider in reviewing the content of open-end disclosures? For example, in 2000, the FRB revised the requirements for disclosures that accompany credit card applications and solicitations. 65 FR 58903, October 3, 2000. Is the information currently provided with credit card applications and solicitations adequate and effective to assist consumers in deciding whether or not to apply for an account?

We believe that the information in the Schumer box is currently adequate, although the increased scope of the disclosures now required may already be impeding the ability to use these disclosures for shopping purposes. In addition, see responses to *Q2-Q12.*

Q41. Are there classes of transactions for which the FRB should exercise its exemption authority under 15 U.S.C. § 1604(a) to effectuate TILA's purpose, facilitate compliance or prevent circumvention or evasion, or under 15 U.S.C. § 1604(f) of TILA because coverage does not provide a meaningful benefit to consumers in the form of useful information or protection? If so, please address the factors that the FRB is required to consider under the statute.

No specific recommendations at this time.

Q42. Should the FRB exercise its authority under 15 U.S.C. § 1604(g) to provide a waiver for certain borrowers whose income and assets exceed the specified amounts?

Yes, sophisticated customers should be allowed to waive the requirements of TILA. Both the securities and commodities laws recognize that many consumer protections are not necessary for sophisticated customers.

Q43. The FRB solicits comments on whether there is a need to revise the provisions implementing TILA's substantive protections for open-end credit accounts. For example, are the existing rules adequate, and if not, why not? Are creditors' responsibilities under the rules clear? Do the existing rules need to be updated to address particular types of accounts or practices, or to address technological changes?

As described in greater detail in response to the following question, we encourage the FRB, while it reviews the substantive protections of TILA, to take proactive steps to recognize and foster technological developments and new ways of doing business. In addition, see response to *Q46.*

Q44. Information is requested on whether industry has developed, or is developing, open-end credit plans that allow consumers to conduct transactions using only account numbers and do not involve the issuance of physical devices traditionally considered to be credit cards. If such plans exist, what policies do such creditors have for resolving accountholder claims when disputes arise?

Current open-end credit plans often use security features other than those contained on a credit card to permit transactions in a card-not-present environment. Visa has special rules that allow these card-not-present transactions to be charged back to merchants if the customer asserts that the transaction is unauthorized, even when the issuing bank has authorized the transaction. Merchants can limit charge backs by participating in "Verified by Visa." Moreover, Visa, its member financial institutions, and merchants who accept card-not-present transactions have made significant investments in technology and policies and procedures to ensure that such transactions are secure and properly authenticated. In

particular, there are security and fraud protection programs that are specifically tailored to prevent fraud when a credit card is not present. For example, some of these technologies and policies reference expiration dates, CVV2 numbers (which are verification codes printed on the back of cards), as well as fraud databases that merchants can use before fulfilling such transactions.

The FRB should revise Regulation Z to take into account advances in products or technology. Thus, the FRB should consider how the rules might be modified to address products where a physical card has not been issued. For example, the FRB could specifically recognize the appropriateness of resolving cardholder disputes through use of procedures, such as those used to resolve card-not-present transactions today.

Q45. Have consumers experienced problems with convenience checks relating to unauthorized use or merchant disputes, for example? Should the FRB consider extending any of TILA's protections for credit card transactions to other extensions on credit card accounts and, in particular, convenience checks?

There have been few complaints concerning the use of convenience checks. As a result, there is little current evidence suggesting that TILA's protections for credit card transactions should be extended to convenience checks. The supplemental information accompanying the ANPR, however, suggests that the billing error provisions apply to convenience checks. We believe any suggestion that the billing error provisions should be applied to convenience checks would create serious operational and financial problems because, for example, those checks are not subject, and cannot be subjected to, the chargeback system for credit cards. Unlike credit card transactions, convenience checks are not processed through a payment card system and are not subject to chargeback mechanisms that are incorporated in the payment card associations' operating guidelines and regulations. Under the chargeback mechanism, creditors have contractual obligations with merchants accepting the cards. Since convenience checks can be provided to any merchants that accept checks, and because such checks operate outside the payment card system, there would be no chargeback rights for such mechanisms. Billing disputes for transactions that are not subject to the chargeback system are costly for financial institutions to resolve and in many instances consumers ultimately end up bearing the cost of such disputes. Thus, it is inappropriate to subject convenience checks to the billing error provisions.

Further, there are significant practical impediments to applying substantive protections, such as cardholder claims and defenses or billing error provisions, to convenience checks. Indeed, in many ways, convenience checks are more like using a cash advance to pay for goods or services, than a transaction with a merchant using a credit card. A convenience check can only be returned by the operator of an open-end credit plan based on a fraudulent signature. Accordingly, providers of convenience checks would have to absorb the losses associated with customer claims or assertions of billing errors. At the same time, convenience checks provide consumers with real benefits in the form of the ability to make payments to persons who do not accept credit cards. For these reasons,

convenience checks should not be covered by the claims and defenses provisions of TILA and should only be considered to be a billing error if the check itself was not authorized by the customer.

Q46. Should the FRB consider revising Regulation Z to allow creditors to issue additional credit cards on an existing account at any time, even when there is no renewal or substitution of a previously issued card? If so, what conditions or limitations should apply? For example, should the FRB require that the additional cards be sent inactivated? If activation is required, should the FRB allow issuers to use alternative security measures in lieu of activation, such as providing advance written notice to consumers that additional cards will be sent?

Visa believes that the FRB should amend Regulation Z to provide that a credit card issuer may send an additional credit card to a consumer under an existing credit card plan, even where the additional card is not sent in connection with a renewal or substitution of a previously issued card. There is no legal or policy basis for prohibiting a credit card issuer from sending an additional credit card for an existing account to a consumer who already has an accepted credit card from the issuer for that same account, provided there is no additional consumer liability for unauthorized use under the account for that additional card.

Permitting a financial institution to send an additional device to an individual, who already has an accepted access device from the issuer for that same account, would promote technological developments without compromising consumer protections. Providing additional credit cards to consumers who have existing credit card plans can provide greater convenience to consumers, just as other credit access devices, such as convenience checks, provide additional benefits. Further, additional access devices will minimize burdens on credit card issuers by encouraging issuers to efficiently, and in a cost-effective manner, test consumer acceptance of new types of access devices. Allowing issuers to provide additional cards without specific additional requests will help card issuers deploy new access devices that can provide valuable benefits and conveniences to consumers in cases when "traditional" accepted credit cards, due to operational or other reasons, cannot provide such benefits or conveniences. For example, while there is a high level of security in all credit card transactions, new programs, such as "Verified by Visa," provide enhanced security for certain online transactions. In this context, an issuer could provide access devices, similar to the key fobs often used for secure Internet access, that provide an additional level of security. Requiring a request by the customer before providing devices that offer these services would impede the efforts of the issuer to provide its customers with a more secure means of accessing their credit accounts and efforts to better control its own risk.

CUT -OFF HOURS AND PROMPT CREDITING

Q47. What are the cut-off hours used by most issuers for receiving payments? How do issuers determine the cut-off hours?

Q48. Do card issuers' payment instructions and cut-off hours differ according to whether the consumer makes the payment by check or electronic fund transfer, or by using the telephone or Internet? What is the proportion of consumers who make payments by mail as opposed to using expedited methods, such as electronic payments?

Q49. Do the existing rules and creditors' current disclosure practices clearly inform cardholders of the date and time by which card issuers must receive payment to avoid additional fees? If not, how might disclosure requirements be improved?

Q50. Do the operating hours of third-party processors differ from those of creditors, and if so, how? Do creditors treat payments received by a third-party processor as if the payment was received by the creditor? What guidance, if any, is needed concerning creditors' obligation in posting and crediting payments when third-party processors are used?

Q51. Should the FRB issue a rule requiring creditors to credit payments as of the date they are received, regardless of the time?

While the time of cut-off hour for crediting payments can affect whether a consumer incurs a late payment fee, any requirement to fully describe payment timing issues in TILA disclosures is unlikely to be effective. Any time established for receipt of mailed checks and other payments is necessarily arbitrary and will not reflect differences in back office handling of payment messages or differences in the availability of funds to the creditor for different types of payments. We believe that creditors should be able to establish reasonable cut-off hours to accommodate payment processing. In this regard, the FRB must recognize that time of day alone does not directly reflect on the reasonableness of the cut-off hour. Delivery of a payment to a point specified by the creditor should be considered delivery to the creditor for this purpose. Further, we believe that the FRB should not require creditors to credit payments as of the date received, regardless of the time of day. Such a rule would only lead to inefficient practices that may be reminiscent of remote disbursement practices.

REQUEST FOR COMMENT ON ADDITIONAL ISSUES

Q52. Providing guidance not expressly addressed in existing rules. FRB staff is asked to provide informal oral advice on an ongoing basis about how Truth in Lending rules may apply to new products and circumstances not expressly addressed in Regulation Z and its official staff Commentary. The FRB invites the public to identify issues where they believe staff's informal advice should be formalized or addressed anew. Should such changes be

adopted after notice and public comment, they would apply prospectively and compliance would become mandatory after an appropriate implementation period.

We believe staff guidance should be formally issued through annual updates to the Commentary. While it is appropriate for the FRB staff to discuss issues that are unclear when asked to do so by individual creditors or other organizations, and even to identify provisions contained in Regulation Z and the Commentary that are relevant to questions about how the rules might apply, staff guidance on general application should not be issued in writing unless interested parties have been provided with notice and an opportunity to comment on the guidance.

Q53. Adjusting exceptions based on de minimis amounts. To facilitate compliance, the FRB has provided a number of exceptions based on de minimis dollar amounts. For example, TILA's open-end rules require creditors to transmit periodic statements at the end of billing cycles in which there is an outstanding balance or a finance charge is imposed; the regulation relieves creditors of that duty if the outstanding debit or credit balance is $1 or less (and no finance charge is imposed). 15 U.S.C. § 1637(b); 12 CFR § 226.5(b)(2)(i). Similarly, the FRB provides for a simplified way to calculate the effective APR on periodic statements when a minimum finance charge is assessed and is 50 cents or less. 12 CFR § 226.14(c)(4). Should de minimis amounts such as these be adjusted, and if so, to what extent?

We believe adjusting the levels of *de minimis* exceptions may have some potential benefits, but that it may also raise more issues that it solves.

Q54. Improving plain language and organization; identifying technical revisions. The FRB is required to use "plain language" in all proposed and final rules published after January 1, 2000. 12 U.S.C. § 4809. The FRB invites comments on whether the existing rules are clearly stated and effectively organized, and how, in the upcoming review of Regulation Z, the FRB might consider making the text of Regulation Z and its official staff Commentary easier to understand. Are there technical revisions to the regulation or Commentary that should be addressed?

Visa encourages the use of plain language throughout Regulation Z and the Commentary. To facilitate compliance, it is essential that the FRB promulgate rules and guidance that clearly communicate the requirements of Regulation Z in an understandable manner. In this regard, the FRB should avoid complex grammatical structures, long sentences and "legalese." Plain language simply is easier to read and understand. Moreover, because it takes significantly less time to read and understand plain language than it takes to read more traditional regulatory language, plain language would save creditors both time and money.

Q55. Deleting obsolete rules or guidance. A goal of the Regulation Z review is to delete provisions that have become obsolete due to technological or other developments. Are there any such provisions?

In the context of electronic banking, the FRB should evaluate the need for periodic statements when consumers have ready access to account information. Under Regulation Z, a creditor must send a consumer a periodic statement for each monthly cycle in which a credit transaction has occurred. It is unclear how the duty of a creditor to provide such periodic statements interacts with the growing practice of providing transactional history and other account information on a daily basis online. Visa believes that the FRB should modify appropriate Regulation Z requirements to permit creditors to meet the periodic statement requirement through ongoing online access by a consumer to his or her transaction history, and that if a creditor provides such daily online access and the consumer agrees to use such online access, the creditor need not provide monthly or quarterly statements for such accounts.

Q56. Recommendations for legislative changes. Are there any legislative changes to TILA the FRB should consider recommending to the Congress? For example, where a rule is based on a dollar amount established by the statute, the FRB seeks comment on whether to recommend adjustments of those dollar amounts to the Congress, and if so, the amount of such adjustments.

No specific recommendations at this time.

Q57. Recommendations for nonregulatory approaches. In addition to requesting comment on suggestions for regulatory or statutory changes, the FRB seeks comment on nonregulatory approaches that may further the FRB's goal of improving the effectiveness of TILA's disclosures and substantive protections. Such approaches could include guidance in the form of best practices or consumer education efforts. For example, calculation tools are widely available on the Internet. How might the availability of those tools be used to address concerns that consumers need better information about the effects of making only minimum payments on their account? Are there any data that indicate the extent to which consumers access calculation tools that are publicly available?

We believe that the FRB should seriously consider a significant long-term commitment to educating consumers about consumer credit. This commitment could include an interactive educational Web site, mass media promotion of the Web site and mass media messages targeted at specific topics. An educational Web site could provide consumers with extensive information about credit terms and credit practices and about the prudent use of credit. Moreover, such a Web site could be accessed by consumers at any time—before or after opening an open-end credit plan. In addition, printed educational materials could be made available to consumers with limited Internet access. Mass media messages could highlight current issues, as well as credit fundamentals.

We also believe that TILA should not be viewed as the vehicle for addressing individual abusive practices; instead, these practices should be addressed through the unfair and deceptive acts and practices authority of the FRB and other federal agencies. Open-end consumer credit plans are an efficient and flexible vehicle for delivering credit to consumers. This flexibility has resulted in a wide variety of open-end credit products

and an even wider variety of terms and conditions for these products. While it is possible to highlight certain common terms of open-end credit, a consumer can only understand open-end credit products by understanding how all of the terms of the credit product will apply to the consumer's particular pattern of account use.

As long as the expectations of federal agencies for unfair and deceptive practices are informed and made clear and consistent across the agencies, such as through best practices developed after notice and comment, this power can be exercised by individual agency actions that provide the flexibility to deal with evolving market practices or rules written by the FRB in the case of persistent longer-term abuses. This approach allows the agencies to adopt a flexible approach to changing practices without cluttering key disclosures with information that is often of little relevance beyond a particular plan. This approach also should reduce litigation.

Q58. Reviewing other aspects of Regulation Z. Although the FRB is proposing to focus the review primarily on the rules for open-end credit, are there other areas or particular sections of Regulation Z that should be included in this initial stage of the review? For example: (a) Definitions and rules of construction. Are changes needed to the definitions or rules of construction in § 226.2 of the regulation? Unless defined in the regulation, terms have the meaning given to them by state law or contract. Are there specific terms that are not defined in Regulation Z that should be? For example, the FRB's staff has received questions about § 226.20, which generally requires creditors to provide new TILA disclosures when a closed-end loan is refinanced. Under the regulation and staff Commentary, a "refinancing" is generally deemed to occur when an existing obligation has been satisfied and replaced by a new obligation, "based on the parties" contract and "applicable law." See Comment 20(a)–1. Concerns have been raised about the current approach, and whether it results in uniform application of Regulation Z because different states are free to draw different conclusions about when a particular set of circumstances constitutes a "satisfaction and replacement." Courts may take a case-by-case approach to ascertain the parties' intent before deciding whether a new promissory note satisfied and replaced the original note, or whether the new note merely "relates back" to the original note that is not deemed to be extinguished. The issue raised is whether the FRB should consider adopting a definition of "refinancing" that does not rely on state law and seeks to create a more uniform approach in determining when new disclosures are required.
(b) Exempt transactions. Section 226.3 of Regulation Z implements the provisions of 15 U.S.C. § 1603, which specifies classes of transactions not covered by TILA. Do rules implementing 15 U.S.C. § 1603 need to be updated?

No specific recommendations at this time.

Visa appreciates the opportunity to comment on this very important topic. If you should have any questions about the above, or if I can otherwise be of assistance, please call me, at (415) 932-2178.

Sincerely,

Russell W. Schrader
Senior Vice President and
Assistant General Counsel

RUSSELL W. SCHRADER
Senior Vice President
Assistant General Counsel

March 15, 2005

By Hand Delivery

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-1217, Regulation Z—Advance Notice of Proposed Rulemaking

Dear Ms. Johnson:

This letter is submitted on behalf of Visa U.S.A. Inc., in response to the Federal Reserve Board's ("FRB") advance notice of proposed rulemaking ("ANPR") on the open-end credit rules of Regulation Z, which implements the Truth in Lending Act ("TILA"). Visa appreciates the opportunity to comment on this important ANPR. In addition to the thoughts contained in this letter, Visa will submit more specific comments responding to many of the questions raised in the ANPR.

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. In calendar year 2004, Visa U.S.A. card purchases exceeded a trillion dollars, with over 450 million Visa cards in circulation. 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 Visa's member financial institutions and their hundreds of millions of cardholders.

<u>The FRB's Review of Regulation Z is Timely Given the Market and Technological Changes Since Enactment of TILA</u>

Visa strongly supports the FRB's decision to take a fresh look at TILA. TILA was enacted in 1968. At that time, the primary purpose of TILA was to provide consumers

[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.

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with the "true cost of credit" expressed as an "annual percentage rate" ("APR") and to allow consumers to compare available credit terms more readily. Ten years after the enactment of TILA, both consumers and creditors agreed with the FRB that TILA could be substantially improved. As a result, TILA was significantly revised in 1980 to simplify disclosures given to consumers, make compliance easier for creditors, limit civil liability and strengthen administrative enforcement. There have been numerous additional amendments to TILA and Regulation Z since 1980 to address an amalgam of issues and concerns. Nevertheless, we believe that a comprehensive review of the open-end credit provisions of Regulation Z is timely and appropriate.

In conducting this comprehensive review, Visa believes that the FRB should fully reevaluate existing TILA requirements in light of the dramatic changes in consumer credit markets and communications technology since TILA was broadly revised in 1980. For example, there has been a significant expansion in the number and variety of open-end consumer credit products, and the market for open-end consumer credit is far more competitive today. In addition, the number of consumers who are eligible to receive credit cards has increased dramatically. In the early 1980s, it was difficult for consumers to obtain credit cards and most consumers carried only one, or at most, two credit cards. Since then, the demand for open-end credit, and particularly for credit cards, has risen significantly due to the benefits that consumers derive from credit cards. In addition, due to technological developments, most notably the Internet, consumers have ready access to information about open-end credit products and terms, and both creditors and policy makers have efficient new tools for delivering information to consumers.

Therefore, as the FRB reviews the open-end credit provisions of Regulation Z, we strongly encourage the FRB to consider these market developments and the alternative approaches that new technologies will support, and encourage the FRB to avoid viewing Regulation Z and TILA as the sole means of addressing issues related to open-end credit plans. While Visa believes that there are a number of provisions of Regulation Z that should be modified to better facilitate informed shopping and to improve consumer understanding of open-end credit plans, we believe that it is equally important for the FRB to consider the role of Regulation Z in a broader context, as well as to consider those educational issues that can be addressed more effectively outside of Regulation Z. In this regard, there has been a tendency for some to view Regulation Z as a cure all for what are often isolated or transitory practices. While some regulatory changes clearly are appropriate, we believe that Regulation Z is not the appropriate vehicle for addressing many of these issues.

FRB Should Not Review Regulation Z in Isolation

While the ANPR includes 58 separate questions, we believe it would be a mistake for the FRB to attempt to address all of the issues raised by these questions through revisions to Regulation Z. Such an approach would only lead to longer and more complex disclosures that serve the needs of neither consumers nor creditors. We believe that the FRB's overall goal should be to enhance consumer understanding of open-end credit

transactions and to facilitate the ability of consumers to make better informed credit decisions. And, while some aspects of this goal, such as comparison shopping, can be effectively addressed through Regulation Z, other aspects can be addressed most effectively through other means. Therefore, we recommend that the FRB's review of Regulation Z include a three-pronged approach: (1) fixing Regulation Z; (2) educating consumers; and (3) exploring non-regulatory or non-TILA approaches, such as the issuance of agency guidance or best practices, to address many open-end credit issues.

Specifically, Visa believes that the FRB should examine each issue identified in the ANPR and determine whether the issue would be addressed most effectively under the first prong (fixing Regulation Z), the second prong (educating consumers) or the third prong (a non-regulatory approach).

"Fixing Regulation Z"—Current Issues Related to Open-End Credit Plans

The current Regulation Z scheme of account opening disclosures and periodic statements has been criticized by consumer groups, creditors and government officials. Some believe that consumers are given too much information through Regulation Z disclosures and that the information required to be provided is illogical and does not facilitate either comparison shopping or understanding account activity. This is in part due to the extensive disclosures required by Regulation Z and the liability provisions of TILA, which encourage creditors to "over disclose" in order to protect themselves from potential liability.

Visa believes that the dynamic nature of open-end consumer credit, and the wide variety of open-end consumer credit products, presents significant regulatory challenges. Open-end credit is fundamentally different than closed-end credit. Closed-end credit typically involves a single loan transaction and a series of repayments. Open-end credit plans, on the other hand, often involve hundreds or thousands of transactions involving an array of services spanning years or decades during which the services provided, the costs of providing those services, including the costs of funds, and market practices are all subject to significant change. To shop for and use open-end consumer credit intelligently requires a basic understanding of the nature of open-end credit. However, unlike the terms of individual accounts and the details of individual transactions that cause disclosures to differ from account to account and from periodic statement to periodic statement, the basic nature of open-end credit does not change. Therefore, there is no need to reeducate consumers of these basic facts in every disclosure or account statement. For example, the general fact that the payment must be received by the payment due date does not have to be repeated on each account or account statement.

As a result, Visa believes that the FRB should look to Regulation Z to facilitate comparison shopping for consumers opening new open-end credit plans, and to provide error resolution rights, while other purposes and goals should be addressed through educational efforts or other regulatory tools. This limited Regulation Z focus would help

to simplify account opening disclosures and periodic statements for open-end credit plans under Regulation Z and, thereby, promote comparison shopping for consumer credit.

In this regard, Visa believes that there has been significant progress in recent years in the use of "readable" language and that this progress could benefit both the regulatory language of Regulation Z and the model disclosures. Given the nature of open-end credit, the relative importance of various terms can change over time and different terms can have more or less significance to different consumers using the same open-end credit plan because of the many ways that consumers use these plans. As a result, it is not feasible to highlight all of the terms that may be important to all consumers for purposes of comparison shopping for open-end credit plans. For example, balance computation methods are complex and have a relatively small impact on most consumers. Similarly, some fees may be incurred only in unusual situations. While information on such open-end credit terms may need to be included in the comprehensive plan agreement, they are not important for comparison shopping. Accordingly, Visa believes that the "Schumer box" and initial disclosures under open-end credit plans should emphasize only those few key terms important to most consumers. Initial disclosures and the "Schumer box" then could include a statement that other terms may affect the consumer's use of the plan and that the consumer should review all of the terms in the plan agreement.

In determining the key terms that should be highlighted, Visa believes that the FRB should: (1) only highlight terms where consumer comparison shopping is essential; and (2) only include disclosures where uniformity can be achieved and uniformity is beneficial. This would lead to shorter and simpler disclosures that would enhance consumer understanding by making it more likely that consumers will actually read and understand the disclosures. Increasing consumer understanding, in turn, will assist consumers in making informed decisions.

In addition, the FRB should recognize that the APR operates differently in open-end credit than in closed-end credit. Any use of the APR should recognize this fact and provide for an APR that makes mathematical sense. The APR should only include charges that are based on the amount and duration of credit and, therefore, should not include fixed fees. This approach to APR disclosure would both simplify compliance and foster consumer understanding by making disclosures more intuitive. In particular, the FRB should reevaluate the calculation of the historical APR provided on periodic statements. Fees that are included in the historical APR, but are not based on the duration and amount of credit, such as cash advance fees, distort or "skew" the APR in a way that is confusing to consumers. Although an artificially high APR in a periodic statement may shock consumers, it does little in terms of educating consumers about the significance of their account activity. In addition, the current approach for calculating the historical APR includes some finance charges and excludes others and fails to provide a figure that is useful to consumers for comparing accounts or for understanding the costs associated with credit.

Consumer Education Outside of Regulation Z

The FRB also has asked whether there are non-regulatory approaches that could further the FRB's goal of improving the effectiveness of disclosures. In this regard, Visa believes that it is important for consumers to have a fundamental understanding of how open-end credit operates before they even begin to shop for credit.

Attempting to educate consumers about open-end plans through one-on-one disclosures is inefficient for a number of reasons. First, it leads to longer and more complex disclosures, thereby diluting efforts to highlight the most important common terms. In addition, information provided by creditors at the time of the credit transaction is often too late. Further, information provided with individual transactions can lead to repetitive delivery of the same information and ongoing costs, while serving no useful purpose, because the consumer does not read such information.

Visa believes that such information should be provided through educational efforts, rather than through creditor disclosures. More specifically, Visa believes that the federal government, and most appropriately the FRB, should take a far more active role in educating consumers about the characteristics and uses of open-end consumer credit. Rather than relying on TILA as the primary vehicle to educate consumers about open-end credit issues, we believe educational initiatives sponsored by the FRB would more efficiently inform consumers about many aspects of open-end credit. Issues such as the use of open-end credit that are common to most, if not all, credit plans should be addressed through targeted educational efforts, rather than through Regulation Z. For example, information about minimum payments, over-limit fees, payment allocation methods and payment due dates should be disseminated through educational efforts, rather than through Regulation Z disclosures.

In fact, the FRB's educational efforts should look far beyond the traditional pamphlets, like those distributed in connection with home equity lines of credit. For example, Visa believes that the FRB should seriously consider a significant and substantial long-term commitment to educate consumers about open-end credit. Such a program could include mass media messages targeted at specific topics, an interactive educational Web site and mass media promotion of the FRB's Web site. If the FRB believes that the public needs a better understanding of particular issues, such as the increased costs of making only small monthly payments on an open-end credit plan, an issue that is the subject of three questions in the ANPR, such issues could be addressed most effectively through mass media education by the FRB. Although the cost of this education might be borne initially by the FRB, rather than issuers of open-end credit, the total educational cost actually would be lower. In this regard, most issuers pass this cost on to consumers broadly.

Moreover, such an educational Web site could provide consumers with extensive information about credit terms and credit practices and about the prudent use of credit. Such a Web site could be accessed by consumers at any time—before or after opening an open-end credit plan. Information from such a Web site also could be downloaded and printed for distribution to consumers with limited Internet access.

Non-Regulatory or Non-TILA-Related Approaches

Visa also believes that TILA should not be viewed as the vehicle for addressing individual abusive practices; instead, these practices should be addressed through the agencies' unfair and deceptive acts and practices authority. Open-end consumer credit is an efficient and flexible vehicle for delivering credit to consumers. This flexibility has resulted in a wide variety of open-end credit products and an even wider variety of terms and conditions for these products. While it is possible to highlight common terms of open-end credit, a consumer can only understand open-end credit products by understanding how all of the terms of the credit product will apply to the consumer's particular pattern of account use.

A few unscrupulous creditors desiring to take unfair advantage of consumers can always do so by means that elude simple, clear disclosure of common terms. When this occurs, Visa believes that the FRB and other federal agencies should look to an approach other than TILA disclosures. For example, the banking agencies and the Federal Trade Commission have the power to address unfair and deceptive acts and practices. The disclosure of key terms should not be expanded in an effort to cover, or deter, such practices. To do so would only complicate disclosures and detract from the key information needed to compare accounts.

As long as expectations for unfair and deceptive practices are based on a full understanding of current practices and are made clearly and consistently by all federal agencies, such as through best practices developed after notice and comment, this power can be exercised by individual agency actions that provide the flexibility to deal with evolving market practices or rules written by the FRB in the case of persistent longer term abuses. This approach also would give the agencies the flexibility to address changing practices without cluttering key disclosures with information that often is of little relevance to a particular plan, and should reduce litigation by limiting and simplifying Regulation Z requirements.

Statutory Changes

Visa recognizes that some of these actions could require legislative changes, but the FRB certainly can propose statutory changes to TILA where it believes such changes are necessary to implement the program described above.