



*Submitted via e-mail to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)*

June 29, 2007

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

RE: Final Rules on Regulation Z; Docket No. R-1284

Dear Ms. Johnson:

This comment letter is submitted by the American Financial Services Association (“AFSA”)<sup>1</sup> in response to the proposed rule published by the Board of Governors of the Federal Reserve Board (“Board”) in the *Federal Register* on April 30, 2007 relating to electronic disclosures under the Board’s Regulation Z (“Proposal”). We thank the Board for the opportunity to comment on the Proposal.

### **Summary**

AFSA supports the Proposal and urges the Board to adopt it in final form with one modification, as detailed below. We believe the Proposal provides sufficient and satisfactory guidance with respect to the provision of electronic disclosures under Regulation Z. AFSA asks the Board to reconsider its approach, however, as it relates to the provision of application and solicitation disclosures electronically so as to permit a card issuer to provide such disclosures through a clear and conspicuous link provided on or with an electronic application or solicitation.

### **Specific Comments**

The Proposal would, among other things, repeal the existing interim rules pertaining to electronic disclosures under Regulation Z and state, instead, that disclosures required by Regulation Z may be provided to the consumer in electronic form “subject to compliance with the consumer consent and other applicable provisions of the E-SIGN Act.” The Board declines to provide specific interpretations of the E-SIGN Act itself in the Proposal, and we believe this is appropriate. The E-SIGN Act is self implementing and many companies have been complying with it for several years without significant need for additional regulatory interpretation. We

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<sup>1</sup> The American Financial Services Association, founded in 1916, is the trade association for a wide variety of consumer finance companies. AFSA's mission is to protect and improve the consumer credit business, maintain a positive public image, and create a legislative climate in which reasonable credit regulation can and will be enacted. AFSA operates in the public interest, encourages and maintains ethical business practices, and supports financial education for consumers of all ages.

agree with the Board that such interpretation is not necessary in the context of either the Truth in Lending Act or Regulation Z.

We also strongly support the Board's intent to exempt certain disclosures under Regulation Z from the E-SIGN Act requirements if they are given electronically. In particular, the Board proposes to exempt the so-called "Schumer box" disclosures associated with applications and solicitations, as well as the disclosures that must be provided in connection with certain electronic advertisements, from the E-SIGN Act requirements. The primary effect of such an exemption is the avoidance of the requirement to obtain the consumer's consent in order to provide such disclosures electronically. The Board correctly states that such an exemption would eliminate a potentially significant, and certainly unnecessary, burden on electronic commerce without increasing the risk of harm to consumers. In particular, the Board notes that "because... consumers are viewing the application, solicitation, or advertisement online, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online as well." We also believe it would be difficult to offer electronic applications and solicitations to consumers if they could, for some reason, decline to accept the electronic delivery of those disclosures that accompany such materials. For these reasons, AFSA strongly urges the Board to retain the proposed exemption from the E-SIGN Act as it relates to disclosures required under §§ 226.5a, 226.5b, and 226.16 of Regulation Z.

Although the Proposal avoids providing regulatory interpretations of the E-SIGN Act itself, the Board does offer in the Official Staff Commentary ("Commentary") guidance as to how a card issuer could provide electronic disclosures in compliance with Regulation Z. In general, we believe the guidance in the Commentary is useful and appropriate. We ask the Board, however, to reconsider the guidance provided in Comment 5a(a)(2)-8. In particular, it appears the Board would not condone the provision of the Schumer box disclosures through a clear and conspicuous link on or with an electronic application or reply form unless "consumers cannot bypass the disclosures before submitting the application or reply form." We do not believe this is necessary, nor is it consistent with the existing Commentary as it relates to hard copy disclosures.

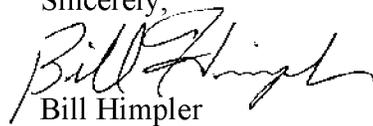
Currently a card issuer may provide paper Schumer box disclosures other than on or with an application or solicitation "if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information." A card issuer is not required to ensure that the consumer actually views the disclosures or to prevent the consumer from bypassing them. We believe this to be an appropriate standard, and one that has worked well under the existing Regulation Z. The Proposal, in fact, includes a similar standard as it relates to Schumer box disclosures that are provided *on the same page* as the application or reply form. Specifically, the Schumer box disclosures "could be located on the same web 'page' as the application or reply form without necessarily appearing on the initial screen, if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates the disclosures contain rate, fee, and other cost information, as applicable."

AFSA strongly urges the Board to permit a reference to the Schumer box disclosures in the form of a link on or with an electronic application or solicitation. The link may be to a

different web page, or it could simply autoscroll the consumer to a specific portion of the same web page. We do not believe that compliance with the Regulation Z disclosure requirements should depend on whether the clear and conspicuous reference directs the consumer to another portion of the same web page or automatically takes the consumers to the disclosures on a separate web page. In fact, the paper-based requirement assumes the disclosures are *not* on the same page as the application or solicitation. We believe the guidance with respect to electronic disclosures should be similar. Furthermore, it would appear *more likely* that the consumer would obtain the required disclosures if a link were provided, as clicking on a clear and conspicuous link is simpler and more intuitive than manually scrolling down a web page until the disclosures are found. We also do not believe it is appropriate for the Board to impose heightened disclosure requirements in connection with certain electronic disclosures, such as requiring a card issuer to prevent a consumer from “bypassing” such electronic disclosures, when no similar requirement is necessary or appropriate in connection with the same disclosures provided on paper.

Again, AFSA appreciates the opportunity to provide its comments on the Proposal. Please do not hesitate to contact me at 202-466-8616 if we may be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is written in a cursive style with a large, stylized initial "B".

Bill Himpler

Executive Vice President, Federal Affairs  
American Financial Services Association