MasterCard Worldwide
2000 Purchase Street
Purchase, NY 10577 2509

MasterCard
Worldwide

June 29, 2007

Via Electronic Delivery

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

Re: Docket No. R-1281 (Regulation B)
Docket No. R-1282 (Regulation E)
Docket No. R-1284 (Regulation Z)

Dear Ms. Johnson:

MasterCard Worldwide ("MasterCard")[1] submits this comment letter in response to the proposed rules ("Proposed Rules") published in the *Federal Register* on April 30, 2007 by the Board of Governors of the Federal Reserve System ("Board") pertaining to the electronic delivery of disclosures under Regulation B, Regulation E, and Regulation Z (collectively, the "Regulations"). MasterCard appreciates the opportunity to provide its comments on the Proposed Rules.

In General

MasterCard commends the Board on the Proposed Rules. The Proposed Rules would repeal the interim electronic disclosure rules issued by the Board in 2001 ("Interim Rules") while clarifying that electronic disclosures provided by financial institutions under the Regulations must comply with the applicable provisions of the Electronic Signatures in Global and National Commerce Act ("E-SIGN Act" or "Act"). The Proposed Rules also provide exceptions in

[1] MasterCard Worldwide (NYSE:MA) advances global commerce by providing a critical link among financial institutions and millions of businesses, cardholders and merchants worldwide. Through the company's roles as a franchisor, processor and advisor, MasterCard develops and markets secure, convenient and rewarding payment solutions, seamlessly processes more than 16 billion payments each year, and provides industry-leading analysis and consulting services that drive business growth for its banking customers and merchants. With more than one billion cards issued through its family of brands, including MasterCard®, Maestro® and Cirrus®, MasterCard serves consumers and businesses in more than 210 countries and territories, and is a partner to 25,000 of the world's leading financial institutions. With more than 24 million acceptance locations worldwide, no payment card is more widely accepted than MasterCard. For more information go to www.mastercard.com.

certain circumstances to E-SIGN Act requirements, and provide guidance in the form of amendments to the Official Staff Commentaries for the Regulations. We strongly support the Proposed Rules and urge their adoption with one suggested revision regarding Regulation Z.

As noted in our comment letter on the Interim Rules in 2001, MasterCard was concerned that the Interim Rules created ambiguity with respect to compliance with the E-SIGN Act in the context of the Regulations. We were also concerned about additional provisions in the Interim Rules that were not necessary for purposes of E-SIGN Act implementation, but that unnecessarily limited or proscribed how financial institutions and others could provide electronic disclosures under the Regulations. Subsequently, the Board lifted the mandatory compliance deadline in the Interim Rules and made compliance with the Interim Rules optional.

Since those developments, many financial institutions and others have successfully developed compliance programs allowing them to provide electronic disclosures under the Regulations. These programs effectively provide consumers with necessary protections and we are unaware of significant issues relating to compliance with the Act or the Regulations in connection with electronic disclosures. The Board notes in the Proposed Rules that industry has operated satisfactorily without significant regulatory interpretation of the Act, and the Proposed Rules appropriately avoid interfering with these developments. Thus, the Proposed Rules state simply that a financial institution may provide the disclosures required by the Regulations in electronic form, "subject to compliance with the consumer consent and other applicable provisions of the [E-SIGN Act]." The Proposed Rules also provide critical and common-sense exceptions to the E-SIGN Act requirements, discussed in more detail below.

By repealing the Interim Rules and replacing them with simpler, more straightforward requirements, the Board has significantly improved the approach to electronic disclosures under the Regulations. We strongly support the approach taken by the Board under the Proposed Rules, and urge that it be retained in any final regulations.

Regulation B

The Proposed Rule pertaining to Regulation B states that disclosures that must be given in writing under Regulation B may also be given electronically, subject to compliance with the consumer consent and other applicable E-SIGN Act requirements. This is appropriate with respect to many of the disclosures required under Regulation B, as compliance with the E-SIGN Act's consumer consent requirements is generally feasible.

The Board also recognizes, however, that strict adherence to the requirements of the E-SIGN Act could produce nonsensical results in certain circumstances under Regulation B. Specifically, a creditor may provide certain disclosures required by Regulation B to an applicant as part of an application. Consumers may access these applications electronically, and the Board appropriately requires that such applications accessed electronically must also be accompanied by certain electronic disclosures, such as those required under §§ 205.5(b)(1) and 205.5(b)(2) of Regulation B. It would not be appropriate to condition the provision of these disclosures electronically on the consumer's consent to receive such disclosures electronically. To strictly apply the Act in such a circumstance begs the question as to how a creditor would provide such disclosures with the application if, for whatever reason, the consumer did not consent to receive

the disclosures electronically despite accessing the application itself electronically. We do not believe it is appropriate to require a creditor to comply with the E-SIGN Act with respect to such disclosure requirements as specified in the Proposed Rules, and we urge the Board to retain the exception relating to compliance with the Act in the final regulations.

We also applaud the Board for providing this E-SIGN Act exception under the authority granted the Board by Congress in the Equal Credit Opportunity Act ("ECOA"). As we noted in our 2001 comment letter, there are critical distinctions between excluding electronic delivery of such disclosures from *the scope* of the Act and excluding delivery from *the requirements* of the Act. We urge the Board to reject explicitly its original interpretation in the final regulations, and to retain the exception provided in the Regulation B Proposed Rule.

Regulation Z

As with the Regulation B Proposed Rule, the Regulation Z Proposed Rule generally requires compliance with the E-SIGN Act in connection with the provision of disclosures electronically. The Regulation Z Proposed Rule also exempts the Schumer Box disclosures and those disclosures that must accompany certain electronic advertisements from the E-SIGN requirements. For the reasons discussed above in connection with Regulation B, MasterCard strongly supports the Board's approach with respect to compliance with the E-SIGN Act as it relates to Regulation Z.

We note that the Regulation Z Proposed Rule includes significant guidance in the Commentary regarding the provision of the Schumer Box disclosures electronically. We appreciate that the Board's initial indication in proposed Comment 5a(a)(2)-8 is that "[c]ard issuers have flexibility in satisfying [the] requirement" to provide Schumer Box disclosures "on or with a blank application or reply form that is made available to the consumer in electronic form, such as on a card issuer's Internet web site." We believe it is appropriate to provide such flexibility, and urge the Board to retain this concept. We are concerned, however, that this Comment does not, in fact, provide sufficient flexibility to card issuers. In particular, we note that the Board suggests a card issuer could provide a link to the electronic Schumer Box disclosures "as long as consumers cannot bypass the disclosures before submitting the application or reply form." We do not believe this is appropriate or necessary.

Existing Comment 5a(a)-2(i) to Regulation Z notes that a card issuer need not include the Schumer Box disclosures on the same page as an application or solicitation reply form. Rather, a card issuer may simply use a clear and conspicuous reference on the application or reply form to the location of the disclosures and indicate that such disclosures contain rate, fee, and other cost information as applicable. Therefore, as it relates to paper-based disclosures, the Board does not require a card issuer to present the Schumer Box disclosures in a manner that "consumers cannot bypass" so long as the card issuer provides a prominent reference for the consumer as to where the consumer can find such information.

We believe that the approach provided by the Board in the existing Commentary as it relates to paper-based disclosures is equally appropriate and applicable to electronic disclosures. The Board attempts to give comparable treatment to electronic disclosures by indicating that 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 that the disclosures contain rate, fee, and other cost information, as applicable." The Board, however, appears to limit the ability to provide a "clear and conspicuous reference" to the disclosures only if such disclosures appear on the same page as the application or reply form. As a result, the Board's Commentary treats paper-based and electronic disclosures differently, as paper-based Schumer Box disclosures need not appear on the same page as the paper application or solicitation.

MasterCard believes that the electronic reference to the Schumer Box disclosures could refer the consumer to another portion of the web page, or it could be a link taking the consumer directly to those disclosures regardless of whether the disclosures are on the same web page. It is absolutely appropriate to allow a card issuer to provide a reference to Schumer Box disclosures that may be located elsewhere than the initial screen for an application or solicitation. It is not clear, however, why such a reference meets the requirements of Regulation Z if it directs the consumer to another portion of a web page but apparently not if the reference provides a link to the disclosures themselves, which may be on a separate web page. Indeed, a clear and conspicuous link actually provides more utility to a consumer than the reference permitted by the Board in paper-based disclosures, as a link could take the consumer directly to the Schumer Box disclosures with no further effort required by the consumer. We believe the Board should encourage such a result in its adoption of final regulations.

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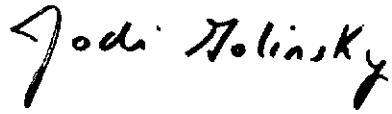
Once again, we appreciate the opportunity to comment on the Proposal. If you have any questions concerning our comments, or if we may otherwise be of assistance in connection with this issue, please do not hesitate to call me at (914) 249-5978 or our counsels in connection with this matter, Michael F.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

Sincerely,



Jodi Golinsky
Vice President &
Regulatory and Public Policy Counsel

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