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HSBC

By electronic delivery

October 12, 2007

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

Re: Docket No. R-1286

Dear Ms. Johnson:

This comment letter is submitted by HSBC Finance Corporation ("HSBC") in response to the Proposed Rule issued by the Board of Governors of the Federal Reserve System ("Board") to amend the open-end credit provisions of Regulation Z ("Proposed Rule"). Among other companies, HSBC Finance Corporation wholly owns HSBC Auto Finance Inc., HSBC Consumer Lending (USA) Inc., Beneficial Company LLC, HSBC Mortgage Services Inc., HSBC Card Services Inc., HSBC Bank Nevada, N.A., and HFC Company LLC. HSBC is part of the HSBC Group, one of the largest financial services organizations in the world which serves over 125 million customers worldwide. In the United States and Canada, HSBC businesses provide financial products to nearly 60 million customers. In the United States HSBC Bank Nevada, N.A. is a top ten issuer of general purpose and private label credit cards. HSBC appreciates the opportunity to provide its comments on the Proposed Rule to the Board.

HSBC appreciates the Board's efforts in undertaking a thoughtful and thorough approach to proposing revisions to Regulation Z. We believe the Proposed Rule represents a reasonable approach to improving several of the disclosures required under Regulation Z and includes beneficial substantive revisions to Regulation Z. HSBC also believes, however, that the Proposed Rule should be modified in various ways to result in an improved regulation for consumers and creditors alike. Our specific and detailed comments are below.

Open End vs. Closed End

The Board has identified as an issue open end credit lines that contain closed end components. Specifically, there is a concern that some open end credit lines contain "sub-accounts" which are used to make large purchases and which are individually underwritten separately from the line as a whole. Most significantly, the credit lines for these sub-accounts do not replenish. The Board has proposed to resolve this situation by requiring that the sub-accounts replenish. However, this proposal presents what is likely an unintended result that should be eliminated.

In many cases private label credit cards offer promotional financing on major purchases. These promotions (such as no payments, no interest or "same as cash") are in essence sub-accounts of the account as a whole. They have different terms from the regular account terms, and are limited in their scope and duration. Customers can make current purchases at the regular account terms while still carrying the promotional purchase. However, while the credit line as a whole will replenish as the promotional purchase is paid off, the promotional sub-account will not, because the promotional financing applies only to the purchase made on the sub-account. Current purchases made on the replenished credit line will be subject to the regular account terms, not the promotional terms. Under the Proposed Rule as currently worded, that promotional sub-account would not be permitted to be established, since the sub-account itself will not replenish. It is doubtful that this result was intended by the Board, as the key consideration that would make it revolving credit is the replenishment of the line, and not necessarily the availability of the sub-account terms. Therefore, we ask that Comment 2(a)20-2 be clarified to indicate that replenishment of the credit line as a whole and not just the sub-account be permitted in order for the line to be considered open end credit.

Finance Charge

<u>Debt Cancellation Contracts/Debt Suspension Agreements</u>

HSBC is largely supportive of the proposed changes pertaining to Debt Cancellation Contracts and Debt Suspension Agreements. There are, however, two areas of concern where HSBC advocates revision to the Proposed Rule.

i. Telephone Enrollments. HSBC's first major area of concern relates to proposed Comment 4(d)(4)-1, which intends to prohibit the use of "leading questions" or "negative consent." HSBC agrees with the implicit Board position that telemarketing scripts must fairly market these programs as voluntary for such fees to be excluded from being treated as finance charges. However, ambiguity as to what constitutes a "leading question" could leave banks vulnerable to allegations that program fees reasonably excluded from finance charge calculations pursuant to §226.4(d)(4) should not have been. Without more specific guidance to address the Board's concern, even questions such as "Would you like to purchase this service?" are susceptible to allegations that the bank used "leading questions," with potentially dire consequences. HSBC suggests more specificity within this Comment to achieve the Board's objective, while not leaving banks at risk of ambiguity. Therefore we recommend the Board omit from the final Comment any reference to "leading questions." If "leading question" remains within this Comment, we ask the Board to clarify that banks may safely utilize enrollment questions which seek a yes or no response from consumers.

ii. Added Disclosures for Debt Suspension Agreements. HSBC's second area of concern relates to the Board's proposed additional marketing disclosures when a debt suspension agreement is being advertised. Under the proposed §226.4(d)(3)(iii), a credit card issuer would be required, "as applicable" to call specific attention to the fact that a plan will only suspend payments, and will not cancel debt. It is not uncommon for a plan to combine elements of debt suspension and debt cancellation (e.g. certain events qualifying for debt suspension benefits, while others qualify for debt cancellation benefits). Furthermore, certain HSBC programs offer suspension benefits until suspension benefits are exhausted, at which point a cardholder would receive debt cancellation benefits (i.e. if an involuntary unemployment event exceeds 12 months, or a temporary disability event exceeds 24 months or becomes reclassified as a permanent disability). Given the potentially dire consequences of failing to make disclosures required to exclude program fees from finance charge calculations, HSBC recommends the Board confirm that, when prefacing the §226.4(d)(3)(iii) disclosure requirements with "as applicable," it (1) intended to cover plans strictly comprised only of debt suspension benefits, and (2) does not intend credit card issuers to confusingly disclose that a plan will not cancel debt, when it may in fact cancel debt for certain covered events, or after certain debt suspensions benefits have been exhausted under a plan.

Solicitation and Application Disclosures

<u>Payment Allocation</u>

HSBC supports the inclusion of Payment Allocation within the boxed disclosures provided under §226.5(a). Like many credit card issuers, HSBC has been providing this disclosure in some fashion for an extended period of time. Having said that, the proposed wording to be placed within the disclosure box appears overly confusing, and the usefulness of such a lengthy disclosure may be lost on the average consumer. HSBC believes it would be sufficiently clear and informative to simply state that payments are generally applied to lower APRs first.

<u>Paper Size</u>

HSBC believes the Board did not intend to mandate paper size, given its acknowledgement "[a]lthough creditors are not required to use a certain paper size…." However, the proposed commentary also provides that for disclosures, sample forms "are designed to be printed on an 8 x 14 sheet of paper." To avoid any potential misunderstanding that the Board expects or suggests 8 x 14 due to its chosen formatting, HSBC suggests an affirmative statement by the Board that disclosures may be provided on paper sizes other than 8 x 14, or alternatively to simply remain silent on the topic of paper-size if no expectation of size is intended.

Electronic Disclosures

HSBC supports the Board's proposal to establish that compliance with the E-SIGN Act would constitute effective electronic delivery of terms and conditions. Creditors should not need further guidance regarding how to effectively comply with the E-SIGN Act, as creditors should have sufficient familiarity with the E-SIGN Act requirements. Furthermore, HSBC supports the Board's position that disclosures required under §§ 226.5(a) and 226.16 need not require E-SIGN consent to be considered effectively disclosed. Since §226.5(a) disclosures are intended to allow consumers an ability to comparison shop without obligation, and §226.16 disclosures are intended to avoid selective disclosure in advertising, it would be cumbersome to force consumers through an E-SIGN process to receive such information.

Account Opening Disclosures

Oral Disclosures

HSBC supports the Board's Proposed Rule that certain fees may be disclosed orally before the fee would be imposed. HSBC believes, generally speaking, that disclosure at the time a service is being contemplated by a consumer is far more effective and informative than a disclosure provided well in advance of the time the consumer considers or accepts a product. The additional flexibility should be beneficial both to lenders and consumers.

Telephone Disclosures

HSBC would appreciate more clarity in the Board's Proposed Rule which contemplates some ability to provide disclosures by telephone to give a cardholder expedited access to granted credit. HSBC supports the Board in finding a way in which creditors could give timely access to credit, while cognizant of the need for material disclosures to accomplish the objective of informed use of credit, and avoidance of confusion of terms. As proposed, it would seem that merchants, not the banks who issue credit on their behalf, are being allowed greater disclosure flexibility. We believe that omission to be an oversight. Nevertheless, HSBC asks that the Board consider all procedures under which a consumer may receive credit under a merchant lending program. A consumer may be speaking with the merchant, or the consumer may be transferred to a lender to apply directly, before being transferred back. Further, if a disclosure process may be determined for the immediate use of credit through a merchant program, HSBC questions why a rule could not be put in place to allow more widespread informed use of credit obtained over the telephone. Seemingly, the focus should be on the timely delivery of material disclosures to effectuate informed use of credit, and therefore we recommend a general telephone exception for account opening disclosures, including whatever additional consumer protections the Board deems reasonable and necessary.

Statements

General Comments

As an introduction to our comment on statements we begin by explaining the complexities of modern day statement production. Today's statements are entirely produced during the printing process. In other words, the face of the paper stock is blank. Every letter, line, and diagram or drawing on the face of the statement is put there through laser printing. And the computer program that drives that printing is extremely complex. Each printed figure on the statement is drawn, not reproduced, through lines of computer code which describe its size, shape, thickness, and placement. Therefore, modifying the appearance of a statement requires much more complex coding than might be expected. For example, the average HSBC statement printing program contains approximately **two hundred thousand** lines of code. Therefore, rebuilding that statement requires intense, expensive, and very lengthy programming. That process is compounded by the fact that each form of statement that a bank uses may be slightly different. For instance, in our private label credit card business, where statement design is tailored to each individual merchant, HSBC uses nine statement programs that are significantly different and, in total, utilizes over 200 forms of statements.

In the Proposed Rule the Board has mandated what is in essence a complete statement redesign. While the effort that the Board put into the consumer research that led to this proposal is laudable, what is not clear is whether the existing statement designs that are in use across the industry are so confusing as to require the major expense that will be required to implement that portion of the Proposed Rule relating to statements. Moreover, the Proposed Rule for the statement design leaves little room for information that consumers want on their statements but which is not mandated by regulation. For instance, a great number of credit cards have rewards programs associated with them. Many consumers look to their statements as the source for information about their rewards programs (such rewards balance, rewards earned, rewards redeemed, expiration of rewards, etc.) but under the Proposed Rule, that information likely would be relegated to the bottom of a second page. It is not clear that those factors entered into the research that was conducted by the Board.

The second major cost to credit grantors resulting from the Proposed Rule comes from the additional statement pages that would be required to be printed. All of the various groupings and additional disclosures take up space. Using the template proposed by the Board, almost all statements will be multi-page. To add one additional page to each statement each month will result in an additional incremental monthly cost to HSBC of over one million dollars. When added to the redesign costs, the total cost of the Board's proposal is excessive when compared to the incremental benefit to consumers. We would request that the Board review the perceived benefit that the statement proposal would produce against these costs, and reconsider its value on that basis. Alternatively, due to the lengthy revision, programming and testing required to implement a new statement, we would request that the Board not require compliance with this portion of the Proposed Rule until at least 18 months after the date of its publication.

While we ask for some flexibility in the statement design, we appreciate many of the proposals that the Board made for statement simplification. For example, the elimination of periodic rates, the simplified promotional rate disclosures, and the willingness to consider the elimination of the confusing effective APR are all very much appreciated and supported.

Effective APR

With respect to the elimination of the effective APR, we would like to add our voice to the others urging the Board to adopt the alternative that eliminates it. The effective APR is a number that is not meaningful to consumers. Consumers are well aware of the fees that they pay, and awareness of the costs of credit will be more readily noticeable given certain other Board proposals related to statement structure and grouping. By requiring the fees to be put into an APR and annualized, the resulting number is often a psychological overstatement and stands in stark contrast to their actual impact. Moreover, it leads to calls from customers who do not understand what it means and who are then mistakenly lead to believe that they are being overcharged. Eliminating the requirement that it be displayed is the right thing to do, and we urge the Board to adopt that position.

Minimum Payment Disclosure

As part of this rulemaking, the Board has been charged with the task of implementing the requirements of the Bankruptcy Reform Act of 2000 that a minimum payment disclosure be put on statements, alerting consumers to the consequences of making only minimum payments. The Board received extensive comment from the industry during the Advanced Notice of Proposed Rulemaking on this topic, and all of it remains accurate. However, in light of the Board's proposal with respect to this requirement, some of it bears repeating.

HSBC agrees that minimum payment warnings, such as those provided by Congress in the Bankruptcy Reform Act, can serve as an important educational tool to those consumers who do not understand the implications of making minimum payments. However, given the numerous new disclosures the Board is proposing to be disclosed on a monthly statement, HSBC is providing comments pertaining to (i) the effectiveness of providing a disclosure on a monthly basis which is implicitly intended to be a warning; (ii) the reasonableness of providing an estimate which greatly overstates the repayment period; (iii) limiting exclusions to those who pay an account in full for two consecutive months; and (iv) further assumptions requested for estimate/actual repayment.

i. Effectiveness of a monthly 'warning'. The Board has proposed a drastic renovation of the existing monthly statement, calling attention to the ramifications of not making a timely payment, the cut off time for timeliness, the fees which have been imposed during a cycle and during that annum, and any impending changing of terms, if communicated via that channel. This is in addition to the underlying purpose of the billing statement, which is to give consumers a listing of transactions during that cycle.

In his March 1999 testimony before the Committee on Banking, Housing, and Urban Affairs, former Governor Edward M. Gramlich suggested:

> *"Regarding these additional disclosures, the Board recognizes the value of ensuring that consumers better understand the implications of making minimum payments on open-end credit plans. But the Congress might ask whether providing similar disclosures repeatedly, as required by this legislation, may have the unintended effect of creating 'information overload' for consumers receiving these disclosures. Here is where a study might be helpful."*

HSBC agrees with the concern posed. The Board is proposing numerous content and format revisions to the monthly statement, and providing additional disclosures which do not seem pertinent to the behavior of the vast majority of consumers (explained below) could result in overwhelming those consumers with information. Such consumers may not heed other warnings and disclosures the Board has deemed to require added conspicuousness.

ii. Reasonableness of an overstated generic estimate. To the extent the Board feels such a disclosure is needed, HSBC supports the Board's decision to utilize a "generic warning" largely as proposed in the Bankruptcy Reform Act. Whether or not such a warning is needed, it clearly puts into layman's terms the ramifications of making minimum payments on a simple credit balance.

However, should HSBC decide to provide generic estimates to those who call the toll-free number, consumers arguably will get an amortization estimate which greatly exaggerates the actual duration it would take to pay off the account making minimum payments. Customers of HSBC may revolve balances at varying APRs, typically categorized as (1) promotional, (2) purchase or (3) cash.

Currently in one of HSBC's general purpose credit card portfolios, roughly 15% of total receivables owed are cash transactions (some of which are revolving at a promotional rate), with the remaining 85% revolving at a purchase APR. Under Assumption (a)(3) Annual Percentage Rate of Appendix M1, "credit card issuers and the FTC must use the highest annual percentage rate on which the consumer has an outstanding balance." HSBC is cognizant of the Board's stated quandary: "If multiple APRs apply to the outstanding balance, using the lowest APR to calculate the repayment period would estimate repayment periods that are shorter for some consumers, depending on the components of the balance, while using the highest APR would estimate repayment periods that are longer for some consumers." However, as the above numbers show, there is a significantly greater likelihood that consumers will be given an inaccurate estimate when the warning is based on 15% of current balances vs. basing this estimate on 85% of balances. Rather than being forced to provide a worst case scenario and likely inaccurate estimate to all, HSBC would like an option to provide callers both (i) an estimate based on purchase APR and (ii) an estimate based on Cash APR, allowing consumers to determine which estimate best fits the composition of their account balance. This could be phrased "If your account is primarily comprised of purchase balances, your estimated time to pay your account in full is [duration], and if your account is primarily comprised of cash advance balances, your estimated time to pay your account in full is [duration].

iii. Exclusions from minimum payment disclosure. HSBC is encouraged by the Board's determination that the minimum payment disclosure is not needed for some individuals, as provided in proposed exemption §226.7(b)(12)(iii)(F) (a consumer who has paid a balance in full during 2 consecutive billing cycles need not be presented the minimum payment warning). However, HSBC believes this exemption is far too limited, and does not properly identify consumers whose own actions indicate an understanding of the benefits of making payments exceeding the minimum owed.

Based on its own payment records, HSBC believes that its consumers are generally very aware that it is in their best interest to pay more than the minimum amount owed. In fact, in one of HSBC's general purposed credit card portfolios, only 10% of cardholders who make a payment pay the minimum amount due, while 80% pay more than the minimum amount and 10% pay their account balance in full. Based on these numbers, the vast majority of HSBC customers completely disregard the minimum payment offered by HSBC. Such a large population of consumers suggests that there is no rampant misconception as to the implications of minimum payments. Ninety percent of customers would not choose to make more than a minimum payment unless they understood the benefits of doing so, and conversely understood the detriments of making only a minimum payment. Based on this evidence, HSBC encourages the Board to limit the minimum payment disclosure requirement to only those accountholders who have made only the minimum payment in the previous three consecutive billing cycles. It is those persons who would benefit from the Congressional intent of the Bankruptcy Reform Act.

iv. Further Assumptions requested. While the Board has provided generally helpful assumptions, HSBC would appreciate more guidance with respect to situations which continue to cause confusion.

A. The bank offers debt suspension agreements, the duration of coverage determined by the duration of the event triggering coverage. For example, a consumer in such a program may have the accrual of finance charges and minimum payments suspended for up to 12 months in the event of involuntary unemployment, or 24 months in the event of disability. Without knowing the duration of a covered event, should the bank's estimate/actual presume that payments are being made in months in which payments may continue to be suspended if an event continues?

B. In each of the M1 and M2 assumptions, we understand we are to assume the customer makes at least minimum payments each month. A customer may be at a penalty APR, which would revert to the underlying base APR upon 6 consecutive minimum payments. Should the bank assume continued application of a penalty APR even when the assumptions provided by the Board would terminate application of this rate after a defined period of time?

C. HSBC, as well as most other creditors, offer promotional payment plans in conjunction with its private label credit cards. These promotions may defer minimum payments altogether for a period of time, or may present to a consumer a strong incentive to make more than minimum payments (such as in the case of a "same as cash" promotion where interest charges can be avoided by paying in full within the promotional period). In either case, consumers with such a plan will be given inherently inaccurate estimates based on the Board's assumptions. HSBC therefore recommends that accounts, which contain a promotional credit plan, be exempted from the minimum payment disclosure requirements until expiration of that promotional plan.

<u>Timeframe for Mailing Statements</u>

The Board has solicited comment on whether it should make a recommendation to Congress concerning the timing of periodic statement mailing. Under section 163(a) of TILA, if a card issuer provides a grace period, the issuer must send the consumer his or her periodic statement at least 14 days before the grace period ends. HSBC suggests the current statement mailing requirements remain unchanged. HSBC believes consumers currently receive billing statements well in advance of the time to make a payment to avoid a late fee. Consider also that billing is typically a monthly occurrence, and therefore receipt of the statement at a given time is anticipated by consumers. Also the Board should consider that consumers have payment alternatives (mail, telephone, on-line or internet). In fact, roughly 32% of HSBC's customers who receive a statement make their monthly payments using on-line payment technology, and an additional number of customers make payments by telephone.

Subsequent Disclosures Requirements

Change in Terms Notices: 45-Day Notice

The Board proposes to increase the notice period before a credit card issuer can implement a change in terms ("CITs") from 15 days to at least 45 days. We urge the Board to reconsider this requirement in light of its potential impact on cardholders.

i. General Comments. In today's competitive marketplace a credit card issuer may have a need to change terms for a variety of reasons – competitive pressure, changed or changing economic conditions or a change in the risk profile of the consumer. Speed to market with these changes is critical. We also note that consumers generally receive more than 15 days advance notice before a CIT takes effect and a number of states allow consumers to opt-out of a CIT. Finally, we note that the ability of a card issuer to change terms is clearly disclosed to cardholders as part of their account agreement. Considering these factors as a whole we believe card issuers generally provide consumers with sufficient time to respond (by opting-out, shopping for a different product or negotiating different terms with their issuer) to a CIT.

A 45-day notice for a CIT would also have a significant impact on card issuers in a way which we believe the Board did not intend. In order to comply with the 45-day requirement, credit card issuers may not be able to change terms for up to 90 days depending on when the determination is made and how changes are implemented. The effective date of the CIT may also be longer if on day 1 of a consumer's billing cycle, that notice may not be sent for another thirty days in order for it to coincide with an existing mailing, such as the periodic statement. The expiration of the 45-day period would fall in the middle of the billing cycle beginning after the notice was sent (*i.e.*, 75 days after the determination was made). For many changes, the issuer must wait for the beginning of a new billing cycle, meaning the "waiting period" could be up to 90 days.

By forcing card issuers to wait for up to 90 days in the face of rapidly changing economics or credit risk, card issuers may be forced to increase the cost of credit to all cardholders to hedge for the risk that may be associated with only a small fraction of accounts. HSBC questions whether the Board considered this outcome and, therefore, suggests that any notice beyond 30 days is not beneficial to consumers. Any benefit to the consumer from a 45-day advance notice is relatively small when compared to the adverse impact on the credit card industry.

If the Board retains a provision requiring more than 15 days advance notice, we ask that card issuers have more flexibility to implement a CIT than provided by the Proposed Rule. For example, a card issuer should be able to give 15 days notice if it allows the cardholder to opt-out of the CIT or close the account, and repay the existing balances under the existing terms. The cardholder is not unfairly treated because he or she can pay of the balance under the pre-existing terms and apply for a credit card account with another card issuer.

If the Board concludes that an advance notice period is required we suggest that the period of notice should be 30 days instead of 45 days to avoid an additional billing cycle delay in revoking the promotional rate. We do not see any additional benefit to the consumer in providing 45 days notice rather than 30 days notice when the cost to card issuers in waiting those additional 15 days (or an additional billing cycle) could be quite costly.

ii. Forfeiture of Promotional Rate. Like many credit card issuers, HSBC occasionally offers promotional APRs on a specific class of transactions (i.e. purchases, balance transfers). It is the customer's responsibility to remain in good standing to retain the privileges of a promotional rate. However, if a customer should miss payments or exceed the credit limit, the promotional rate will be revoked, and the promotional balance would typically begin to revolve at the non-promotional customary APR for that transaction type (i.e. not a penalty or default rate, but a standard APR for purchases or balance transfers, as the case may be). HSBC believes the conversion of a promotional rate to a non-penalty base rate should be specifically excluded from the proposed §226.9(g)(3)(i).

First and foremost, HSBC believes the conversion of a promotional rate to a non-promotional rate should be excluded from coverage because HSBC calls specific attention in marketing materials and disclosures to the need to make timely payments and to keep the account in good standing to preserve promotional terms. In addition to disclosures, HSBC believes consumers are aware that 'promotions' are temporary in nature, and should therefore not be intertwined with actual "changes" to the underlying account base pricing (i.e. the customary rate for purchases and cash advances).

Second, the promotional balances would not convert to a delinquency/penalty rate, as noted above, which creates confusion concerning additional disclosures required in subsections (B) through (D) of §226.9(g)(3)(i).

Those added disclosures presume that the balance is converting to penalty pricing. Specifically as to subsection (B), no penalty rate is being applied; as to subsection (C), the balance is neither moving to a temporary rate which can be cured from, nor is the application of customary pricing permanent, as the rate could thereafter move from customary to penalty APRs upon further default; and as to subsection (D), no delinquency or penalty rate is being applied to any balances in this scenario.

Lastly, given the short duration of some promotional rates, subjecting these rates to the same 45 day notification could have the unintended consequence of forcing credit card issuers to discontinue promotional pricing following a single default event, which would be a detriment to many consumers; most HSBC promotional offers currently allow 2 default events before the promotional rate is terminated. If the Board determines that it will continue to require advance notice for the termination of a promotional offer, HSBC believes that it would be appropriate to provide notice following the initial default event, so that it would not need to wait until the 2 default events have occurred before imposing the contractual customary pricing.

iii. Penalty Pricing Notices. HSBC is also concerned about the 45-day notice requirement as it pertains to penalty pricing. In addition to the concerns expressed above relating to the CITs, in the context of penalty pricing we believe that this provision could have additional, significant unintended consequences.

As an initial matter, we note that the application and solicitation materials, and the cardholder agreement describe those events which may cause an account to be repriced based on "on us" behaviors. It is worth noting that the Board in previous rulemaking required card issuers to describe with specificity those events which triggered a repricing. Accordingly, HSBC believes that consumers will be well informed of the events which trigger a penalty pricing. It is also important to note that consumers agree, as part of the cardholder agreement, to the penalty pricing terms just as they agree to any other portion of the contract between the issuer and the cardholder. The burden imposed on card issuers in having to provide advance notice before implementing penalty pricing, when the triggers have been disclosed in a cardholder agreement, is not justified considering that the penalty pricing is only triggered by bad behavior on the part of the consumer.

We believe this provision may over time result in card issuers shifting costs to consumers who abide by account agreements in order to compensate for the risk posed by those who do not. We suggest that this is not a result intend by the Board.

As discussed above, if the Board retains a requirement to provide notice of a change in pricing described in the account disclosures and cardholder agreement, and such notice must be provided a certain period of time prior to the contract provision becoming effective, we ask the Board to consider circumstances in which notice could be provided in advance of a cardholder tripping all of the "triggers."

Format of Change in Terms Provided by Statement

In addition to the conceptual issues we discuss immediately above with respect to the CIT and so-called penalty pricing disclosures, we also believe that the Proposed Rule's formatting requirements for these disclosures should allow for greater flexibility. The format for a CIT provided in a statement is a further discouragement to credit card issuers to provide this notice in an important monthly account communication. The proposed formatting requirements for these disclosures to be located on the first page are rigid, and force other presentation re-arrangement for a segment of accounts. The Board should consider other presentation options, such as a note to the location of change in terms notices if not presented on the front page. If a credit card issuer determines its statement has too many first page requirements, it would be encouraged to mail a CIT in a more costly self mailer, which may not be given the same attention by consumers as the monthly statement. We therefore ask the Board to allow a card issuer to provide these two types of disclosures in a clear and conspicuous manner with the periodic statement, but not necessarily mandate a specific location.

Convenience Checks

The Board has proposed new disclosure rules for convenience checks which are presented more than 30 days after account opening disclosures have been furnished to a consumer. Specifically, §226.9(b)(3)(i) would require certain disclosures to be placed "on the front of the page containing the checks" and §226.9(b)(3)(ii) which would require that convenience checks offered more than 30 days after account opening which have a variable rate would be required to be accurate within 30 days. Regarding the placement of disclosures on the front page containing checks, HSBC believes there are alternative means of providing disclosures which would be readily noticeable to consumers and, therefore, opposes strict placement requirements as to such disclosures. Concerning the 30 day accuracy, HSBC believes mailed convenience checks should be subject to the same accuracy requirements which apply to other mailed offers as contemplated in §226.5a(b)(1)(ii), which requires that direct mail credit offers containing a variable rate be accurate within 60 days prior to mailing. As with other mailed credit offers, there are a significant number of steps which go into the development of a convenience check mail program - a pool of eligible prospects is selected, the creative development and review process takes place (and disclosures are reviewed for compliance), the eligible pool is audited, and the material is then sent for final production, with such final production itself taking as much as 2 weeks before mail is finally sent. Any change in the prime rate during this process would significantly hamper HSBC's ability to disclose a prime rate that is accurate within 30 days of mailing and, in fact, could result in forcing the business to abandon a campaign midstream to start over. As a technical point, the proposed wording "when the disclosures are given" in §226.9(b)(3)(ii) adds confusion in the context of mailed disclosures; it is unclear when a mailed disclosure is "given" even while it is readily known when it was mailed. Based on these concerns, HSBC requests that the Board deviate from the proposal and, as to mailed convenience checks, consider variable disclosures accurate if the disclosures were accurate within 60 days of the mailing of such disclosures.

Advertising Disclosures

The Board has made a number of recommended changes to the advertising disclosures required by §226.16. While we appreciate the proposed simplification of the television and radio disclosures required by this Section, we feel that many of the other changes would be problematic if applied to promotional credit plans that appear as sub-accounts to private label open end credit accounts (see the discussion in our comments on open end vs. closed end credit). Many types of promotional credit plans feature reduced or fixed monthly payments, together with or apart from lower promotional APRs. To apply the Proposed Rule on introductory rates and minimum monthly payments to these types of promotional credit plans could result in confusing or even misleading disclosures.

The Board proposes that advertisements which state a minimum monthly payment also state the total of payments and the time period required to pay the balance if only minimum monthly payments are made. In addition to the general comments that we made in connection with the minimum monthly payment disclosure requirement for periodic statements (many of which are equally valid here), we would point out that promotional credit plans which advertise a monthly payment do not lend themselves to or in some cases even require the disclosures that the Board envisions. For example, a furniture retailer might advertise sofas at a reduced interest rate and $49 per month for two years. If that promotional plan results in the sofa being paid off in 2 years, then the proposed additional disclosure is unnecessary, since the period is stated and the total of payments is easily calculated. If the promotional credit plan does not result in the sofa being fully paid off, then after the promotional period ends, any remaining balance will be included with the general account balance of non-promotional purchases. In that case, determining the total of payments and length of payoff period is problematic, if not impossible. Calculating both of those disclosures would require the creditor to prognosticate how high the consumer's regular balance will be when the promotion expires and the remaining promotional balance rolls into that regular balance. And it is not a solution to assume no other balance at the expiration of the promotion, since doing so will lead to an often gross understatement of both disclosures. Moreover, since multiple promotions could exist on the same account, any disclosure of the payoff period and total of payments for any one of them would provide the consumer with little value. Therefore we would ask the Board to exclude advertisements of promotional credit plans from the coverage of these requirements. In the alternative, we would suggest that the requirement that these disclosures be equally prominent to the advertised monthly payment be eliminated with respect to promotional credit plans. Such a requirement would create confusing looking ads which would detract from the consumer understanding a promotion which could be of benefit to them.

Similarly, we would posit that the advertising requirements for introductory rates are not applicable to promotional credit plans which may feature lower interest rates for limited periods of time. In its definition of introductory rate, the Board seems to agree, but some clarification might be necessary. The Board defines an introductory rate as one which is applicable to "a credit card account" for an introductory period. By using that term, it would seem to exclude a promotional credit plan which is not a credit card account, but only a portion of the credit card account. Moreover, a lower rate for a promotional credit plan is not actually "introductory," since it may become available for a specific purchase at any time in the life of a credit account, and not specifically at the beginning. Therefore, we would ask that the Board clarify that an introductory rate is one that is applicable to an account as a whole at the inception of the account.

Billing Error Provisions

i. Third-Party Intermediaries. Section 226.13(a)(3) of Regulation Z implements Section 161(b) of TILA which defines a "billing error" to be, among other things, "[a] reflection on a statement of goods or services not accepted by the [consumer] or not delivered to the [consumer] in accordance with the agreement made at the time of the transaction." The Proposed Rule would add a new Comment 226.13(a)(3)-2 to clarify that Regulation Z's billing error provisions also apply to those circumstances in which a consumer uses a credit card, for example, to fund a separate account with a third-party payment intermediary. The Board proposes to "clarify" that the billing error provisions in Regulation Z apply when the consumer uses the third-party account to purchase goods or services that are not accepted by, or are not delivered to, the consumer.

HSBC submits that this Comment represents a potentially significant change in billing error requirements under Regulation Z. In today's world, in order for a card issuer to be held responsible, even indirectly, for the actions of a merchant, the card issuer must be extending credit for purposes of the consumer's transaction with that merchant. The Comment would, however, make the card issuer indirectly liable for the merchant's action even though the (i) the issuer's card is not accepted by the merchant; (ii) the merchant has not been vetted by another participant in the payment system in which the issuer is participating; (iii) the issuer has no direct or indirect mechanism to protect itself against rogue or untrustworthy merchants accepting payments through third-party intermediaries; and (iv) the third-party payment system is in a better position to provide the consumer protections advocated by the Board. Although the Board states that "there is little difference between a consumer using his or her credit card to make a payment directly to the merchant on the merchant's Internet Web site or to make payment to the merchant through a third-party intermediary" we disagree. The fact that a third party is involved can dramatically change the risk to the card issuer for the reasons enumerated above.

The statute and regulation provide cardholders with protections if the third-party intermediary does not deliver the goods or services to the consumer, or if the consumer does not accept the goods or services. We do not believe the language of the statute supports a Comment that would confer billing error protections for any subsequent transactions involving that third-party intermediary account, especially since such transactions are not "reflect[ed] on a statement" provided by the card issuer. We therefore urge the Board to delete this proposed Comment.

If the Board retains the substance of this Comment, we ask that the Board narrow its applicability to those instances where it is possible to trace a specific credit card transaction to a specific purchase of goods or services indirectly through a third-party payment intermediary. Aside from the logistical difficulties in tracing a billing error back to what is essentially the equivalent of a cash advance, we do not believe a consumer can reasonably believe that he or she receives TILA protections in connection with a purchase funded by a cash advance, regardless of the "currency" involved.

ii. Timeframe to Resolve Billing Errors. Section 161 of TILA states among other things that a card issuer must resolve a billing error within two complete billing cycles (in no event later than ninety days) after the receipt of the billing error notice." Section 161(c) of TILA states that a "creditor who fails to comply with the requirements of this section…forfeits any right to collect from the obligor the amount indicated by the obligor [as a billing error] and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed $50." Therefore, it appears that Congress established the timeframe in which a card issuer must resolve billing errors. Congress also stated that if a creditor did not meet its obligations, including those relating to the timeframe in which the billing error must be resolved, the creditor must forfeit to the consumer any right to collect the challenged amount with a cap of $50.

The proposed revision to the Commentary would appear to require a creditor to forfeit its right to collect from a cardholder if a billing error investigation exceeded the allotted time. In so doing, the Commentary would read out of the statute the provision capping the forfeiture to $50. The Board suggests that this change in the Commentary is a "clarification" to the existing law. However, HSBC has for years relied on the forfeiture cap provided in 161(c) if a billing error investigation exceeds the statutorily allotted time without criticism from the Board or any other regulatory body. Furthermore, given the strong statutory support for the $50 liability cap, we believe that the proposed change in the Commentary appears to be more of a substantive change to Regulation Z than a "clarification" of existing interpretations. We therefore urge the Board to reconsider this revision to the Commentary. If the Board does not reconsider the proposed change and card issuers are not allowed to rely on the forfeiture cap, the costs to card issuers in resolving disputes will increase because they will (i) need to increase staffing to inefficient levels to ensure all billing error investigations are resolved within 2 billing cycles (which in the case of a complicated dispute or a dispute involving an uncooperative cardholder is not always possible) or (ii) write off the entire amount of the dispute if the investigation is not completed within 2 billing cycles.

iii. Rules Pending Resolution. Section 226.13(d)(1) of the Proposed Rule would require the card issuer to ensure that it does not debit a consumer's asset account for any part of the amount in dispute where the cardholder has agreed to pay a predetermined amount each month and subsequently disputes one or more transactions that appear on a statement. A billing error notice received any time up to 3 business days before the scheduled payment date would need to be given effect. Practically speaking this requirement if adopted will present card issuers with numerous operational challenges. First, the dispute needs to be logged, analyzed and then communicated to the area which manages the payments. For this to occur within 3 business days will require card issuers to allocate additional resources to ensure this is accomplished and to make changes to its system so that all or a portion of the payment can be stopped. Second, the disputed amount may be more than the scheduled payment. In such a case how does a card issuer allocate the disputed amount to the minimum payment due? Is the card issuer required to recalculate the minimum payment due? Because of the numerous operational issues associated with implementing this proposal we urge the Board to delete it. We also note that consumers are in a better position to manage their scheduled payment because they have the option of modifying on-line the payment amount, usually up to at least 2 business days prior to the scheduled payment date.

Advertising Requirements for Home Equity Loans

We appreciate the efforts of the Board in enhancing the advertising requirements for home equity plans, thus creating a more level playing field and enabling consumers to more effectively compare various creditors' products. While pleased with the progress made by the Board in establishing a clear regime of home equity plan advertising disclosures, we would suggest an important change to these requirements.

Currently, in § 226.16(d)(4) (entitled, "Tax Implications"), creditors are required to make sure that any references to the tax deductibility of interest expenses incurred under a home equity plan are not misleading. It appears in the Proposed Rule that the Board is expanding the home equity plan "triggering terms" to include the new Account-Opening Disclosures noted in Section 226.6(a)(3) (Although numerated in the Proposed Rule as Section 226.6(a)(6), this citation appears to be a scriveners error.) and, in particular, all statements that consumers should consult a tax advisor regarding the tax deductibility of their home equity plan's interest and charges. See § 226.6(a)(3)(v). Although we agree that an advertisement which touts a home equity plan's tax deductibility should disclose that the consumer should consult outside tax advisors, it is not clear why this should "trigger" the additional disclosures under Sections 226.16(d)(1)(i), (ii) and (iii). Therefore, we would urge the Board to enhance and clarify the current disclosure requirements of § 226.16(d)(4), instead of creating an additional "triggering term" related to tax implications.

Effective Date

HSBC strongly urges the Board to provide card issuers with sufficient time to review and implement any Final Rule published as a result of this comment process. As the Board knows, the Proposed Rule is extremely comprehensive and its implementation will require significant systems work, operational revisions, and testing. We note that the Board granted creditors a year to implement the significant revisions to Regulation Z published in 1981 and has in other instance provided for a long implementation period. In light of the increased complexity of systems and products since 1981, we believe it would be appropriate to grant card issuers no less than 18 months, and preferably 24 months, to implement the Final Rule.

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Again, HSBC appreciates the opportunity to provide its comments on the Proposed Rule. Please do not hesitate to contact me at (831) 759-7098 in connection with this comment.

Sincerely,

David C. Bouc
Deputy General Counsel