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July 18, 2008

***Via Electronic Mail***

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

Re: Docket No. R-1286

Dear Ms. Johnson:

Barclays Bank Delaware ("BBD") is pleased to be able to submit this comment letter in response to the Proposed Rule regarding the open-end credit provisions of Regulation Z published by the Board of Governors of the Federal Reserve (the "Board") in the *Federal Register* on May 19, 2008 ("Current Proposal")\*. BBD appreciates the opportunity to make its views known on the Current Proposal.

BBD is a partnership focused issuer of credit cards with almost \$7 billion in credit card receivables and approximately 4.8 million credit card accounts. Founded in 2001, BBD is one of the fastest growing credit card issuers in the United States. As a bank focused on the issuance of credit cards, BBD appreciates the opportunity to make its views known on the Current Proposal.

The Current Proposal sets forth a number of proposed revisions to the Board's comprehensive proposal to amend Regulation Z in so far as it applies to credit cards that the Board published in the *Federal Register* on June 14, 2007 ("Prior Proposal"). BBD will not repeat in this letter the comments it previously submitted with regard to submitted with regard to the Prior Proposal. BBD believes that most of the specific proposals in the Current Proposal are appropriate and well thought out. BBD's comments are limited to those issues that are most impactful to it. It will address the issues in the order presented.

**Electronic Disclosures (§ 226.5(a)(1))**

The Current Proposal would allow creditors to make certain disclosures electronically, without having to comply with the consumer notice and consent procedures of the E-Sign Act, as long as the consumer requests the service

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\* The Board also published in the Federal Register a proposal to declare certain credit card practices as potentially unfair or deceptive ("UDAP Proposal"). BBD will submit a separate comment letter of the UDAP proposal on or before August 4, 2008. However, to the extent certain provisions of the Current Proposal are impacted by the UDAP proposal, BBD's comments in this letter might reflect on on the UDAP proposal as well.

electronically. BBD believes that this is the proper interpretation of the E-Sign Act, and supports the Board's adoption of this proposed Commentary provision.

The consumer notice and consent procedures of the E-Sign Act apply only to those disclosures that are required to be provided in writing. Certain of the disclosures at issue in the proposed Commentary provision are not required to be provided in writing and may be provided orally. As a result, E-Sign procedural consent requirements do not apply to those disclosures. Moreover, imposing a notice and consent requirement is likely to complicate matters for consumers and create operational burdens on creditors in connection with transactions that otherwise could be completed quickly and easily over the internet or through other electronic means.

#### **Minimum Finance Charges (§ 226.5a(b)(3))**

The Current Proposal would permit creditors to exclude the minimum finance charge from both the Schumer box and the account opening table if the minimum finance charge is \$1.00 or less. BBD supports this change and the Board's efforts to make disclosures simpler, easier to understand and more meaningful.

The Schumer Box and Account opening table are intended to increase consumer understanding of credit card offers by including only that information most important to consumers in an easily understandable format so that the consumer can make an educated decision as to whether or not to apply for the card (Schumer Box) or how best to use their card (account opening table). Including extraneous or relatively unimportant information in the tables only serves to detract from the effectiveness of the disclosure of more important terms. BBD believes that the Board is correct that a minimum finance charge of \$1.00 or less is not important information and should be excluded from these tabular disclosures. No one makes a decision regarding whether or not to apply for a particular card or how to use their card on the basis of the amount of the minimum finance charge.

#### **Foreign Transaction Fees (§ 226.5a(b)(4))**

The Prior Proposal prohibited creditors from disclosing foreign transaction fees in the Schumer Box. It did require that foreign transaction fees be included in the account opening table. The Current Proposal would require such fees to be disclosed in both tables. The Board indicated that the rationale for this change was to prevent confusion among those consumers who might receive account opening tables as part of the application process rather than Schumer Box disclosures. BBD opposes this proposed change and believes that foreign transaction fees should be excluded from the Schumer Box.

One of the purposes of Regulation Z is to provide customers with the information they need to make informed decisions at the right time. The Schumer Box is intended to be a less comprehensive disclosure than the account opening disclosure. As stated above, the Schumer Box should contain only that information

most important to consumers in making a decision as to whether or not to apply for a particular card. In contrast, the account opening disclosure is a much more inclusive disclosure document that is intended to educate consumers as to all facts of the card they have already chosen and how best to use that card. BBD submits that foreign transaction charges are not that important to most consumers in selecting a card; they are important to consumers as to how best to use their card when they travel. In any instance in which Regulation Z permits an account opening disclosure is given in lieu of the Schumer box the consumer will receive a more comprehensive disclosure. However, this does not mean that the Schumer box needs to be modified to include the additional information required to be disclosed in account opening disclosures. BBD believes that very few consumers shop for credit cards on the basis of the amount of foreign transaction fees. Including such fees in the Schumer Box will only serve to detract from the disclosure of more important terms that consumers do wish to consider in deciding whether or what cards to apply for.

**Notice of Increase in APR Due to Default or Delinquency (§ 226.9(g))**

The Prior Proposal would require that a change in terms notice be provided under new § 226.9(g) in instances where the APR is increased as a result of default or delinquency. The UDAP Proposal would limit the application of such a rate increase to balances incurred after 14 days after the notice is provided unless the consumer becomes 30 days past due. The Current Proposal attempts to provide guidance as to how the change in terms notice should address the possibility that the APR increase may apply to balances existing 14 days after the notice is printed.

BBD believes that the default APR change in terms disclosures that the Board has proposed will be difficult to disclose and for consumers to understand. The proposed Commentary provisions contain examples of the manner in which the 14-day, 30-day and 45-day periods work in these inter-related rules. The fact that it takes multiple examples to illustrate the proposed rules, underscores the unduly complicated nature of the rules that the Board proposes. Given the Board's conclusions in the UDAP Proposal regarding the alleged inability of consumers to understand relatively straight forward disclosures, how is it likely that consumers will understand the manner in which the proposed rules are intended to work.?

More important, BBD opposes the proposed requirement in the Current Proposal that creditors must send a second notice of change in terms if the creditor provided a notice with respect to increasing the APR on new balances after 14-days and the consumer becomes 30-days past due after the 45-day notice period in the prior notice. BBD believes that a change in terms notice which informs the consumer that the increased APR will apply to existing balances after the 14 day period has expired if the consumer becomes 30-days past due should be sufficient whether or not the 30-day trigger occurs during the 45-day notice period.

Presumably, the purpose of requiring a second notice before imposing the increased APR on existing balances is to provide consumers with the ability to consider

alternatives with respect to such balances, such as not becoming 30-days past due or transferring such balances to another creditor. BBD submits that this purpose is adequately served by the first notice. The first notice adequately informs the consumer that a 30-days delinquency will result in the rate increase applying to existing balances. Moreover, since the first notice provides that the increased APR applies to balances incurred after the 14 day period, the consumer has already been provided the opportunity to take whatever action the consumer believes will best protect his or her interest.

### **Crediting Payments (§ 226.10)**

The Current Proposal would require that any payment a creditor receives by mail before 5 p.m. be credited as of the date of receipt as long as the consumer complies with reasonable payment instructions. The existing rule under Regulation Z that allows creditors to delay crediting a payment received after a reasonable cut-off time would continue to apply to payments received by other means, such as electronically. BBD encourages the Board not to adopt the 5 p.m. rule for crediting mail payments.

At the outset, we believe that creditors should not be required to provide same-day credit for payments merely because they are received before the close of an ordinary business day. Banks require a reasonable time to process payments. Providing open-end creditors a reasonable amount of time to process payments received by mail is appropriate in light of the fact that Regulation Z requires such creditors to credit borrowers for payments on their open end account on the date the payment is received, even though creditors do not receive funds after depositing the check for one or more days afterwards.

A requirement that credit card issuers give credit for mail payments received at the end of the business day would cause significant operational problems. Payments that physically can not be processed that calendar day will need to be back dated. This would create operational issues and customer confusion. In addition, card issuers typically must provide data on payments received each day to their processors by the early evening so that the processors can update cardmember account records over night. In many cases, it will not be possible to process payments cardmembers received shortly the end of the business day and meet these processing. Information delivered to processors will necessarily incomplete. As a result, issuers would have to implement a back dating process for checks received at the end of the business day.

Further, card issuers begin their processing of payments early in the morning so that they can complete them in time for the processing of accounts that begins at the end of the business day. Issuers receive a very high percentage of their mail at the post office in the early hours of the morning and through lunch time. Only a very small percentage of mail payments are available at the post office after early- to mid-afternoon and before 5 p.m. Thus, there would be relatively few consumers whose payments are received after early- to mid-afternoon who would not receive same-day credit under the Current Proposal. Card issuers should not be required to

restructure existing processing deadlines and back dating processes for over-night account processing for these few consumers.

**Card Substitution (§ 226.12(a)(2))**

The Current Proposal would prohibit the issuance of a substitute credit card for a card that has been inactive for 24-months if the substitution involves a change in the merchant base that accepts the credit card. BBD opposes this change because it believes that this rule could limit substitutions that provide consumers with enhanced card usage and value.

BBD believes that most consumers appreciate “upgrade” substitutions in which the consumers receive a credit card with greater merchant acceptance than that associated with the previous card. Indeed, consumers generally do not lose card utility in such substitutions because the typical substitution involves the issuance of a general purpose for a card that is accepted at only a single retailer. Further, BBD’s experience is that such substitutions create very limited opportunities for identity theft and therefore that the value of these substitutions far outweigh identity theft concerns.

BBD agrees that a second credit card should not be issued in substitution for a first credit card after the relationship with the first credit card has been terminated. However, we do not believe that a rule that a relationship necessarily is terminated after two years of inactivity. Some cards may have expiration dates that are longer than two years. The consumer may just not have shopped at that particular retailer during the two year period. There is no reason to assume that simply because the first card has been inactive for two years there is not an existing account relationship with the consumer.

**Deferred Interest Offers (§ 226.16(h))**

The Prior Proposal contained provisions implementing new introductory rate offer disclosure requirements that were mandated by the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”). These introductory rate disclosure provisions contained detailed rules regarding the content, size and placement of disclosures designed to ensure that consumers understand the terms and conditions of introductory rate offers. The Current Proposal goes one step further and creates new disclosures obligations for deferred interest transactions based on the rules for introductory rate offers, even though BAPCPA did not impose new requirements in connection with such offers. BBD opposes this new disclosure requirement.

BBD is concerned about the proliferation of detailed disclosure requirements where there has been no demonstration that the new disclosures are needed. Deferred interest rate offers have been available to consumers for years and we believe they are readily understood by consumers. Most consumers are familiar with the fact that most deferred interest promotions provide that interest will be charged from the initial transaction date if the consumer does not pay the balance in full by the end of

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the deferred interest period. BBD believes that creditors should have the flexibility to adopt disclosures regarding the terms and conditions of their deferred interest offers that meet the circumstances of the promotion. BBD is unaware of any evidence that consumers not understanding such offers. As a result, BBD submits that it is not appropriate for the Board to adopt yet another technical compliance requirement for creditors offering these programs and create potential liability if such technical disclosures are not provided properly.

Again, BBD appreciates the opportunity to provide its comments on the Current Proposal. If you have any questions or comments, please do not hesitate to contact me at [cwalker@barclaycadrus.com](mailto:cwalker@barclaycadrus.com) or (302) 255-8700. Thank you.

Sincerely,

Clinton W. Walker