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July 18, 2008

Via Electronic Mail

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:

MasterCard Worldwide (“MasterCard”)¹ submits this comment letter in response to the Proposed Rule pertaining to the open-end credit provisions of Regulation Z published by the Board of Governors of the Federal Reserve (“Board”) in the *Federal Register* on May 19, 2008 (“Current Proposal”). MasterCard appreciates the opportunity to provide its comments on the Current Proposal.

The Current Proposal provides a limited number of revisions to the comprehensive proposal to amend the open-end credit provisions that the Board published in the *Federal Register* on June 14, 2007 (“Prior Proposal”). As requested by the Board, MasterCard will not repeat in this letter the comments it previously provided on the Prior Proposal, but rather will limit its comments to the revisions proposed in the Current Proposal.

Similarly, the Current Proposal is related, in certain respects, to the Board’s proposal to amend Regulation AA that was published in the *Federal Register* on May 19, 2008 (“Regulation AA Proposal”). MasterCard will submit a separate comment letter on the Regulation AA

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.

Proposal that includes comments on those aspects of the Board's current rule making efforts that are best explained in the context of that Proposal.

General Comments

MasterCard is not offering comments on each of the specific items in the Current Proposal, but will focus on those issues that we have identified as the most significant ones. As a general matter, however, we appreciate that the Board has published revisions it is considering to the Prior Proposal and provided an opportunity for comment on those revisions. MasterCard believes that this additional opportunity for comment is helpful to ensure a more complete opportunity to provide input on the new rules.

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

The Current Proposal would allow creditors to provide certain disclosures electronically, without complying with the consumer notice and consent procedures of the E-Sign Act, if the consumer requests the service electronically. MasterCard believes that this is the proper interpretation of the E-Sign Act, and supports the Board's adoption of the proposed Commentary provisions.

As noted by the Board, the consumer notice and consent procedures of the E-Sign Act expressly apply only with respect to disclosures that are required to be provided in writing. The disclosures at issue in the proposed Commentary provisions are not required to be provided in writing, but may be provided orally. Thus, these E-Sign procedural consent requirements do not apply. Moreover, imposing a notice and consent requirement is likely to impose complications to consumers and operational burdens on creditors in connection with transactions that otherwise can 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 a minimum finance charge from both the Schumer box and the account opening table if it is less than \$1.00 (adjusted for inflation). MasterCard supports this change and the Board's efforts to make disclosures more meaningful.

The tabular disclosures are intended to increase consumer understanding by including a limited amount of information in an easily understandable format. Including excessive information in the table detracts from the effectiveness of the disclosure. MasterCard believes that the Board is correct that a minimum finance charge of less than \$1.00 is not important information that should be included in these tabular disclosures. Further, we commend the Board for making this amount indexed to inflation to reflect the fact that over time the exemption should apply to a larger minimum finance charges.

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

The Prior Proposal required creditors to disclose foreign transaction fees in the account opening table, but prohibited them from being included in the Schumer Box. The Current Proposal would require such fees to be disclosed in both tables. The Board indicated that this

change was intended to prevent confusion among consumers who received account opening tables as part of the application process rather than Schumer box disclosures. MasterCard opposes this proposed change and believes that foreign transaction fees should be excluded from the Schumer Box.

The Schumer box, by design, is intended to be a less comprehensive disclosure than the account opening disclosure. Thus, in any instance in which Regulation Z permits an account opening disclosure is given in lieu of the Schumer box the consumer will be given a more comprehensive disclosure. However, this does not mean that the Schumer box disclosure will confuse consumers. MasterCard believes that very few consumers shop for credit cards on the basis of foreign transaction fees. Thus, such fees are appropriately excluded from the Schumer box, which is intended to disclose only a select number of key account terms. Likewise, given the relatively low importance of foreign transaction fees to consumers in applying for accounts, it is unlikely that the fact that some disclosures provided with applications may contain information about them while others do not is unlikely to cause any significant difference to consumers.

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

The Prior Proposal would required a change in terms notice under new § 226.9(g) if the APR is increased as a result of default or delinquency, and the Regulation AA Proposal would limit the application of such a rate increase to balances incurred 14 days after the notice unless the consumer becomes 30 days past due. The Current Proposal provides guidance on the manner in which the change in terms notice should address the possibility that the APR increase may apply to balances outstanding 14 days outstanding after the notice.

MasterCard is concerned that the default APR and related practices and disclosures that the Board has proposed will be difficult to disclose to consumers 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 in these inter-related rules work. The fact that it takes this number of examples to illustrate the proposed rules, and that most people will need to draw a calendar with the various dates to track the example, plainly shows the unduly complicated nature of the rules that the Board proposes creditors disclose to consumers. Especially given the Board's conclusions in connection with the Regulation AA Proposal about the inability of consumers to understand relatively straight forward disclosures, it is unlikely that consumers will understand the manner in which the proposed rules are intended to work.

In addition, MasterCard opposes the requirement in the Current Proposal that creditors would be required to 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. MasterCard believes that the first change in terms notice sent to consumers, which informs then that the increased APR will apply to balances existing after 14 days if they become 30-days past due should be sufficient whether or not the 30-day trigger occurs during the 45-day notice period. Indeed, the notice proposed by the Board (G-21) does not make this distinction to the consumer.

The purpose of requiring a second notice to impose the increased APR on balances outstanding after 14 days presumably is to provide consumers with the ability to consider alternatives with respect to such balances, such not becoming 30-days past due (and thus avoiding the application to such balances) or transferring such balances to another creditor. However, both of these purposes are adequately served by the first notice. The first notice adequately informs the consumer that 30-day delinquency will result in the rate applying to such balances. Moreover, since the first notice provides that the increased APR applies to balances incurred after the 14 day period, the consumer should already be considering potential balance transfer options after that notice if such a transfer would be beneficial to the consumer.

Crediting Payments (§ 226.10)

The Current Proposal would provide that any payment that a creditor receives by mail before 5 p.m. must be credited to the consumer's account that day if 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. MasterCard strongly urges the Board to not adopt the 5 p.m. "per se" 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 before the close of an ordinary business day. It is well established in banking operations that a customer needs to provide the bank a reasonable time to process a transaction. Common examples of this include cut-off times to obtain availability of checks being deposited or sending an ACH or wire transfer. Providing open-end creditors a reasonable time to process payments received by mail is especially important in light of the fact that the prompt crediting rule in Regulation Z requires such creditors to provide borrowers with credit on their open end account on the date the payment is received, even though the creditor does not receive funds after depositing the check for one or more days afterwards.

Importantly, a requirement that credit card issuers must give credit for mail payments received at the end of the business day would cause significant operational problems. Card issuers typically must provide data on payments received each day to their processors by the end of the business day or in the early evening so that the processors can update account records over night. In many cases, it will not be possible to process payments received shortly the end of the business day and meet these processing deadlines. Card issuers should not be put in the position of either violating the new 5 p.m. cutoff time or incurring extensive expenses to revise operations that have worked well for most consumers.

Further, card issuers begin their payment processing early in the morning so that they can complete them for 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. There is only a very small percentage of mail payments that 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 for over-night account processing for these few consumers.

Finally, MasterCard submits that the “one-size-fits-all” approach of specific cut-off time for all creditors should not be adopted. The existing provisions of Regulation Z properly recognize that creditors should have the flexibility to adopt “reasonable” cut-off times that meet legitimate business needs. Different creditors will have different operations with respect to processing mail payments and updating account records, including different time zone considerations. Consumers are adequately protected from improper practices in delaying posting of payments by a requirement that the cut-off be reasonable, and the existing standard provides creditors the flexibility to conduct their operations without cost inefficiencies that do not provide significant consumer benefits.

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 is being made because of a change in the merchant base that accepts the credit card. MasterCard opposes this change because it believes the one-size fits all rule could limit substitutions that provide consumers with enhanced card usage.

Although the Board notes that some consumers may be concerned about identity theft issues in connection with credit card substitutions, MasterCard believes that most consumers appreciate “upgrade” substitutions in which the consumers receive a credit card with greater merchant acceptance than 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 card accepted at all merchants in a network for a card that is accepted at only a limited number of merchants.

Moreover, many card substitutions are preceded by a change-in-terms notice so the consumer has advance notice (and frequently the right to opt-out), which reduces the risk for identity theft. In many instances the general purpose card that will be issued in substitution of a card accepted at a single retailer will have different terms than the other card. Thus, the creditor will send an advance notice, satisfying the change-in-term notice requirements and informing the consumer in many instances that they can opt-out of the substitution and terms change by notifying the creditor. Many consumers are thus provided with notice that a new card will be sent, and the opportunity to retain their old card before the creditor effects the proposed substitution.

MasterCard 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 terminated. However, we do not believe that a per se rule that a relationship is terminated after two years of inactivity is appropriate. Some cards may not have expiration dates or have expiration dates that are longer than two years. There is no reason to assume that there is not an existing account relationship with a consumer for the first card merely because the first card has been inactive for two years. Instead, if any limits are needed to reflect that a card relationship no longer exists and thus substitution is not permitted, a more appropriate test would be whether the consumer could use the card without having to reapply for a new account.

Deferred Interest Offers (§ 226.16(h))

The Prior Proposal contained provisions implementing new disclosures required in connection with introductory rate offers that were imposed by the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”). These introductory rate 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. Even though BAPCPA did not impose new requirements in connection with deferred interest offers, the Current Proposal would create new disclosures for such transactions based on the rules for introductory rate offers. MasterCard opposes the new disclosure requirements.

MasterCard is concerned about the regulatory proliferation of detailed disclosure requirements, especially those provided in a retail establishment or at the point of sale, where there is not a compelling need for new disclosures.² Deferred rate offers have been available to consumers for many years and, to the best of our knowledge, they are readily understood by consumers. Most consumers are familiar with the fact that many deferred interest promotions provide that interest will be charged from the transaction date if the consumer does not pay the balance in full by the end of the deferred interest period.

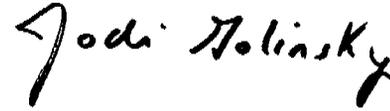
More importantly, MasterCard believes that creditors should have the flexibility to adopt disclosures regarding the terms and conditions of their deferred interest offers that meet the circumstances of the promotion. Creditors have disclosed these terms in a variety of ways and, again as far as MasterCard is aware, there is not evidence of consumers not understanding such offers. As a result, MasterCard 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.

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² For example, the Prior Proposal would require a card issuer to provide the APR in the account opening table itself, as opposed to allowing an issuer to provide that information elsewhere but as part of an integrated document. This is unnecessary, and it will be extremely difficult and costly to implement. We reiterate our concerns with this provision from the Prior Proposal as part of our comments on the Current Proposal because we urge the Board to take a broader view of how its revisions will cumulatively affect the provision of credit in a retail environment and at the point of sale.

Again, MasterCard appreciates the opportunity to provide its comments on the Current Proposal. Please do not hesitate to contact me at (914) 249-5978, or our counsels at Sidley Austin LLP in connection with this matter, Michael McEneney at (202) 736-8368, James Huizinga at (202) 736-8681, or Karl Kaufmann at (202) 736-8133.

Sincerely,

A handwritten signature in black ink that reads "Jodi Golinsky". The signature is written in a cursive, slightly slanted style.

Jodi Golinsky
Vice President and
Regulatory & Public Policy Counsel

cc: Michael F. McEneney, Esq.
James A. Huizinga, Esq.
Karl F. Kaufmann, Esq.