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Jennifer J. Johnson
Secretary
Board of Governors of
the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Regulation Z; Docket No. R-1370

Ladies and Gentlemen:

GE Money Bank appreciates the opportunity to provide the following comments on the proposed amendments to Regulation Z published by the Board of Governors of the Federal Reserve System ("Board") in the Federal Register on October 21, 2009 (the "Proposal"). 74 Fed. Reg. 54124. We have limited our comments to those issues that we believe are critical to resolve in order to avoid unintended disruption in the availability of credit to consumers on private label and co-branded credit cards, especially those offered at the point of sale ("POS") in retailer locations. Specifically, our comment focuses on the following issues:

- **Promotional APR Disclosures** - More flexibility is needed regarding the advance promo disclosures.
- **Ability to Pay** - Alternative methods of assessing ability to pay are needed.
- **Transitional Issues** - Non-CARD Act requirements should not be accelerated and other transition rules are needed.
- **Partial Grace Period** - Requirement should not apply to accounts that continually revolve, merely because issuer waives trailing interest if balance is paid in full.
- **Internet Posting of Card Agreements** - Clarification and additional time is requested.
- **Payment Re-Allocation On Deferred Interest Transactions** - Flexibility is needed to accommodate cardholder requests to reallocate payments.
- **Variable Rate Disclosures At POS on New Accounts** - Flexibility is needed to provide current rate information outside the account opening table (the same accommodation as was made for risk-based pricing).

* **Penalty Rate in Late Payment Warning** - An "up-to" disclosure should be permitted.
* **Periodic Payment Advertisements in Catalogues** - Chart form disclosures in catalogues should be permitted to use different fonts and styles than used in the remainder of the catalogue, as long as the disclosure is clear and conspicuous.

Each issue is discussed in more detail below.

(1) Promotional APR Disclosures (Proposed §§ 226.9(c)(2)(v)(B), 226.55(b)(1))

Issuers generally are allowed to increase an APR after the expiration of a promotional rate offer, without a change in terms notice (proposed § 226.9(c)(2)(v)(B)), and to apply the increased APR to the promotional balance (proposed § 226.55(b)(1)), if before the promotional period begins, the issuer discloses to the consumer the length of the promotional period and the APR that applies after expiration of the promotion. As the Board recognized in the Proposal, this requirement causes substantial operational issues for promotional transactions offered at POS. We request that the Board adopt clarifications or changes in the following areas to ensure that consumers continue to have the benefits of these types of promotional offers.

First, because there may be multiple APRs that could potentially apply to cardholders within a program, a requirement to disclose a cardholder's actual go-to APR before the promotional period begins continues to present numerous difficulties to issuers and merchants, notwithstanding the transition period granted issuers to redesign POS disclosure systems. Absent further flexibility in the POS disclosure processes, we believe that it will be impractical or impossible to provide these disclosures without a substantial redesign of the POS purchase and check out processes at virtually all retailer locations and websites. We believe that the extraordinary cost involved in such redesign, including the coordination of the systems of the issuer, its processor and the retailer, is not justified when disclosures with substantially the same benefits for consumers can be provided without the enormous operational burdens presented by the permanent rules proposed by the Board.

To address these problems, while continuing to provide the cardholder with meaningful disclosure, we request that the following be expressly permitted:

* Issuers should be permitted to provide the cardholder with an up-to APR permanently, and not just for a transition period. This approach would permit merchants to standardize the required disclosures for all cardholders and would still alert the cardholder that an increased APR will apply after the promotion ends.
* Issuers should be given flexibility to provide the required disclosures with a receipt or other document provided at POS at conclusion of the transaction. This would enable

merchants to provide the disclosures through the retailer's cash register receipt system, which provides written receipts at conclusion of the transaction.

- Issuers should have an exemption similar to the one granted for telephone transactions in Comment 9(c)(2)(v)-5 for promotional transactions at POS, even if disclosures are provided after the consumer leaves the POS. Specifically, such disclosure should be sufficient as long as the consumer can cancel (or void) the transaction without cost after receiving the written disclosures.

Second, issuers should be able to provide these disclosures electronically, without having to comply with the disclosure and consent requirements under the eSign Act, if the consumer enters into the transaction electronically. The two most common examples of this type of transaction are the checkout for a website purchase and an electronic signature pad in a brick and mortar store location. Many consumers who do not open their private label accounts electronically (and thus have not obtained eSign disclosures in an electronic application process) want to take advantage of promotional offers where the transaction is conducted electronically. For website purchases, issuers should not be required to redesign checkout pages and route these customers from on-line checkout pages to an eSign Act process merely to provide a promotional rate offer. Similarly, for electronic pin pad transactions, retailers should not be required to redesign pin pads to include eSign disclosures and consents, or redesign cash register receipt systems to print out a paper disclosure from the cash register before the transaction is completed. Instead, in these instances, like in connection with Schumer Box disclosures and advertising disclosures, issuers should be able to provide the short and simple disclosures that are required electronically without complying with the eSign Act.

Third, issuers should be expressly permitted to provide advance disclosures of promotional transactions that may be available, from time to time, at retailers. Specifically, issuers should be permitted to provide such disclosures together with periodic statements, general promotional mailings or other documents provided to customers. Both the Card Act and the Proposal merely require that the issuer provide the disclosure before the promotional period begins. The Commentary should be modified to give issuers flexibility to provide such disclosures when convenient and continuously rely on such disclosures with respect to promotional purchases that consumers may make thereafter.

Fourth, the Proposal creates a requirement that the promotional disclosures be provided in "close proximity" to the promotional APR. We request that the Board expressly provide issuers with flexibility to comply with this requirement, which was not in the statute, in at least two circumstances: (i) an issuer that provides the promotional disclosures through a periodic statement (either on the statement or by a separate insert) should be permitted to cross reference the "go to" APR on the statement, and (ii) an issuer that provides the promotional disclosures at the same time it provides a Schumer Box or account opening table should be permitted to cross reference the rates in those disclosures. In both of these situations, the minimal (if any) benefit of requiring the APR to appear immediately next to the other promotional disclosures is heavily outweighed by the very significant operational burdens of repeating an account specific disclosure elsewhere in the cardholder's materials.

An additional item related to promotional APRs is the requirement of a minimum six-month period, under § 226.55(b)(1). We believe that Comment 55(b)(1)-2 should be clarified to provide that the six-month period can be calculated based on a "window" approach (as in Comment 55(b)(1)-2.i) whenever the promotion applies to all qualifying transactions during the window, and not only to a single transaction. Thus, as in existing Comment 55(b)(1)-2.i, this approach would work for a promotion offering a discounted APR on all purchases made between January 1 and June 30, with a higher APR to apply as of July 1. Similarly, an issuer could offer the same promotion for all balance transfers that occur between January 1 and June 30, or all purchases of $500 or more between January 1 and June 30, or any other series of transactions that occur during the window period. On the other hand, if the promotion applied to one specific transaction (for example, get a discounted APR on your next one transaction), then the six-month period would have to be measured from the actual transaction date.

This same concept should be applied in the case where a cardholder may purchase an item, but posting may be delayed to a point less than six months from the expiration date of a promotion. For example, a cardholder may purchase a custom-made piece of furniture, and the transaction does not post until 8 weeks later, when the furniture is delivered. The compliance with the six-month rule should be based on the date of the transaction, not the date of posting.

(2) Ability to Pay (Proposed § 226.51)

Although the CARD Act does not require it, the Proposal requires that an issuer consider a consumer's income or assets in determining a consumer's ability to make minimum payments on the account. This is a problem for issuers because they generally do not directly consider income in evaluating credit, and significant operational changes will be required to collect and evaluate income information. Issuers have years of experience with reliable means of assessing creditworthiness that are statistically validated for predictiveness, many of which are not based primarily (or at all) on income and assets. For safety and soundness reasons, issuers must continue to rely on their existing creditworthiness models; those models simply cannot be redesigned by February 2010. Requiring issuers to superimpose another layer of creditworthiness by considering a consumer's income or assets will necessarily lead to tighter credit and less retail sales. There is no indication that Congress intended a particular method for assessing creditworthiness or that methods used by banks were inadequate; in fact, Congress considered and rejected an amendment that would have required creditors to consider income, which strongly suggests that Congress did not intend such a requirement. Unlike mortgage loans where it is common to calculate debt to income ratios in assessing creditworthiness, credit card payments typically are low enough that assessment of income is neither necessary nor predictive of the ability to repay.

For these reasons, we believe that the Board should not impose a general requirement to consider income and assets in determining the cardholder's ability to repay. Instead, for obligations like these, the much more predictive consideration is the consumer's credit history. However, to the extent that the Board determines to generally impose an income requirement, we strongly urge the Board to grant issuers flexibility to employ reasonable underwriting procedures and not require banks to change time and statistically tested standards without good reason. In particular, if there will be an income requirement, we request that the Board clarify or modify the Proposal to address five points regarding this new requirement.

First, issuers should have flexibility to obtain reliable income and asset information from sources other than the applicant. Applications for private label credit cards are commonly provided at checkout in retailer locations, and many consumers will not want to provide such sensitive information to a store associate in a checkout line. Alternative means of obtaining income also should be permitted where an issuer requests income, such as on a written application, and the consumer does not provide it (e.g., leaves the field blank or writes something non-responsive). As long as income or asset information is reasonably reliable, it should not matter that it is obtained from a third party source. Even if the Board does not believe appropriate models are available today, it should not preclude the development and use of such models in the future by adopting a per se rule that prohibits them.

Second, an issuer that requests income or asset information from an applicant should have flexibility in formulating the request. For example, rather than asking for the exact amount of an applicant's income, an issuer might obtain a verification that the applicant has a minimum income amount or income within a specified range. Such general indications of income and assets should be sufficient if the minimum or range of incomes stated would reasonably support the ability to make the required minimum payment.

Third, with respect to increasing credit lines on existing accounts, issuers should be able to rely on payment history on an account by a consumer in assessing that consumer's ability to make the minimum payment on that same or a similar account. For example, an issuer should be able to rely on the fact that a consumer has consistently paid on time in determining whether a consumer can make the minimum payment on the account if the credit line is increased. Such actual payment history on the account in question is the most helpful information in assessing the ability of the consumer to make the required minimum payment on the account.

In fact, some issuers (such as ourselves) have historically taken a conservative approach to initial credit lines. We frequently start a customer with a lower initial line with the expectation that we will increase the line once the customer has proven his or her ability and willingness to pay by making on time payments for a certain time period. We then proactively increase the credit line to a higher level. This flexibility to consider actual payment behavior in lieu of income or asset information is especially important for the existing customers with accounts in place as of February 22 because there was no regulation requiring the collection of income or asset information about those customers at the time the customers were approved for credit. Requiring this information from existing customers now would thwart our, and other issuers', proactive credit line increase programs, resulting in less available credit for people who qualify for it, and decreased retail sales.

Fourth, the Board should adopt a de minimis exception to the income requirement for accounts on which the minimum payment which the consumer would be expected to pay is less than a specified dollar amount. There are many credit card accounts on which minimum monthly payments are only the amount of a utility bill or other ordinary monthly expense, rather than a substantial loan payment. For these smaller monthly payment accounts, issuers should not be required to demand income information from consumers when such information is not necessary or appropriate to determining the ability to make the monthly payments. Alternatively, the Board could adopt a de minimis exception based on a small credit line less than a specified dollar amount.

Fifth, the Board should allow issuers to rely on household income and not require issuers to use only the income of the individual that is liable on the account. Historically, to the extent that income has been collected in connection with retailer credit card accounts, some issuers have obtained household income. This appropriately allowed one spouse to rely on income of the other spouse, without resort to technical (and sometimes confusing) community property or similar state laws. The Board should allow this practice to continue, consistent with safe and sound banking practices under which the issuer generally assesses the consumer's ability to make minimum payments. A contrary interpretation would hinder the ability of stay at home parents who care for children from obtaining credit.[1]

The income requirement will require major operational changes, especially for POS applications where it will be necessary to change data fields to collect and transmit information that previously has not been requested. Further, credit line increases for existing accountholders will be extraordinarily difficult because income information has not been previously collected from consumers or has been collected with respect to households rather than individuals. As a result, if the Board determines that one or more of the foregoing changes should not be adopted permanently, we ask that the transition rules recognize the operational difficulties and temporary relief be provided. For example, if an income requirement is imposed for credit line increases, it should apply only for accounts opened after February 22, 2010.

(3) Transitional Issues

We ask that the Board address the following four transitional issues when it finalizes the Proposal.

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[1] We recognize that special consideration will need to be given to the ability of applicants under 21 to rely on household income, but believe that issue can be addressed separately.

First, we believe that the Board should keep the effective date of July 1, 2010 for all rules in the Proposal that are not required by the CARD Act to have an earlier effective date. Prior to the CARD Act, the Board had determined that this effective date was needed for the requirements imposed as part of the revisions to Regulation Z. We accepted that determination, and we believe that such time continues to be needed and is appropriate. Like other issuers, we relied on the Board's indication of the July 1, 2010 effective date in prioritizing the massive amounts of systems and other work that is needed to come into compliance with the new requirements. These time frames are especially important with respect to private label and co-brand programs offered through retailers because of the need to coordinate necessary changes with the retailer's systems and operations. Indeed, it is especially important that issuers have until July 1, 2010 to implement the new account opening disclosure requirements and billing statement content and formatting requirements, which are not impacted by the CARD Act amendments. We thus urge the Board to retain the original effective dates on which the industry has relied and confirm this as soon as possible, even before the final regulations are issued. If for some reason, disclosures with an original effective date of July 1, 2010 are required to be imposed by February 22, 2010, the Board should provide an express exemption for advertisements and other materials that issuers and retailers prepared before the new effective date in reliance on the July 1, 2010 effective date.

Second, we request that the Board clarify the following items regarding the minimum six month promotional period under proposed § 226.54(b)(1):

- The six-month requirement does not apply to a promotional financing transaction entered into before February 22, 2010, even if the promotional period expires after that date. For example, a consumer may enter into a deferred interest transaction with a promotional period of 90 days on January 22, 2010. In that instance, assuming the issuer provided appropriate promotional disclosures before the beginning of the promotional period, the issuer would be able to assess the deferred interest if the consumer did not pay in full during the 90-day promotional period, even though the promotional period ended after February 22, 2010.

- The six month requirement does not apply to a promotional transaction entered into before February 22, 2010, but which is posted to the credit account after that date because of a delay in delivery of goods being financed in the transaction. For example, in December 2009, a consumer may order furniture subject to a 90 day deferred interest promotion. The charge may not be posted to the consumer's account until the furniture is built and delivered, which, in this example, occurs February 25, 2010. In this instance, an issuer should be able to provide the promotion for a period of less than 6 months (90 days) because the transaction was entered into before February 22, 2010.

Third, we request that the Board clarify that, for transactions entered into before February 22, 2010, if an issuer for whatever reason did not provide an appropriate promotional disclosure before the beginning of the promotional period, the issuer should be able to increase the rate to the post-promotional rate by providing notice and opt-out to the customer as required by the regulations in effect at the time the transaction was entered into. This transition rule is required, for example, with respect to promotional transactions that were entered into before the promotional disclosure requirement was adopted in the July Interim Rule and that end after February 22, 2010. Even for transactions entered into after the July Interim Rule, if the issuer did not provide the alternative promotional disclosures allowed by § 226.9(c)(2)(v)(B) of the Interim Rule, it arguably is not possible to comply with the notice and opt-out procedure before the February 22, 2010 effective date of the Proposal, if the promotional transaction ends after that date, because the consumer is provided the right to opt out until the end of the promotional period / effective date of the change. More generally, issuers should be able to comply with rules applicable at the time the promotional transaction is entered into, and not be required to comply with the rules that might apply when the transaction ends.

Fourth, we ask that the Board confirm that the requirement that issuers use fixed due dates, as set forth in proposed § 226.7(b)(11)(i)(A), only applies to periodic statements mailed after February 22, 2010, and not to statements mailed before that date which have due dates after February 22, 2010. This is the approach that the Board took with respect to many of the periodic statement requirements in the August 2009 interim final rule, and we believe it would be appropriate here as well.

(4) Partial Grace Period (Proposed § 226.54(a)(ii))

The Proposal would prohibit an issuer from imposing finance charges as a result of the loss of a grace period if those finance charges are based on any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period. We request that the Commentary be revised to expressly state that a consumer who continues in revolver status from one billing cycle to the next is not entitled to the partial grace period rule in the second billing cycle merely because the issuer does not charge "trailing interest" in the second billing cycle if the consumer paid the purchase balance in full. The Supplementary Information to the Proposal indicates that the partial grace period rule should not apply in this instance because the consumer does not lose a grace period (i.e. does not move from transactor to revolver status). It also is not in a consumer's interest to require issuers to impose trailing interest in order to avoid being required to provide the partial grace period rule to accounts that revolve every month. Although this seems to be the clear intent of the Proposal, an express statement is very much needed to protect issuers from a contrary judicial interpretation in an area that can be very confusing.

(5) Internet Posting of Card Agreements (Proposed § 226.58)

We request that the Board address two issues with respect to this portion of the Proposal. First, proposed § 226.58(f)(1) requires that an issuer maintain "on its publicly available Web site the credit card agreements that the issuer is required to submit to the Board. . . ." We ask that the Board clarify that an issuer may post copies of its private label or co-brand card agreements on a Web site of the retailer that accepts that card and that not all of an issuer's card agreements need to be posted on the same Web site. Otherwise, the provision might be read to require an issuer of multiple private label cards to post all of its agreements on the issuer's Web site when consumers would be more likely to find the agreements if they are posted on the retailer's Web site.

Second, under proposed § 226.58(f)(2), issuers must promptly provide a copy of the cardholder's agreement to the cardholder if the issuer does not post and maintain the cardholder's agreement on its Web site. Proposed Comment 58(f)(2)-3 states that an issuer has 10 business days after receipt of a consumer's request to provide such a copy. We request that this time period be extended to at least 60 days. Many issuers have a large number of different cardholder agreements and creating the operational infrastructure to provide consumers with integrated copies of their cardholder agreements, including intervening terms changes communicated by change-in-terms notices, in 10 business days will be unduly burdensome and costly to issuers. Moreover, since this requirement is new, it should only apply to new accounts opened on or after February 22, 2010. Issuers may have accounts on the books dating back as long as 30 years. In such instances, while the issuer has good records of what terms apply to the accounts, specific copies of each customer's underlying credit agreement may not be available.

Finally, an express exemption needs to be provided for accounts purchased from another issuer prior to the effective date. Many of these purchases have been completed in the past years when there was no requirement to be able to provide consumers with a copy of their cardholder agreement, and purchasers did not impose such a requirement on sellers. Although purchasers obtained reasonable assurances as to the contract terms on the accounts they were purchasing, they did not anticipate it would be necessary to reconstruct individual contract forms under Regulation Z. It will be difficult for many purchasers to comply with the requirement at this time when the seller may not even be in existence.

Many of these issues also could be addressed by clarification that, at least with respect to accounts opened prior to February 22, 2010, an issuer can comply with § 226.58(f)(2) by providing the requesting consumer with a document that provides the information required to be included in an account opening table, as applicable to the consumer's account. This would give the consumer the most substantive account information, without requiring the great effort of compiling an integrated contract.

(6) Payment Re-Allocation On Deferred Interest Transactions (Proposed § 226.53(b))

The Proposal generally requires issuers to apply payments in excess of the minimum payment first to the balances at the highest APR, but proposed § 226.53(b) creates an exception under which such payments must be applied to a deferred interest balance during the last two billing cycles immediately preceding the expiration of the deferred interest period. We appreciate that the Board conducted consumer testing that raised significant questions about the ability of consumers to choose the manner in which payments should be applied to their account balances. However, we have substantial experience with consumers asking us to reallocate payments on their accounts to deferred interest balances and request that the Board adopt a limited exception to the payment allocation rule. Specifically, we believe that an issuer that applies payments as specified in proposed § 226.53 should be allowed, if the issuer receives an unsolicited request from a consumer, to do the following: (i) apply payments received prior to the last two billing cycles to a deferred interest balance, and (ii) apply payments received during the last two billing cycles to a balance other than the expiring promotion.

Based on our substantial experience with servicing deferred interest transactions, we believe consumers want this option. We also think that there is no significant risk of creditor misconduct if the exception is limited to unsolicited requests that payments be re-allocated after an issuer initially complies with § 226.53. If we do not have this flexibility, our customer service representatives will be forced to tell customers that their requests cannot be accommodated because we are prohibited by law from making the requested change.

(7) Variable Rate Disclosures At POS on New Accounts (Proposed § 226.6(b)(2)(i)(A))

The Proposal generally requires issuers offering variable rate accounts to include in the account opening table an APR that was in effect during the last 30 days. This requires issuers providing account opening tables at POS to change out stock, within 30 days, every time a variable rate on the account changes for APR disclosures. Issuers thus incur substantial costs, both for distribution and replacement of stock, as well as for destroying stock that is out of date. We believe it is important for the Board to adopt a limited exception for variable rate disclosures in account opening tables that are provided at POS at retailer locations. Specifically, we request that issuers be allowed to include in the account opening table the variable rate as of the date the disclosure is prepared, with an indication of the date as of which the variable rate was current, and supplement the account opening table with a separate disclosure outside of the table, stating the variable rate that was current as of a date not more than 30 days from the date the disclosure is given. To the extent that the Board believes it is useful, this supplemental disclosure could be put into the format of a box, and together the two disclosures would be considered an integrated document. We think that providing the flexibility to provide the disclosure outside of the account opening table will not significantly reduce the effectiveness of the disclosure for consumers and will substantially reduce operational expenses for issuers. If this alternative is not acceptable, we request that the Board extend the period within which creditors are required to change stock, at least for POS disclosures, from 30 days to 90 days. This extension would not significantly affect the value of the disclosures to consumers, since index rates generally do not move greatly during such short periods, but would provide substantial operational and cost benefits to issuers with respect to reprinting and restocking the disclosures.

(8) Penalty Rate in Late Payment Warning (Proposed § 226.7(b)(11)(i)(B))

The Proposal requires a periodic statement to disclose any increased periodic rate (expressed as an APR) that may be imposed on the account as a result of late payment in a monthly warning message. The Proposal would expressly allow an issuer to disclose a range of rates, or the highest rate, if the rate may be increased for more than one feature. We request that the Board also allow issuers to disclose a range of rates or a highest rate for a card program where different penalty APRs apply to different accounts in the program. For example, some consumers in a program may not have received a change in terms for a program (possibly because their account was not active at the time of a change), or may have opted out of a change in terms relating to an increase in the penalty APR. As a result, different customers under the program may have different penalty APRs.

Importantly, some systems do not have the operational capability to tailor the statement warning message as a variable message and include the precise penalty APR that applies to each account (as it is not possible to insert customer-specific financial information into a non-variable field of the billing statement). As long as the highest or range of penalty APRs is provided, the consumer is given adequate forewarning of the potential application of the penalty APR. There is no detriment to customers at all in allowing a more generic warning message since the intention of the warning message is just to give customers notice that paying late can have serious consequences. Before the customer's account becomes subject to the penalty APR, a consumer-specific disclosure of that customer's penalty APR is required to be given under proposed § 226.9(g), with 45-days notice.

(9) Periodic Payment Disclosures in Catalogues (Proposed §§ 226.16(b)(2) and (c))

The Proposal requires an advertisement for credit to finance the purchase of goods or services that states a periodic payment amount to disclose the time period to repay and the total of payments, with the disclosure generally being required to be in equal prominence to the statement of the periodic payment. In addition, the Proposal extends the ability to provide advertising disclosures in catalogues by table or schedule to this new advertising disclosure in § 226.16(b)(2) as well as the trigger term advertising disclosure under § 226.16(b)(1).

We request that the Board clarify that the table or schedule disclosures satisfy the equal prominence requirements of § 226.16(b)(2) if the chart or table clearly and conspicuously discloses the relevant information, even though the disclosures appear elsewhere in the catalogue and may be in a different style, font or color to the periodic payment disclosure on advertising pages. Absent some flexibility in this regard, we are concerned that it will not be possible to take advantage of the chart or table disclosures that have worked well for catalogue advertisements. In that regard, we believe that periodic payment disclosures are useful to consumers because they help consumers on a budget know their monthly obligations – providing such disclosures should not be made so cumbersome as to be unworkable.

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Again, we appreciate the opportunity to provide our comments on the issues discussed above. Please contact the undersigned if you have any questions or we can be of further assistance.

Sincerely,

Kurt Grossheim
President,
GE Money Bank