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April 14, 2010

***By electronic delivery***

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-1384, Truth in Lending, Regulation Z***

Dear Ms. Johnson:

TD Bank, N.A. appreciates this opportunity to comment on the Federal Reserve Board's proposed amendments to Regulation Z to implement provisions of the Credit CARD Act having an effective date of August 22, 2010. The proposal addresses two major areas of revision: the requirement that penalty fees be "reasonable and proportional"; and the requirement to reevaluate rate increases on a periodic basis. TD Bank, N.A. has comments to offer on the first of these requirements.

TD Bank, N.A. is one of the 15 largest commercial banks in the United States, with \$152 billion in assets, and provides consumers with a full range of financial products and services at more than 1,000 locations from Maine to Florida. TD Bank, N.A. is a wholly-owned subsidiary of Toronto-Dominion Bank, which is headquartered in Toronto, Canada. Toronto-Dominion Bank and TD Bank, N.A. also operate subsidiaries and divisions in insurance, wealth management, merchant services, mortgage banking, government banking, private label credit cards, insurance premium financing and other financial services.

TD Bank, N.A. offers 5 credit card products to its retail bank customers and is ranked 43rd among credit card issuers with just over \$300 million in managed receivables. A recent entrant into the credit card issuer space, having just launched the products in 2008, TD Bank, N.A. remains well positioned for growth, despite an industry where the top 3 issuers have over 50% of market share and hold portfolios with upwards of \$100 billion each.

The Retail Card Services division of TD Bank, N.A. provides private label credit card programs to small and mid-sized specialty retailers. Our portfolio has over 300,000 active cardholders in all 50 states with \$400 million in outstanding balances.

Reasonable and Proportional Fees. The Board has proposed three options in determining the reasonableness of fees.

A. The first proposed option permits an issuer to charge a penalty fee for a particular type of violation (such as a late payment) if it has determined that the amount of the fee represents a reasonable proportion of the costs incurred by the issuer as a result of that type of violation. Among the violations discussed are late payments, returned payments, and over-the-limit transactions. Guidance is provided regarding the types of costs incurred by card issuers, and comment is specifically requested on the feasibility of the allocation of costs. Comment is also requested on whether there are additional costs incurred by card issuers other than those discussed in the proposed Commentary.

While the proposal regarding late fees allows for consideration of collection costs such as staffing, phone calls and letters, it does not allow for inclusion of charge-offs as a cost of collection. Late payments carry the risk that an entire balance is in jeopardy, not just the amount of a single payment. In addition, delinquent accounts have a higher risk weighting, thus the capital requirements for those accounts are even higher than non-delinquent accounts. Charge-offs represent the largest expense associated with non-payment and should be permitted, along with cost of capital, in calculating the costs associated with the late payment violation. It is respectfully suggested that the entire balance should be considered and larger fees be allowed for larger balances, so that the consumers who expose the bank to the most risk pay for it.

B. The second proposed option is to calculate fees based upon a deterrent model, requiring a card issuer to determine the reasonableness of fees on the basis of their effectiveness as deterrents. This is not feasible for smaller or newer issuers that lack the portfolio scale and historical data with which to create such a model. Conversely, large issuers would need to experiment with multiple fee levels over many years of specific modeling to assess deterrent value.

C. The third proposed option is to use: the lesser of five percent of the actual dollar amount associated with a specific violation (such as five percent of the minimum periodic payment which is overdue, as a late payment fee); or an annually-adjusted safe harbor figure. For small issuers, the safe harbor will likely be the only option because the other two options will be very costly and difficult to implement. As a result, this will reduce revenue that insulates a card issuer from losses and will result in a reduction of available credit and the amount of credit. Merchants rely on consumers having ready access to credit. By reducing access to available credit, there will be a negative impact on the economy.

Further, the use of an annually-adjusted safe harbor figure raises issues with respect to disclosure. It may be considered a change in terms requiring advance notice and an opportunity to reject the change. Card issuers will also need guidance on providing information to consumers regarding the index used to calculate the figure each year, which may be confusing to most consumers.

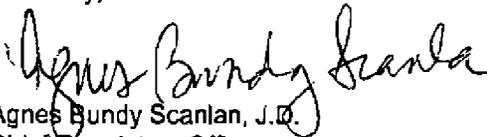
It is respectfully suggested that any percentage-based limit on fees be calculated using the full balance at risk, rather than the minimum periodic payment which may be late or for which the payment is returned. This proposal would best align the fee with exposure to risk. Also the formula for calculation of minimum periodic payments may vary within the industry, and is not necessarily tied solely to the balance due. A flat percentage of the full balance would

provide uniformity of calculation for the industry and be more readily understood by consumers.

An annually-adjusted safe harbor figure may best be calculated using specific credit card industry average figures. In determining a formula for calculating this figure, it is important to include not just costs associated with collections, but also operating costs to underwrite, process and originate accounts plus ongoing operating costs for risk management. Such a formula might consist of total costs, including capital expenses and a set percentage of charged-off balances, divided by the number of late fees billed annually.

For the foregoing reasons, TD Bank, N.A. respectfully submits that any percentage-based method of imposing fees for violating the terms or other requirements of a credit card account should be based upon the full balance due on the account, that the deterrent model method is impracticable and should not be included in the regulation, and that the safe harbor method should use a figure based on actual industry average costs. Thank you for your consideration.

Sincerely,



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