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March 30, 2011

VIA ELECTRONIC SUBMISSION

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

Re: Docket No. R-1405 and RIN No. 7100-AD64

Dear Madame Secretary:

The following comments are submitted on behalf of ACA International ("ACA") in response to the Board of Governors' ("Board") notice of proposed rulemaking and request for comments ("Notice") announcing proposed amendments to Regulation Y, which would establish criteria for determining whether a company is "predominately engaged in financial activities" and to define the terms "significant nonbank financial company" under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. 76 Fed. Reg. 7731 (Feb. 11, 2011). For the reasons stated herein, ACA requests that the Board's final rule expressly clarify that companies engaged in collection agency and related services are not subject to the amended Regulation Y criteria under Dodd-Frank as nonbank financial companies because the services provided are incidental activities, as determined by prior Board interpretations.

I. Background on ACA International.

ACA International is an international trade association originally formed in 1939 and composed of credit and collection companies that provide a wide variety of accounts receivable management services. Headquartered in Minneapolis, Minnesota, ACA represents approximately 5,000 company members, including credit grantors, collection agencies, attorneys, asset buyers, and vendor affiliates.

The company-members of ACA comply with applicable federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. Specifically, the collection activities of ACA members are regulated primarily by the FTC under the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*, the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (as amended by the Fair and Accurate Credit Transactions Act); the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*; in addition to numerous other federal and state laws. Indeed, the accounts receivable management industry is unique if only because it is one of the few industries in which Congress enacted a specific statute governing all manner of communications with consumers when recovering debts, including those created in the context of healthcare operations. In so doing, Congress committed the primary regulation of the recovery of debts to the jurisdiction of the Federal Trade Commission. 15 U.S.C. § 16921.

ACA members range in size from small businesses with a few employees to large, publicly held corporations. Together, ACA members employ in excess of 150,000 workers. These members include the very smallest of businesses that operate within a limited geographic range of a single town, city, or state, and the very largest of national corporations doing business in every state. The majority of ACA members, however, are small businesses. Approximately 2,000 of the company members maintain fewer than ten employees, and more than 2,500 of the members employ fewer than twenty persons.

ACA members are a crucial component in safeguarding the health of the economy. Uncollected consumer debt threatens America's economy. According to the Federal Reserve Board and United States Census Bureau, total consumer bad debt costs every adult in the United States $683 every year. This translates into a cost for the average non-supervisory worker of nearly 54 hours (before taxes) in annual salary that pays for the bad debt of other consumers. By itself, outstanding credit card debt has doubled in the past decade and now approaches three quarters of one trillion dollars.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. They represent the local family doctor, hospital, or nursing home. ACA members work with these businesses, large and small, to obtain payment for the goods and services received by consumers. In years past, the combined effort of ACA members has resulted in the recovery of billions of dollars annually that are returned to businesses and reinvested. For example, ACA members recovered and returned over $40 billion in 2007 alone, a massive infusion of money into the national

economy.[1] Without an effective collection process, the economic viability of these businesses, and by extension, the American economy in general, is threatened. At the very least, Americans are forced to pay higher prices to compensate for uncollected debt.

II. Response to Request for Comment.

ACA requests that the Board's final rule clarify that collection agency services are not subject to the rule as nonbank financial companies because the services they provide are purely incidental financial activities, as determined by prior Board interpretations.

Section 102 regulates bank holding companies and nonbank financial companies, including United States nonbank financial companies. For these entities to be subject to the requirements of the proposed Regulation Y amendments, they must be "predominantly engaged in financial activities" for purposes of Title I of the statute. "Financial activities" are defined by reference to those activities that have been determined to be financial in nature under section 4(k) of the Bank Holding Company Act, as codified in Regulation Y. *See* 12 C.F.R. § 225.86 & 12 C.F.R. § 225.28.

Regulation Y identifies "collection agency services" as "so closely related to banking or managing or controlling banks as to be a proper *incident* thereto. . . . ." 12 C.F.R. §§ 225.28(a), (b)(iv) (emphasis added). The Board states that, to assist nonbank companies in determining whether they are predominantly engaged in financial activities, the rule specifies that these activities are "financial in nature" and cross-references the provisions in Regulation Y that identify these activities. The Board properly notes that section 102(a)(6) of the Dodd-Frank Act, however, only refers to activities that have been determined to be financial in nature under section 4(k). 76 Fed. Reg. 7731, 7735 n.25 (Feb. 11, 2011). "[A]ctivities that have been (or are) determined to be 'incidental' to financial activities (such as 'finder' activities listed in § 225.86(d) of Regulation Y) . . . are *not* considered financial activities for purposes of determining whether a company is predominantly engaged in financial activities under section 102(a)(6) of the Dodd-Frank Act." *Id.* (emphasis in original).

Similar to "finder" activities, Regulation Y clearly identifies collection agency services and asset management, servicing, and collection activities as incident to permissible banking activities. Thus, although these companies may be engaged in financial activities, Regulation Y instructs that the services they perform are incidental to those activities. As

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[1] PricewaterhouseCoopers, Value Of Third-Party Debt Collection To The U.S. Economy in 2007: Survey and Analysis, *available at* http://www.acainternational.org/files.aspx?p=/images/12546/pwc2007-final.pdf.

such, these entities are excluded from potential Board supervision under sections 102 and 113. In order to give proper guidance to the entities regarding the scope of their compliance obligations, if any, ACA respectfully requests that the final rule clarify that the applicable sections of the Dodd-Frank Act do not apply to companies engaged in financial activities that are purely incidental to banking consistent with Regulation Y.

ACA appreciates the opportunity to comment on the proposed amendments. If you have any questions, please contact Andrew Beato at 202-737-7777.

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