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By electronic delivery

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

Re: Docket No. R-1284: Proposed Rule Amending Regulation Z (Truth in Lending)
-and-
Docket No. R-1282: Proposed Rule Amending Regulation E (Electronic Fund Transfers)

Dear Ms. Johnson:

Hudson Cook, LLP appreciates the opportunity to comment on the Proposed Rule amending Regulation Z, implementing the Truth in Lending Act, and the companion Proposed Rule amending Regulation E, implementing the Electronic Fund Transfer Act, each published in the April 30, 2007 Federal Register by the Board of Governors of the Federal Reserve System (the "Board"). The Proposed Rules withdraw portions of the interim final rules for the electronic delivery of disclosures published on March 30 and April 4, 2001.

Hudson Cook is a law firm practicing in the area of consumer financial services. Our clients include national and state banks, federal and state chartered savings associations, bank and thrift holding companies, licensed finance companies and mortgage bankers, insurance and securities companies, investment banks and "e-commerce" firms. We submit this letter on behalf of the firm and not on behalf of any particular client.

We appreciate the fact that the Proposed Rules address concerns expressed by those who commented to the Board during the last comment period. The changes the Board proposes to make to the interim final rules will facilitate the continued development of electronic commerce in the consumer arena.

Specifically, we support the Board's proposal to permit the use of electronic disclosures in online applications, advertisements and solicitations without the need to obtain the consumer's consent to receive such disclosures electronically. The fact that the consumer has opted to shop or apply for financial services online evidences the consumer's comfort and facility with electronic transactions. The Proposed Rules will facilitate meaningful product descriptions in electronic advertisements and solicitations without compromising consumer protections. In addition, the Board's proposed use of non-exhaustive lists to explain how financial service providers may

comply with electronic disclosure requirements should prove very helpful to the industry without limiting the development of new technology. We suggest below additional measures the Board could take to further assist industry compliance.

Specifically concerning electronic advertisements, such as those on internet websites, the Board would assist industry compliance by clarifying that the term "advertisement" does not include individualized, personalized information available to consumers through online calculators and similar tools. For example, many internet websites include loan calculators that allow consumers to enter hypothetical loan amounts, down payments, terms, and other information, in order to see possible repayment terms that might apply. The Board itself recently announced the availability of an online Mortgage Comparison Calculator on the Board's website to assist consumers interested in comparing fixed and adjustable rate mortgage products. The fact that the Board has an online calculator may encourage creditors to offer similar online calculators on their own websites. Online calculator tools serve purposes similar to cost estimates provided to individual consumers or communications relating to the negotiation of a specific transaction (*see* Official Staff Comment 1.ii.A. to Section 226.2(a)(2)), and thus should not be considered "advertisements" or part of a multiple-page "advertisement." This comment applies equally in the deposit account and consumer leasing arenas. *See, e.g.,* Official Staff Comment 2 to 12 CFR § 230.2(b) (using an in-person discussion with a consumer "about the terms for a specific account" as an example of a communication that is not an "advertisement"); *see also* Official Staff Comment 2.i. to 12 CFR § 213.2(b). The Board could provide this clarification of the term "advertisement" by supplementing existing Official Staff Comment 1.ii. to 12 CFR § 226.2(a)(2) of Regulation Z and comparable Comments in the Board's other consumer protection regulations.

The Board also would assist industry compliance by incorporating into the Official Staff Commentary statements included in the Supplementary Information to the Proposed Rules that allow financial service providers to provide consumers with required disclosures in both paper and electronic form and to rely on the paper form of the disclosures to satisfy statutory and regulatory compliance obligations. In such cases, the duplicate electronic form of disclosures would not have to comply with E-Sign, Regulation Z (or other applicable consumer protection regulations of the Board), or other electronic disclosure requirements because the party providing the disclosure does not rely on the electronic form of disclosure to satisfy statutory or regulatory disclosure obligations.

Specifically concerning Regulation E, 12 CFR § 205.10(d) disclosures, if provided electronically (for example, through posting on a secure internet web page), should not be required to be accessible by the consumer in electronic form beyond the date of the electronic fund transfer. In addition, Section 205.10(d) disclosures should not be subject to E-Sign requirements (unless incorporated into other disclosures subject to E-Sign, such as periodic statements subject to E-Sign). The Electronic Fund Transfer Act does not require the Section 205.10(d) notice to appear in writing or in a form the consumer may keep for future reference. *See* 15 USC § 1693e(b).

The Section 205.10(d) disclosure gives the consumer advance notice that an upcoming scheduled electronic fund transfer will be in an amount different from the amount of the last regularly recurring transfer, or different from the amount previously authorized by the consumer. This permits the consumer to take appropriate steps to ensure that the consumer's asset account has sufficient funds in it to cover the upcoming scheduled transfer. Once the transfer occurs, the notice

described in Section 205.10(d) has no further utility. If consumers agree to receive the Section 205.10(d) notice telephonically (for example, by dialing a toll-free telephone number, inputting a personal identification code, and listening to an automated announcement) or by accessing a secure internet web page to see the dollar amount and date of upcoming scheduled electronic fund transfers, financial institutions and third-party payees (recipients of scheduled electronic fund transfers) should be able to accommodate such consumers. The Board has broad authority under 15 USC § 1693e(b) to issue implementing regulations for this advance notice to the consumer.

The third-party payee of the scheduled electronic fund transfer, rather than the financial institution holding the consumer's asset account, typically provides Section 205.10(d) notices. It would help such payees if the Board revised the Official Staff Commentary to Section 205.10(d) to permit the provision of electronic Section 205.10(d) notices (with the consumer's consent) in a manner that the consumer might not be able to download, retrieve, or otherwise retain after the electronic fund transfer. Consumers who have chosen either to listen to an automated announcement over the telephone or to view a secure internet web page to obtain detailed information about the next scheduled electronic fund transfer already have a number of options to retain this information: they may redial the telephone number, return to the web page or record the information into their personal computer files, or simply write down the information for future reference, to the extent needed, up to and including the date the transfer is scheduled to occur. In addition, once the transfer occurs, the consumer's financial institution can advise the consumer of the dollar amount and date of the transfer and should also provide the consumer with a periodic statement reflecting any such transfer (pursuant to 12 CFR § 205.9(b)).

Although we submit formal comments only with regard to the Proposed Rules for Regulations Z and E, we also support the similar proposals regarding Regulations B, M and DD. Most of the comments in this letter pertaining to consumer credit and deposit account matters would apply (with appropriate modifications) to these other regulations, as well.

Thank you very much in advance for considering these comments. Please do not hesitate to contact us if you have any questions.

Sincerely,

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-and-

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