VISA

June 28, 2007

Russell W. Schrader
Senior Vice President
Assistant General Counsel

By Electronic Delivery

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1280

Re: Proposed Rule on Regulation B; Docket No. R-1281
Proposed Rule on Regulation E; Docket No. R-1282
Proposed Rule on Regulation M; Docket No. R-1283
Proposed Rule on Regulation Z; Docket No. R-1284
Proposed Rule on Regulation DD; Docket No. R-1285

Dear Ms. Johnson:

This comment letter is submitted on behalf of Visa U.S.A. Inc. in response to the Federal Reserve Board's ("FRB") request for comment in connection with the proposed amendments to several consumer protection regulations, including Regulations B, E, M, Z and DD, to address the electronic delivery of disclosures required under these regulations. Visa appreciates the opportunity to comment on this important matter.

SUMMARY OF PROPOSED RULES

In general, the proposed rules would: (1) withdraw those portions of the 2001 interim final rules on electronic disclosures that restate or unnecessarily cross-reference provisions of the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"); (2) withdraw certain portions of the 2001 interim final rules that the FRB now believes may impose undue burdens on electronic banking, such as the e-mail alert and redelivery requirements; and (3) retain the substance of important clarifications or guidance, such as the applicability of the E-Sign Act to certain application and advertising disclosures.

In addition, the proposed rules include several regulation-specific amendments. For example, under the proposed amendments to Regulations B and Z, when an application is accessed by an applicant in electronic form, certain disclosures would have to be provided in electronic form on or with the application, but the consumer consent provisions of the E-Sign Act would not apply. Also, under the proposed revisions to Regulation Z, the FRB would implement provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("Bankruptcy Act"), which mandate certain disclosures for online credit card solicitations. In

Visa U.S.A. Inc.
P.O. Box 194607
San Francisco, CA 94119-4607
U.S.A.

t 415 932 2178
f 415 932 2525

connection with Regulations Z, B and DD, the proposal would clarify that when an advertisement is accessed by a consumer in electronic form, associated disclosures also must be provided in electronic form on or with the advertisement.

PROPOSED RULES PROMOTE INNOVATION AND FLEXIBILITY

Visa believes that the success of electronic commerce depends in large measure on the ability of companies to establish, develop and maintain customer relationships electronically. This is particularly true with respect to the development of online financial services. Further, while various federal consumer protection statutes require disclosures to be provided to consumers in writing, given the application of the E-Sign Act, these rules should no longer present a significant impediment to the continued evolution and development of innovative online financial products and services. Since the lifting of the mandatory compliance with the interim final rules, financial institutions have deepened their customer relationships through the offering of online financial products and services, which has benefited both consumers and financial institutions. Fostering the growth of online financial services also furthers the development of a national financial services market, in which consumers enjoy the benefits of competition in the form of lower rates and costs for financial products and services. By adopting the proposed rules, with some modification, the FRB would continue to promote innovation and would provide important flexibility to financial institutions; as a result, consumers would gain better access to financial products and services.

VISA SUPPORTS ELIMINATION OF UNNECESSARY AND BURDENSOME PROVISIONS CONCERNING ELECTRONIC DISCLOSURES

Visa strongly supports the proposed elimination of unnecessary provisions concerning electronic disclosures, and the elimination of onerous requirements contained in the interim final rules. Under the proposed rules, the regulatory and commentary sections addressing the general requirements for electronic communications would be deleted as unnecessary. Visa supports the proposed deletion of these sections. As the FRB correctly acknowledges, the deletion of these provisions will have no impact on the applicability of the E-Sign Act to the regulations. The E-Sign Act specifically addresses the requirements for delivering electronic disclosures and, since the lifting of the mandatory compliance with the interim final rules, institutions have had the flexibility to apply the E-Sign Act provisions to their offerings of online banking products and services without the impediments created by the interim final rules.

In addition, Visa strongly supports the deletion of the timing and delivery requirements contained in the interim final rules as unnecessary or inappropriate. In particular, Visa supports the elimination of the requirements to send disclosures to a consumer's e-mail address or to post the disclosures on a Web site and send a notice alerting the consumer to the availability of the disclosures. The lifting of this public e-mail alert requirement has given financial institutions the flexibility of determining whether disclosures will be sent via a public system or a proprietary system, as is often the case with current online banking programs.

Furthermore, the e-mail alert requirement would have made it difficult, if not impossible, for electronic disclosures to be delivered. For example, from an operational standpoint, the e-mail alert requirement would make it difficult to rely on proprietary systems to deliver

messages to customers and would make it difficult to deliver disclosures to customers if the institution does not have the customers' public e-mail addresses. Moreover, sending information to a public e-mail address is far less reliable. And, given recent data breach incidents, and the increase in identity theft and related fraud, including "phishing," any use of a public e-mail address to send account information to consumers could present significant security and privacy concerns.

WITH SOME MODIFICATION, VISA SUPPORTS THE RETENTION OF CERTAIN PROVISIONS

Visa supports the retention of those provisions of the interim final rules that provide regulatory relief or provide important guidance concerning the delivery of electronic disclosures. The FRB should be commended for its efforts to accommodate and encourage the use of electronic communications in retail banking. With some modification, the proposed rules would facilitate the ability of financial institutions to comply with existing consumer protection laws in an electronic environment.

E-Sign Consent Not Required for Application and Advertising Disclosures. Visa believes the FRB effectively balanced competing interests by clarifying that the consent provisions of the E-Sign Act would not apply to certain application, solicitation and advertising disclosures. Accordingly, Visa encourages the FRB to retain the provisions contained in the interim final rules clarifying that creditors can provide applications and advertising disclosures electronically, without regard to the consumer consent or other provisions of the E-Sign Act. Applying the E-Sign Act consent provisions to applications and advertisements would impose significant burdens on electronic commerce and would make it significantly more difficult for consumers to shop for information electronically and compare credit terms. Thus, Visa supports the FRB's use of its exception authority under section 105(a) of the Truth in Lending Act ("TILA"), and section 703(a) of the Equal Credit Opportunity Act, as well as under section 104(d) of the E-Sign Act, to do so.

Regulation E. Visa recommends that the FRB clarify that institutions or payees are not required to comply with the consent provisions of the E-Sign Act when obtaining a consumer's written authorization for recurring payments under Regulation E. The consent provisions of the E-Sign Act require an institution to provide affirmative consent along with specific disclosures before information can be provided electronically "if a statute, regulation, or other rule of law requires that information relating to a transaction . . . be provided or made available to a consumer in writing."[1] However, the authorization required by section 205.10(b) of Regulation E is not a required disclosure that is provided to a consumer; instead, the authorization is provided to the institution/payee by the consumer. Thus, the E-Sign consent provisions should not apply to the authorization.

Section 205.10(b) of Regulation E also requires the financial institution or payee that obtains the 205.10(b) authorization to provide a copy of the authorization to the consumer. Visa recommends that the FRB clarify that an electronic copy or confirmation of the authorization satisfies the copy requirement. More specifically, the FRB should clarify that an institution or payee that sends a copy of an authorization provided by the consumer should not trigger the

[1] 15 U.S.C. § 7001(c)(1).

consent provisions of the E-Sign Act. Requiring a consumer to receive a copy of an electronic authorization would unduly delay the authorization process; instead, an electronic confirmation of the consumer's authorization should be sufficient. These clarifications are consistent with the proposed clarification under section 226.15 of Regulation Z that creditors need not send a second copy of the required rescission notices.

Clarifications and Modifications Are Needed. While Visa generally supports the proposed amendments and clarifications, several modifications are necessary. Specifically, the FRB should consider the following clarifications in connection with the adoption of the final rule:

- Requiring Electronic Disclosures. The FRB should permit financial institutions to provide the application and solicitation disclosures electronically, so long as the timing requirements of the regulation are met. Under the proposed rules, if a consumer is able to access an application, solicitation or advertisement in electronic form, card issuers would be required to provide all application, solicitation or advertising disclosures in electronic form, rather than in paper form. While most creditors would likely provide electronic disclosures if consumers can access electronic applications and solicitations, we believe that this requirement could limit the ability of financial institutions to provide credit products under some circumstances. For example, application information may be entered by an employee or agent of the lender and confirmed by the consumer or it may be entered directly by the consumer at a terminal at the lender's office. Furthermore, institutions may provide credit products and services at kiosks located in banks or retail locations. Under these circumstances, applications may be filled out electronically; however, there may be printers attached to computers or kiosks so that disclosures could be printed at the printers attached to the computers or kiosks. We believe that such a limitation could impede the offering of innovative products and services, with no evidence that consumers would otherwise be harmed by receiving disclosures in paper, rather than in electronic form. Thus, the FRB should modify the proposed rules to permit disclosures in either electronic or paper form, as long as the disclosures are provided on or with the application.

- Non-Bypassable Link. Under the proposed rules, for disclosures required to be provided in tabular form, card issuers would be required to meet the formatting requirements contained in section 226.5a(a)(2) of Regulation Z and the accompanying commentary provision. That is, disclosures provided on or with an application or solicitation would have to be provided in a prominent location. More specifically, required application and solicitation disclosures would have to: (1) appear on the screen when the application or reply form appears; (2) be located on the same Web "page" as the application or reply form if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates the disclosures contain rate, fee and other cost information; or (3) be provided through a link to the electronic disclosures on or with the application or reply form, as long as the consumer cannot bypass the disclosures before submitting the application or reply form. Visa recommends that the FRB delete the requirement to provide consumers with a non-bypassable link option. Currently, many card issuers provide a link to disclosures before or during the application process. However, requiring card issuers to include a non-bypassable link goes beyond the requirements under section 226.5a of Regulation Z, which is

to simply "provide disclosures." Requiring the use of a non-bypassable link is akin to requiring card issuers to ensure that cardholders open and read disclosures that are mailed to them and, thus, the requirement should be deleted.

- Bankruptcy Act Amendments. Section 1304 of the Bankruptcy Act amends TILA to require that credit card application and solicitation disclosures provided over the Internet be "readily accessible to consumers in close proximity" to the solicitation. The FRB has specifically requested comment on how this standard should be interpreted and whether the existing guidance in section 226.5a(a)(2) of Regulation Z, discussed above, should be retained. Visa believes that the FRB should not retain the standard in proposed section 226.5a(a)(2) because such a standard would essentially require card issuers to provide consumers with a non-bypassable link or to have disclosures themselves appear on the screen or on the same Web page as the application. From an operational standpoint, it would be difficult for financial institutions to ensure that disclosures appear on a screen or on the same Web page. For example, many consumers have programs on their computers that would block pop-up screens. In addition, the amount of text on a screen often is within the consumer's control and dependent on the consumer's settings for viewing documents. Thus, we believe that creditors should be provided maximum flexibility in making the disclosures readily accessible and in close proximity.
- Format Requirements May Not Be Suitable for Electronic Environment. Pursuant to section 226.5(a)(3) of Regulation Z, certain disclosures required under section 226.5a for credit and charge card applications and solicitations must be provided in a tabular format or in a prominent location in accordance with the requirements of Regulation Z. Such tabular or prominence requirements may not be suitable in an electronic environment. For example, the requirement that the annual percentage rate for purchase transactions be disclosed in 18-point type and the requirement that certain disclosures should be more prominent are not appropriate for the electronic environment. In this regard, it would be difficult, if not impossible, for creditors to ensure compliance with these requirements. Creditors have no control over how disclosures will appear on the consumer's computer screen. Thus, institutions should have no duty to ensure that a consumer views the disclosures in the context of such format and type-size requirements.

ALTERNATIVE TO PERIODIC STATEMENT REQUIREMENT

Under recent payroll card amendments to Regulation E, the FRB adopted a final rule that provides an alternative to providing traditional periodic statements. Specifically, as an alternative to providing periodic statements for payroll cards under Regulation E, an institution may: (1) make balance information available through a telephone; (2) make an electronic history of the consumer's transactions available through the Internet for at least 60 days from the date the consumer electronically accesses the account; and (3) promptly provide, upon request, a written history of the consumer's transactions that covers at least 60 days preceding the date of the consumer's request.

Providing alternatives to the delivery of periodic statement information in other circumstances could advance financial service innovations and provide financial institutions with flexibility in offering online banking and other e-commerce-related products. Accordingly, Visa recommends that the FRB consider providing similar flexibility in meeting statutory requirements for providing periodic statements more broadly under Regulation E and under other consumer protection regulations, such as Regulation DD.

Once again, we appreciate the opportunity to comment on this important matter. If you have any questions concerning these comments or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (415) 932-2178.

Sincerely,

Russell W. Schrader
Senior Vice President and
Assistant General Counsel