VIA ELECTRONIC MAIL

March 28, 2005

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

**Re: Advance Notice of Proposed Rulemaking
Regulation Z Open-end Credit Rules
Docket No. R-1217**

Ladies and Gentlemen:

HSBC Retail Services submits this comment letter in response to the Advance Notice of Proposed Rulemaking ("ANPR") issued by the Board of Governors of the Federal Reserve System (the "Board"), regarding the commencement of a review of the open-end credit rules of the Board's Regulation Z ("Reg Z"), which implements the Truth in Lending Act ("TILA"). HSBC Retail Services, an HSBC North America Holdings Inc. ("HNAH") business, issues private label credit cards through its affiliate, HSBC Bank Nevada, N.A. HNAH is a registered financial holding company with various U.S. banking and non-banking subsidiaries that engage in revolving consumer finance transactions.

HSBC Retail Services commends the Board for undertaking the daunting task of reviewing the open-end credit rules of Reg Z and appreciates this opportunity to submit comments. We agree with the Board that this review is necessary to determine whether existing Reg Z disclosure and substantive protection rules continue to achieve the stated purposes of TILA in light of the increased use by consumers of open-end lines of credit and the complexity and diversity of credit products available. We respectfully emphasize the importance that any proposed revisions be carefully considered by the Board in light of the primary goals of TILA and Reg Z: i) to assure meaningful disclosure of credit terms so that consumers may comparison shop; and ii) to protect consumers against inaccurate and unfair credit billing and credit card practices. While many of the suggestions in the ANPR are in line with these goals, we are concerned that some may out run the primary purposes of TILA.

In the course of this review, we encourage the Board to be mindful that while the level of consumer sophistication regarding the selection and use of open-end credit card products has significantly increased over the years, information overload and overly technical

disclosures must be avoided. It is generally recognized that over-disclosure does not constitute meaningful disclosure and, rather than increasing consumer knowledge, risks diminishing the probability that consumers will read and understand the information provided. Concerns for information overload were recently echoed by Acting Comptroller of the Currency Julie L. Williams who stated that "the reams of disclosures [creditors] are obliged to provide aren't working very well to inform your customers about the things those customers really want to know."[1] In short, to be effective, Reg Z disclosure requirements should be reserved only for the most important terms that a consumer wants to know and needs to understand in order to make informed decisions when shopping for credit.

In keeping with the foregoing principles, we strongly support the Board's plan to use consumer focus groups in connection with the development of or revision to any model forms or clauses. Well-executed consumer research can provide the Board with valuable insight into the effects proposed disclosures are likely to have both on consumers, as well as the marketplace. This insight should help the Board to ensure that any revisions made to Reg Z balance the needs of consumers and the market place while accomplishing the stated purposes of TILA.

Scope of the Review

Question 1. The Board solicits comments on the feasibility and advisability of reviewing Regulation Z in stages, beginning with the rules for open-end credit not home-secured. Are some issues raised by the open-end credit rules so intertwined with other TILA rules that other approaches should be considered? If so, what are those issues, and what other approach might the Board take to address them?

Due to the complexity of Reg Z and the significant differences between home secured and non-home secured open-end lines of credit, not to mention closed-end credit, we understand the Board's approach to a review conducted in stages. Certainly, Section 226.5a can be reviewed in isolation as it does not apply to home equity plans that are subject to Section 226.5b. Likewise, Section 226.5b could be reviewed on a standalone basis. Our concern, however, is with respect to those Sections of Subpart B that apply to both home secured and non-home secured lines of credit. For example, with the exception of subsections (e) and (f), all of Section 226.9 applies to both home secured and non-home secured open-end credit. And Section 226.12 applies to both non-home secured open-end credit plans, as well as home-secured open-end credit lines accessible by credit card. Therefore, while we agree with the Board's approach to begin its review of Subpart B only with respect to non-home secured open-end credit, we urge the Board to clearly note the impact of any proposed rule published on home secured open-end credit provisions.

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[1] Remarks by Acting Comptroller of the Currency, Julie L. Williams, Independent Community Bankers of America, San Antonio, Texas, March 11, 2005 (http://www.occ.treas.gov/ftp/release/2005-29a.pdf)

Format of Disclosures

Question 2. The Board seeks comment on whether formatting rules are necessary with respect to account-opening disclosures.

We do not believe formatting rules are necessary to make account-opening disclosures more understandable and noticeable. To the contrary, we believe prescribing specific formatting rules would result in a more cumbersome, complicated and less understandable communication to the consumer, as well as subject creditors to increased litigation risk for technical non-compliance. TILA disclosures appear in a wide variety of media and, in many instances, co-exist with other federal, state, and contractual disclosures in the same document. Any prescribed formatting rules for the initial disclosures could be at odds with other non-TILA disclosures contained within the same document resulting in a more complicated and confusing presentation to the consumer. There is no evidence to suggest that consumers would have better understood the credit terms had the initial disclosures been grouped in a particular way or appeared on the same page. And requiring that all account-opening disclosures be "clear and conspicuous" puts creditors in the precarious position of defending litigation alleging that other provisions of the contract are less important or rendered inconspicuous.

Our belief that formatting rules are not necessary is further supported by the 2001 consumer survey cited by the Board in the ANPR. However, should the Board propose formatting rules, model forms and clauses should be designed giving safe harbor to creditors who use them.

Question 3. Are there ways to use formatting tools or other navigational aids for TILA's account-opening disclosures that will make the disclosures more effective for consumers throughout the life of the account? If so, provide suggestions.

We do not believe additional formatting tools or navigational aids are necessary to make disclosures more effective throughout the life of the account. Account agreements are typically organized into paragraphs with descriptive captions or headings. As indicated above, there is no evidence to suggest consumers could more effectively use their account agreement as a reference tool if it was organized or presented in a different manner.

The Board may, however, wish to consider giving creditors the option of providing a tabular disclosure (i.e., like the "Schumer Box") or some other type of executive summary highlighting the key credit terms for the consumer. This table or summary could be placed toward the beginning of the account-opening disclosures. For such a disclosure to be effective and meaningful, care would have to be taken to ensure only the most important terms are included in the table or summary. If this approach were taken, we would also urge the Board to provide model language and appropriate safe harbor protections.

Question 4. Format rules (for periodic statements) could require certain disclosures to be grouped together or appear on the same page where it would aid a consumer's understanding. Confusion could be reduced, for example, by requiring the due date to avoid finance charges and "please pay by date" by grouped together. Is such a rule desirable? Are there other disclosures that should be grouped on the same page?

We do not believe these suggested formatting rules would be desirable. In general, the front of a periodic statement is used for transaction specific information, while the reverse side is used for pre-printed federal and state disclosure requirements. Specific requirements that certain information be on the front or reverse side of the periodic statement could result in significant printing and programming changes at great expense to creditors with little increased benefit to consumers. Moreover, such requirements would be difficult to apply to electronic statements that do not have the paper equivalent of a front or back "page".

It is also important to note that with respect to the Board's suggestion that the actual due date be reflected on the front of the statement, the payment due date is not a required disclosure of either Section 226.6 or Section 226.7.

Question 5. Could the cost of credit be more effectively presented on periodic statements if less emphasis were placed on how fees are labeled and all fees were grouped together on the periodic statement? Are there other approaches the Board should consider? If so provide suggestions.

We do not believe grouping fees together would be a more effective way in presenting the cost of credit to consumers. In fact, we believe that doing so may make it more difficult for the consumer to determine the accuracy of the transactions set forth on the statement. Periodic statements typically present transactions in chronological order. In our opinion, it is more effective to reflect the cost of credit (i.e., the cash advance fee) next to the actual cash advance transaction to which it relates, rather than grouping the transaction fee with other fees located elsewhere in the statement and requiring the consumer to "connect the dots." Further, any such requirement would entail significant programming costs that would not be outweighed by any consumer benefit to be achieved.

Question 6. How could formatting tools or other navigational aids make the disclosures on periodic statements more effective for consumers?

We are aware of no evidence suggesting that consumers find periodic statements difficult to understand or navigate. Consequently, we do not believe any formatting tools or navigational aids are necessary to make the periodic statement disclosures more effective. As noted above, the adoption of such rules would result in expensive programming changes to creditors with no corresponding benefit to consumers. Moreover, such rules

could stifle innovation on the part of creditors that could otherwise benefit consumers.

Question 7. Is the Schumer Box effective as currently designed? Are there format issues the Board should consider? If so, provide suggestions.

We believe the Schumer Box, as currently designed, is effective and recognized by consumers as containing important information about credit terms. We are aware of no evidence that consumers find the Schumer Box confusing or difficult to navigate. We would like to take this opportunity, however, to respectfully urge the Board to reconsider its 18-point type requirement for the Annual Percentage Rate required by Section 226.5a(b). We believe the location of the APR in the Schumer Box gives the consumer meaningful and comparable disclosure in line with the purposes of TILA. But while type size requirements increase compliance costs to creditors, they do not necessarily lead to an increase in the consumer's comprehension level.

Question 8. Should balance transfer fees be included in the Schumer Box given their prevalence in promotions?

As a general matter, we do not believe any additional information should be added to the Schumer Box. The more information that is added, the less each individual item is highlighted for the consumer. With respect to balance transfer fees in particular, Reg Z currently requires that such fees be disclosed clearly and conspicuously on or with the credit application. We believe this is sufficient given the fact that it is at the consumer's election whether to effect a balance transfer transaction.

Question 9. Are there formatting tools or navigational aids that could more effectively link information in the account-opening disclosures with the information provided in subsequent disclosures, such as those accompanying convenience checks and balance transfer checks?

As with periodic statements and the Schumer Box, we are aware of no evidence that formatting tools or navigational aids are needed to more effectively link account-opening disclosures with subsequent disclosures provided with respect to convenience or balance transfer checks. As evidenced by a highly competitive market place, consumers have become increasingly savvy at using and comparing the terms of balance transfer and credit card check offers. Any such rules would serve only to increase costs to creditors with no corresponding benefit to consumers.

Question 10. Should existing clauses and forms be revised to improve their effectiveness?

We do not believe existing clauses and forms should be revised. Recent studies have indicated that consumers believe it is easy to obtain information about the credit terms of their accounts and are generally satisfied with their credit card companies. However, we do believe that additional clauses and forms can be developed to provide creditors with

greater compliance flexibility to more effectively encompass the wide variety of open-end credit products now prevalent in the market place. The development of any such additional clauses and forms should include the use of well-executed consumer research.

Question 11. Would additional model clauses or forms be helpful? If so, please identify the types of new model clauses and forms that the Board should consider developing?

We believe additional model clauses and forms would be helpful, particularly to the extent the Board proposes any of the formatting requirements it is now considering. In line with the purposes of TILA, the increased availability and use of model clauses and forms will enable consumers to more effectively comparison shop and determine billing accuracy. Any additional model clauses and forms should be designed to address the mixture of credit products in the market place, as well as provide creditors with compliance ease and flexibility coupled with safe harbor protections which would reduce frivolous lawsuits. And as indicated above, we fully support the Board's use of well-executed consumer research in developing such forms and clauses.

Question 12. Is there additional information [available] on the navigability and readability of different formats and on ways in which formatting can improve the effectiveness of disclosures?

While we believe there is a significant amount of information available on the way in which formatting can enhance the readability and effectiveness of disclosures, there is no general consensus as to optimal design or format. Consequently, we would caution the Board not to adopt any one particular approach to formatting, but instead provide creditors with alternatives thereby preserving maximum compliance flexibility. While we believe the Board will be able to effectively leverage consumer focus groups in this exercise, we also recommend that the Board consult forms experts in the lending industry.

Content of Disclosures

Question 13. How could the Board provide greater clarity on characterizing fees as finance charges or "other charges" imposed as part of the credit plan? Under Regulation Z, finance charges include fees imposed as a condition of the credit as well as fees imposed "incident to" the credit. This includes "service, transaction, activity, and carrying charges." 12 CFR § 226.4(b)(2). What types of fees imposed in connection with open-end accounts should be excluded from the finance charge, and why? How would these fees be disclosed to provide uniformity in creditors' disclosures and facilitate compliance?

Before responding to these issues, we believe a threshold question must be addressed. That question is whether the classification of a fee as a finance charge or an "other charge" is relevant or meaningful to a consumer. We believe the answer to the question

is no. We do not believe consumers have a clear understanding of what is and is not a finance charge or an "other charge", nor do we believe consumers will make a credit decision based on how a particular fee is classified. Instead, consumers want to know (i) what fees will or may be imposed, (ii) how much the fees are, (iii) how frequently the fees will or may be imposed, and (iv) under what circumstances they may be imposed. We find it highly unlikely that a consumer comparing two credit products, identical in all respects except that one creditor classifies a $29 fee as a finance charge and the other classifies it as an "other charge", will make their decision based on fee classification. For the consumer, regardless of whether the fee is a finance charge or an "other charge", if the fee is incurred, it has to be paid. Yet, while the distinction may be lost on, or of no consequence to, the consumer, the penalty to the creditor for misclassification of a fee is high. For these reasons, we strongly urge the Board to carefully consider in the first instance, whether fee classification is necessary to further the purposes of TILA. Consumer research in this regard would be of significant value.

If the Board concludes that classification of fees is necessary, we believe greater clarity can be achieved through a simple reaffirmation of the existing definition of finance charge. In line with TILA, the Board has defined finance charges as fees that are imposed "as an incident to or a condition of the extension of credit." Plain and simple, consumers typically think of finance charges as interest. When consumers obtain an extension of credit, they expect to pay interest as a condition of that credit and they expect that interest to continue to accrue for as long as the credit is outstanding. Finance charges should not include, however, fees for optional features or services available on the plan that the consumer may elect to use or avoid at different times over the life of the account. For example, the Board has already determined that over-the-credit limit fees and late fees are "other charges." While these fees are imposed in connection with the credit plan, they can be avoided by the consumer by not exceeding the credit limit on their account, or making their payment on time. Using the same analogy, we believe the Board should also classify as "other fees", for example, cash advance or balance transfer fees. Such fees can also be avoided by the consumer by not obtaining a cash advance or transferring a balance to their account. Classifying such fees as finance charges results in their inclusion in the historical APR which, based on the manner in which that rate is calculated (i.e., non-interest rate finance charges must be amortized over one billing cycle when calculating the historical APR), presents a distorted view of the actual costs incurred by the consumer. Alternatively, classifying such fees as "other charges", which creditors currently disclose in a clear and conspicuous manner (e.g., in applications, solicitations, and account agreements), provides the consumer with meaningful information they can readily use to compare the cost of credit.

Question 14. How do consumers learn about the fees that will be imposed in connection with services related to an open-end account, and any changes in the applicable fees?

The fees/charges that are imposed in connection with services related to an open-end account as well as any changes in the applicable fees are disclosed to consumers in

applications, solicitations (typically in or below the "Schumer Box"), and the account agreement provided to the consumer or with the credit card. Some fees such as check-by-phone fees may be disclosed to a consumer at the time the consumer requests the specific service.

Question 15. What significance do consumers attach to the label "finance charge," as opposed to "fee" or "charge"?

As stated in our answer to Question 13. above, we are not aware that consumers have a clear understanding of the distinction between finance charge versus a fee or charge. Further, we do not believe when comparison shopping for credit, consumers make decisions on whether a fee is characterized as a finance charge or an "other charge." Instead, we believe consumers are interested in what the fees are, how much they are, and under what circumstances they are assessed. Again, this is an area where the Board can make effective use of consumer research in determining the line between meaningful disclosure and information overload.

Question 16. Some industry representatives have suggested a rule that would classify fees as finance charges only if payment of the fee is required to obtain credit. How would creditors determine if a particular fee was optional? Would costs for certain account features be excluded from the finance charge provided that the consumer was also offered a credit plan without that feature? Would such a rule result in useful disclosures for consumers? Would consumers be able to compare the cost of the different plans? Would such a rule be practicable for creditors?

Again, we urge the Board to return to its basic definition of finance charge rather than establishing a rule that would classify fees as finance charges only if payment of the fee is required to obtain credit. Adoption of a rule classifying a fee as a finance charge if it is "required to obtain credit" would result in the disclosure of, for example, the participation fee as a finance charge. This would be a significant deviation from current disclosure requirements, which we believe would add to, rather than alleviate consumer confusion. Additionally, we are concerned that offering different types of credit plans that either include or exclude certain features and then make a determination of what is and is not a finance charge on that basis will simply lead to more cumbersome disclosures, resulting in consumer confusion and impairment of their ability to make informed credit decisions. Under the plain language of TILA and Reg Z, a finance charge is a charge that must be (i) "imposed" and (ii) "an incident to or a condition of the extension of credit." We think this is a workable definition which, as suggested in our answer to Question 13, could benefit from more clarity.

Question 17. Some industry representatives have suggested a rule that would classify a fee as a finance charge based on whether the fee affects the amount of credit available or the material terms of the credit. How would such a standard operate in practice? For example, how would creditors distinguish finance charges from "other charges"? What terms of a credit plan would be considered material?

We do not recommend a rule that would classify a fee as a finance charge based on whether the fee affects the amount of credit available or the material terms of the credit. We cannot envision any way that such a rule could work in practice without resulting in significant confusion to consumers. And, as discussed herein, the inclusion of these types of fees in the finance charge are not likely to be helpful to a consumer due to the impact any inclusion will have on the historical APR.

Question 18. TILA requires the identification of other charges that are not finance charges and may be imposed as part of the plan. The staff commentary interprets the rule as applying to "significant charges" related to the plan. Has that interpretation been effective in furthering the purposes of the statute? Would another interpretation be more effective? Criteria that have been suggested as relevant to determining whether the Board should identify a charge as an "other charge" include: the amount of the charge; the frequency with which a consumer is likely to incur the charge; the proportion of consumers likely to incur the charge; and when and how creditors disclose the charge, if at all. Are those factors relevant? Are there other relevant factors?

The term "significant" is subject to a variety of interpretations which, we believe, adversely affects its effectiveness in furthering the purposes of TILA. At a minimum, the question of what is and is not "significant" can lead to significant debate. It naturally follows that varying interpretations of what is significant will lead to non-uniform disclosures which in turn leads to consumer confusion and compromises the value of comparison shopping.

We recommend that the Board adopt an approach similar to the one it took with respect to expedited payment and card delivery fees in April of 2003. That is, if the fee is not imposed as "part of the plan" (e.g., in the case of the expedited payment fee, payments on the plan can be made by other means without incurring a fee), the fee is not an "other charge."

Question 19. What other issues should the Board consider as it addresses these questions? For instance, in classifying fees for open-end plans generally, do home equity lines of credit present unique issues?

We believe that home equity lines of credit do present unique issues. While home equity lines of credit do share similar product features with other open-end credit plans, there are significant differences. In creating separate regulations designed specifically for home equity lines of credit (i.e., Section 226.5b), the Board has already recognized these differences. We therefore believe that in addressing these questions, home equity lines of credit should be considered separately.

Question 20. How important is it that the rules used to classify fees for open-end accounts mirror the classification rules for closed-end loans? For example, the approach of excluding certain finance charges from the effective APR for open-end

accounts is not consistent with the approach recommended by the Board for closed-end loans. In a 1998 report to the Congress concerning reform of closed-end mortgage disclosures, the Board endorsed an approach that would include "all required fees" in the finance charge and APR.

Home equity lines of credit and closed-end loans are significantly different. While home equity lines allow consumers the flexibility of taking future advances against their lines, all monies under closed-end mortgages are advanced at the end of the rescission period. Closed-end loans generally provide for a fixed term or amortization basis, while open-end lines may be for a fixed or open term. The Board has historically, and appropriately, recognized these differences by creating separate and distinct regulations. We do not believe that creating consistency of definition and application of rules between these two types of products would be helpful to consumers. We believe consumers recognize these products as being very different and, for that reason, would not expect to comparison shop between the two to the same extent they expect to comparison shop when looking for open-end credit. Therefore, we believe it is not necessary or appropriate to mirror the fee classification rules for open and closed-end products.

Question 21. The staff commentary to Regulation Z provides guidance on when a fee is properly excluded from the finance charge as a bona fide late payment charge, and when it is not. See Comment 4(c)(2)-1. Is there a need for similar guidance with respect to fees imposed for exceeding a credit limit, for example, where the creditor does not require the consumer to bring the account balance below the originally established credit limit, but imposes an over-the-credit-limit fee each month on a continuing basis?

Additional guidance regarding the exclusion of over-the-credit limit fees from finance charges may not be useful. Generally, creditors request payment of any amounts which exceed the originally established credit limit in their periodic statements by including such amounts in the minimum payment due. Consumers are given the opportunity to pay the requested amount thereby eliminating the continual assessment of over-the-credit limit fees.

Question 22. Because of technical limitations or other practical concerns, credit card transactions may be authorized in circumstances that do not allow the merchant or creditor to determine at the moment of the transaction whether the transaction will cause the consumer to exceed the previously established credit limit. How do card issuers explain to consumers their practice of approving transactions that might result in the consumer's exceeding the previously established credit limit for the account and being charged an over-the-credit-limit fee? When are over-the credit-limit fees imposed; at the time of an approved transaction, or later such as at the end of the billing cycle? The Board specifically requests comments on whether additional disclosures are needed regarding the circumstances in which over-the-credit-limit fees will be imposed.

The policy regarding authorizing transactions that exceed a consumer's credit line is explained in the account agreement provided to a consumer with the credit card. Over-the-credit-limit fees are imposed at the time the approved transaction posts to the account, and may also be imposed in the next billing cycle if the over-the-credit limit circumstance has not been cured. The circumstances under which an over-the-credit-limit fee is imposed are described in the account agreement. We believe consumers understand these circumstances as described, and additional disclosures do not appear to be necessary.

Question 23. Have changes in the market and in consumers' use of open-end credit since the adoption of TILA affected the usefulness of the historical APR disclosure? If so, how? The Board seeks data relevant to determining the extent to which consumers understand and use the historical APR disclosed on periodic statements. Is there data on how disclosure of the historical APR affects consumer behavior? Is it useful to consumers to include in the historical APR transaction charges such as cash advance fees and fees to transfer balances from other accounts?

We commend the Board for recognizing that consumers' use of open-end credit since the adoption of TILA has changed significantly. Consumers more frequently take advantage of the many cash advance, balance transfer and promotional features offered with credit cards. These features oftentimes involve fees which, when included in the historical APR calculation, may cause material variations in the APR originally disclosed on the account. The complexity of the historical APR calculation makes it difficult to explain to consumers. Our experience indicates that the disclosure of the historical APR is not helpful to consumers, nor does it affect consumer behavior. Cash advance and balance transfer fees are clearly and conspicuously disclosed on any periodic statement provided to consumers. The inclusion of these fees in the historical APR does not provide any additional utility to the consumer.

We would welcome any efforts by the Board to provide additional consumer education on this subject.

Question 24. Are there ways to improve consumers' understanding of the effective APR, such as by providing additional context for the disclosure? For example, should consumers be informed that the effective APR includes fees as well as interest, and that it assumes the fees relate to credit that was extended only for a single billing period?

We believe that the best way to improve consumers' understanding of the effective APR is to adopt a consistent method of disclosing fees as dollar amounts and to exclude those properly disclosed amounts from the effective APR. And, as mentioned above, educational efforts by the Board would be another means of improving consumer understanding of this term.

Question 25. Are there alternative frameworks for disclosing the costs of credit on

periodic statements that might be more effective than disclosing individual fees and the effective APR? For example, would consumers benefit from a disclosure of the total dollar amount of all account-related fees assessed during the billing cycle, or the total dollar amount of fees by type? Would a cumulative year-to-date total for certain fees be useful for consumers?

We would support any efforts by the Board to more effectively disclose the costs of credit on periodic statements. However, we do not believe that a total dollar amount of fees assessed during the billing cycle or a cumulative year to date total for certain fees would be more useful to consumers rather than a specific description or delineation of each individual fee on a periodic statement.

A description of the fee assessed, as well as the amount of any such fee is typically disclosed by creditors on the periodic statement next to the related transaction. We believe this format is the most useful and provides the most clarity to the consumer.

Question 26. Is mailing a notice 15 days before the effective date of a change in interest rates adequate to provide timely notice to consumers?

Excluding a change in the interest rate due to delinquency or default, we believe that a 30 day notice of a change in interest rates is timely notice to consumers. Changes in the interest rate due to delinquency or default should be permitted to occur as disclosed in any application, solicitation or account agreement governing the account.

Question 27. How are account-holders alerted to increased interest rates due to consumers' default on this account or another credit account? Are existing disclosure rules for increases to interest rates and other finance charges adequate to enable consumers to make timely decisions about how to manage their accounts? If not, provide suggestions.

Accountholders are alerted to potential increases in the interest rate and the circumstances under which any increase will be triggered initially in application or solicitation materials. This information is also disclosed in the account agreement provided to the accountholder with the card. The accountholder is again notified after any interest rate increase is triggered on the periodic billing statement. In addition, advance notification (30 days) is provided to accountholders when the rate increase is due to a risk-based re-price. We believe that existing disclosures enable consumers to make timely decisions about how to manage their accounts.

We would welcome any consumer education efforts the Board may wish to consider to alert consumers to the importance of using credit wisely.

Question 28. How significantly does the balance calculation method affect the cost of credit given typical account use patterns?

The balance calculation method can affect the cost of credit. Whether and how significantly an account is affected will depend on any number of factors, including whether the accountholder is a revolver or transactor, the balance on the account, including the balance of each category (purchases, cash advances, etc.), the applicable APRs for those balances, and the timing and amount of any payments. The impact of a two-cycle average daily balance vs. the average daily balance calculation method is most significant on the first statement a transactor becomes a revolver.

Question 29. Do consumers understand that different balance calculation methods affect the cost of credit, and do they understand which balance calculation methods are more or less favorable for consumers? Would additional disclosures at account-opening assist consumers and, if so, what type of disclosures would be useful?

Balance calculation methods are generally discussed in the account agreements provided to consumers with the credit card. The methods are not simple concepts and may be difficult to understand. We are not aware of the extent to which consumers understand or do not understand the various methods. Additional attempts to further simplify these difficult concepts are not likely to lessen any confusion that may exist. We would welcome any attempts by the Board to provide consumer education in this area.

Question 30. Explanations of balance calculation methods are complex and may include contractual terms such as rounding rules. Precise explanations are required on account-opening disclosures and on periodic statements. Should the Board permit more abbreviated descriptions on periodic statements, along with a reference to where consumers can obtain further information about the calculation method, such as the credit agreement or a toll-free telephone number?

As discussed in Question 29 above, we agree that explanations of balance calculation methods are complex. More abbreviated descriptions are not likely to make the explanations less complex and may actually increase consumer confusion. We do not believe a dedicated toll-free number for questions on this issue is likely to be helpful. Less than 1% of our customer service calls involve questions about the balance transfer calculation methods.

Question 31. Is it appropriate for the Board to consider whether Regulation Z should be amended to require: (1) periodic statement disclosures about the effects of making only the minimum payment (such as, disclosing the amortization period for their actual account balance assuming that the consumer makes only the minimum payment, or disclosing when making the minimum payment will result in a penalty fee for exceeding the credit limit); (2) account-opening disclosures showing the total of payments when the credit plan is specifically established to finance purchases that are equal or nearly equal to the credit limit (assuming only minimum payments are made)? Would such disclosures benefit consumers?

We believe that a minimum payment disclosure on periodic statements is of limited

benefit to consumers. Our experience indicates that on average the majority of consumers pay an amount in excess of their minimum payment due each month. Consumers recognize that they are not limited in making a payment that exceeds any minimum amount due as is evidenced by their action. If the Board is persuaded that an additional disclosure is necessary, we would remind the Board that the bankruptcy reform bill currently pending before Congress contains a minimum payment disclosure which if enacted may address the Board's concerns.

Question 32. Is information about the amortization period for an account readily available to creditors based on current accounting systems, or would new systems need to be developed? What would be the costs of implementing such a rule?

Information about the amortization period for accounts is not readily available. The costs to gather and provide this information will require major systems enhancements and will be significant.

Question 33. Is there data on the percentage of consumers, credit cardholders in particular, that regularly or continually make only the minimum payments on open-end credit plans?

As discussed in Question 31, the majority of our customers pay more than the minimum payment due each month. The number of customers that regularly or continually make only the minimum payment varies based on the card portfolio.

Question 34. What are the common methods of payment allocation and how much do they affect the cost of credit for the typical consumer?

The most common method of payment allocation throughout the industry allocates payments first to interest, fees and principal balances. Payments are applied to lower APR balances before higher APR balances. No quantitative information is available on the effect the payment allocation method has on the cost of credit for the typical consumer.

Question 35. Do creditors typically disclose their allocation methods, and if so, how?

The payment allocation method is typically disclosed to consumers in applications, solicitations and the contractual agreement the consumer receives with the card.

Question 36. Is it appropriate for the Board to consider whether Regulation Z should be amended to require disclosure of the payment allocation method on the periodic statement? Would such a disclosure materially benefit consumers? Some creditors offer a low promotional rate, such as a 0% APR for cash advances for a limited time and a higher APR for purchases. Creditors typically do not allocate any payments to purchases until the entire cash advance is paid off. Are additional

disclosures needed to avoid consumer confusion or misunderstanding? What would the cost be to creditors of providing such a disclosure? What level of detail would provide useful information while avoiding information overload?

We believe a payment allocation disclosure on the periodic statement would be of limited benefit to the consumer. If the Board is persuaded that an additional disclosure is necessary, we urge the Board to consider implementing a disclosure that may be used by all creditors such as providing by category/plan the outstanding balance remaining in such category/plan after any payments or credits are applied.

Question 37. What tolerances should the Board consider adopting pursuant to this provision? Should the Board expressly permit an overstatement of the finance charge on open-end credit? Would that adequately address concerns over proper disclosure of fees? How narrow should any tolerance be to ensure TILA's goal of uniformity is preserved?

We recommend the Board maintain the current tolerance provisions set forth in Regulation Z.

Question 38. In considering changes to the disclosures required by Regulation Z, the Board seeks data relevant to the costs and benefits of the proposed revisions. Accordingly, commenters proposing revisions to the disclosure requirements are requested to provide data estimating the cost difference in complying with the existing rules compared to any proposed alternatives, including any one-time costs to implement the changes.

We do not currently have available data estimating the costs and benefits of the proposed revisions. However, relative to the consumer benefits, we do believe the suggestions we have made are feasible from a cost perspective.

Question 39. Are there particular types of open-end credit accounts, such as subprime or secured credit card accounts, that warrant special disclosure rules to ensure that consumers have adequate information about these products?

We do not believe that subprime and secured credit card accounts warrant special disclosure rules. As discussed in this letter, all consumers will benefit from simple, clear, and conspicuous disclosures in applications, solicitations and account agreements.

Question 40. Are there additional issues the Board should consider in reviewing the content of open-end disclosures? For example, in 2000, the Board revised the requirements for disclosures that accompany credit card applications and solicitations. 65 FR 58903, October 3, 2000. Is the information currently provided with credit card applications and solicitations adequate and effective to assist consumers in deciding whether or not to apply for an account?

We believe the information currently provided with credit card applications and solicitations is effective in assisting consumers in deciding whether or not to apply for an account. We welcome the opportunity to review and comment on any additional model forms and/or disclosures the Board would like to consider with respect to disclosures that accompany applications and solicitations.

Question 41. Are there classes of transactions for which the Board should exercise its exemption authority under 15 U.S.C. 1604(a) to effectuate TILA's purpose, facilitate compliance or prevent circumvention or evasion, or under 15 U.S.C. 1604(f) because coverage does not provide a meaningful benefit to consumers in the form of useful information or protection? If so, please address the factors that the Board is required to consider under the statute.

There are no additional classes of transactions for which we believe the Board should exercise its exemption authority.

Question 42. Should the Board exercise its authority under 15 U.S.C. 1604(g) to provide a waiver for certain borrowers whose income and assets exceed the specified amounts?

The current exemptions are sufficient.

Substantive Protections

Question 43. The Board solicits comments on whether there is a need to revise the provisions implementing TILA's substantive protections for open-end credit accounts. For example, are the existing rules adequate, and if not, why not? Are creditors' responsibilities under the rules clear? Do the existing rules need to be updated to address particular types of accounts or practices, or to address technological changes?

We believe the existing provisions implementing TILA's substantive requirements for open-end credit accounts are adequate and not in need of revision. These rules work in the present day and are drafted such that they can be adapted to evolving technologies and business practices. Not only must the Board consider the impact of any changes to these rules to creditors, it must also take into the account the impact on the consumer retailing industry, acquiring banks, and card associations. At a minimum, changes to these well established rules would lead to confusion, uncertainty, and disruption to businesses and consumers, all of which may lead to increased litigation.

Question 44. Information is requested on whether industry has developed, or is developing, open-end credit plans that allow consumers to conduct transactions using only account numbers and do not involve the issuance of physical devices traditionally considered to be credit cards. If such plans exist, what policies do such

creditors have for resolving accountholder claims when disputes arise?

We believe some issuers do issue account numbers without the issuance of a traditional credit card device. Such a product would be for use by a consumer in an on-line environment. We believe such accounts would be subject to the rules generally applicable to open-end credit, but not necessarily to the rules applicable to cards [e.g., Section 226.12(c)]. We would suspect such issuers would agree contractually with consumers as to the manner in which accountholder claims would be resolved.

Question 45. Have consumers experienced problems with convenience checks relating to unauthorized use or merchant disputes, for example? Should the Board consider extending any of TILA's protections for credit card transactions to other extensions on credit card accounts and, in particular, convenience checks?

The Board should not extend TILA's protections for credit card transactions to other extensions of credit on credit card accounts because the card association network infrastructure that allows chargebacks does not apply to checks. Without this network, creditors are essentially left holding all of the dispute risk with diminished recourse ability against the merchant. And this concern assumes the check is made payable to the merchant. In many cases, the consumer makes the check payable to cash, deposits it in a checking account, and proceeds to make purchases with personal checks. It is inconceivable how TILA's credit card dispute resolution rules could be applied in that situation.

Question 46. Should the Board consider revising Regulation Z to allow creditors to issue additional credit cards on an existing account at any time, even when there is no renewal or substitution of a previously issued card? If so, what conditions or limitations should apply? For example, should the Board require that the additional cards be sent unactivated? If activation is required, should the Board allow issuers to use alternative security measures in lieu if activation, such as providing advance written notice to consumers that additional cards will be sent?

Where technological growth and innovation, and/or consumer convenience can be facilitated without compromising consumer liability protections, we believe unsolicited card rules should be relaxed with respect to existing customers. For example, if a customer holds a single card that can be used both as a private label card and a general purpose credit card, the creditor should be allowed to replace that single card with two cards, one a private label card and the other a general purpose credit card. This should be the case whether the original card accessed one account with, for example, dual credit lines, or two separate accounts. Similarly, creditors should also be allowed to replace a card that accesses one account with a card that accesses multiple accounts. In each of the foregoing cases, we believe the convenience and flexibility afforded to consumers outweighs a minimal risk of authorized use.

In addition, a creditor should be allowed to issue unsolicited access devices (e.g., an additional card, key fob) at any time on an existing account, not just for replacement purposes. More and more consumers are finding the use of key fobs a convenient alternative to a credit card. Again, allowing this flexibility would not materially increase the risk of unauthorized use.

In any of the foregoing scenarios we believe a reasonable approach would be to maintain an overall unauthorized use liability for the account(s) at no more than $50.

Question 47. What are the cut-off hours used by most issuers for receiving payments? How do issuers determine the cut-off hours?

We have established a 3:00pm local time cut-off hour and we believe industry cut-off hours are typically between noon and 3:00pm. In determining an appropriate cut-off time a creditor may consider the time of day by which a reasonable number of payments would be received, as well as local postal service procedures.

Question 48. Do card issuers' payment instructions and cut-off hours differ according to whether the consumer makes the payment by check or electronic fund transfer, or by using the telephone or Internet? What is the proportion of consumers who make payments by mail as opposed to using expedited methods, such as electronic payments?

Payment instructions will typically differ based upon the method of payment used by the customer. For example, in determining a cut-off time for an electronic payment, local postal services procedures do not have to be taken into account. Payment instructions and cut-off hours applicable to each type of payment method are clearly disclosed to consumers.

Question 49. Do the existing rules and creditors' current disclosure practices clearly inform cardholders of the date and time by which card issuers must receive payment to avoid additional fees? If not, how might disclosure requirements be improved?

We believe the existing rules and creditor's current disclosure practices clearly inform cardholders of the date and time by which payments must be received in order to avoid additional fees. We do not believe there is a need for improvement in this regard.

Question 50. Do the operating hours of third-party processors differ from those of creditors, and if so, how? Do creditors treat payments received by a third-party processor as if the payment was received by the creditor? What guidance, if any, is needed concerning creditors' obligation in posting and crediting payments when third-party processors are used?

We believe creditors treat payment checks received by third-party processors as if the payment was received by the creditor. We do not believe guidance in this regard is necessary.

Question 51. Should the Board issue a rule requiring creditors to credit payments as of the date they are received, regardless of the time?

No, we do not believe it is necessary or appropriate for the Board to do so. As set forth in our answer to Question 49 above, we believe the current rules work and consumers are given clear disclosure as to when their payment must be received by the credit issuer. Moreover, many issuers have revised their open-end payment credit practices as a result of litigation on this issue alleging breach of contract and/or deceptive trade practices claims. Consumers appear to understand and not be dissatisfied with payment crediting practices, therefore, we do not believe rulemaking by the Board is necessary.

Additional Issues

Question 52. ***Providing guidance not expressly addressed in existing rules.*** **Board staff is asked to provide informal oral advice on an ongoing basis about how Truth in Lending rules may apply to new products and circumstances not expressly addressed in Regulation Z and its official staff commentary. The Board invites the public to identify issues where they believe staff's informal advice should be formalized or addressed anew. Should such changes be adopted after notice and public comment, they would apply prospectively and compliance would become mandatory after an appropriate implementation period.**

We believe creditors should be afforded flexibility in compliance with the initial account disclosure requirements in the telesales environment, particularly when the consumer wishes to simultaneously consummate both the credit and purchase transaction. More and more consumers use the convenience of purchasing goods and services over the telephone. In many of these cases, the consumer wishes to open the account she will use to finance the purchase at the same time she is making the purchase. And, just as the consumer desires speed and convenience when conducting transactions over the telephone, she wants her purchase delivered without delay. This situation raises the practical problem of delivering the account-opening disclosures, particularly when the account-opening disclosures are mailed and the goods are shipped from different locations, as is often the case.

Section 226.5(b) of Reg Z provides that the account-opening disclosures must be delivered before the first transaction is made under the plan. According to the Official Staff Commentary "before the first transaction" means "before the consumer becomes obligated on the plan.."[2] As applied in the telesales environment, creditors may take alternative approaches to address this issue. One may be to delay shipment of the

[2] Official Staff Commentary of Regulation Z, Section 226.5(b)(1).

merchandise until after the consumer receives the account disclosures in the mail. The delay in shipment, however, causes consumer and merchant frustration. A second approach would be to ship the goods, but delay posting the transaction to the account until after the consumer receives the disclosures and elects whether to use the account to finance the purchase or some other method of payment. This alternative causes anxiety to the merchant whose goods are in the consumer's hands before a method of payment has been confirmed.

We believe the foregoing issues can be addressed, with minimal if any risk to consumers, by providing additional clarity to the meaning of "before the first transaction." We suggest that the Official Staff Commentary be amended to clarify that a consumer is not deemed to be "obligated on the plan" until after the expiration of a reasonable cancellation period. During this cancellation period, the consumer would have the option of canceling the transaction in its entirety or using another form of payment, in either case, at no cost. For example, after the telesales call, the merchandise would be shipped, the account-disclosures mailed, and the purchase would be posted to the account. Upon receipt of the account-disclosures or merchandise, whichever is later, the consumer would have a reasonable period of time (e.g., 10 days) to either completely cancel the transaction, or use another form of tender to pay for the merchandise. If the consumer selected cancellation, the goods could be returned and the transaction on the account cancelled, at no cost to the consumer. If the consumer decided to keep the goods, but selected another form of tender, the card transaction would be cancelled at no cost to the consumer. If the cancellation period expires with the consumer taking no action, it would be assumed that the goods would be retained by the consumer and financed on the card. We believe this approach provides necessary flexibility to consumers, merchants and creditors to operate in the ever-growing telesales environment with little or no risk to consumers.

Question 53. ***Adjusting exceptions based on de minimis amounts.*** **To facilitate compliance, the Board has provided a number of exceptions based on *de minimis* dollar amounts. For example, TILA's open-end rules require creditors to transmit periodic statements at the end of billing cycles in which there is an outstanding balance or a finance charge is imposed; the regulation relieves creditors of that duty if the outstanding debit or credit balance is $1 or less (and no finance charge is imposed). 15 U.S.C. 1637(b); 12 CFR 226.5(b)(2)(i). Similarly, the Board provides for a simplified way to calculate the effective APR on periodic statements when a minimum finance charge is assessed and is 50 cents or less. 12 CFR 226.14(c)(4). Should *de minimis* amounts such as these be adjusted, and if so, to what extent?**

We do not believe these de minimis amounts need to be adjusted.

Question 54. ***Improving plain language and organization; identifying technical revisions.*** **The Board is required to use "plain language" in all proposed and final rules published after January 1, 2000. 12 U.S.C. 4809. The Board invites comments**

on whether the existing rules are clearly stated and effectively organized, and how, in the upcoming review of Regulation Z, the Board might consider making the text of Regulation Z and its official staff commentary easier to understand. Are there technical revisions to the regulation or commentary that should be addressed?

We believe the existing rules are clearly stated and effectively organized. We are aware of one technical revision in the Official Staff Commentary that should be addressed. It is our understanding that the second sentence of paragraph 7. of the Official Staff Commentary to Section 226.5a(b) should provide that the event or events that may result in an increased penalty rate are to be disclosed outside the table.

Question 55. ***Deleting obsolete rules or guidance.*** **A goal of the Regulation Z review is to delete provisions that have become obsolete due to technological or other developments. Are there any such provisions?**

Please refer to our answers to Questions 46 and 52.

Question 56. ***Recommendations for legislative changes.*** **Are there any legislative changes to TILA the Board should consider recommending to the Congress? For example, where a rule is based on a dollar amount established by the statute, the Board seeks comment on whether to recommend adjustments of those dollar amounts to the Congress, and if so, the amount of such adjustments.**

We do not believe revisions to dollar amounts established by statute, or any other legislative changes to TILA, are necessary.

Question 57. ***Recommendations for nonregulatory approaches.*** **In addition to requesting comment on suggestions for regulatory or statutory changes, the Board seeks comment on nonregulatory approaches that may further the Board's goal of improving the effectiveness of TILA's disclosures and substantive protections. Such approaches could include guidance in the form of best practices or consumer education efforts. For example, calculation tools are widely available on the Internet. How might the availability of those tools be used to address concerns that consumers need better information about the effects of making only minimum payments on their account? Are there any data that indicate the extent to which consumers access calculation tools that are publicly available?**

We believe there are many opportunities for non-regulatory approaches to improve the effectiveness of TILA disclosures. For example, a website could provide a calculator for the effective APR or the amount of time it would take a consumer to pay an account in full if the consumer made only the minimum payment requested. Education efforts could also be focused on the manner in which payments are allocated and the differences between daily balance calculations.

Question 58. ***Reviewing other aspects of Regulation Z.*** **Although the Board is proposing to focus the review primarily on the rules for open-end credit, are there other areas or particular sections of Regulation Z that should be included in this initial stage of the review?**

We agree with the Board's approach to focus its review primarily on the open-end credit rules and do not see a pressing need to broaden that review to any other areas or sections of Reg Z at this time.

Once again, we appreciate the opportunity co comment on the ANPR. If you have any questions concerning our comments, or if we may otherwise provide assistance with respect to this issue, please do not hesitate to call me directly at (847) 564-6324.

Sincerely,

Julie A. Davenport
General Counsel - HSBC Retail Services