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August 4, 2008

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Regulation Comments, Chief Counsel's Office  
Office of Thrift Supervision  
ATTN: OTS-2008-0004  
1700 G Street, NW  
Washington, DC 20552

Mary Rupp, Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

RE: Docket No. R-1314  
OTS-2008-0004  
RIN 3133-AD47  
Proposed Changes to Regulation AA  
Unfair or Deceptive Acts or Practices  
73 Federal Register 28904, May 19, 2008

Dear Sir or Madam,

I am writing to comment on the proposed rule changes concerning the Unfair or Deceptive Acts or Practices Proposed Rule. Specifically, I am writing in regards to the proposed limitation for banks to finance account opening fees for the issuance or availability of credit.

I have been in the credit card business with CorTrust Bank for over 15 years, with this being my 1<sup>st</sup> year as the Credit Card Manager. Over that time period, I have seen several changes in the credit card business, in particular the "subprime" (those consumers with a FICO score under 660) credit card business. To limit the amount of fees that a credit card issuer can charge a consumer will significantly impact the "subprime" consumer's access to credit. Following are the reasons I disagree with this proposed change.

Proposed Rule on Limitation on Financing Account Opening Fees

To address problems with so-called "sub-prime" credit cards, creditors would be prohibited from financing security deposits or fees for the issuance or availability of credit (such as account-opening fees or membership fees) if those deposits or fees utilize the majority of the available credit on the

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account. The proposal limits the amount of fees on the first billing statement to 25% of the credit limit and an additional 25% of the credit limit can be charged in fees on the credit card over the following 11 billing statements.

#### Agencies Analysis of Consumer Injury or Harm

In discussing this issue, the agencies state that "consumers incur substantial monetary injury when security deposits and fees for the issuance or availability of credit are charged to a consumer credit card account, both in the form of the charges themselves and in the form of interest on those charges." Also, the agencies state that such security deposits and fees "diminish the value of that account by reducing the credit available to the consumer for purchases or other transactions."

The Agencies analysis that these fees reduce the available credit is obvious. I disagree with the monetary injury that these types of "subprime" credit card accounts cause the consumer for the following reasons:

- These types of credit card accounts have helped millions of people to establish or rebuild a positive credit history. By a consumer improving his or her credit score, they will have the opportunity to "graduate" to a better credit card offer or save thousands of dollars in interest on home mortgages, automobile loans or car insurance.
- These types of credit card accounts allow consumers to make purchases that they may have not been able to make with a check or cash such as purchases over the internet, renting a car or hotel room or purchasing gasoline at the pump.
- An estimated 70 million people have a FICO Score below 660. By limiting the amount of fees a credit card issuer can charge may completely eliminate these consumers access to this type of credit, not allowing them to establish or rebuild their credit. By doing this, we would be pushing these consumers into unregulated areas of lending that would significantly harm them.
- Although the open to buy on our current offer is small when the first billing statement is issued, I believe there is significant value in this type of product if used properly. If the consumer charges \$250 every month for the first year and pays the balance in full, the consumer will have had the opportunity to purchase \$2,759 in goods and paid only \$241 in fees ( $\$250 \times 12 = \$3,000$ ,  $\$3,000 - \$241 = \$2,759$ ). This means that fees only utilized approximately 8% of the available credit over the first year. If the account is used properly, I believe there is significant value to the consumer.

#### Mitigation of Risk

As with many products that consumers purchase, price is based on the risk the seller of the product is taking. As an example, a smoker pays a higher premium for life insurance than a non-smoker. Young

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drivers or those with several traffic infractions pay more for auto insurance than those older more experienced drivers with clean driving records.

Credit cards are no different. Consumers that have had a history of one or more "credit accidents" have a higher probability of an accident in the future than someone with a clean record. This means that a financial institution must charge higher fees for the "safety and soundness" of the institution, similar to a life or auto insurance company.

Also, "sub-prime" cardholders require more resources to service. These cardholders tend to make more phone calls to our service center as well as significantly more collectors are required to make collections calls. Because these cardholders are more labor intensive, fees need to be charged to offset the additional expenses as compared to a prime portfolio.

#### Summary

It is important to note that some of the Board's other proposed changes will significantly increase the amount of disclosures that will allow the consumer the ability to make a much more informed decision in regards to accounts with lower credit limits with higher up-front fees. I commend your efforts in this area and hope that these changes will help to alleviate your concerns in regards to consumer monetary injury or harm.

I would ask you to continue to work on improved disclosures that are clearer and easier for the consumer to understand and make better decisions in regards to credit products. I believe that taking this route is significantly better for the consumer than totally limiting products available to them currently in a regulated environment.

With improved disclosures, the consumer will have an easier time on deciding what credit products have value to them.

I appreciate the opportunity to comment on these proposed changes and hope that the regulators will continue to work with financial institutions to improve disclosures that allow the consumer to make their own choices on what products have value and are right for them.

Sincerely,



David A Brown