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BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
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September 29, 2003

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. OP-1158

Dear Ms. Johnson:

This comment letter is submitted on behalf of Visa U.S.A. in response to the Board of Governors of the Federal Reserve System's ("Board") proposed interpretation and supervisory guidance with request for comment entitled Anti-Tying Restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970 ("Proposed Interpretation"). Visa appreciates the opportunity to comment on this important issue.

The Visa Payment System, of which Visa U.S.A.¹ is a part, is the largest consumer payment system, and the leading consumer e-commerce payment system, in the world, with more volume than all other major payment cards combined. There are more than one billion Visa-branded cards, and they are accepted at more than 28 million physical locations in 144 countries. Visa plays a pivotal role in advancing new payment products and technologies, including technology initiatives for protecting personal information and preventing identity theft and other fraud, for the benefit of its 21,000 member financial institutions and their hundreds of millions of cardholders worldwide.

Visa strongly supports the principles expressed in the Proposed Interpretation and applauds the Board's effort to assist both banks and their affiliates in understanding and complying with the anti-tying restrictions of section 106 of the Bank Holding Company Act ("Section 106"). However, one aspect of the Proposed Interpretation, the restriction on banks to offer mixed-product arrangements to individuals, makes an unnecessary distinction between retail and corporate customers. This distinction results in the unwarranted application of the Section 106 anti-tying restrictions to retail customers.

¹ Visa U.S.A. is a membership organization comprised of U.S. financial institutions licensed to use the Visa service marks in connection with payment systems.

The Proposed Interpretation states that Section 106 permits a bank to provide corporate customers with the “freedom to choose whether to satisfy a condition imposed by [a] bank through the purchase of one or more traditional bank products or other “non-traditional” products.” According to the Proposed Interpretation, if a corporate customer, who is offered the mixed-product arrangement, has a “meaningful option to satisfy the bank’s condition solely through the purchase of the traditional bank products included in the arrangement, then the bank’s offer would not, in fact, require the customer to purchase any non-traditional product from the bank or its affiliates.”

In direct contrast, however, the Proposed Interpretation forbids offering similar mixed-product arrangements to individual retail customers. Citing standardization of retail products, and individual retail customers’ lack of financial sophistication and susceptibility to pressure from banks to purchase non-traditional products, the Proposed Interpretation concludes that “it [is] difficult for a bank to establish a good faith belief that a mixed-product arrangement provides a meaningful option to satisfy the condition associated with the arrangement solely through the purchase of traditional bank products.”

Visa believes that the statement forbidding mixed-product arrangements for retail customers is unnecessary and that it is based on an erroneous premise that retail products are not tailored to reflect the specific needs and resources of customers; it also underestimates the ability of retail customers to make meaningful financial choices. Moreover, the application of such a restriction to retail customers is inconsistent with the Board’s treatment of similar relationship banking programs involving combined balance discounts, which are a subset of mixed-product arrangements. Visa also believes that there is no legal basis for the Proposed Interpretation’s distinction between corporate and retail customers under the anti-tying restrictions of Section 106.

Visa believes that mixed-product arrangements will provide benefits to retail customers, while preserving protections against coercive bank practices by not obligating retail customers to purchase non-traditional products. For example, a bank may wish to offer a special credit card to its best customers that incorporates pricing and other features that are not available to other customers. This credit card may not produce a return that justifies offering it unless the customer uses other bank and affiliate services that meet an internal profitability threshold or “hurdle rate.” This is essentially the same relationship as the example described in the Proposed Interpretation to illustrate a mixed-product relationship for corporate customers. However, this product may not meet the safe harbor for combined balance discounts because it includes unique features other than a discount. Visa believes that there is no policy reason for restricting the ability of banks to offer such products. Moreover, the increasing sophistication of automated systems enables banks to identify customers that would qualify for these products and to tailor the character of the products to the specific interests of those customers.

Visa also believes that retail customers who are informed that this premium card product is only available so long as they use a specific volume of traditional banking, security, or insurance services from the bank and its affiliates, will make choices among these products every bit as effectively as if the premium card product only involved a lower interest rate and therefore

qualified for the combined balance discount safe harbor. Thus, consistent with Section 106 and the Proposed Interpretation's discussion of corporate mixed-product arrangements, the existence of this "meaningful choice" suggests that retail and corporate customers should be treated equally under the auspices of Section 106.

In this regard, Visa notes that the statutory text of Section 106 makes no distinction between corporate customers and retail customers in the context of mixed-product arrangements. Accordingly, banks should be afforded the opportunity to serve individual retail customers with a wide spectrum of financial services through mixed-product arrangements. Visa also believes that offering individual retail customers a broad menu of financial services options in a mixed-product arrangement is in line with the narrow scope of anti-tying protections offered by Section 106.

In sum, Visa believes the better approach to mixed-product arrangements is to recognize the benefit of providing individual retail customers with access to a wide choice of both traditional and non-traditional products. Visa appreciates the opportunity to comment on this important topic. 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