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August 18, 2008

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

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex M)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Fair Credit Risk Based Pricing Regulations - Docket No. R-1316
FACT ACT Risk Based Pricing Rule: Project No. R411009

Dear Ms. Johnson and Office of the Secretary:

The Board of Governors of the Federal Reserve System and the Federal Trade Commission (collectively, the "Agencies") have requested comments to their proposed rules to implement the risk based pricing provisions in section 311 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amends the Fair Credit Reporting Act (FCRA) (the "Proposed Rules"). JPMorgan Chase & Co., on behalf of JPMorgan Chase Bank, N.A., Chase Bank USA, N.A. and its other subsidiaries, appreciates the opportunity to submit this response.

JPMorgan Chase & Co., (NYSE: JPM) ("Chase") is a leading global financial services firm with assets of $1.6 trillion and operations in more than 50 countries. The firm is a leader in investment banking, financial services for consumers, small business and commercial banking, financial transaction processing, asset management, and private equity. Under its JPMorgan and Chase brands, the firm serves millions of consumers in the United States and many of the world's most prominent corporate, institutional and government clients. Information about the firm is available on the Internet at www.jpmorganchase.com.

I. Introduction and General Comments

Chase appreciates the thorough and thoughtful approach that the Agencies have taken to develop the Proposed Rules to ensure flexibility in their application across a variety of lending products and risk based pricing structures. Chase commends the Agencies on their efforts to improve the accuracy of consumer reports, enabling consumers to receive the best rates possible. Chase supports the concept of alerting consumers of the existence of negative information on their consumer reports, allowing those consumers, if they choose, to check their consumer reports for accuracy and correct any erroneous information.

Chase also supports the majority of the Agencies' Proposed Rules, including that the Proposed Rules' applicability should be limited to transactions involving the extension of credit that is primarily for personal, household or family purposes. We also agree with the requirement that an original creditor to a transaction provide the Risk Based Pricing Notice to ensure that a consumer receives just one Risk Based

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Pricing Notice per transaction. We do seek modification or clarification, as set forth below, on several aspects of the Proposed Rules.

This letter reflects the comments of Chase's domestic consumer lending businesses. General comments across all of these product lines are outlined in this Section, with specific comments providing details on different practices for each of the businesses provided in the Specific Sections below.

A. Effective Date of Final Regulations

While the Proposed Rules will provide requirements for important disclosures to consumers and assist in improving credit bureau accuracy, it is important to note that the technology and operational efforts to comply with the new requirements of the final regulations will be significant, particularly coupled with required implementation efforts resulting from the Board's Regulation Z and Regulation AA Proposals, both published in the Federal Register on May 19, 2008. The final regulations will require creditors across all spectrums of the industry to make significant changes to application processing systems, implement interfaces with the credit reporting agencies to receive information, train personnel and redesign or create letters and notices. Large banks such as Chase will be required to make these changes across a variety of platforms and businesses in order to support multiple products. With certain products, our partners who are retailers will also have programming challenges. To provide lenders and banks sufficient time to make and test the necessary changes, we recommend that the effective date of the final regulations be at least eighteen months from the date on which the final regulations are issued and that the compliance period include two peak holiday shopping seasons to accommodate our retail partner's schedules.

II. Specific Comments for Mortgage and Non Mortgage Loans (other than Credit Cards)

Chase has been working with industry groups to encourage the Agencies to adopt the credit score disclosure exception for loans secured by residential real property (the "Mortgage Exception Notice"), and for other types of loans (the "Credit Score Disclosure Notice"). Chase plans to rely on the Mortgage Exception Notice and the Credit Score Disclosure Notice to comply with the final regulation. As a result, we do not find it necessary to comment on many aspects of the Proposed Rules related to the Risk Based Pricing Notice. Chase would likely have extensive comments on those aspects if the Mortgage Exception Notice or the Credit Score Disclosure Notice were not available.[1]

A. Timing Requirements for the Credit Score Disclosure Notice

As the Proposed Rules are currently drafted, the Credit Score Disclosure Notice for loans not secured by one to four units of residential real property must be supplied "as soon as reasonably practicable after the

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[1] One of the reasons that Chase is relying on the Mortgage Exception Notice and Credit Score Disclosure Notice exceptions is because of the uncertainty under the Proposed Rules as to what constitutes a "given class of products," both for determining whether one Risk Based Pricing Notice method must be used, and for determining which consumers should receive the Risk Based Pricing Notice. Separate risk based pricing models are often used for the same product delivered through different channels (for instance, a direct auto loan for a new vehicle delivered via a branch vs. such a loan closed by a dealer or a private student loan that is obtained directly from the lender versus obtained through a school). These pricing differences may be due to a variety of factors including inherently higher fraud risk in certain channels or a difference in cost to administer the products through one channel over another. To combine the pricing models used in these different channels to prepare the Risk Based Pricing notice using one of the methods in the Proposed Rules for all new auto loan recipients, or all private student loans, for example, would create inaccurate results since very credit worthy borrowers in a higher priced channel would receive the Risk Based Pricing Notice and other, less credit worthy borrowers in a lower priced channel would not. The Agencies should clarify that the same or similar products delivered via different channels may be considered to be in different classes of products, if there are differences in risk based pricing formulas because of channel differences.

credit score has been obtained, but in any event at or before consummation of a transaction in the case of closed-end credit..." This timing requirement is problematic in lending transactions where a retailer is closing a loan on behalf of a lender, such as when an auto dealer is closing a loan on behalf of a lender in a dealership. In these types of situations, there is virtually no time between when the credit score is accessed and when the loan is consummated, with the dealer preparing, delivering and executing all of the loan documents on the lender's behalf essentially simultaneously. The consumer, in this context, will have been provided the required disclosures under Regulation Z, including the APR, since the dealer is equipped to calculate and provide these disclosures on the lender's behalf. However, the dealer has no ability to provide a timely Credit Score Disclosure Notice in this instance because customer specific information must be supplied from the credit reporting agency used by the lender in order to populate the Credit Score Disclosure Notice. The dealer does not have access to this information and it would be operationally very difficult to provide the information to the dealer within the required timeframe.

Chase strongly urges the Agencies to adopt a more flexible approach for the timing of the Credit Score Disclosure Notice similar to that set forth in Section 609(g) of the FCRA, which allows mortgage lenders to provide the notice required under Section 609(g) (the "FACT Act Notice"), which contains the credit score "as soon as reasonably practicable." The provision of the Credit Score Disclosure Notice as soon as reasonably practicable after consummation of the loan would still uphold the stated statutory purpose of the Credit Score Disclosure Notice - to prompt consumers to check their consumer reports for any errors, while providing lenders the ability to deliver the notice accurately.

B. Model Forms for the Mortgage Exception Notice and the Credit Score Disclosure Notice

Chase appreciates that there is flexibility to work within the safe harbor form proposed for the Mortgage Exception Notice and the Credit Score Disclosure Notice. Chase seeks clarification on how far the Mortgage Exception Notice and Credit Score Disclosure Notice formats can deviate from the model forms and retain the protection of the safe harbor. For instance, the current practice in the mortgage industry is to work with the credit reporting agencies to create the FACT Act Notice. Each credit reporting agency varies slightly in format and layout of these forms. The Agencies should clarify that as long as the substance of the information disclosed is the same as the model forms, and the clear and conspicuous standard is met, the exact format of the model forms does not have to be followed. Similarly, for the Credit Score Disclosure Notice, Chase seeks clarification that it would be acceptable to reduce the model Credit Score Disclosure Notice to one page and, as long as the clear and conspicuous standard is met, still be within the safe harbor. We seek the same clarification for the model form when no credit score is available.

Chase also encourages the Agencies to adopt, as part of the final regulation, a standard by which a user of a credit score may rely on information provided by the person who supplies the credit score, such as that found in Section 609(g)(1)(F)(i) of the FCRA which states " The obligation of any person pursuant to this subsection shall be limited solely to providing a copy of the information that was received from the consumer reporting agency." This will fairly and appropriately ensure that lenders will not be liable if the information they receive from the credit reporting agencies to populate the exception notices under the Proposed Rules is incomplete or inaccurate.

C. Delivery of Notices in case of Joint Applicants

The Proposed Rules do not address delivery of the Mortgage Exception Notice or the Credit Score Disclosure Notice in cases of joint applicants. We urge the Agencies to clarify that the Mortgage Exception Notice and Credit Disclosure Notice should be provided only to the applicant whose credit report was used in the risk based pricing decision.

III. Specific Comments for Credit Card Issuers

A. Timing Requirements for the Risk Based Pricing Notice

We appreciate the Board's creation of special requirements applicable to credit card issuers, with a clear rule delineating the circumstances in which a credit card issuer must provide a risk based pricing notice. However, the timing requirement for open-end credit plans to notify the consumer before the first transaction is made under the plan, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer by the person required to provide the notice", creates a timing conundrum for instant credit offers ("IC Offers"), similar to the situation described above for the auto lending context.

IC Offers for credit cards can occur in several channels, for example, at a retailer and online. For purposes of this letter, "cobrand card" refers to any credit card that is issued by Chase as a MasterCard or Visa credit card and bears the name of a merchant and "private label card" refers to a credit card issued by Chase that only bears the name of the merchant and may only be used at the merchant's location ("brick and mortar" or online). Often more than one purchase APR is disclosed: the offer may be (i) just for a cobrand card with more than one purchase APR, (ii) just for a private label card with a single price point (in which case no risk based pricing notice would be necessary), or (iii) if the applicant does not qualify for either cobrand purchase APR, a combined offer for a cobrand card with two purchase APRs and a "downsell" to a private label card with a third purchase APR.

When a consumer applies for an IC Offer at a retailer, the consumer is given the disclosures required under Reg. Z Section 226.5a, as well as the initial disclosures required under Section 226.6. Depending upon the offer, both disclosures include pricing for either the cobrand card, the private label card, or for both the cobrand card and the private label card, in the case of the combined offer. After the consumer is approved for a credit card, the retailer prints out a receipt and temporary credit card that indicates both the consumer's approved product, and the purchase APR that will apply to the consumer's new account. Under the Proposed Rules, it is at this point in the application process that Chase would be required to give the new cardmember the risk based pricing notice if the consumer did not qualify for the lowest purchase APR.

The credit reporting agency that Chase uses is dependent upon the individual's consumer address. Therefore, at any given retailer's location, Chase may obtain consumer reports from multiple credit reporting agencies. There are two significant hurdles with delivering the risk based pricing notice at this point: (i) communicating the credit reporting agency information to the retailer at the time of approval; and (ii) programming the retailer's register to print the required information. In addition, there are significant privacy issues with an employee communicating the risk based pricing notice in a retail setting to the new cardmember.

- When is the teachable moment?

In the section-by-Section Analysis provided by the Agencies under "Timing," the Agencies recognize "that for some transactions there may be very little time between approval of an application and either consummation or the first transaction under the plan" and as an example, give credit card accounts that may be opened quickly. The Agencies expressly solicit comments on whether there are scenarios when "the notice should be permitted to be provided after consummation or after the first transaction under the plan" and whether such notice would be effective for consumers. The Agencies also note that the "teachable" moment for consumers is best addressed by utilizing a "targeted, personalized notice." When a consumer is standing at the point of sale and applying for an IC Offer, it is unlikely that the consumer will react to a risk based pricing notice upon approval of their account. The "teachable" moment for

consumers approved at the point of sale is when they receive their welcome materials and new card in the privacy of their home.

- Providing the Notice

In order to comply with the purpose of the Proposed Rules, as well as to overcome the hurdles and privacy issues set forth above, Chase urges the Agencies to adopt a more flexible approach for the timing of the risk based pricing notice in the case of an IC Offer by allowing the notice to be delivered "as soon as practicable" after the initial transaction takes place. Alternatively, Chase urges the Agencies to adopt a "hybrid" approach for IC offers, whereby the issuer may provide a generic risk based pricing notice in a prominent place on the disclosures handed to the consumer prior to the time of application, near the disclosures required under Regulation Z section 226.5a, stating that the terms offered to the consumer "may be less favorable than the terms offered to consumers who have better credit histories." An actual risk based pricing notice would then be provided by the issuer "as soon as practicable" after the initial transaction takes place.

Chase believes that such an accommodation is within the discretion provided to the Agencies to modify the timing requirements of the risk based pricing notice, and still upholds the purpose of the risk based pricing notice, which is to provide consumers with the opportunity to review their credit reports for accuracy. Chase urges the Board to consider this exception for IC Offers, since without some accommodation, issuers will be forced to make offers with only one purchase APR, resulting in either greater numbers of declined applications or offers being made with higher purchase APRs to consumers who might ordinarily qualify for lower purchase APRs.

B. Clarification of Which Consumers Must Receive a Notice

Chase requests that the Board provide clarification on whether the credit score proxy method provided under subpart 222.72 (b)(1) is available to credit card issuers to determine which class of consumers must receive the notice. While the credit card example provided in this subsection indicates it is an available method, subsection (c)(1) of proposed Section 222.72(c), which contains the requirements and guidance for credit card issuers, states "Except as otherwise provided by this subpart, a credit card issuer is subject to the requirements of paragraph (a) of this is section . . . . , (emphasis added)." No other section under the subpart indicates an alternative method for credit card issuers. Therefore, we ask that the Board include the credit score proxy method under Section 222.72(c) as an alternative method to determine which applicants must receive a risk based pricing notice.

IV. Conclusion

In conclusion, Chase appreciates the opportunity to comment on the Proposed Rules. We hope that our comments will further shape the Proposed Rules in ways that help improve the clarity and consistency of disclosures, helping consumers make informed choices throughout the relationship they have with their bank. For any questions you may have about these comments, please contact Joan B Aristei, Vice President, Assistant General Counsel at 516-745-3676.

Very truly yours,

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