

August 18, 2008

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

Re: Docket Number R-1316  
FACT Act Risk-Based Pricing Rule

World Financial Capital Bank (WFCB) is please to submit comments on the proposed rules to implement the risk-based pricing provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). WFCB is a limited purpose credit card bank and our clients are predominately specialty retailers.

In the case of a credit card issuer, a risk-based pricing notice must be provided if a consumer applies either in connection with an application program (such as a direct-mail offer or a take-one application) or in response to a solicitation and more than a single possible purchase annual percentage rate may apply under the program or solicitation. There are several areas in the proposed rules on which WFCB would like to comment.

**222.70 Scope.**

**The rule does not apply to any person that uses a consumer report in connection with an application or extension of credit to a consumer (or any other applicant) for a business purpose.** The Agencies solicit comment regarding whether there are any circumstances under which creditors should be required to provide risk-based pricing notices in connection with credit primarily for business purpose.

While we believe there may be limited circumstances in which a comparison of the terms of business purpose credit may be meaningful, we do not believe the risk-based pricing notices should be required for business purpose credit. Multiple variables are considered in the decisioning process for business purpose credit and obtaining a consumer report is only one factor, and only in certain circumstances would a consumer report apply.

## **222.72(b) Methods for Identifying Consumers Who Must Receive Notice**

**A determination may be made, on a case-by-case basis, by directly comparing the materials terms offered to a consumer to the material terms offered to other consumers in similar transactions. As an alternative to making the direct comparison, the proposed rules provide two alternative methods for determining which consumer must receive risk-based pricing notices (i.e. credit score proxy and tiered pricing methods).**

We agree with the Agencies that the direct comparison required by the general rule may not be feasible or practical for many creditors, and appreciate the flexibility in the proposed rules to apply alternative methods. However, we do not believe it is feasible or practical to limit creditors to applying only one of the alternative methods to a class of products. Certain products, such as credit cards, could be subdivided into categories with different pricing structures and methods for calculating risk (e.g. private label retail card versus bankcard), which would require more than one alternative method for determining when the notice should be given. Also, by limiting the method to a class of products, a notice could be required when there is no difference in the material terms between applicants, resulting in confusion and perceived violations of the account-opening disclosure under Regulation Z.

For example, if the credit score proxy method is chosen, then the underlying assumption is that by setting a cutoff score for credit cards, all the lower scoring consumers would receive credit cards with materially less favorable terms. The same assumption is applied also to consumers that may not have a credit score. Limiting the alternative method in this scenario would require notices to all consumers in which special credit card programs are designed, such as student or no credit score programs. In such programs, consumers could get the same terms as consumers with higher scores or the pricing could be tiered based on income. Regardless, the consumers would still have to receive a notice that incorrectly informs them that they are receiving materially less favorable terms. In such cases, without having an option as to which alternative method best fits the credit card category, applying the assumption under the credit score proxy would not effectively target the risk-based pricing notice to those consumers who are likely to have received materially less favorable terms.

## **222.73 Content, Form and Timing of the Risk-Based Pricing Notice**

**Timing of the Notice. In the case of credit under an open-end credit plan, the risk-based pricing notice must be provided before the first transaction is made under the plan, but not earlier than the time the decision to approve an application is communicated to the consumer.** The Agencies solicit comment on whether there are any circumstances in which the notice should be permitted to be provided after the first transaction under the plan, and whether a notice provided after the first transaction under the plan would be effective for consumers.

We believe consumers benefit from a process that permits credit approval at the point of sale. While the proposed rules permit oral disclosures, we do not believe the proposed contents of the risk-based pricing notice could be clearly and effectively communicated if given in-store at the point of sale, and would also provide a store associate with confidential credit information about the consumer. Since the notice only applies to those consumers who are most likely to have received less favorable material terms, we do not believe a store associate is the best alternative

for communicating the unfavorable terms, neither orally nor in the form of an appropriate written notice. In such cases, providing the notice after the first transaction allows the consumer to potentially benefit from in-store discounts and still review the terms at a time when the notice is more likely to be read and acted upon. The consumer can still make a decision to payoff any balances based on knowing that material terms may be less favorable or reframe from further usage of the card until their credit scores improve. Once a consumer establishes a credit card relationship, most creditors are open to reviewing the material terms of the credit card to entice the consumer to keep the credit card.

#### **222.74 Exceptions to the Risk-Based Pricing Notice Requirement**

**Credit Score Disclosure. A risk-based pricing notice is not required if the creditor provides a credit score disclosure to all consumers. The contents for the credit score disclosure include the current credit score or the most recent credit score that was previously calculated for a purpose related to the extension of credit.** The Agencies request comment on whether requiring disclosure of either the distribution of credit scores or how a consumer's credit score compares to the scores of other consumers will be helpful to consumers, and whether such a requirement will be unduly burdensome to industry or costly to implement.

We appreciate the Agencies proposing exceptions for classes of persons or transactions in which the risk-based pricing would not significantly benefit. However, we do not agree that the credit score disclosure exception is a viable alternative, especially as it relates to credit card issuers. The creation of a credit score disclosure for each consumer imposes additional cost and an undue burden on the industry to provide information without an equally offsetting benefit to consumers. Under existing regulations, consumers are entitled to free consumer reports that provide details of the information maintained by the consumer reporting agencies. The consumer report is more beneficial to consumers in identifying inaccuracies and provides information that consumers will not have by merely obtaining the credit score.

Similar to the direct comparison method for determining when to provide a risk-based pricing, providing a credit score disclosure to all consumers is equally unpractical in a credit card environment. Unlike loans secured by real estate, credit card approval could occur at the point of sale. The proposed rules would require store associates to provide sensitive credit information at a communication point that is not secure.

We appreciate the opportunity to comment on this important proposal.

Sincerely,  
/s/

Marvin H. Corne  
President & CEO