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August 18, 2008

Via Electronic Mail

Ms. Jennifer J. Johnson,
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, N.W.
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: Federal Reserve Regulation V: Docket No. R-1316 (12 C.F.R. Pt. 222)
FTC Risk-Based Pricing Rule, Project No. R411009 (16 C.F.R. Pts. 640 & 698)

Ladies and Gentlemen:

Barclays Bank Delaware ("Barclays") is pleased to be able to submit this comment letter in response to the Proposed Rule published by the Board of Governors of the Federal Reserve ("Board") and the Federal Trade Commission ("FTC" and together with the Board, the "Agencies") in the *Federal Register* on May 19, 2008 implementing the risk-based pricing notice provisions of the Fair and Accurate Credit Transaction Act ("FACT Act").

Barclays is a partnership focused issuer of credit cards with over $7 billion in credit card receivables and approximately 4.8 million credit card accounts. Founded in 2001, Barclays is one of the fastest growing credit card issuers in the United States. As a bank focused on the issuance of credit cards, Barclays appreciates the opportunity to make its views known with regard to the Proposed Rule, especially as to how it applies to credit cards.

Summary of Comments

Barclays appreciates the fact that the Agencies have striven to reach a balance between providing increased information to consumers on one hand and the burden that any new rule could impose on users of credit reports. Operational feasibility is an important consideration. Barclays will not comment on all aspects of the Proposed Rule, especially where the Agencies got it "right". That stated, Barclays specifically proffers that 1) the Agencies have properly determined that the "material" term for purposes of credit cards is the annual percentage rate ("APR") for purchases; 2) the inclusion of account review in the scope of the Proposed Rule should be re-evaluated; 3) greater flexibility should be incorporated in the timing rules and 4) the 60% threshold for the credit score proxy should be revisited and revised to a lower number. Barclays also encourages the Agencies to provide for a reasonable implementation period.

1) Definition of Material Terms

One of the most important aspects of the Proposed Rule is the definition of "material terms" in the context of credit cards as referring to the APR for purchases. Barclays strongly supports this aspect of the Proposed Rule. The APR on purchases is likely to be the key term which most consumers refer to when comparing credit card offers. The Board has already recognized this fact already by requiring the APR on purchases to be the key term that is emphasized in the "Schumer box" disclosures for credit cards. It is also the primary term that issuers regularly vary as part of risk-based pricing. Employing the purchase APR as the material term also enables issuers to more readily and accurately comply with any final rule, because it enables straightforward comparisons.

2) Account Review Should Not Trigger a Risk-Based Pricing Notice

Barclays submits that the Proposed Rule's requirement that a risk-based pricing notice be provided in connection with account reviews is not required by the statutory language of the FACT Act and is not necessary to serve the purpose behind this provision. Barclays therefore requests that the Agencies withdraw this aspect of the Proposed rule.

The terms of the FACT Act do not require extending the risk-based pricing notice rule to account review. The FACT Act contemplates a notice when a creditor uses a consumer report "in connection with an application for, or a grant, extension, or other provision of, credit…." 15 U.S.C. § 1681m(h)(1). None of these terms relates to account review. Indeed, the Agencies elsewhere in the Proposal use all of these words to describe an initial credit decision, not an account review. *See* Proposed § _.73(c)(2). There is no application at the account review stage. Importantly, at the time of an account review, the creditor has already granted, extended, and provided credit. Account review may be used to vary the terms of credit previously extended, but it does not involve a decision to grant, extend, or provide credit. As a result, the Proposed Rule should not include a requirement to provide risk-based pricing notices in connection with account review.

Moreover, there is no need to provide a risk-based pricing notice in connection with the account review of existing accounts. The requirements under Regulation B with regard to adverse action notices are more than sufficient. For changes in terms of existing accounts, Regulation B defines "adverse action" to encompass any "termination of an account or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts." 12 C.F.R. § 202.2(c)(1)(ii). The adverse action notice that is then sent to the consumer provides all the information the consumer needs with regard to reviewing his or her credit bureau report. There is no gap here for the risk-based pricing notice to fill; the adverse action requirement already satisfies the need for providing notice in these circumstances.

3) Timing Requirements

The timing requirements in the Proposed Rule impose an unnecessary burden on creditors that is neither required by the statutory language of the FACT Act nor justified by any marginal benefit that would accrue to consumers. Under the Proposed Rule, credit card issuers would be required to deliver the notice before the first transaction on the credit card account plan, but not earlier than the communication of the credit decision to the consumers. Barclays urges the Agencies to reconsider this requirement.

a. Notice Prior to the First Transaction Is Unnecessary and Unworkable

The FACT Act gives the Agencies wide latitude in determining the time at which the risk-based pricing notice must be provided. It not only refers to "the time of an application" and "the time of communication of an approval," but also to the timing requirements and exceptions set by regulation. 15 U.S.C. § 1681m(h)(2).

This is important in that it is not always operationally feasible to provide the notice both at or after the time of communication of the credit decision and before the first transaction. For instance, Barclays issues co-branded credit cards where consumers apply for the cards at point of sale. The decision to grant credit is communicated at point of sale to enable the new cardholder to make purchases then and there on the new credit card account. The consumer is often provided a substantial monetary incentive to make purchases at that time. It would be extremely difficult, if not impossible, to deliver a risk-based pricing notice within the context of this process. Unlike the initial disclosure statement, the notice could not be pre-printed. Even if the retail clerk could print the notice, the retail clerk might get to see the content of the notice, to the chagrin of the consumer.

Finally, it might not even help to deliver the risk based pricing notice at that time. As a practical matter, there would not be sufficient time for the consumer to obtain a copy of his or her consumer report before using the card. There certainly would be too little time for the consumer to attempt to correct any apparent errors before the purchase transaction. As a result, the burden of providing notice prior to the first transaction simply outweighs any consumer benefit of receiving such a notice at that time, as opposed to later.

Importantly, the credit card marketplace already provides substantial alternatives for a consumer who, after opening an account, obtains his or her consumer report and is able to fix an error. The issuer, upon request, is likely to re-evaluate the terms of the account to take into account the updated accurate information. But even if that remedy were not available, the consumer could – armed with the improved consumer report – apply for a new credit card account and easily transfer any existing balances.

Because of the practical timeline of credit card transactions, and the available alternatives, Barclays urges the Agencies to reconsider the timing requirement, at least with respect to credit card applications. A more appropriate timeframe would be delivering the notice within 30 days after the application.

b. The Timing for Account Review Notices Should Be Relaxed.

Assuming the Agencies do not delete the requirement for providing a risk-based pricing notice in connection with an account review, the practical effect of the timing rules for providing a risk-based pricing notice for an account review depends on the Board's determination of other pending proposals regarding Regulations AA and Z. Those requirements may significantly limit the manner and time at which creditors can change terms in connection with an account review, and the substance and the timing of the notices that must be provided. As a result, there should be few circumstances in which no notice will be provided prior to the effective date of a change in the APR.

However, if there are such circumstances, creditors should be able to provide the risk-based pricing notice (or credit score disclosure) with the next periodic statement, rather than within 5 days of the effective date of the change in APR. The increase in APR will be reflected on that next periodic statement, which makes it the logical place to include information about the increase and what led to it. Moreover, a consumer is more likely to appreciate the importance of, and to review, the notice if it is provided within the periodic statement than in a separate mailing. Creditors, therefore, should have the flexibility to provide notice with the next periodic statement instead of incurring the cost of a separate mailing.

4) <u>The 60% Threshold for the Credit Score Proxy Should Be Reconsidered</u>

Under the credit score proxy method, the creditor is required to provide a risk-based pricing notice to each consumer whose credit score is below that level where 40 percent of the creditor's consumers are above and 60 percent are below. 73 Fed. Reg. at 28974. Barclays agrees with the Agencies that a bright-line rule is appropriate. However, Barclays questions whether 60% is the appropriate threshold, since it would mean that a majority of consumers who qualify for credit must receive risk-based pricing notices. It is far from apparent in the text of the statute, or its legislative history, that the intent was that a majority of successful applicants for credit should receive risk-based pricing notices. Indeed, the effectiveness of the risk-based pricing notice is likely to be diminished if receipt becomes routine, rather than the exception. This is one reason that the Agencies have determined to require that the notice be given to some as opposed to all applicants. Given the cost of providing a targeted notice, the credit score proxy method should be modified to target the notice to those consumers who most need to review their credit reports to preserve the notice's efficacy. A more appropriate standard would be to provide the notice to those who fall within the lowest 30 percent of the issuer's credit scores.

Effective Date

Implementing the final risk-based pricing rule will be a substantial undertaking for credit card issuers. Creditors will need time to design disclosures, implement and test processes and procedures for determining which consumers should receive notices, and sending the notices. Creditors may also need to redesign the processes that they use to receive and evaluate applications in order to be able to implement the new requirements. If they intend to rely on the credit score proxy method, creditors will also need an opportunity to analyze their portfolios to determine the appropriate threshold.

In addition, the Proposed Rule comes at a time when several other significant regulatory actions are pending: comment periods only recently closed on proposals to amend the open-end credit disclosure rules under Regulation Z, and the unfair or deceptive acts and practices rules under Regulation AA. The proposals are all interrelated. Implementing any final rules under those regulations will demand substantial issuer resources and time.

As a result, Barclays believes that a minimum eighteen month implementation period (from the time all three final regulations are promulgated) is appropriate for the risk-based pricing rule. Eighteen Months should allow issuers time to devote resources to this obligation and to other important regulatory obligations in order to ensure compliance.

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Again, Barclays appreciates the opportunity to provide its comments on the Proposed Rule. If you have any questions or comments, please do not hesitate to contact me at cwalker@barclaycardus.com or (302) 255-8700. Thank you.

Sincerely,

Clinton W. Walker

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