★ SPIRIT *of*
America
NATIONAL BANK

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August 15, 2008

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551.

Re: FACT Act Risk Based Pricing Rule

Docket No. R-1316

Dear Ms. Johnson:

I am writing on behalf of Spirit of America National Bank ("SOANB") to comment on the above-referenced proposal. As explained in more detail below, the proposal that the risk-based pricing notice (or the credit score) be provided to the consumer seeking a new credit card "before the first transaction is made under the plan" creates substantial operational and cost issues for both credit card issuers and retailers. Additionally, the proposal as drafted is unlikely to achieve the regulatory objective of inducing the consumer to review his or her credit report before the credit card is first used. The Rule should provide that the risk-based pricing notice (or credit score) is to be sent to the consumer in the mailing that sends the consumer his or her new credit card.

SOANB is a special purpose credit card bank regulated by the Office of the Comptroller of the Currency. Today, SOANB issues proprietary credit cards to consumers who are customers of its affiliated retailers.

SOANB is a wholly-owned subsidiary of Charming Shoppes, Inc. ("CSI"). CSI is a multi-brand, multi-channel specialty apparel retailer with a leading market share in women's plus-size specialty apparel. Its Retail Stores segment operates retail stores and related E-commerce websites under the following distinct names: LANE BRYANT, LANE

BRYANT OUTLET, FASHION BUG, CATHERINES PLUS SIZES and PETITE SOPHISTICATE OUTLET. CSI's Direct-to-Consumer segment operates numerous apparel, accessories, footwear, and gift catalogs and related E-commerce websites through its Crosstown Traders business.

CSI has more than 2,400 retail stores in 48 states. It has approximately 27,000 employees and is the third-largest women's specialty apparel retailer in the United States. CSI is a public company whose stock is traded on the NASDAQ under the ticker symbol "CHRS."

CSI, through SOANB, offers proprietary credit card programs to encourage sales in its retail stores and catalogs. CSI believes that its proprietary credit card programs act as promotional vehicles by engendering customer loyalty, creating a substantial base for targeted direct-mail promotion, and encouraging incremental sales.

The proposal that the risk-based pricing notice (or the credit score) be given to the consumer "before the first transaction is made under the plan" harkens back in concept many years to a time when a consumer would go in person to a bank to apply for a credit card. The consumer would complete an application, the bank would process the application, and some weeks later notify the consumer if he or she was approved or declined for credit. Today, consumers apply for credit cards via the Internet, over the telephone, in person in retail stores and in other venues that do not provide the appropriate forum for the delivery of the proposed risk-based pricing notice or credit score. The time period between the application for a credit card and the approval of the credit card has been reduced from what was weeks 30 years ago to mere seconds today. To attempt to insert the delivery of a risk-based pricing notice (or a credit score) into a time interval that has become mere seconds is akin to attempting to insert a regulatory elephant through the eye of a needle. Nothing good will come of it.

<u>Proposed Section 222.73(c)</u>

Section 222.73(c)(2), as currently proposed, provides:

> (c) Timing. A risk-based pricing notice must be provided to the consumer-
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> (2) In the case of credit granted, extended, or provided under an open-end credit plan, 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; or

SOANB issues both "store credit cards" and "catalog credit cards" by means of open-end credit plans. In both cases, the first transaction under the plan is typically made within a few seconds of the approval of the consumer's application for credit. Accordingly, the proposed language that would require the delivery of the risk based pricing notice to the consumer within this "several second" window is impractical, undesirable and not likely to lead to the goal intended.

In the case of the opening of a new "store credit card" account, the process usually starts by the consumer entering a retail store and selecting merchandise to purchase. The consumer then approaches the cash register with the selected items. The store employee at the register is trained to ask the consumer if he or she has the store's credit card and, if the answer is no, the store employee will solicit the consumer to open a credit card account. Typically, some incentive (e.g. 10% off the purchase price) is offered as an inducement to apply for the store credit card. If the consumer decides to apply, he or she is directed to an "instant credit machine" that is linked electronically to the bank issuing the credit card. The consumer (applicant) inputs his or her name, residential street address, social security or taxpayer identification number and date of birth. This information is transmitted to the bank and, in a matter of seconds; the bank obtains a credit report from a consumer reporting agency, analyzes credit information and transmits back to the store an approval or a denial of the application. If the application for credit is approved, the customer charges the amount of the purchase to his or her new credit card account at that time. This process is known in the retailing industry as "instant credit."

The "instant credit" process for catalog credit cards is very similar. In the typical case, the catalog shopper provides the application information to the call center representative who in turn keys the information into the bank's application processing system. An approval or denial is obtained within seconds and, if approved, the customer will be told that he or she is approved and invited to charge the amount of the catalog purchase to his or her new credit card account.

In both the store credit card and the catalog credit card processes, the card-issuing bank mails the actual credit card to the consumer within a few days of the credit approval.

The nature of the instant credit process in the context of store credit cards or catalog credit cards does not permit the delivery of the risk-based pricing notice before the first transaction is charged to the credit card account. In the case of catalog credit cards, the customer is typically on the telephone and there is simply no means to provide the proposed form of written notice to the customer before the first purchase is charged to the consumer's credit card account. In the case of store credit cards, the customer is standing in a retail store and has no functional means to check his or her credit report before deciding whether or not to accept the credit card at the proffered interest rate and charge the purchase price of the merchandise to his or her new credit card account.

The only practical means to comply with Section 222.73(c)(2) as currently drafted would be for retailers and catalog companies that issue credit cards to only approve at the store (retail instant credit) or on the telephone (catalog instant credit) those applicants who would receive the best interest rate. All other applicants who would be "approved but not at the best rate" would be told at the store or on the telephone that the credit card issuer will notify them by mail of the decision on their credit application. This would effectively permit the credit card issuer to include the risk-based pricing notice in with the credit card mailed to the consumer. This however, will cause a decrease in both catalog and retail store sales, as the merchandise may not be purchased for various reasons such as – no other means of payment, customer will not make purchase without a discount off the first purchase, or the customer is upset over perceived decline and decides not to buy with another tender of payment.

Finally, SOANB also believes that the proffered reason for proposed requirement ("a consumer may be more likely to check his or her consumer report for errors and, after reviewing the consumer report, may decide not to go forward with the transaction until any errors in the consumer report are corrected.") is unrealistic and inconsistent with consumer behavior. Any consumer that has attempted to correct an error in his or her credit report knows that the process often takes weeks or months (if not longer) and is frequently an exercise in frustration and endurance. It is unrealistic to believe that a consumer will put a decision to use an approved credit card on hold until the consumer has identified and corrected an error on his or her credit report. Once a consumer is told that he or she is approved for credit (the trigger for the notice), the consumer will always take and use the credit card. The consumer will use the card because he or she knows that he or she can always pay the balance owed and cancel the credit card account at any time without penalty or fee.

Proposed Section 222.75(e)(3)

This Section provides a credit card issuer with an alternative to providing the risk-based pricing notice. Instead of providing the risk-based pricing notice, this Section would permit a credit card issuer to provide the consumer with his or her credit score along with other specified information. However, this Section contains the same timing requirement that the credit score be given to the consumer before the first transaction is made under the open-end credit plan:

> (e) Other extensions of credit--credit score disclosure. (1) In general. A person is not required to provide a risk-based pricing notice to the consumer under Sec. 640.3(a) or (c) if:

(i) The credit requested by the consumer involves an extension of credit other than an extension of credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to the consumer a notice that contains the following--

* * *

(3) Timing. The notice described in paragraph (e)(1)(ii) of this section must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation of a transaction in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

Given the timing requirement of this exception, the exception gives rise to the same issues as the risk-based pricing notice does with respect to both retail store instant credit and catalog instant credit.

Additionally, the "credit score" alternative fails to recognize that the consumer may well be confused as there is no single "credit score." A consumer may receive one number if the creditor uses the Fair Isaac FICO score. If the creditor uses other credit scores, the consumer may well receive another number. Providing the credit score will create more questions, explanations, and consumer confusion.

ALTERNATIVE

SOANB believes that delivery of the risk-based pricing notice (or the credit score information) before the first purchase is charged to a new credit card account, while perhaps desirable from a consumer information point of view, is very unlikely to achieve the Congressional goal of inducing consumers to review their credit reports. This goal will be better achieved – at a far lower cost to both the retailing and banking industries – by permitted credit card issuers to send either risk-based pricing notice or the credit score information along with the credit card. By including this information in with the card, the banking industry will save on postage expense and can package the notice with the other disclosures and information provided to a new customer.

More importantly, the consumer will receive the notice or the credit score with the credit card (along with disclosures and other information about the credit card) at one time. Typically, the credit card is mailed to the consumer's home. Accordingly, the consumer will receive the notice at home and will be able to make a decision to order a credit report or otherwise take steps to check his or her credit at that time.

SOANB respectfully asks the Board to change the proposed rules to permit the sending of the risk-based pricing notice (or the credit score information) after the first transaction is made on the open-end credit plan as long as the notice (or the credit score) is included with the credit card mailed or delivered to the consumer.

Thank you for your consideration of these comments.

Sincerely,

James J. Kreig
Bank Counsel
Spirit of America National Bank