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**MEMORANDUM**

November 17, 2009

To Our Clients and Friends

Re: Proposed Regulation E Amendments Regarding Prepaid Products

The Federal Reserve Board (the “Board”) has proposed rules that amend Regulation E, Electronic Fund Transfers, as required by the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the “Credit CARD Act”), to restrict fees and expiration dates for certain prepaid products and to require disclosure of their terms and conditions prior to purchase. Comments are due within 30 days after publication in the *Federal Register*. The Credit CARD Act provisions which relate to these rules are effective August 22, 2010.

**APPLICABILITY OF PROPOSED RULES**

The proposed rules apply to all cards, codes or other devices issued to a consumer in a specified amount that provide access to underlying funds (even if not issued in the form of a card or certificate) that otherwise meet the definition of a gift certificate, store gift card or general-use prepaid card (the “covered products”). The Board requests comment on whether the proposed requirements should apply to cards issued for business purposes.

Gift certificates are products that are redeemable at a single merchant or an affiliated group of merchants and are not reloadable. Store gift cards also are products redeemable at a single merchant or affiliated group of merchants and may or may not be reloaded. Closed-loop cards generally would be considered gift certificates or store gift cards under the proposed rules. General-use prepaid cards are products redeemable at multiple merchants or at ATMs. Open-loop cards are generally considered general-use prepaid cards.

The proposed rules exclude other types of prepaid cards, such as:

- Prepaid cards received through loyalty, award or promotional programs (although disclosure of any fees and expiration date would be required)
- Prepaid telephone service cards
- Reloadable cards that are not marketed or labeled as gift cards or gift certificates
- Cards not marketed to the general public
- Cards redeemable only in conjunction with certain events or venues
- Devices issued only in paper form

State laws that provide greater protection for consumers regarding fees or expiration dates of covered products would not be preempted by the proposed rules.

### **FEE LIMITATIONS AND DISCLOSURES**

The proposed rules prohibit dormancy, inactivity or service fees with respect to a covered product, unless:

- There was no activity on the covered product within the year prior to the imposition of the fee,
- Only one such fee is assessed per calendar month, and
- The amount of the fee that may be charged, how often fees may be assessed and that inactivity fees may be assessed are indicated on the covered product and provided prior to purchase.

The prohibition on service fees includes reload, transaction and balance inquiry fees. Other fees that may be imposed must be provided prior to purchase, including a toll-free telephone number and, if a website is maintained, the website for consumers to obtain fee information.

### **EXPIRATION DATE RESTRICTIONS**

Under the proposed rules, funds underlying the covered products are prohibited from expiring until at least five years after the date of issuance (for gift certificates) or after the last load of funds (for store gift cards or general-use prepaid cards). Clear and conspicuous disclosures regarding whether the underlying funds expire must be made prior to purchase. Any difference between the expiration date of the covered product and the underlying funds must be disclosed, including that the consumer may contact the issuer to obtain a replacement certificate or card.

A copy of the proposed rules can be found at our website at <http://www.schwartzandballen.com>

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox or Heidi Wicker at (202) 776-0700.