

SCHWARTZ & BALLEN LLP
1990 M STREET, N.W. • SUITE 500
WASHINGTON, DC 20036-3418

(202) 776-0700

MEMORANDUM

December 1, 2008

FACSIMILE
(202) 776-0720

WWW.SCHWARTZANDBALLEN.COM

To Our Clients and Friends

FDIC Coverage of Stored Value Cards

The General Counsel of the Federal Deposit Insurance Corporation (“FDIC”) has issued a new opinion regarding whether funds underlying stored value cards qualify as “deposits” as defined in the Federal Deposit Insurance Act (“FDI Act”). The opinion provides that all funds underlying stored value cards will be treated as deposits to the extent that the funds have been placed at an insured depository institution.¹ In addition, if the FDIC’s recordkeeping requirements are satisfied, the holders of the cards will be treated as the depositor for purposes of determining deposit insurance. Accordingly, such funds will be insured up to the insurance limit and depository institutions will be subject to assessment of deposit insurance premiums on such funds.

BACKGROUND

In 1996, the FDIC’s General Counsel issued an opinion regarding when funds underlying stored value cards will be regarded as deposits under the FDI Act. In view of the evolution in the manner in which stored value card products function (*e.g.*, payroll cards, reloadable cards), the General Counsel has revisited the prior ruling and has issued a new opinion. The new opinion notes that in many instances, stored value products are not distributed directly by an insured depository institution to holders. Rather, cards often are distributed by a third party such as by an employer or a retail store. In view of this, the opinion addresses when funds should be insured to the third party who places the funds in the bank in a pooled account, or to the holders of the stored value cards, who are the parties withdrawing funds from the pooled accounts or directing their payment to merchants.

¹ FDIC General Counsel’s Opinion No. 8.

DISCUSSION

The opinion provides that for deposit insurance purposes, the FDIC will recognize the holders of stored value cards as the owners of the deposits if the FDIC's standard requirements for "pass-through" insurance coverage have been satisfied. The FDIC's rules regarding "pass-through" deposit insurance² require the following:

- The account records at the insured depository institution must disclose the existence of an agency or custodial relationship
- The identities of the actual owners of the funds and the amount owned by each must be disclosed in the records of the insured depository institution or records maintained by the custodian, agent or other party, and
- The deposits actually must be owned under the agreements among the parties by the named owners and not by the custodian or agent

If the above requirements are not met, the card distributor or other named account holder will be recognized as the owner.

A copy of the final rule can be found on our website at http://www.schwartzandballen.com/whats_new.html.

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

² 12 C.F.R. § 330.5.