



December 21, 2009

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave, NW  
Washington, DC 2551

**Attention:** Docket No. R-1377

**Re:** Proposed Rule: Electronic Fund Transfers

Dear Ms. Johnson:

Marriott International ("Marriott") would like to thank the Federal Reserve Board (the "Board") for the opportunity to comment on the proposed amendments to Regulation E implementing the statutory requirements set forth in the *Credit Card Accountability Responsibility and Disclosure Act of 2009* (the "Act"). Generally speaking, we support the Board's approach to prescribing rules to implement the provisions of this Act. We do, however, offer these comments to provide some insight into the gift card industry and to recommend that the Board further refine the rulemaking with regard to three issues: (i) providing gift cards in a "specified amount;" (ii) loyalty programs; and (iii) gift cards that are not marketed to the general public.

## **I. Background**

As you are aware, the *Credit Card Accountability Responsibility and Disclosure Act of 2009* added new Section 915 to the Electronic Funds Transfer Act ("EFTA"), which is implemented by Regulation E. Section 915 introduces to Regulation E a number of new terms, including definitions for "general-use prepaid cards," "gift certificates," and "store gift cards." In the proposed rule, the Board defines these new terms as follows:

- **Gift Certificate.** A gift certificate is a card, code or other device<sup>1</sup> that is: (i) issued to a consumer in a specified amount that may not be increased or reloaded in exchange for payment; and (ii) redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.
- **Store Gift Card.** A store gift card is a card, code or other device that is: (i) issued to a consumer in a specified amount, whether or not that amount may be increased or reloaded by the cardholder, in exchange for payment; and (ii)

<sup>1</sup> For ease of reference, we will use the term "card" to mean "card, code or other device" in this letter.

- redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.
- **General-Use Prepaid Card.** A general-use prepaid card is a card, code or other device that is: (i) issued to a consumer in a specified amount, whether or not that amount may be increased or reloaded by the cardholder, in exchange for payment; and (ii) redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.

Cards that fall into any of the above categories are, according to the Board's proposed regulation, subject to certain disclosure requirements, substantive limitations on fees and are not permitted to expire for at least five years.

The terms "gift certificate," "store gift card," and "general-use prepaid card" do not include any card, code, or other device that is:

1. Useable solely for telephone services;
2. Reloadable and not marketed or labeled as a gift card or gift certificate;
3. A loyalty, award, or promotional gift card;
4. Not marketed to the general public;
5. Issued in paper form only; or
6. Redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services, in conjunction with admission to such events or venues, at the event venue or at specific locations affiliated with and in geographic proximity to the event or venue.

For purposes of this comment letter, we focus our comments on the Board's efforts to define these new terms and exemptions.

## II. Recommendations

### A. *Cards Covered by the Regulation Should be in a "Specified Amount"*

As noted above, to be a "gift certificate," "store gift certificate" or "general-use pre-paid card" for purposes of Regulation E, the Board is requiring that the card be issued "in a specified amount." In the preamble to the rulemaking, the Board clarifies that a card is issued in a "specified amount" if it is "issued in predenominated amounts or in a customer-requested, or variable load, amount."<sup>2</sup>

We agree with the Board's approach and urge the Board to adopt this concept in its final regulation. We agree that, by limiting the types of cards governed by Regulation E to those cards with specific currency denominations (*i.e.*, purchase of a \$50 gift

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<sup>2</sup> 74 Fed. Reg. 60,989 (Nov. 20, 2009).

certificate or a \$50 gift certificate for which the consumer can increase the dollar value by reloading), the Board avoids erroneously dragging within the scope of the Regulation those cards that are used to obtain goods or services, the value of which can be increase or decrease over time.

In the hotel industry, we often issue gift cards for "experiences." An "experience" can mean a variety of services, such as a weekend stay anywhere in the world, a stay with golf lessons and golf time, or dinner for two at a hotel any night of the week. The hotel industry is not alone in making experiences available with the swipe of a card. Every day consumers use cards to obtain city tours, outdoor adventures, a Saks Fifth Avenue personal shopper, an opportunity to drive a stock car, or a whale watching experience. If cards for these or similar "experiences" are subject to the five-year minimum expiration requirement, we anticipate the companies issuing these cards will be forced to raise prices significantly over current market values. We reach this conclusion because we believe that such an aggressive pricing strategy will be necessary to guard against rising future costs. This result, however, harms both the companies looking to sell the experiences as well as the consumers looking to purchase them. As such, we support the Board's decision to require any card covered by the Regulation to be in a "specified amount."

#### **B. *Definition of Loyalty, Award, or Promotional Gift Card***

We support the Board's exemption for loyalty, award or promotional gift cards from coverage under the Regulation. Below we provide some recommendations for clarifying the scope of this exemption.<sup>3</sup>

##### **1. Fund-Raising Should be Included in the Exemption**

To ensure continued kindness toward charitable organizations, we propose that the Board amend the definition of "loyalty, award, or promotional gift card" to include cards that are provided by companies as part of fund-raising events. The Board could accomplish this by adding the recommended italicized language to the definition, as follows:

- (i) Is issued in connection with a loyalty, award, or promotional program, *or with a fund-raising event for a charity or non-profit;*

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<sup>3</sup> In addition, we understand that the Board included a typographical error in the definition in the document published in the Federal Register. Specifically, we believe that definition of "loyalty, award, or promotional gift card" and its related Commentary should refer to the disclosures set forth under Section 205.20(e)(3) rather than 205.20(e)(2). We note that fixing this error in the final regulation is imperative since the incorrect reference to paragraph (e)(2) could be read to, erroneously, require that cards under loyalty, award or promotional cards be subject to a minimum five-year expiration date. We believe this is an incorrect result where Congress intended for these types of cards to be exempt from the substantive limitations imposed by the Act; and where the Board otherwise indicated in the rulemaking that loyalty cards should be exempt from expiration dates: "if a card, code, or other device is deemed to be a loyalty, award, or promotional gift card, it would not be subject to . . . the requirement to have an expiration date of at least five years."

We make this recommendation because we are aware that many non-profit organizations use "experiences" as auction items at fund-raisers. Often these items are able to generate significant profit to the charity given the difference between the perceived value of the experience and the purchase price of the card. If these types of cards are not excluded from coverage under the Regulation, they may be subject to the minimum expiration date and may be priced such that the profit to the charity is significantly decreased. We believe that this may have a chilling effect on charities' desire to obtain "experience" cards for fundraising purposes.

## **2. Permit Redemption With Other Retailers**

We urge the Board to amend the Commentary to permit consumers to redeem loyalty or award cards with retailers other than the awarding company. For example, it is common for a company such as an airline to provide its customers with loyalty reward cards that are redeemable at retail stores or even with competitors. Said differently, these award cards do not require that the customer redeem the card with the awarding airline. We believe that this type of flexibility is necessary for the success of many existing loyalty and award programs.

### *C. Clarify Exemption for "Not Marketed to the General Public"*

We support the Board's exemption for cards that are not marketed to the general public; however, we urge the Board to clarify that secondary sales of these cards by recipients do not destroy the exemption. For example, the Board uses as an example a retail chain that sells a card to members of its frequent buyer program. Those frequent buyers should then be permitted to resell that card to a third party – without the retailer having to fear that such secondary sales will affect the exempt nature of the card. We believe that the Board needs to provide retailers with this clarification for companies to rely on this exemption with any degree of certainty that they are not violating the Regulation.

We also urge the Board to clarify that marketing to the general public does not include advertisements of cards that occur in business-to-business marketing channels. We believe that this approach is consistent with the approach taken by the Board in Regulation Z,<sup>4</sup> another consumer protection regulation that the Board promulgates. In Regulation Z, the Board expressly limits advertisements that are covered by the Regulation to those that "invit[e], offer[], or otherwise announc[e] generally to prospective customers the availability of credit."<sup>5</sup> This provision is widely understood in the consumer credit industry to exclude business-to-business advertisements from coverage under Regulation Z. We urge the Board to adopt a similar approach in Regulation E relating to the marketing to the general public. As such, we recommend

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<sup>4</sup> 12 C.F.R. §§ 226.1 *et seq.*

<sup>5</sup> 12 C.F.R. Off. Staff Comm. § 226.2(a)(2)-1

that the Board add express language to this section to clarify that the advertising of the availability of cards (for business development purposes) to other businesses does not violate the prohibition against marketing to the general public.

### **III. Conclusion**

Marriott again thanks the Board for the opportunity to comment on the proposed amendments to Regulation E. We support the efforts that the Board has made to adopt provisions exempting certain cards from coverage under the Regulation. However, for the reasons set forth above, we urge the Board to further refine the rulemaking with regard to three issues: (i) providing gift cards in a "specified amount;" (ii) loyalty programs; and (iii) gift cards that are not marketed to the general public.

Respectfully,

Stephen M. Maselko  
Vice President