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

Attention: Docket No. R-1377

Re: Proposed Rules Affecting Gift Certificates, Store Gift Cards and General-Use Prepaid Cards which Implement Title IV of the Credit Card Accountability Responsibility and Disclosure Act of 2009

Dear Ms. Johnson:

This letter is being submitted to the Board of Governors of the Federal Reserve System (“**Board**”) in response to the proposed rules issued in connection with gift certificates, store gift cards and general-use prepaid cards (collectively, “**Covered Products**”), which rules were published in the *Federal Register* on Nov. 20, 2009 at 74 *Fed. Reg.* 60986-61012 (the “**Proposed Rules**”). Specifically, the Proposed Rules seek to amend Regulation E, which implements the Electronic Fund Transfer Act (“**EFTA**”), and the corresponding official staff commentary.

The Proposed Rules address fees, expiration dates and disclosures relating to certain prepaid products, primarily gift cards, as well as various exemptions from those requirements. The Proposed Rules build on provisions set forth in Title IV of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (“**CARD Act**”), which will become effective on August 22, 2010. Any capitalized, undefined terms appearing in this letter shall have the meanings ascribed to them in Title IV of the CARD Act and in the Proposed Rules.

Springbok Services, Inc. (“**Springbok**”) provides customized open loop or network branded prepaid card programs to motivate behavior and enhance loyalty among corporations and their employees and/or their customers. Springbok is one of the leading prepaid card providers that offer complete lifecycle management of prepaid card programs from program development and card fulfillment to transaction processing and reporting.

Springbok is also a founding member of the Network Branded Prepaid Card Association (“**NBPCA**”), a non-profit trade association representing a diverse group of organizations that take part in delivering network branded prepaid cards to consumers, businesses and governments. The NBPCA’s members

include financial institutions, card organizations, processors, program managers, marketing and incentive companies, card distributors and law firms. The NBPCA is active on behalf of its members to enhance the environment for the success of network branded prepaid cards through education of government officials, the media and consumers. It also works with members to establish and encourage best practices to benefit card users and industry participants.

Springbok appreciates the opportunity to comment on the Proposed Rules and respectfully requests that the Board considers the suggestions set forth herein.

Endorsement of NBPCA Comment Letter

Springbok has reviewed the comment letter prepared and filed by the NBPCA with the Board on December 15, 2009 (the “NBPCA Comment Letter”), and Springbok endorses all of the concerns raised by the NBPCA in the NBPCA Comment Letter as well as the recommendations set forth therein.

In addition to the specific concerns and recommendations included in the NBPCA Comment Letter, Springbok desires to expand on a few of the points raised by the NBPCA. Please consider our additional comments set forth below.

Restrictions on Fees; Definition of Service Fees

Title IV of the CARD Act restricts dormancy fees, inactivity charges or fees, and service fees (collectively, “Restricted Fees”) on gift certificates, store gift cards, and general-use prepaid cards unless there has been no activity with respect to the certificate or card in the 12-month period ending on the date on which the charge or fee is imposed (the “Dormancy Period”) and certain other requirements are met. (see new §915(b)(1) and (2) of the EFTA). Upon expiration of the applicable Dormancy Period, only one fee per month may be charged in connection with a Covered Product. Title IV of the CARD Act defines a “service fee” as “a *periodic fee, charge, or penalty for holding or use of a gift certificate, store gift card, or general-use prepaid card*” (emphasis added) and, with respect to general use prepaid cards, excludes a one-time initial issuance fee.

In analyzing the definition of service fees, the Board expanded the definition of service fee to include most fees that can be charged in connection with the use of a Covered Product including, without limitation, a monthly maintenance fee, a transaction fee, a reload fee and a balance inquiry fee. (Official Staff Interpretation to Paragraph 20(a)(6)-1, 74 *Fed. Reg.* 61008). In explaining its analysis of this issue in the Proposed Rules, the Board states the following:

“The Board considered an alternative interpretation of a “periodic fee” as a fee that is imposed at regular intervals, which would include a monthly maintenance fee, but not transaction fees or reload fees that are triggered by consumer activity. The Board notes, however, that the statutory definition of “service fee” refers to the “use” of a gift certificate, store gift card, or general-use prepaid card. See new EFTA Section 915(a)(3)(A) (15 U.S.C. 1693m(a)(3)(A)). Therefore, the Board believes that Congress intended to also capture consumer-initiated fees such as transaction fees and reload fees in the definition of “service fee.” Moreover, the Board is concerned that a narrow interpretation of “service fee” would lead to circumvention by issuers and result in a shift in fee structures from fees imposed at regular intervals to fees that are imposed for a transaction or service associated with the certificate or card. The Board believes that interpreting the term “service fee” broadly, and thus limiting the imposition of such fees,

will improve the transparency and predictability of costs to the consumer.” (74 *Fed. Reg.* 60991)

We respectfully disagree with the Board’s interpretation of Congressional intent in this area and their interpretation of the definition of service fee. Based on knowledge gained through our extensive lobbying efforts at the time of passage of the CARD Act, we strongly believe that Congress was primarily concerned with fees that decrement the balance of a Covered Product without any affirmative act on the part of the consumer such as monthly maintenance fees and dormancy fees. In fact, one of the most commonly used definitions of “periodic fee” is a fee that is occurring or recurring at regular intervals, which would exclude several of the fees used by the Board as examples of service fees. It really doesn’t make sense that Congress would try to restrict the imposition of fees and charges on activities that are consumer initiated (that is, due to an action or request by the consumer) as this will only decrease the utility of these Covered Products and stifle innovation when beneficial features and functionality are no longer provided.

For example, most prepaid providers will provide a consumer with free access to their account balance and transaction history online through a website and, in some cases, over the phone through an IVR system, but will charge a consumer if the consumer requests a paper statement through the mail. The costs of the online and IVR access to this information can be controlled to a degree by the provider in fully automating the process. However, in the case of mailing a paper statement to a consumer, there are real costs that can reduce or eliminate the already small profit margins on the Covered Products as the provider would have to bear the incremental labor costs of processing the request, including stuffing the envelope, as well as the postage costs in connection with mailing the card. For many types of Covered Products, after incorporating the other fee restrictions contained in the CARD Act, the cost of mailing a paper statement would eat up the entire profit margin from the Covered Product. Furthermore, if a consumer requests this service more than once, the increase in costs could be magnified to the point that a provider would actually be paying the consumer to use its Covered Product. Since most prepaid card providers operate as for profit entities (rather than not-for-profit entities), this type of service (mailed statements) will likely no longer be offered. In addition, there are numerous other types of services that are consumer initiated but have costs that would materially affect the profitability of a Covered Product and will simply no longer be offered.

One additional issue raised by the Board’s expansive view of the definition of “service fee” is that it will become extremely difficult, if not impossible, to comply with the “on the card” fee disclosure requirements contained in Proposed Rules. See **Disclosure Requirements** below.

Disclosure Requirements

As mentioned in the NBPCA Comment Letter, the Proposed Rules have significant requirements for disclosures that must be made on the card itself. In addition, Section 205.20(b)(4) of the Proposed Rules makes clear that disclosures made in an accompanying terms and conditions document, on packaging surrounding a certificate or card, or on a sticker or other label affixed to the certificate or card will not constitute a disclosure on the certificate or card in compliance with the requirements of Sections 205.20 (d)(2), (e)(3) and (f) of the Proposed Rules. (74 *Fed. Reg.* 61006). Provided below are examples of some of the disclosures that will now have to be included on the card itself:

- The amount of any dormancy, inactivity or service fees, including any balance inquiry fee, reload fee, ATM fee or other transaction fee, because the Board has also deemed these types of fees to be “service fees”;

- How often such fees may be charged;
- That such fees may be charged for inactivity;
- The plastic expiration date, if any;
- The funds expiration date, or if the underlying funds don't expire, that fact;
- A statement in equal prominence and close proximity to the plastic expiration date noting that the card expires but the underlying funds either do not expire or expire at a later date, and that the consumer may contact the issuer for a replacement card;
- A toll-free number and, if maintained, the web site from which replacement cards are available;
- A toll-free number and, if maintained, a web site for the consumer to obtain information about all card fees.

The NBPCA Comment Letter contained an attachment depicting how a typical card might appear once the new disclosure requirements take effect. While Attachment A to the NBPCA Comment Letter is an excellent illustration, we believe that, in practice, the situation might actually be worse. Because of the expanded view of the definition of "service fees", all of the possible fees that would have to appear on the card in order to comply with the requirements of the Proposed Rules may not actually fit on the card. In fact, the Board notes in the Proposed Rules interpreting the "clear and conspicuous" disclosure standard that "*disclosures on the back of a card that are printed on top of indentations from embossed type on the front of the card are not likely to be conspicuous if it obstructs the readability of the type*". (Official Staff Interpretation on Paragraph 20(c)(1), 74 *Fed. Reg.* 61010). As a result, the middle third of the disclosure appearing on the back of the example card appearing as Attachment A to the NBPCA Comment Letter would need to be moved to another location on the card, which would likely be physically impossible once you lose that much real estate on the back of the card.

Nonetheless, as you can see from the sample card disclosure appearing as Attachment A to the NBPCA Comment Letter, this amount of disclosure (if it even fits on the card) is not likely to encourage consumer understanding of the terms and conditions for the use of the card. In fact, it will likely have the opposite effect.

Further, unlike a consumer gift card, where the purchaser may not include the prepaid card terms and disclosures with the gift card when they give it to the gift recipient, prepaid cards which are provided as part of loyalty, award or promotional programs are mailed or distributed directly to the intended recipient and are accompanied by the terms and disclosures. Requiring disclosure of fees and expiration dates in a clear and conspicuous fashion on the materials which accompany a prepaid card distributed as part of a loyalty, award or promotional program is more consumer friendly than including such disclosures on the prepaid card in an unreadable font size. As a result, the Board should eliminate the "on-the-card" disclosure requirement for prepaid cards distributed as part of a loyalty, award or promotional program and instead require that such information must be disclosed in a clear and conspicuous fashion in (i) the materials which accompany the prepaid card or (ii) on a sticker placed on the prepaid card.

In addition, we completely agree with recommendations in the NBPCA Comment Letter that a reference on the card to "other terms apply" and where to obtain them should be sufficient as long as this data (such as reload fees and how to obtain a replacement card) can be disclosed clearly and conspicuously elsewhere - either on the card packaging, the terms and conditions and/or on a sticker affixed to the card. We strongly recommend that the Board limit the disclosures required to be printed on the card itself to only the most critical terms and permit separate disclosures of all relevant terms on the card packaging and/or with a sticker.

Examples of Loyalty, Award or Promotion Programs.

While we laud the efforts of the Board to provide examples of loyalty, award or promotion programs in Official Staff Interpretations to the Proposed Rules, we are concerned that these examples may later be viewed by regulators and others as an exhaustive list of the types of programs that would qualify for this exclusion. We would encourage the Board to further expand the introductory language contained in the Official Staff Interpretation to Paragraph 20(a)(4) to make clear that the list of examples of loyalty, award or promotion programs is non-exhaustive and for illustrative purpose only. In addition, we would suggest the following revisions (appearing as double underlined changes) to the existing examples appearing in the Proposed Rules as well as including the following new examples.

1. Examples of loyalty, award, or promotional programs. Section 205.20(a)(4) defines a loyalty, award, or promotional gift card as a card, code, or other device that is issued in connection with a loyalty, award or promotional program. Such cards, codes, or other devices are excluded from the definitions of “gift certificate,” “store gift card,” and “general-use prepaid card” under § 205.20(b)(3), provided that the disclosures specified in paragraphs (d)(2), (e)(2), and (f) of this section are given to the consumer, on or with the card, as specified in § 205.20(a)(4)(iii). Examples of loyalty, award or promotional programs include:

- i. Loyalty or consumer retention programs operated or administered by a merchant, retailer, product manufacturer or distributor that provide to consumers cards redeemable for goods or services or other monetary value as a reward for (a) certain purchases at or visits to the participating merchant or retailer, or (b) certain purchases of a particular product or service provided by a manufacturer or distributor regardless of the identity of the merchant or retailer;
- ii. Rebate programs operated or administered by a merchant, retailer, or product manufacturer or distributor that provide cards redeemable for goods or services or other monetary value to consumers in connection with the consumer’s purchase of a product or service and the consumer’s completion of the rebate submission process.
- iii. Sweepstakes or contests that distribute cards redeemable for goods or services or other monetary value to consumers as an invitation to enter into the promotion for a chance to win a prize.
- iv. Referral programs that may provide cards redeemable for goods or services or other monetary value to consumers in exchange for referring other potential consumers (a) to a particular merchant; or (b) toward the purchase of a particular product or service.
- v. Incentive programs through which an employer may provide cards redeemable for goods or services or other monetary value to employees, for example, to recognize job performance, such as increased sales.

Proposed Additional Examples:

- vi. Incentive programs through which a product manufacturer may provide cards redeemable for goods or services or other monetary value to independent distributors, for example, to recognize achievement of sales milestones.

vii. Health and wellness programs through which an employer may provide cards redeemable for goods or services or other monetary value to employees, for example, upon completion of pre-determined milestones such as preventative screening for certain chronic illnesses, and enrollment in weight loss programs or smoking cessation programs.

viii. Safety programs through which an employer may provide cards redeemable for goods or services or other monetary value to employees, for example, upon the completion of a minimum number of days in a manufacturing facility without an accident or insurance claim.

ix. Incentive programs through which an entity may provide cards redeemable for goods or services or other monetary value to consumers in exchange for pre-determined activities such as filling out surveys, or donating blood or plasma.

Transitional Issues

On the transitional issues, it is not uncommon for Springbok to manufacture hundreds of thousands of prepaid cards, terms and conditions and card carriers for a rebate or rewards program in advance of the launch of the program. Some promotional programs may run a year or longer, and Springbok typically will be holding several million customized cards in inventory at any given point in time. If Springbok is forced to destroy and replace this inventory as of the August 22, 2010 effective date of the Proposed Rules in order to comply with the “on-the-card” disclosure requirements, Springbok will incur costs of several hundred thousands of dollars for destroying current card inventory and ordering replacement inventory. If the Board adopts Springbok’s proposal to eliminate the “on-the-card” disclosures, this waste of resources may be avoided.

Conclusion

Springbok supports the goals of the Board’s Proposed Rules, but we encourage the Board to consider our comments before completing the final rules implementing Title IV of the CARD Act. We hope that the Board thoughtfully considers some of the unintended consequences of the Proposed Rules and their effect on the industry while ensuring that the Proposed Rules still accomplish the consumer protection goals of Title IV of the CARD Act.

Sincerely Yours,

Bradley J. Fauss
SVP, General Counsel and Corporate Secretary