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December 21, 2009

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue NW  
Washington, DC 20551

Re: Regulation E-Docket No. R-1377

Dear Ms. Johnson:

This letter is submitted to the Board of Governors of the Federal Reserve System (the "Board") on behalf of Compass Bank, an Alabama banking corporation ("Compass"), in response to the Board's request for comment on the proposed amendments to Regulation E, which implements changes to the Electronic Fund Transfers Act ("EFTA") as required by the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (the "CARD Act"), and the official staff commentary to Regulation E (collectively referred to herein as the "Proposal" or the "Proposed Rule").

Compass is a Sunbelt-based, regional commercial financial institution owned by Compass Bancshares, Inc., a bank holding company that is wholly owned by BBVA (NYSE: BBV) (MAD: BBVA). Compass has approximately \$68 billion in assets and, through its operating companies, maintains more than 740 branches in Alabama, Arizona, California, Colorado, Florida, New Mexico, and Texas. Compass is among the top 25 largest banks in the U.S. based on deposit market share.

Compass appreciates the Board's time and effort in preparing the Proposal and hopes that these comments will be helpful to the Board in its effort to create reasonable and workable standards regarding the fee and expiration date restrictions applicable to gift cards and pre-paid debit card products and the manner in which fee and expiration date information is communicated to gift card consumers.

Section 401 of the CARD Act amends the EFTA to limit the ability of issuers of gift cards to assess a dormancy, inactivity or service fee in connection with a gift card or certificate unless (1) a fee is imposed only if there has been no activity for one year; (2) clear and conspicuous disclosures are provided on the card or certificate at the time the card or certificate is purchased; and (3) no more than one fee is imposed in any given calendar month. In addition, the CARD Act prohibits financial institutions from issuing

gift cards with expiration dates less than five years after the issuance of the card or the date when funds were last loaded to the card.

### **Restrictions on Dormancy, Inactivity, or Service Fees**

Proposed Section 205.20 defines a “service fee” as “a periodic fee, charge or penalty for holding or using of a gift certificate, store gift card, or general use pre-paid card.” Proposed comment 20(a)(6)-1 clarifies that the fees included in this definition may include transaction fees, reload fees, or balance inquiry fees. Compass requests that the Board consider a more narrow interpretation of “service fee” that would include only fees that are imposed at regular intervals and exclude most fees that are triggered by consumer activity. Consumer initiated activity other than transactions to purchase goods or services or obtain cash, such as balance inquiries, creates a cost for the card issuer that maintains the systems to support these types of activity. The more a voice recorded access system or live customer service system is accessed by consumers, the higher the cost is for the card issuer. Card issuers should be allowed to discourage excessive use of these systems and recoup the cost of maintenance for these systems by charging a reasonable fee for these services. Allowing fees for customer generated activity will allow gift cards to remain a viable product for card issuers, thereby providing more choices and convenience for consumers in the gift card marketplace.

### **Exclusions**

Proposed Section 205.20 (b)(2) implements a statutory exclusion for cards, codes or devices that are “reloadable and not marketed or labeled as a gift card or gift certificate.” Comment 20(b)(2)-4 provides that this exclusion applies if the entities subject to the rule maintain policies and procedures reasonably designed to avoid the marketing of these cards as gift cards. Compass, like many financial institutions, sells cards to business clients that market the cards for final sale to consumers. Because financial institutions cannot continually monitor the marketing of these cards by its clients, Compass agrees with the Board that allowing the maintenance of proper policies and procedures to protect issuers from liability for the improper marketing of these cards is essential to ensure more choice for consumers.

### **Restrictions on Expiration Dates**

As previously referenced, the CARD Act prohibits the issuance of gift cards with expiration dates less than five years after the later of the date the card was issued or the date when funds were last loaded to the card. The Board has proposed two alternatives to minimize confusion for consumers regarding the expiration of funds held in a gift card account.

Under Proposed Alternative A, a gift card or certificate cannot have an expiration date, unless: (1) the card or certificate expiration date is at least five (5) years after the card or certificate is issued or sold; (2) the expiration date for the underlying funds is at least five years after the card or certificate was issued or last loaded, or after the card or certificate expiration date, whichever is later; (3) certain disclosures are made, including a “statement, disclosed with equal prominence and in close proximity to the certificate or card expiration date, that the certificate or card expires, but the underlying funds either do not expire or expire later...and that the consumer may contact the issuer for a replacement card” and (4) no fee is imposed for replacing the card or certificate prior to the expiration of the underlying funds.

Under Proposed Alternative B, an issuer is required to have policies and procedures to ensure that a consumer has a reasonable opportunity to purchase a card or certificate that has an expiration date that is at least five years from the date of purchase. Proposed Alternative B also requires the card or certificate to include certain disclosures alerting consumers to the difference between the card expiration date and the underlying funds expiration date, if any, and that no fee or charge is imposed for replacing the card prior to the expiration of the underlying funds.

Compass strongly urges the Board to adopt Proposed Alternative B. The flexibility of Alternative B would allow for issuers of gift cards to have more flexibility in responding to consumer needs and build policies and procedures into their existing card issuance systems, resulting in faster compliance by card issuers. If the Board determines that it is necessary to adopt Alternative A, we respectfully request at least one year from the final issuance of the Rule for implementation.

The Board specifically requests comment on whether it should also or alternatively require issuers to automatically issue replacement cards to consumers prior to the card expiration date for reloadable cards. Compass recommends against the adoption of such a requirement. Card issuers do not necessarily have access to the identity or address of the final user, who often is different from the purchaser of the card. The implementation of a system to automatically issue new cards to consumers upon the expiration of a reloadable card would be cost prohibitive because of additional system requirements and expenses for issuing a second device. The Proposal already requires the issuance of a new device at the request of the consumer upon the expiration date of the card, which, we believe, is the best procedure to avoid fraud and ensure the funds are available for the correct cardholder.

#### **Disclosures on Gift Cards or Certificates**

Proposed Sections 205.20(c) and (d) set forth disclosure requirements for covered gift card and certificates. The proposed rule would require the following information disclosed clearly and conspicuously on the card itself: (1) the amount of any dormancy,

inactivity or service fee, how often such a fee may be imposed and that such a fee may be assessed for inactivity; and (2) information about the expiration date and potential fees, including a toll-free number, and, if one is maintained, a web site, that a consumer may use to obtain a replacement card and fee information.

The Board's proposal sets an unreasonable standard for disclosures required to be on the card itself. Compass agrees that the amount and frequency of fees that may be charged to the balance on a gift card should be disclosed to consumers. Because of the size of most gift cards, the amount of disclosure required by the Proposal to be on the gift card itself may result in disclosures that are not legible enough to effectively notify the consumer. Compass respectfully requests that the Board modify the proposal so that the final rule requires that the card itself only disclose a website and toll-free telephone number where the card holder may access replacement card and fee information.

#### **Grandfathering Existing Cards**

The Board has solicited comments on whether it should consider rules to grandfather gift cards in the marketplace as of the effective date of the rule. Issuers of gift cards do not have the ability to replace cards already issued to consumers or communicate changes to the terms of existing gift cards for anonymous purchasers of gift cards. Therefore, Compass respectfully requests that the Board allow cards issued to consumers before the implementation date of the Proposal to continue with the initially disclosed fees and expiration dates until the funds are depleted, expired, or remitted to the appropriate state as unclaimed property.

In addition to gift cards issued directly to consumers, Compass issues cards to business clients for final distribution to consumers. Those card inventories may not be fully distributed to consumers by the implementation date. The cost to replace these cards is significant (our initial estimate is approximately \$2.50 per card). Card replacement depends heavily on the cooperation of Compass' clients, therefore there is a risk that not all cards covered by the rule will be replaced in time for implementation. For this reason, Compass requests that compliance with the Proposal be extended at least 6 months, to February 22, 2011.

#### **Escheatment**

Compass asks for clarification from the Board regarding the relationship between the restrictions on the expiration of the underlying funds for gift cards and compliance with state escheatment laws. Section 205.12 of Regulation E states that its provisions only preempt state law where the state laws are inconsistent with the provisions of Regulation E. The Proposed Section 205.12 (b) gives the Board the authority to determine, upon the request of a financial institution, whether the act preempts state law relating to gift cards. Presently, many states require that unused funds stored on a gift card be turned over to

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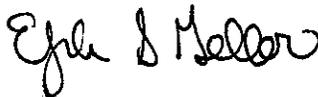
the state as abandoned property. Some states require escheatment before what would be a required expiration period under the Proposal. Compass seeks guidance on how the Board expects the escheatment process to continue for cards issued in states where escheatment laws specifically require unused funds on gift cards to be turned over to the state before the expiration requirements of the Proposal have been met.

**Conclusion**

We thank the Board for considering our comments to the Proposal and appreciate the Board's challenge in creating workable standards for implementing the requirements of the CARD Act and informing consumers about the terms of their gift cards.

If you have any questions concerning this letter or if you would like us to provide any additional information, please do not hesitate to contact me.

Sincerely yours,



Elizabeth S. Geller  
Corporate Counsel  
Compass Bank