

## Financial Institutions Client Service Group

To: Our Clients and Friends

March 29, 2010

### Summary of the Federal Reserve Board's Final Gift Card Rules

On March 23, 2010, the Federal Reserve Board issued its final rule, a summary and analysis of the final rule, and the official staff interpretation of the final rule in connection with Title IV of the CARD Act (the "Final Rules" or "Rules"). The Final Rules are comparable to the proposed rules that were issued in November 2009, and follow the gift card related provisions set forth in the CARD Act addressing fees, expiration, disclosures, and various exemptions. Set forth immediately below is a brief summary of key provisions of the Rules.

- **Fees.** Dormancy, inactivity and service fees (including balance inquiry, usage fees, and ATM fees) are prohibited unless:
  - (i) there has been no activity for the previous year,
  - (ii) only one fee per calendar month is assessed, and
  - (iii) certain disclosure requirements are met.

NOTE: The term "service fee" includes recurring account maintenance fees and activity-based fees, such as per transaction, balance inquiry, ATM, and reload fees.

*This means that NO balance inquiry fees, ATM fees, reload fees, "per transaction" fees, or maintenance/service fees can be charged in the first 12 months, OR whenever the card is actively in use. After 12 months of inactivity, an issuer will have to choose between debiting either the maintenance/service fees OR any other "activity-based fee" in the same month.*

Replacement card fees are prohibited if the underlying funds remain valid. All other fees, such as initial issuance fees and cash-out fees, are permitted but must be disclosed either on or with the card prior to purchase, and cannot be changed after purchase.

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- **Expiration.** No expiration date is permitted *unless* there are “policies and procedures in place that provide consumers with a reasonable opportunity to purchase a card that has an expiration date that is at least five years from the date of purchase.” The commentary explains that this obligation can be met either by:
  - (i) Having procedures that prevent the sale of card with less than 5 years validity; OR
  - (ii) Making cards available to consumers (i.e., placing them on shelves) with at least 5 years and 6 months remaining on the card.

If there is an expiration date on the card, then the funds on the card cannot expire until:

- (i) than five (5) years after the date *of last load* of funds, OR
- (ii) the date on the card, *whichever is later*.

Moreover, if there’s an expiration date (unless the “safe harbor” applies - see below), you must disclose *ON the card and in close proximity to the expiration date*, the fact that the underlying funds either (a) do not expire or (b) expire at a later time *and* that the consumer may contact the issuer for a free replacement card.

*NOTE re: the “safe harbor”* - The above disclosure requirement can be avoided if the cards are manufactured with an expiration date that is at least 7 years out.

- **On the Card Disclosures.** In addition to specific disclosures regarding fees and expiration dates, the Final Rules require disclosure on the card itself of a *toll-free telephone number* and, if applicable, a website.
- **Exemptions.** Exclusions remain for cards, codes, or other device that are:
  - (i) Useable solely for telephone services,
  - (ii) Reloadable and not marketed or labeled as a gift card or gift certificate,
  - (iii) A loyalty, award, or promotional gift card,
  - (iv) Not marketed to the general public,
  - (v) Issued in paper form only, OR
  - (vi) Redeemable solely for admission to events or venues.

The Final Rules add that temporary general-purpose reloadable cards are exempt as well, even if the temporary card is initially non-reloadable.

- **Rewards Cards.** Loyalty, award and promotional cards (“Rewards cards”) are defined as cards issued “in connection with” an awards program provided they meet necessary disclosure requirements. Disclosure requirements for Rewards cards include reference on the *front of the card* that the card is issued for loyalty, award, or promotional purposes and any applicable funds

expiration date. Any fees must be disclosed on or with Rewards card. Again, stickers are not considered sufficient for this disclosure.

- **Compliance.** The Final Rules maintain the CARD Act's mandatory compliance date of August 22, 2010, applying to any covered gift certificate, store gift card or general-use prepaid card (i.e., open-loop gift card) sold to a consumer on or after such date, or provided to the consumer as a replacement. A special transition rule specific to rewards products provides that the Final Rules do not apply to such cards where the period of eligibility for the program began prior to August 22, 2010.

A complete copy of the Final Rules may be found at  
<http://www.federalreserve.gov/newsevents/press/bcreg/20100323a.htm>.

If you have any questions or would like additional information on these matters, please do not hesitate to contact Judie Rinearson (212-541-1135; [judith.rinearson@bryancave.com](mailto:judith.rinearson@bryancave.com)) or Margo Hirsch Strahlberg (312-602-5094; [mhstrahlberg@bryancave.com](mailto:mhstrahlberg@bryancave.com)).