

November 7, 2005

**VIA EMAIL AND HAND DELIVERY**

Robert E. Feldman  
Executive Secretary  
(Attention: Comments/Legal ESS)  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20429

Re: Federal Deposit Insurance Corporation/Notice of Proposed Rulemaking:  
Part 330: Stored Value Cards

Dear Mr. Feldman:

We are pleased to submit this letter on behalf of MoneyGram International, Inc. ("MGI") to the Federal Deposit Insurance Corporation ("FDIC"), commenting on the Notice of Proposed Rulemaking ("Notice"), dated August 8, 2005, clarifying the applicability of federal deposit insurance coverage of funds that are deposited into insured depository institutions and subject to transfer or withdrawal through the use of stored value cards and other nontraditional access mechanisms. As the Notice indicates, this proposal is a revision of the proposed rule that was published for comment in April 2004.

MGI, a publicly held financial services company headquartered in Minneapolis, Minnesota, operates one of the largest funds transfer businesses in the world. Its product lines include Travelers Express money orders, MoneyGram money transfers, MoneyGram ExpressPayment emergency bill payments, eMoney Transfer on-line service, and utility bill payments. MGI, through its Travelers Express subsidiary, also is one of the largest providers of official checks and money orders to depository institutions. MGI's products are available in more than 100,000 locations worldwide. MGI is duly licensed as a money transmitter in 45 states and Puerto Rico, and is regulated as such by the state bank regulators in each of those states. MGI commented on the first proposal on stored value cards that was published by the FDIC for comment in April 2004 and is pleased to comment on this second proposal.

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**A. The Revised Proposed Rule**

In general, MGI believes that the FDIC's more simplified approach to its analysis of the applicability of federal deposit insurance to funds underlying prepaid cards, and the FDIC's placement of the proposed regulation as part of the FDIC's deposit insurance regulations at Part 330 of Title 12 of the Code of Federal Regulations is superior to the first proposal.

MGI also generally agrees with the FDIC's approach in the Notice to treat funds underlying various prepaid cards consistent with the FDIC's treatment of other funds collected by third parties and deposited in an insured financial institution. If the funds are deposited in an account at an insured financial institution in the name of the third party and there is no indication on the face of the account that the third party is holding funds on behalf of cardholders (or holders of other access mechanisms), then the funds in the account are insured up to the maximum amount for that account and there is no pass-through insurance coverage available to the cardholders. On the other hand, if the funds are deposited in an account at an insured financial institution in the name of the third party, there is an indication on the face of the account that the third party (or the financial institution itself) is holding the funds on behalf of others, and the third party (or the financial institution) maintains records of the identities, addresses and amounts held on behalf of each card holder, then the pass-through insurance rules would apply and each sub-account would be separately insured up to the maximum amount available by law. Because of that approach, MGI believes that, rather than issuing new regulations, the FDIC could more efficiently handle the issue by issuing an new interpretation that repeals General Counsel Opinion No. 8 and indicates that pass-through insurance coverage is available on prepaid cards and other alternative access mechanisms to the same extent it is available under other custodial arrangements under 12 C.F.R. §330.5.

If the FDIC nevertheless believes that a separate and new regulation is more appropriate, MGI would suggest that the FDIC add one or two examples to those in the proposed regulation in Subsections (2) and (3), such as the following:

Example: A company sells prepaid debit cards that can be used at certain ATMs or merchants. Company (or its processor) maintains information on the value stored on each card, which may or may not include the identities of the cardholders (depending on whether the cards are embossed with the customers name, or temporary or throwaway cards, such as gift cards). The funds are invested by the company until the value on the cards is used or escheated, at which time the funds are sent to a settlement account at an

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insured depository institution. Such funds in the settlement account are deposits insurable to the company.

Example: An employer distributes payroll cards to employees. Funds underlying the cards are placed in an insured depository institution in an omnibus account that indicates that the account is held by the employer as custodian on behalf of various employees. The funds in that account are transferable or withdrawable by the employees through the use of the cards and cannot be recovered by the employer. The employer, or its service provider (not the bank) maintains records on the identities of each employee holding a card. Under these circumstances, the funds are deposits insurable to the employees.

#### **B. Different Treatment for Gift Cards and Payroll Cards**

The FDIC requested comment in the Notice on the issue of whether special distinctions should be recognized between the funds underlying payroll cards, gift cards and other types of prepaid cards or alternative access mechanisms. Specifically, the FDIC requested comment on whether it should require that funds underlying payroll cards must be held in custodial accounts that satisfied the FDIC's requirements for pass-through insurance coverage, and whether it should create a de-minimus exception for gift cards with small balances issued by a bank itself and not a retail store.

In MGI's view, these distinctions should not be made at this time. In the case of the payroll cards, these alternative payment methods are only now starting to be generally accepted by both employer and employees. As such, many states are only now considering amendments to their labor laws to accommodate the use of payroll cards or separate payroll card laws, which may or may not require that the funds underlying the cards be placed in custodial accounts on behalf of cardholder employees. There also may be other developments in the area, including technological improvements or enhancements that would allow employees to choose to have their pay placed on reloadable prepaid cards they already hold, rather than separate payroll cards that are exclusively issued by the employer.

MGI believes that the FDIC should allow these legal and technological developments to occur without imposing the requirement that the funds must be placed in custodial accounts that satisfy the FDIC's requirements for pass-through insurance coverage. Only if it appears that there are insufficient protections in state labor or payroll card specific laws or elsewhere should the FDIC act. Such separate requirements also

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should not be imposed on government benefit or medical benefit cards at this time. The market for those cards are even more in their infancy than payroll cards and such market should be allowed to develop. We note, moreover, that in the case of medical benefit cards, such as cards that may be associated with Health Savings Accounts or similar accounts, the underlying funds already are required by federal law to be held in separate tax-exempt custodial accounts and thus, any additional requirements imposed by the FDIC may be duplicative.

As for gift cards, most gift cards are unembossed, temporary cards that are thrown away once the amount on the card is used up. While sponsoring companies keep track of the amounts on the cards, the companies usually do not know the name of any cardholder or the cardholder's address. Under current law and the FDIC's proposal, any funds the sponsoring company may place in a depository institution will be insured only to the company. A special rule for depository institutions that may issue these cards directly appears to be unwarranted.

### **C. Proposed Disclosure**

The FDIC's proposed rule does not mandate that prepaid cards or other alternative access mechanisms have accompanying disclosures about the FDIC-insured status of the funds underlying the cards or alternative mechanism, but the FDIC requested comment on the issue. MGI believes that no such disclosure should be required, particularly on the card itself. Indeed, having disclosures on cards that are prominently branded on the front with the name and logo of a sponsoring company or retail store and the name of the issuing institution in small letters on the back would likely be very confusing to the cardholder or misleading and lead to unintended consequences. For example, if the sponsoring company were to declare bankruptcy, and the funds were separately insured, the cardholder may call the FDIC or the institution, requesting their funds, under the mistaken belief that the FDIC insured the funds of the company, not the bank. Alternatively, if the issuing bank were to fail, the cardholder may not even be aware that its funds were held at the bank.

Even more troubling, if a sponsoring company were to declare bankruptcy, the creditors of the company almost certainly would seek to freeze the funds of the company. Such a freeze likely would cover funds underlying the prepaid cards in omnibus company accounts for which pass-through insurance coverage is not available, raising the question of whether those funds could be used to cover cardholder purchases and withdrawals. But such a freeze also could be sought over the custodial accounts holding funds

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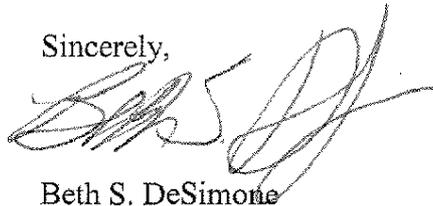
underlying cards, raising the possibility of disputes over the ownership and use of these funds, regardless of the nature of the account in which the funds are deposited.

Under current practice, disclosure of the insured status of funds underlying prepaid cards is included in the terms and conditions prepared by the issuing banks to accompany the cards. A review of these disclosures indicate that most documents already adequately disclose that the funds underlying the cards are separately insured by the FDIC, if the funds are placed in custodial accounts at the bank and thus are eligible for pass-through insurance coverage. If the funds underlying the cards are not placed in custodial accounts, most documents state that the funds are not FDIC-insured. Because adequate disclosures appear to already be given, any new requirements would be unnecessary.

Finally, MGI again requests that, if the FDIC determines to finalize the proposed rule, it coordinate with other federal banking agencies so that the implications of the FDIC's rule are fully known. As noted previously, any final rule issued by the FDIC likely will have implications to other agency determinations as to whether the funds should have, for example, the protections of the Electronic Funds Transfer Act and Regulation E, or the know your customer and other rules of the USA Patriot Act. A more coordinated approach therefore would be better for both sponsoring companies and issuing banks so the costs of issuing these cards can be factored into business plans and models. In fact, because no abuse of the cards or financial crisis relating to the issuers or sponsors of these cards exist, there is no need for the FDIC to act unilaterally without coordination from the other agencies with respect to these other laws and regulations. Thus, we request that such coordination be considered prior to issuing any final rule and to weigh the implications against any perceived benefit to the banking industry and consumers of issuing the rule prior to the other agencies concluding their own analysis.

Thank you for the opportunity to provide comments on the Notice. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth S. DeSimone", written over a horizontal line.

Beth S. DeSimone