Wachovia Corporation
Legal Division
NC0630
One Wachovia Center
301 South College Street
Charlotte, NC 28288

Tel 704 374-6611

Eugene M. Katz
Senior Vice President and
Assistant General Counsel
Direct Dial: 704 383-7707
Fax: 704 715-4494
Email: gene.katz@wachovia.com

WACHOVIA

November 7, 2005

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

Electronic Address: comments@fdic.gov

Re: Part 330 – Stored Value Cards

Dear Mr. Feldman:

This letter is submitted on behalf of Wachovia Corporation and its subsidiary companies, including Wachovia Bank, National Association, and Wachovia Bank of Delaware, National Association (collectively referred to as "Wachovia").

Wachovia has reviewed the FDIC's Notice of Proposed Rulemaking ("NPR") issued to clarify the insurance coverage of funds subject to transfer or withdrawal through the use of stored value cards and other non-traditional access mechanisms, including codes, computers or other electronic means, and appreciates the opportunity to provide comments.

Summary of the Proposal

The NPR replaces an April, 2004 proposal, and Wachovia appreciates the FDIC's careful re-consideration of whether funds underlying stored value cards are "deposits" for purposes of the Federal Deposit Insurance Act ("FDIA").

The NPR is much simpler than the April, 2004 proposal and raises three issues: (1) is there a deposit; (2) if so, who is the insured owner of the funds; and (3) should cardholders receive disclosures about the insured status of the funds. Under the NPR, if the funds have been placed at an insured depository institution, they would be considered "deposits" under the FDIA regardless of whether the stored value card is issued by the depository institution or a third party, and the FDIC's current ownership rules would apply to these funds. The deposited funds would be owned by the party named on the

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institution's records, unless the account records reflect that the funds are being held for third parties and there are records of the interests in the account of each third party.

Discussion

Wachovia offers a number of stored value products, including payroll cards, gift cards, and remittance cards, and believes the overly simplified approach taken by the FDIC in the NPR does not recognize critical differences among the various types of stored value products in the marketplace today. Further, the regulatory implications and related costs of determining that funds underlying all stored value cards are "insured deposits" could have significant implications for financial institutions and place them at a distinct competitive disadvantage with our non-bank competitors who will not have to bear these added costs. This unlevel playing field could force financial institutions out of the market, particularly with products such as gift cards that have slim profit margins.

Wachovia believes that financial institutions should have the freedom to design stored value products that are insured or uninsured based on customer expectations and market demand. The stored value arena is still evolving and participants need the flexibility to modify card features as consumers become more aware and accepting of these products and as technology continues to advance.

Wachovia does not believe that all stored value cards can be treated the same. For example, we believe there is a clear distinction between funds underlying payroll cards and funds underlying gift cards with respect to whether the funds should be classified as "deposits."

Payroll cards are a means for banks to reach underserved markets, including the unbanked, and may be seen as a substitute for traditional bank accounts. They offer a convenient, safe, and cost-effective way for an employee to access his or her wages, and employers receive cost benefits by eliminating paper checks and reducing exposure to check fraud. Employees are more likely to have the expectation that their wages are insured, as they would be if their wages were deposited into a traditional checking account. Many payroll card programs offered by financial institutions today have the benefit of deposit insurance because the marketplace is expecting it.

As an issuer of gift cards, Wachovia does not believe that there is customer expectation that these cards are insured. Typically, customers expect to treat these cards just like cash. The Wachovia gift card is a disposable, non-reloadable card that can be used at an ATM to withdraw cash or at merchant locations to purchase goods and services. The card represents funds which have been deposited in the financial institution and which constitute the obligation of the financial institution to pay a merchant or the cardholder as the card is used. Due to the very nature of this product, i.e., a gift, the identity of the actual recipient of the card is unknown to the bank.

In summary, Wachovia believes that the FDIC should take no action at this time to treat funds underlying stored value cards and other non-traditional access mechanisms as "deposits." It is our belief that this is a fairly new market and it should be allowed to grow and evolve absent regulatory restrictions. Financial institutions should have the flexibility to design stored value products that are insured or uninsured based on customer expectations and costs.

Disclosure of Insurance Coverage

The FDIC seeks comments on whether disclosures to cardholders about the insured status of funds should be mandated. Wachovia believes that cardholders should know whether the funds underlying a card are insured. With respect to our stored value products, Wachovia discloses in our cardholder agreement whether the funds on the card are FDIC insured. On cards that are not FDIC insured to the cardholder, we state that fact very clearly in the agreement. We are not opposed to disclosure of the insured status of the funds underlying stored value products in documents that are provided with the card, such as a cardholder agreement; however, we are opposed to requiring that the FDIC logo be placed on the card. Issuers of cards traditionally order large quantities of cards for multiple programs, some of which may be insured and some not. Additional expense would be incurred in ordering special cards or "hot stamping" the FDIC logo on the cards, when the same disclosure could appear in documents that accompany the card.

Effect Upon Other Laws

Wachovia is concerned that the actions of the FDIC under the NPR may give rise to attempts to apply other laws and regulations to stored value products. Although we recognize that the FDIC's classifying stored value products as "deposits" does not necessarily determine the applicability of other laws and regulations, it is likely that there will be increased pressure placed on the regulatory agencies by interested groups that stored value products be covered by other laws and regulations as well.

Conclusion

Wachovia respectfully requests that the FDIC withdraw its proposal to allow the developing market of stored value products and associated technology to continue to evolve without this regulatory overlay and to allow market participants the flexibility to structure products that are deemed valuable to the consumer as well as cost-effective to the issuer.

Sincerely,

Eugene M. Katz

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