PayPal
an eBay® company

November 7, 2005

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Attention: Comments/Legal ESS

Part 330 – Stored Value Cards

Dear Mr. Feldman:

I am writing on behalf of PayPal, Inc. ("PayPal"), an online payments company that operates as a licensed money transmitter. PayPal does not require its users to store value in order to make payments through PayPal, and the significant majority of its customers do not carry a stored value balance. Those customers who do carry a balance are typically sole proprietors and other small online businesses who store value with PayPal for a brief period when they receive payments, not by pre-funding a balance for future transactions as in a gift card.

With respect to those customers who do store value, however, PayPal acts much like the issuer of a stored value card. PayPal pools those customers' funds and places those funds in well-capitalized banks as agent for its customers. PayPal therefore appreciates the opportunity to comment on the FDIC's proposal regarding deposit insurance coverage of funds held by banks underlying stored value cards and other nontraditional access mechanisms.

PayPal supports the FDIC's proposal to apply the principles in its proposed regulation to all nontraditional access mechanisms, not only stored value cards. Any decision to the contrary would create the risk of distorting the market either against or in favor of non-traditional payment systems, such as PayPal, that are not accessed by means of a physical card.

PayPal supports the principle that funds received by an insured depository institution from a first party for transfer or withdrawal by other parties would be insured to those other parties if specified conditions are met. We encourage the FDIC to clarify that this principle would apply even if the transfer or withdrawal instructions are transmitted to the depository institution by the first party, as long as the transfer or withdrawal is initiated by, and for the benefit of, the other party.

The key conditions for pass-through deposit insurance, as the FDIC has long identified, are that the depository institution's records must indicate the first party is not the owner

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of the funds, and either the depository institution or the first party must maintain records to show the identity of each of the owners and the amount of their ownership interest. We encourage the FDIC to clarify that the exclusive, or at least primary, factor in determining whether the depository institution's records indicate non-ownership of the funds is the name or caption of the account. For example, a bank account naming a party as agent or custodian for others should be deemed to satisfy this condition even if the party receives earnings credit or interest from the bank based on the amount of funds in the account.

In addition, we believe the FDIC should change the wording of the proposed section 330.5(c)(3) to state that "If both of these conditions are satisfied, then the funds ***will*** be insured to the persons holding the access devices." (emphasis added), instead of stating that funds "may be insured." The use of the word "may" only introduces the very ambiguity that the regulations are intended to eliminate.

Finally, with respect to disclosure of pass-through insurance status, PayPal supports a uniform disclosure requirement when either the depository institution or the sponsor/operator of the stored value program has a good faith belief that the FDIC's requirements for pass-through coverage have been satisfied. The wording considered by the FDIC could be expanded to capture non-card access mechanisms: "[Funds available through this card][Stored value balances] are individually insured by the FDIC to the [Cardholder][balance holder]." For the sake of uniformity and to prevent misleading disclosure, the FDIC should clarify that program sponsors or operators which are not insured depository institutions cannot post the FDIC seal, official signs or official advertising statements.

PayPal appreciates the opportunity to comment, and we look forward to the FDIC's continued leadership in supporting payments innovation.

Sincerely

John D. Muller
Vice President and General Counsel

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