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November 4, 2005

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

Re: 12 C.F.R. Part 330 -- Stored Value Cards

Dear Mr. Feldman:

This letter is to comment on the FDIC's Notice of Proposed Rulemaking regarding the expansion of deposit insurance to include certain "pass through" aggregated accounts of stored value card funds. We concur that an update to the regulations is needed to address deposit accounts involving nontraditional access mechanisms such as stored value cards. However, we do not believe that it is appropriate to issue the rule as published in the August 8, 2005 notice. As noted by the FDIC in the notice itself, there are numerous unanswered questions concerning the application of various federal and state laws and regulations to the stored value card business. Unilaterally extending deposit insurance to certain structured "pass through" stored value card accounts at this time is a premature and unnecessary risk to our financial institutions, the public and ultimately the FDIC deposit insurance fund.

The Florida Office of Financial Regulation (Office) is dedicated to safeguarding the private financial interests of the public by licensing, chartering, examining and regulating financial institutions and financial service companies in the State of Florida. The Office also strives to protect consumers from illegal financial activities of depository and non-depository institutions and companies, while preserving the integrity of Florida's markets and financial service industries. We are responsible for licensing, chartering and regulating more than 350 financial institutions with assets in excess of $84 billion, including state chartered commercial banks, credit unions, non-deposit trust companies and branches, agencies, representative offices and administrative offices of foreign banks. In addition, the Office licenses and regulates money service businesses, collection agencies, consumer finance companies, mortgage broker businesses, lenders and branches, and mortgage broker individuals, retail installment sellers and sales finance companies, securities dealers and agents, and securities offerings. The Office has a long and close working relationship with the FDIC concerning the regulatory supervision of Florida financial institutions to ensure the public confidence in the safety and soundness of the banking system.

The Office is opposed to the FDIC issuing the proposed changes to 12 C.F.R. Part 330, section 330.5(c)(3), which would extend deposit insurance to pass through accounts that are completely under the control of a party other than the financial institution or the ultimate insured depositor. In particular, the Office is concerned that the proposed language "unless the account records of the insured depository institution reflect the fact that the first party is not the owner of the funds; and <u>either the first party or</u> the depository institution (or an agent on behalf of <u>the first party or</u> the depository institution) maintains

200 E. GAINES STREET, TALLAHASSEE, FL 32399-0370
TEL: (850) 410-9601 • FAX: (850) 410-9663

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records reflecting the identities of the persons holding the access devices and the amount payable to each such person" is unsafe and unsound. The Office recommends that the underlined portions of the proposed ruled be deleted in the final rule.

The proposed rule would permit a financial institution or other third party card issuer to maintain and advertise an aggregated "pass through" account as fully FDIC insured when the financial institution relies entirely on a third party for all documentation, records, and accounting of the individual sub-accounts. The financial institution will not be required to maintain any individual customer account information. The third party is not subject to periodic routine examinations by the FDIC or other state or federal regulatory agencies. There is no requirement or authority for the financial institution to inspect the records of the third party, or to demand an accounting or audit of those records. Thus there is no clear delineation of accountability and responsibility for the aggregated pass through accounts, except for the deposit insurance fund to make a payout based upon a third party's records should the financial institution fail. This is a fundamentally flawed approach that does not adequately protect consumers, financial institutions, or the deposit insurance fund.

The final rule should require the financial institution to maintain sufficient account records with individual customer information as a condition for deposit insurance on aggregated pass through accounts. This would also help ensure compliance with the customer identification program requirements of the anti-money laundering and anti-terrorist financing laws and regulations. The FDIC should not permit financial institutions, through rule sanctioned willful blindness, to merely shift the risks of the pass through accounts, such as fraud, money laundering, and other regulatory non-compliance issues, to the deposit insurance fund and consumers. Indeed, conspicuously absent in the Notice of the proposed rule was any analysis or discussion of the risks in granting insured deposit status to these accounts.

Disclosure to the consumers is of course critical. A simple statement on a stored value card that the funds available are FDIC insured is inadequate. The consumers must receive full and clear disclosure of the entire account process, including the timing of funds availability, third party duties and responsibilities, fees, interest, dispute resolution, and deposit insurance, at the time the account is opened and periodically thereafter. The application of numerous consumer protection laws and regulations, such as the Truth in Savings Act of 1991 with Regulation DD, the Electronic Fund Transfer Act with Regulation E, the Truth in Lending Act with Regulation Z, the Federal Trade Commission Act with Regulation AA, and the Expedited Funds Availability Act with Regulation CC, should all be considered in adopting a comprehensive approach to addressing the issues of stored value cards and other nontraditional access mechanisms. Simply declaring the deposits by rule as "insured" without resolving the host of other key issues will only further confuse and mislead consumers, and increase the litigation and financial risks to the financial institutions.

We applaud the FDIC for taking a leading role in grappling with the complex issues that arise in the financial industries and regulatory arena in this era of rapid technological change and innovation. New financial products and services, such as stored value cards and other nontraditional access methods, are welcome developments with the potential to be highly beneficial and useful to both consumers and financial institutions. We thank the FDIC for its efforts and the opportunity to comment on the proposed rule.

Sincerely,

Don B. Saxon

DS/lc
cc: Conference of State Bank Supervisors
Florida Bankers Association