

# J.P.Morgan

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Ms. Jennifer Johnson, Secretary  
Board of Governors of the Federal Reserve System  
Office of the Secretary  
20<sup>th</sup> and Constitution Avenue, N.W.  
Washington, D.C. 20551

Re: Regulation E Proposed Rule; Docket No. R-1377

Dear Ms. Johnson:

The Board of Governors of the Federal Reserve System (the "Board") has requested comments on its proposed amendments (the "Proposal") to the Board's Regulation E ("Regulation E") and Official Staff Commentary ("Commentary"), implementing portions of the Credit Card Accountability Responsibility and Disclosure Act (the "Act") with respect to gift certificates, store gift cards and general-use prepaid cards. JPMorgan Chase & Co., on behalf of its main subsidiary bank, JPMorgan Chase Bank, N.A., and its affiliates (collectively, "JPMC") appreciates the opportunity to submit these comments.

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## 1. Definitions

### A. "Service Fee"

JPMC believes the Board has proposed to define "service fee" more broadly than Congress intended under the Act. Section 915(a)(3)(A) of the Act states that a service fee "...means a periodic (emphasis added) fee, charge or penalty for holding or use of a gift certificate...card." JPMC believes the alternative definition considered by the Board stated in the Proposal's Supplementary Information, i.e., a "fee that is imposed at regular intervals, which would include a monthly maintenance fee, but not transaction fees or reload fees that are triggered by consumer activity" is a more accurate definition of a "periodic fee" and is the better approach. For example, consumer activity that triggers fees such as foreign currency transaction fees, balance inquiry fees and fees for other transactions individual consumers choose to

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engage in that increase the cost of their card relative to other consumers, should not be considered "service fees." This approach would be consistent with other uses of the term "periodic" in other Board regulations such as the Regulation Z definition of "periodic rate" (12 CFR 226.2(21)) and the Regulation DD definition of "periodic statement" (12 CFR 230.2(q)).

Under the Proposal, Section 205.20(d), "No person may impose ...a "service fee"....unless: (1) there has been no activity with respect to the certificate or card in the one-year period ending on the date on which the fee is imposed. [and] (3) Not more than one inactivity, dormancy or service fee is imposed in any given calendar month." In the proposed Commentary, Paragraph 20(a)(6)-Service Fee, "A periodic fee includes any fee...such as a monthly maintenance fee, a transaction fee, a reload fee, or a balance inquiry fee." We agree a monthly maintenance fee is a good example of a periodic fee that is charged at a predetermined time interval. However, the proposed Commentary is too broad to include as "periodic fees" other types of fees that are transactional in nature and not based on a predetermined time interval. Fees are imposed on activities and transactions to recoup the costs, and a reasonable profit, of providing the service. If these fees cannot be assessed, all consumers will bear these costs rather than only those consumers engaging in these transactions. In addition, if a card has no activity for a year, and an inactivity fee is charged, the issuer could not charge any activity or transaction fees in the same month. We believe Congress intended to only include periodic fees as service fees and request the Board revise the proposed Commentary accordingly.

Defining non-periodic fees charged for specific consumer services to be "service fees," will also increase the complexity of the systems changes necessary to ensure that only one fee is charged in any calendar month. For example, if a dormancy or inactivity fee was charged in the thirteenth month after inactivity, and later in the same month, the customer used an ATM dispensing a foreign currency that triggered a foreign currency transaction fee, the Proposal appears to prohibit either the inactivity fee or the foreign currency transaction fee from being charged in order to comply with the limit of one fee in any calendar month.

In addition, if the definition set forth in the Proposal is adopted, additional disclosure would be required on the card. The inclusion of all of this disclosure on a card may be counter-productive to the intent of the regulation. Instead of being viewed as an attempt to convey useful information, it may be viewed by the consumer as useless clutter, since the type size would have to be very small in order to include all of the required information. Any intended benefit to the consumer is likely to be lost.

B. Exclusion for Cards that are "reloadable and not marketed or labeled as a gift card or gift certificate."

Proposed Section 205.20(b)(2) excludes from the definition of general gift certificates, store gift cards, and general use prepaid cards a device that is "reloadable and not marketed as a gift card or gift certificate." The proposed Commentary defines "reloadable" as capable of having more funds added to the card by a "cardholder." This may cause confusion. JPMC offers many prepaid card products that may be reloadable by sources other than the cardholder. For example, JPMC offers a payroll card product and governmental benefits card product both of which have an employer or a governmental entity that places funds to the card account on a continuing basis. We do not believe the Board intends those reloadable card products to be included in the definition of gift certificates, store gift cards, and

general use prepaid cards. Accordingly, we suggest the Board remove reloadability by the cardholder from the definition for clarification purposes.

## 2. Expiration Dates

In Section 205.20(3) of the Proposal, the Board proposed two alternatives for how to disclose to a consumer the expiration date of a card and the expiration date of the underlying funds. JPMC recommends that the Board adopt Alternative A or permit issuers to select either Alternative A or Alternative B.

We recommend Alternative A because it provides for more readily understandable disclosures. It is questionable whether consumers will grasp the difference between the expiration date of a card and the expiration date of the underlying funds. The former is an easily understandable concept familiar to consumers who already possess credit and debit cards bearing expiration dates; the latter is a new, somewhat amorphous concept not readily understandable by consumers. In fact, this concept may be confusing to merchants as well. Having a uniform standard will also allow consumers to readily compare expiration dates on competing gift cards. In addition, Alternative A permits less disclosure on the card, which will allow more space to accommodate other required disclosures and helpful information for using the card.

## 3. Disclosures on the Card

Proposed Section 205.20(4) requires specific disclosures on the card itself and specifically prohibits such disclosures from packaging, terms and conditions, and stickers on the card. Existing state and federal laws as well as certain pragmatic concerns already require significant disclosures on the card such as:

- a. Issuer of the card
- b. Card Association logos indicating where cards are accepted
- c. Card expiration date
- d. Customer service numbers
- e. Website addresses
- f. Signature strip
- g. Magnetic strip
- h. FDIC coverage
- i. Copyright and trademarks

Practically speaking, there simply is not much more room on the cards for additional disclosure. As discussed above, JPMC strongly recommends that the Board limit the definition of service fees to "periodic" fees, and not include activity and transaction fees. If the Board requires the disclosure of non-periodic consumer activity fees, it will be very difficult to disclose all of these fees on the gift card. Moreover these fees may change from time to time as provided in the agreement between the issuer and the consumer, thus increasing the confusion among consumers.

In addition, to the extent the Board increases the disclosures on the card, the likely effect will be the elimination of other important information currently included on cards, such as (i) the importance of registering the card, which is necessary to replace a lost or stolen card and to cancel or "cash out" a card, (ii) applicable restrictions on card use, such as not using it at ATMs or branches, and (iii) referencing terms and conditions of the gift card agreement. The disclosures

contemplated by the Proposal are more extensive than are required for any other debit or credit card program.

JPMC already fully discloses all material terms. Marketing materials state whether any fees will apply, and if so, clearly and completely disclose them. In addition, all disclosures provide all fees associated with the use and retention of the card as well as information for the use of the card. We strongly encourage the Board to reconsider its position on this matter and allow required disclosures on the card packaging or in the terms and conditions, or both, but to limit mandatory on-card disclosures.

#### 4. Definition of Activity

Section 205.20(d)(1) of the Proposal permits the imposition of dormancy, inactivity or service fees, a fee provided there has been no "activity" with respect to the card. In the associated proposed Commentary, the Board has identified a few events that would either constitute activity or would not be deemed to be activity. We request that the Board expand the Commentary to include other types of actions that would or not be deemed to be "activity".

#### 5. Preemption of State Law

Section 205.12(b)(1) of the Proposal provides the Board shall determine whether this part of Regulation E would preempt state law relating to electronic fund transfers, dormancy, inactivity, or service fees or expiration dates. The Proposal, however, is silent on the subject of the escheatment of the underlying funds. Because a gift card must have an expiration date of not less than five years from its issue date, a question arises with respect to the escheatment of the underlying funds when a state statute requires escheatment of funds that have been inactive for a less than five years. For example, assume a consumer purchases a gift card, uses it for two months, and discontinues use of the card. In three years, some state laws may require the reporting and escheatment of the underlying funds. Another example would be when a consumer who has not registered the card and, therefore, has not received any of the letters the bank sent to the original purchaser regarding the possibility of escheating the funds, attempts to use the card after the escheatment period and prior to the expiration date on the card. Since these and other similar scenarios will occur frequently, JPMC requests that the Board provide clear guidance on the interplay between Federal and state law on this issue.

#### 6. Loyalty, award, promotional cards and programs

Section 205.20(a)(4) of the Proposal defines loyalty, award or promotional gift cards as a prepaid card given to a consumer as a rebate, to reward frequent customers, or to reward job performance. The proposed Commentary further describes loyalty or consumer retention programs operated or administrated by a merchant to provide to consumers cards redeemable for goods, services or other monetary value. This would also extend to rebate programs. We encourage the Board to clarify that the gift cards distributed by banks, credit card issuers or other retailers as a component of loyalty rebate programs are excluded from the Proposal's coverage.

Alternatively, we encourage the Board to clarify the disclosure obligations of the various parties involved in the distribution of gift cards in a typical rebate program. 205.20(c)(3) of the Proposal requires that dormancy, inactivity or service fees, as well as any additional fees that may apply and the terms and conditions of the expiration date of the funds be disclosed by an issuer or vendor before a gift card is

purchased. We encourage the Board to clarify that for the purpose of such disclosures, that a gift card is deemed to have been purchased at the site or location where it is redeemed. For example, gift cards are often offered by credit card issuers as a redemption item in conjunction with a rewards program. The credit card issuer in such instances is part of the distribution chain of such cards, but it is usually not the issuer of the gift cards and, depending on the fulfillment channel employed (e.g., on-line, in person, telephone) may not even appear to be the vendor. By clarifying that the required disclosures need only be made once and at the actual place or point of purchase, there will be less of a chance that a consumer will be presented with multiple, perhaps conflicting, disclosures.

#### 7. Transition

The Board has specifically requested comment regarding cards that are in the marketplace on the effective date, August 22, 2010. JPMC requests that the Board establish a reasonable transition period of at least 180 days from the effective date during which cards in the marketplace, as well as pre-existing card inventory that has not yet been issued to consumers, not be subject to the card disclosure requirements.

#### 8. Applicable to Businesses

The Board requested comment on whether it is appropriate to limit the scope of the final rule so that it does not apply to cards issued for business purposes. JPMC believes that the final rule should be expressly limited solely to cover prepaid card products sold directly to consumers. This maintains the stated purpose of the Electronic Fund Transfer Act of providing individual consumer rights and is appropriate within the context of the requirements of Regulation E.

JPMorgan Chase & Co. appreciates the opportunity to comment on this subject and would be pleased to discuss any of the points raised in this letter in more detail. Should you have any further questions, please contact John Guzzi at 312-732-5225.

Sincerely,

Eduardo J. Vergara