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November 12, 2010

VIA COURIER

Keiran J. Fallon
Associate General Counsel
Board of Governors of the Federal Reserve System
20th and C Streets, NW
Washington, DC 20551

Dear Keiran:

Enclosed is a letter from my client, Evolution Benefits, Inc. ("Evolution Benefits"), regarding the implementation of, and issues related to, the interchange provision of the Dodd-Frank Act. Evolution Benefits manages health care and employee benefits prepaid card programs for in excess of 19,000 employers nationwide. Because of its substantial experience in prepaid cards and employee benefits plan administration, a discussion of the issues with representatives of Evolution Benefits may be extremely beneficial to the staff of the Board of Governors of the Federal Reserve System (the "Board"). Accordingly, we respectfully request a meeting with Board staff to discuss our (i) experience in the prepaid card and employee benefits markets and (ii) ideas on the implementation of the interchange provisions.

If you have any questions or need additional information, please give me a call. I look forward to meeting with you again soon.

Sincerely,

Michael A. Mancusi

Enclosure

EVOLUTION BENEFITS

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November 10, 2010

Keiran J. Fallon
Associate General Counsel
Board of Governors of the Federal Reserve System
20th and C Streets, N.W.
Washington, DC 20551

Dear Mr. Fallon:

Evolution Benefits, Inc. thanks the Federal Reserve for the opportunity to comment on the promulgation of regulations implementing certain elements of H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act. Evolution Benefits manages health care and employee benefits prepaid card programs for over 19,000 employers nationwide. Our programs enable approximately 3 million Americans to make convenient payment for qualified goods and services directly from employee benefit plans through the use of a MasterCard or Visa-branded prepaid card.

We appreciate the Federal Reserve's willingness to accept comments and input from industry participants regarding the interchange and network provisions of Dodd-Frank that were introduced via the Durbin Amendment. As you have requested, we provide herein a summary discussion of our prepaid card product and some concerns that we would appreciate the opportunity to discuss directly with you.

Background and Benefits of Employee Benefit Prepaid Cards

Without the convenience of prepaid cards such as ours, employees and their dependents would be required to pay out of pocket, fill out a claim form, submit the form with accompanying documentation, and wait for reimbursement. In the absence of a card, the plan administrator must bear the cost of processing these paper claims and issuing checks or EFTs (and accompanying remittance advices). Prepaid cards generate cost savings for plan administrators (and hence for employer plan sponsors) by replacing manual paper processes with efficient electronic payment.

Employee benefit prepaid cards are heavily regulated by the Internal Revenue Service to ensure that payments made from benefit accounts using these cards are for qualified goods and services as defined by the IRS and the applicable terms of the benefit plan. In order to accomplish this objective, complex and highly sophisticated technology is employed before, during, and after the card transaction to implement effective filters and safeguards that standard bank card systems cannot support. The costs of building and maintaining the necessary technology, data exchanges, and operating support infrastructure to ensure a compliant implementation are many orders of magnitude greater than typical debit cards.

Evolution Benefits' employee benefit prepaid card services are provided to third-party administrators and health plans who administer the employee benefit plans under contract to employers. We charge the administrator a monthly fee per employee card account. This monthly fee does not cover our costs of operations and technology. We derive a significant amount of our revenue from interchange fees through a sponsorship agreement with the banks who issue the cards. Without the benefit of interchange, we would be forced to raise our fees to administrators significantly. Such a fee increase would substantially reduce the cost savings of the card relative to manual paper claims and would force increases in monthly fees that would be directly passed along to plan sponsors, employers and employees, thereby raising health insurance costs.

In addition, our card programs do not support PINs. The majority of the cards issued under our programs are by regulation are prohibited from cash access since providing such access would contravene Congressional intent that card expenses be limited to tax qualified goods and services. The cost to build and maintain PIN infrastructure simply to satisfy the unaffiliated network requirements of the legislation would add materially to our cost structure. Moreover, the merchant fees associated with PIN transactions are significantly lower than interchange rates associated with signature transactions. Therefore, introducing PINs to our card programs will force a change in program structure, forcing us to raise administrator fees with the same result as discussed above.

The Intent of Congress

We would like to call the Federal Reserve's attention to statements made by senior Members in each chamber during the debate over the legislation that address the issues of interchange and network use specific to employee benefit debit cards.

On June 28, in the House, Rep. John Larson of Connecticut and Rep. Barney Frank of Massachusetts, the Chair of the House Financial Services Committee, engaged in a colloquy on the floor as follows (see the Congressional Record, pages H5225-6):

> Mr. LARSON of Connecticut. Madam Speaker, I rise for the purpose of engaging in a colloquy with Chairman *Frank* to clarify the intent behind section 1076 in this bill. The section amends the Electronic Fund Transfer Act to create a new section 920 regarding interchange fees. Interchange revenues are a major source of funding for the administrative costs of prepaid cards used in connection with health care and employee benefits programs like FSAs, HSAs, HRAs and qualified transportation accounts.
>
> These programs are lightly[1] used by both the public and private sector employers and employees and are more expensive to operate because of substantiation than other

[1] Evolution Benefits note: the transcript appears to be in error with respect to this particular word; the C-Span recording and transcript of the colloquy indicate the word "widely" was used rather than "lightly".

regulatory requirements. Because of this, I would like to clarify that Congress does not wish to interfere with those arrangements in a way that could lead to higher fees being imposed by administrators to make up for lost revenue, which would directly raise health care costs and hurt consumers. This is clearly not something that was the intent that we'd like to do. Therefore, I ask Chairman *Frank* to join me in clarifying that Congress intends that prepaid cards associated with these types of programs should be exempted within the language of section 920(a)(7)(A)(ii)(II).

Mr. FRANK of Massachusetts. If the gentleman would yield, he's completely correct. The Federal Reserve has the mandate under this, which originated in the Senate, to write those rules. We intend to make sure those rules protect a number of things: smaller financial institutions from being discriminated against since they're exempt from the regulation, State benefit programs, and these.

So the gentleman is absolutely correct, and I can assure him that I expect the Federal Reserve to honor that. And if there is any question about it, I am sure we will be able to make sure that it happens.

Mr. LARSON of Connecticut. I thank the chairman.

On July 15, Senator Chris Dodd of Connecticut, the Chair of the Senate Banking Committee, read the following statement into the Congressional Record (at pages S5927-8):

Mr. DODD. Mr. President, I would also like to clarify the intent behind another of the provisions in the conference report to accompany the financial reform bill, H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Section 1075 of the bill amends the Electronic Fund Transfer Act to create a new section 920 regarding interchange fees. This is a very complicated subject involving many different stakeholders, including payment networks, issuing banks, acquiring banks, merchants, and, of course, consumers. Section 1075 therefore is also complicated, and I would like to make a clarification with regard to that section.

Since interchange revenues are a major source of paying for the administrative costs of prepaid cards used in connection with health care and employee benefits programs such as FSAs, HSAs, HRAs, and qualified transportation accounts—programs which are widely used by both public and private sector employers and which are more expensive to operate given substantiation and other regulatory requirements— we do not wish to interfere with those arrangements in a way that could lead to higher fees being imposed by administrators to make up for lost revenue. That could directly raise health care costs, which would hurt consumers and which, of course, is not at all what we wish to do. Hence, we intend that prepaid cards associated with these types of programs would be exempted within the language of section 920(a)(7)(A)(ii)(II) as well as from the prohibition on use of exclusive networks under section 920(b)(1)(A).

We believe these statements clearly reflect the intent of the senior Members responsible for this legislation that health care and employee benefit prepaid cards be exempt from the interchange regulation provisions of Dodd-Frank, and, in the case of the Dodd statement, also that such cards be exempted from the prohibition on use of exclusive networks. This is entirely consistent with the carve-out from interchange regulation afforded in the legislation to debit cards used in connection with government programs where the Congress also determined that it did not wish to undermine program financial structures in a way that would raise sponsor or consumer costs.

<u>Conclusion</u>

We thank the Federal Reserve for taking the time to review this letter. We appreciate the extraordinary demands being placed on you and your colleagues as you work to promulgate regulations emanating from Dodd-Frank. Given the highly complex and unusual nature of health care and employee benefit card programs, however, we believe that a meeting in which we can provide additional information regarding how these programs work will prove very useful to you in that endeavor. In the meantime, if you have any questions, I can be reached at (860) 678-3419 or via email at cbyrd@evolutionbenefits.com.

Very truly yours,

Christopher M. Byrd
President and Chief Operating Officer