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ALERT
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Sweepstakes and Gift Card Update

The Commonwealth of Puerto Rico Department of Consumer Affairs approved a new set of sweepstakes regulations that will significantly ease the ability of marketers to advance their promotions within the Commonwealth. Puerto Rican regulations previously restricted marketers' efforts to conduct sweepstakes that are otherwise legal in the 50 states and the District of Columbia. The new regulations, which became effective November 27, 2009, also provide clarity as to certain sweepstakes issues, such as online publication of official rules and text messaging fees.

The significant changes to Puerto Rico's sweepstakes regulations include the following:

- Standard text messaging fees do not constitute consideration for the purpose of a lottery analysis.
- The regulations no longer require certification by a notary for drawing procedures or for game piece security codes.
- Abbreviated rules are permitted in all advertising for the sweepstakes.
- The following material terms must appear in abbreviated rules:
 - the end date
 - eligibility requirements for entry
 - the name of the promoter
 - a statement that no purchase is necessary to enter or play the game
 - disclosure of where the Sweepstakes Rules can be obtained.

- The full official rules need only be published online and be made available in the same language as the advertising for the sweepstakes (previously, the official rules had to be available in Spanish).
- There are simplified disclosure requirements so as to be more in line with typical state laws. For instance, the requirements for odds statements provide that "if the odds of winning cannot be determined, a statement that 'the odds of winning depend upon the number of entries received' shall suffice."
- Tax liability is clarified: "any Commonwealth of Puerto Rico taxes or assessments levied on the prizes as of the date of delivery thereof to the winner shall be the sole responsibility of the winner of the sweepstakes."

There are many other changes presented by the new regulations, and the rules for future sweepstakes made available to residents of Puerto Rico should be reviewed against the entirety of the new regulations.

Federal Reserve Board Issues Proposed Rules Governing Gift Cards

The Credit Card Accountability Responsibility and Disclosure Act of 2009 was enacted in May 2009. Section 401 of the Act provides restrictions on gift cards and other stored value cards, and authorizes the Federal Reserve Board to issue proposed rules implementing the gift card provisions.

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The Federal Reserve Board recently issued proposed rules and invited comments on the proposals.

The Credit Card Accountability Responsibility and Disclosure Act of 2009 and the proposed rules (1) limit dormancy, inactivity or service fees, (2) require certain disclosures, and (3) prohibit expiration dates less than five years after issuance of gift certificates, store gift cards, and general-use prepaid cards.

Restrictions on Dormancy, Inactivity, or Service Fees

Under the proposed rules, no person may impose a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card, unless three conditions are satisfied.

- First, such fees may be imposed only if there has been no activity with respect to the certificate or card within the one-year period prior to the imposition of the fee.
- Second, only one such fee may be assessed in a given calendar month.
- Third, disclosures regarding dormancy, inactivity, or service fees must be clearly and conspicuously stated on the certificate or card, and the issuer or vendor must provide these disclosures to the purchaser before the certificate or card is purchased.

Expiration Date Restrictions

The proposed rules would also provide that a gift certificate, store gift card, or general-use prepaid card may not be sold or issued unless the expiration date of the funds underlying the certificate or card is no less than five years after the date of issuance (in the case of a gift certificate) or five years after the date of last load of funds (in the case of a store gift card or general-use prepaid card). In addition, information regarding whether funds underlying a certificate or card may expire must be clearly and conspicuously stated on the certificate or card and disclosed prior to purchase.

The proposed rules would also require a certificate or card to include a disclosure alerting consumers to the difference between the certificate or card expiration date and the funds expiration date, if any, and that the consumer may contact the issuer for a replacement card. This disclosure must be stated with equal prominence and in close

proximity to the certificate or card expiration date. In addition, the proposed rule would prohibit the imposition of any fees for replacing an expired certificate or card to ensure that consumers are able to access the underlying funds for the full five-year period.

Additional Disclosure Requirements Regarding Fees

In addition to the statutory restrictions for dormancy, inactivity, or service fees, the proposed rules would require the disclosure of all other fees imposed in connection with a gift certificate, store gift card, or general-use prepaid card. These disclosures would have to be provided on or with the certificate or card and disclosed prior to purchase. The proposed rule would also require the disclosure on the certificate or card of a toll-free telephone number and, if one is maintained, a website that a consumer may use to obtain fee information or replacement certificates or cards.

Exclusions

Consistent with the Act, the proposed rules exclude certain card products from the definitions of gift certificate, store gift card, or general-use prepaid card. For example, cards, codes, or other devices that are issued in connection with a loyalty, award, or promotional program, or that are reloadable and not marketed or labeled as a gift card or gift certificate, would not be subject to the substantive restrictions on imposing dormancy, inactivity, or service fees, or on expiration dates. However, under the proposal, disclosures of all fees, including any dormancy, inactivity, or service fees, and any expiration date that may apply, would be required for certificates or cards issued through a loyalty, award, or promotional program.

The Federal Reserve Board must issue final rules by February 2010, and the final rules will become effective August 22, 2010.

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