

savings association, in the usual course of business for a special or specific purpose.\* \* \*” 12 U.S.C. 1813(l)(3). Under this paragraph, funds are “deposits” when held by a bank for the “special or specific purpose” of covering withdrawal or transfer instructions from the holders of stored value cards or other nontraditional access mechanisms. In the original GC8, the Legal Division found that paragraph 3(l)(3) applies only to cases in which the customer’s spending plans are very specific but such a narrow reading of the statute is not supported by the legislative history. *See FDIC v. Philadelphia Gear Corporation*, 106 S. Ct. 1931 (1986). Also, the Legal Division is unaware of any case in which a court found that a bank’s liability did not qualify as a “deposit” because the customer’s spending plans were insufficiently specific.

*Paragraph 3(l)(4).* This paragraph defines “deposit” as “outstanding draft \* \* \* cashier’s check, money order, or other officer’s check issued in the usual course of business for any purpose.\* \* \*” 12 U.S.C. 1813(l)(4). Some stored value products are the functional equivalents of cashier’s checks or money orders.

As outlined above, the statutory definition of “deposit” is very broad. The Legal Division concludes that this definition encompasses all funds underlying stored value cards and other nontraditional access mechanisms to the extent that the funds have been placed at an insured depository institution.

A separate issue is whether the holder of an access mechanism (as opposed to the distributor of the access mechanism) should be treated as the insured depositor for the purpose of applying the insurance limit. This issue is addressed below.

### Depositors

Under the existing insurance regulations at 12 CFR part 330, the FDIC is entitled to rely upon the account records of the failed insured depository institution in determining the owners of deposits. *See* 12 CFR 330.5. Therefore, in cases in which a separate account has been opened in the name of the holder of the access mechanism, the FDIC will recognize the holder as the owner of the deposit.

In some cases, in an agency or custodial capacity, the distributor of the access mechanisms (or agent on behalf of the distributor) might open a pooled account for all holders of the access mechanisms. In such cases, the FDIC may provide “pass-through” insurance coverage (*i.e.*, coverage that “passes through” the agent to the holders). *See*

12 CFR 330.7. Such coverage is not available, however, unless certain requirements are satisfied. First, the account records of the insured depository institution must disclose the existence of the agency or custodial relationship. *See* 12 CFR 330.5(b)(1). This requirement can be satisfied by opening the account under a title such as the following: “ABC Company as Custodian for Cardholders.” Second, the records of the insured depository institution or records maintained by the custodian or other party must disclose the identities of the actual owners and the amount owned by each such owner. *See* 12 CFR 330.5(b)(2). Third, the funds in the account actually must be owned (under the agreements among the parties or applicable law) by the purported owners and not by the custodian (or other party). *See* 12 CFR 330.3(h); 12 CFR 330.5(a)(1). If these three requirements are not satisfied, the FDIC will treat the custodian (*i.e.*, the named accountholder) as the owner of the deposits.

It is encouraged that accurate information concerning FDIC insurance coverage be displayed on stored value cards. This information should include the name of the insured depository institution in which the funds are held. When appropriate, the card also should state that the funds are insured by the FDIC to the cardholder. These disclosures will provide the cardholder with important information concerning FDIC deposit insurance coverage.

### Conclusion

This opinion replaces the opinion published by the FDIC in 1996. Under this opinion, all funds underlying stored value cards and other nontraditional access mechanisms will be treated as “deposits” to the extent that the funds have been placed at an insured depository institution. If the FDIC’s standard recordkeeping requirements are satisfied, the holders of the access mechanisms will be treated as the insured depositors for the purpose of applying the insurance limit. Otherwise, the distributor of the access mechanisms (*i.e.*, the named accountholder) will be treated as the insured depositor.

This opinion is based upon the proposition that the form of the access mechanism is unimportant. Whether the mechanism is traditional, such as an ATM card, book of checks or official check, or nontraditional, such as a stored value product, the access mechanism is merely a device for withdrawing or transferring the underlying money. The “deposit” is the underlying money received by the

depository institution and held for an accountholder.

By order of the Board of Directors, dated at Washington, DC, this 31st day of October 2008.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

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## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**AGENCY:** Federal Election Commission.

**DATE & TIME:** Thursday, November 13, 2008 at 1:30 p.m.

**PLACE:** 999 E Street, NW., Washington, DC (ninth floor).

**STATUS:** This meeting will be open to the public.

### ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2008–14:

Melothe, Inc. by Marc E. Elias, Esquire.

Report of the Audit Division on Edwards for President.

Report of the Audit Division on the Kuhl for Congress Committee.

Report of the Audit Division on the Missouri Democratic State Committee.

Report of the Audit Division on the Oregon Republican Party.

Report of the Audit Division on Sharpton 2004.

Management and Administrative Matters.

### PERSON TO CONTACT FOR INFORMATION:

Robert Biersack, Press Officer,  
Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. E8–26877 Filed 11–10–08; 11:15 am]

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## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this