

**STATE OF NORTH DAKOTA**  
**BEFORE THE INSURANCE COMMISSIONER**

<b>In the Matter of the Proposed</b>	)	<b>RECOMMENDED FINDINGS OF FACT,</b>
<b>Acquisition of Control of Safecard</b>	)	<b>CONCLUSIONS OF LAW, AND</b>
<b>Services Insurance Company by</b>	)	<b>ORDER APPROVING THE ACQUISITION</b>
<b>General Atlantic Partners 79, L.P.,</b>	)	
<b>General Atlantic GenPar, L.P., and</b>	)	<b>FILE NO. CO-10-289</b>
<b>General Atlantic, LLC.</b>	)	

**INTRODUCTION**

On November 29, 2010, a statement also known as a Form A, regarding the acquisition of control of Safecard Services Insurance Company by General Atlantic Partners 79, L.P., General Atlantic GenPar, L.P., and General Atlantic, LLC (collectively the "Applicant") was filed with the North Dakota Insurance Commissioner ("Commissioner"). Applicant also filed a supplemental statement with the Commissioner on January 11, 2011, regarding additional details and information requested by the North Dakota Insurance Department concerning the proposed acquisition.

General Atlantic LLC, Trilegiant Corporation, Safecard Services Insurance Company, and Affinity Group Holdings, Inc., requested that the hearing provided for by N.D.C.C. § 26.1-20-03(4) be waived and gave their consent to waive the hearing. Pursuant to the authority provided by N.D.C.C. § 26.1-10-03(4), the Commissioner issued an Order on March 7, 2011, waiving the hearing on the proposed acquisition.

The matter of the acquisition of control of Safecard Services Insurance Company by Applicant has been considered based upon the Form A and the supplemental filing provided by the Applicant as well as other documents filed with the Commissioner and made a part of the record.

Melissa Hauer, in the capacity of Hearing Officer, after considering and reviewing all the documents, instruments, and materials filed in this matter, makes the following Recommended Findings of Fact, Conclusions of Law and Recommended Order.

## **FINDINGS OF FACT**

### **Applicant's Background and Significant Affiliates**

I

General Atlantic, LLC, a Delaware limited liability corporation founded in 1980, is a private equity fund that together with its affiliates manages \$15 billion in capital and invests in private and public companies as minority or majority investors.

II

General Atlantic, LLC and its affiliated downstream partners, General Atlantic Partners 79, L.P. and General Atlantic GenPar, L.P., both Delaware limited partnerships, (collectively "General Atlantic"), comprise an investment partnership having no operations other than holding investments in private and public companies.

III

Principal ownership (more than 10%) in General Atlantic is held by Steven A. Denning, Chairman of the Board of Directors, and William E. Ford, member of the Board of Directors and Chief Executive Officer.

IV

General Atlantic is not owned or financially controlled by any foreign government outside the United States.

V

Webloyalty Holdings, Inc., a Delaware corporation, is ultimate controlled by General Atlantic.

## VI

Webloyalty Holdings, Inc. is the parent corporation of Webloyalty.com, Inc. (“Webloyalty.com”), a Delaware corporation, that engages in marketing of membership and loyalty programs in conjunction with major retailers and financial institutions. Webloyalty.com provides access to discounts and protection benefits in exchange for a monthly subscription fee. Webloyalty.com is one among nearly 200 companies listed on the website of General Atlantic as a portfolio company with which it has partnered.

## VII

On September 11, 2006, a class lawsuit was filed against Webloyalty Holdings, Inc., and subsidiaries (“Webloyalty”) in the U.S. District Court of Massachusetts alleging that Webloyalty, in association with its distribution partners, unlawfully obtained consumers’ confidential billing information and used this information to sell fee-based membership programs, known as online data pass marketing activities. The Court approved an amended settlement agreement on July 13, 2009, under which Webloyalty provided full refunds to any class member who was charged for two or more months for a membership between January 1, 2000, and September 30, 2008, and who met certain other eligibility criteria. The settlement also provided for comprehensive changes to Webloyalty’s enrollment page and changes to the manner in which it communicates with its members after enrollment.

## VIII

In 2009, Webloyalty voluntarily implemented a mitigation plan similar to the class action settlement for out-of-class members including members enrolled using data pass marketing activities between October 1, 2008, and July 31, 2009. Out-of-class members that filed a claim were eligible to receive a full refund.

## IX

On May 27, 2009, the United States Senate Committee on Commerce, Science and Technology commenced an investigation into the business practices of Webloyalty.com and its primary competitors. The committee's report was critical of certain industry business practices including business practices of Webloyalty.com relating to data pass marketing activities. The committee investigation did not create any direct claim or assessment against Webloyalty.com.

## X

On June 25, 2010, a class lawsuit was filed against Webloyalty in a California federal court alleging industry practices of which the U.S. Senate Committee was critical and covering members who joined a membership program from October 1, 2008, to January 13, 2010. On August 27, 2010, a substantially similar class lawsuit was filed in a Connecticut federal court.

## XI

In 2008, the New York Attorney General commenced an inquiry and investigation into Webloyalty's business practices and entered into a settlement agreement with Webloyalty on September 13, 2010, requiring Webloyalty to implement a restitution program for certain New York residents that joined a membership program from October 1, 2008, to January 13, 2010.

## XII

In regard to its online data pass marketing activities, beginning in August 2009, Webloyalty.com implemented disclosures and a requirement that consumers authorize the transfer of billing information for enrollment and billing of membership fees by entering the last four digits of the credit card used to complete their transaction on the merchant site. On January 13, 2010, Webloyalty.com implemented a requirement that consumers enter the full

16 digits of their credit or debit card in order to enroll in its membership programs.

### XIII

As of January 13, 2010, Webloyalty.com does not engage in data pass marketing activities. Webloyalty.com is in compliance with the Restore Online Shoppers' Confidence Act (S. 3386) which law prohibits data pass marketing activities. The Act was signed into law by President Obama and became effective as of December 29, 2010. Based on the foregoing, the interest of Trilegiant as sole policyholder and the public would not be adversely affected by the current marketing practices of Webloyalty.com.

### **Safecard, Affinion and Trilegiant**

### XIV

Safecard Services Insurance Company ("Safecard") is a North Dakota domestic insurer and has a Certificate of Authority to write the property, casualty and accident and health lines of insurance. In 2009, Safecard reported premiums of \$160,000 and as of December 31, 2009, it had admitted assets of \$1,792,472 and surplus as regards policyholders of \$1,643,143.

### XV

Safecard has five master policies that are currently in force and all are issued to Trilegiant Corporation: (1) Cardguard Master Policy, (2) Home Protection Master Policy, (3) Legal Services Master Policy, (4) Safecard Master Policy, and (5) Safecheck Master Policy.

### XVI

Safecard is a wholly owned subsidiary of Affinion Group, LLC, a Delaware limited liability company.

### XVII

Affinion Group, LLC is a wholly owned subsidiary of Affinion Group, Inc. ("Affinion"), a Delaware corporation, which in turn is wholly owned by Affinion Group Holdings, Inc., a

Delaware corporation (“Affinion Holdings”).

XVIII

Affinion Holdings is indirectly controlled (96.9%) by private equity investment funds managed by Apollo Management V, L.P., a Delaware limited partnership.

XIX

Affinion’s core business activities consist of the marketing of membership, insurance, packaging and loyalty services to consumers including individual memberships for shopping, travel, auto, credit reporting, credit card protection and other membership clubs, including credit card protection and related coverage provided by Safecard.

**Policyholder**

XX

Trilegiant Corporation (“Trilegiant”) is the sole policyholder of Safecard and is also a subsidiary of Affinion Group, LLC.

**Form A Filing**

XXI

On November 29, 2010, General Atlantic by and through its managing partner, Thomas J. Murphy, filed a statement known as a Form A with the Commissioner pursuant to N.D.C.C. § 26.1-10-03 regarding its proposed acquisition of control of Safecard. The Form A statement along with supplemental information filed with the Commissioner by and through General Atlantic’s counsel, Thomas M. Dawson, Esq., Dewey & LeBoeuf, LLP, provides the information required by N.D.C.C. § 26.1-10-03.

**Proposed Transaction**

XXII

As consideration for a merger transaction, the shareholders of Webloyalty, including holders of common and preferred stock, and holders of Webloyalty options, warrants and restricted

shares will exchange 100% of their interest in Webloyalty for a 28.75% ownership of Affinion Holdings, constituting 17,469,697 shares of common stock. As a result, General Atlantic will own approximately 18% of the voting securities of Affinion Holdings on a fully diluted basis and will acquire control of Affinion Holdings and its subsidiaries, including Safecard, within the meaning of N.D.C.C. § 26.1-10-01.

#### XXIII

Affinion will form a merger subsidiary, Parker Holdings LLC, which will be merged into and with Webloyalty, with Webloyalty as the surviving party. As a result, Webloyalty will become a new indirect, wholly owned subsidiary of Affinion and Affinion Holdings.

#### XXIV

General Atlantic will receive 3 of the 11 seats on the Board of Directors of Affinion Holdings and the right to designate at least one seat on the Board of Directors of each of Affinion Holdings' subsidiaries, including Safecard. Anton Levy and Chris Lanning, who are managing directors of General Atlantic, will oversee General Atlantic's investment in Affinion Holdings, and will serve as directors on Webloyalty's board and have been authorized to vote the Applicant's shares of Webloyalty.

#### XXV

As a major shareholder of Affinion Holdings, General Atlantic will receive the right to approve or veto certain major corporate actions by Affinion Holdings. General Atlantic will not have any management positions within Safecard and will have no involvement in its day-to-day operations.

#### XXVI

The terms, conditions and aggregate consideration for the interests in Webloyalty under and pursuant to the Merger Agreement are the result of arm's length negotiations.

## **Applicant's Management**

### XXVII

Steven A. Denning is the Chairman and a Managing Director of General Atlantic. Mr. Denning holds an ownership interest in General Atlantic of 10% or more. Mr. Denning did not disclose any negative history on his NAIC Biographical Affidavit filed with the Commissioner.

### XXVIII

William E. Ford III is the Chief Executive Officer of General Atlantic. Mr. Ford holds an ownership interest in General Atlantic of 10% or more. Mr. Ford did not disclose any negative history on his NAIC Biographical Affidavit filed with the Commissioner.

### XXIX

Richard Fernandes is Chief Executive Officer of Webloyalty.com and is a proposed member of the Board of Directors of Affinion Holdings. Mr. Fernandes did not disclose any negative history on his NAIC Biographical Affidavit filed with the Commissioner.

### XXX

Christopher G. Lanning is a Managing Director of General Atlantic and is a proposed member of the Board of Directors of Affinion Holdings. Mr. Lanning did not disclose any negative history on his NAIC Biographical Affidavit filed with the Commissioner.

### XXXI

Anton J. Levy is a Managing Director of General Atlantic and is a proposed member of the Board of Directors of Affinion Holdings. Mr. Levy did not disclose any negative history on his NAIC Biographical Affidavit filed with the Commissioner.

### XXXII

The principal owners of General Atlantic and the proposed directors of Affinion Holdings possess significant corporate and commercial experience. The competence, experience

and integrity of the principal owners of General Atlantic and the proposed directors of Affinion Holdings is such that it would not be against the interest of the sole policyholder or against the interest of the public if General Atlantic is permitted to acquire control of Safecard.

### **Continuation of Safecard's Business**

#### XXXIII

Following the closure of the merger transaction, Safecard will continue to be used exclusively by Affinion. Safecard will not be used by Webloyalty to underwrite insurance included in benefits packages that Webloyalty offers. With respect to Safecard, General Atlantic has no present plan or proposal to liquidate Safecard, to sell its assets, to merge or cause it to consolidate with any person or persons, or to make any other material change in its business operations, corporate structure or management.

#### XXXIV

General Atlantic's acquisition of control of Safecard is not expected to have an adverse affect on Safecard's ability to satisfy the requirements for the issuance of a Certificate of Authority to write the lines of insurance for which it is presently licensed.

### **Acquisition Financing**

#### XXXV

The merger transaction will consist of a stock for stock exchange and financing of the acquisition is not applicable.

### **Applicant's Financial Status**

#### XXXVI

General Atlantic, LLC filed unaudited consolidated financial statements for the calendar years ending December 31, 2009, December 31, 2008, and December 31, 2007, with the Commissioner as exhibits to the Form A filing. General Atlantic Partners 79, L.P. filed

unaudited financial statements for the calendar years ending December 31, 2009, December 31, 2008, and December 31, 2007 with the Commissioner as exhibits to the Form A filing.

XXXVII

Webloyalty filed with the Commissioner as exhibits to the Form A filing consolidated financial statements, prepared in accordance with U.S. generally accepted accounting principles, and Independent Auditor reports for the calendar years ending December 31, 2009, December 31, 2008, and December 31, 2007.

XXXVIII

The financial condition of General Atlantic and Webloyalty are such that the financial condition of Safecard would not be jeopardized by the acquisition. Furthermore, the acquisition will not prejudice the interests of Safecard's sole policyholder Trilegiant.

**Competition in Insurance and Impact on Insurance Buying Public**

XXXIX

No other affiliate or subsidiary of General Atlantic is an insurer domiciled, licensed, or otherwise authorized to do business in North Dakota. The effect of the acquisition of control of Safecard by General Atlantic will not tend to lessen competition in insurance or tend to create a monopoly in this state.

XL

Safecard offers specialized insurance products to a single sophisticated corporate policyholder which is also controlled by Affinion Holdings. The acquisition of indirect control of Safecard by General Atlantic is not deemed to be hazardous or prejudicial to the insurance buying public.

XLI

Trilegiant, Safecard's sole policyholder, supports the proposed acquisition. General

Atlantic's plans for Safecard are not unfair and unreasonable to Trilegiant and are not against the public interest.

**Department's Recommendation**

XLII

Heide Delorme, Financial Analyst with the North Dakota Insurance Department, reviewed the Applicant's Form A filing and supplemental filings.

XLIII

Ms. Delorme, on behalf of the Insurance Department, considered the criteria outlined in N.D.C.C. § 26.1-10-03(4)(a) through (f) and concluded that there was no basis for disapproving the proposed acquisition of control and recommended that the acquisition of control of Safecard by General Atlantic be approved.

**CONCLUSIONS OF LAW**

1. The Commissioner has jurisdiction over the proposed acquisition pursuant to N.D.C.C. Chapter 26.1-10.

2. The Form A statement as supplemented, meets the filing requirements of N.D.C.C. § 26.1-10-03.

3. The Applicant has met the procedural requirements of N.D.C.C. Chapter 26.1-10 with regard to seeking and receiving approval of the proposed acquisition of control of a domestic insurance company.

4. The hearing in this matter has been duly waived and that an order approving or disapproving the proposed acquisition may be issued based upon the Form A and supplemental materials filed with the Commissioner by the Applicant.

5. The Commissioner shall approve an acquisition of control governed by N.D.C.C. § 26.1-10-03 unless the Commissioner finds that:

a. After the change of control, the domestic insurance company would

not be able to satisfy the requirements for the issuance of a Certificate of Authority to write the lines of insurance for which it is presently licensed.

- b. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance or tend to create a monopoly in this state.
- c. The financial condition of any acquiring party might jeopardize the financial stability of the insurance company or prejudice the interest of its policyholders.
- d. The plans or proposals which the acquiring party has to liquidate the insurance company, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the company and not in the public interest.
- e. The competence, experience, and integrity of those persons who would control the operation of the insurance company are such that it would not be in the interest of policyholders of the company and of the public to permit the merger or other acquisition of control.
- f. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

6. The proposed acquisition of control of North Dakota domestic insurer Safecard by General Atlantic constitutes a change of control under the provisions of N.D.C.C. Chapter 26.1-10 and is subject to prior approval of the Commissioner.

7. Based on the Findings of Fact, there is no evidence that any of the events or conditions listed in N.D.C.C. § 26.1.10-03 would occur or exist after the acquisition of

control.

8. Based on the Findings of Fact, there is no basis upon which the proposed acquisition of Safecard by General Atlantic may be denied.

9. The application of General Atlantic for acquisition of control of Safecard should, therefore, be approved.

NOW, THEREFORE, based upon the representations of General Atlantic and the above Findings of Fact and Conclusions of Law, Melissa Hauer recommends to the Commissioner of Insurance that he adopt the Findings of Fact and Conclusions of Law and enter an Order as follows:

#### **RECOMMENDED ORDER**

The proposed acquisition of Safecard Services Insurance Company by General Atlantic under the provisions of the Form A Statement Regarding the Acquisition of Control with a Domestic Insurer filed with the Commission of Insurance is **APPROVED**.

The Commissioner will retain jurisdiction over the subject matter of this proceeding and over the parties for the purpose of entering such further order or orders as may be deemed proper.

DATED this 7 day of March, 2011.



Melissa Hauer  
General Counsel and Hearing Officer  
North Dakota Insurance Department  
600 East Boulevard Avenue, Dept. 401  
Bismarck, ND 58505  
(701) 328-2440