

SCHWARTZ & BALLEN LLP

1990 M STREET, N.W. · SUITE 500

WASHINGTON, DC 20036-3465

(202) 776-0700

FACSIMILE
(202) 776-0720

www.schwartzandballen.com

MEMORANDUM

December 11, 2003

To Our Clients and Friends

Re: Proposed Disclosure Rules Under Consumer Protection Regulations

The Federal Reserve Board has issued proposed rules to establish more uniform standards for disclosures made under five consumer protection regulations: Regulations B (Equal Credit Opportunity), E (Electronic Fund Transfers), M (Consumer Leasing), Z (Truth in Lending) and DD (Truth in Savings). The Federal Reserve Board is proposing that the “clear and conspicuous” definition contained in Regulation P, which implements the privacy provisions of the Gramm-Leach-Bliley Act, be used as the standard for providing disclosures under these five consumer protection regulations supplanting the non-uniform standards currently in effect.

In addition, the staff commentary for each of these regulations would be revised to add examples consistent with Regulation P’s examples of how to meet the clear and conspicuous standard.

Comments on the proposed rules are due by January 30, 2004.

CLEAR AND CONSPICUOUS

Under the proposed rule, providing disclosure in a “clear and conspicuous” manner means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

SCHWARTZ & BALLEEN LLP

Examples of disclosures that are reasonably understandable include disclosures that:

- present the information in the disclosure in clear, concise sentences, paragraphs and sections;
- use short explanatory sentences or bullet lists whenever possible;
- use definite, concrete, everyday words and active voice whenever possible;
- avoid multiple negatives;
- avoid legal and highly technical business terminology whenever possible; and
- avoid explanations that are imprecise and readily subject to different interpretations.

Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

- use a plain-language heading;
- use a typeface and type size that are easy to read¹;
- provide wide margins and ample line spacing
- use boldface or italics for key words; and
- in a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

The proposed clear and conspicuous standard does not prohibit adding other terms or sending promotional material with the disclosures but the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met. Segregating required disclosures is more likely to satisfy the standard.

For disclosures transmitted by electronic means the “clear and conspicuous” standard will be considered in the context of rulemaking dealing specifically with electronic delivery of disclosures.

The proposed rules can be found at http://www.schwartzandballen.com/whats_new.html.

If you have any questions concerning the proposed rules, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.

¹ Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard.