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M E M O R A N D U M

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To Our Clients and Friends

Re: Federal Reserve's Final and Interim Rules under the Electronic Fund Transfer Act

The Federal Reserve Board has adopted an interim rule and a final rule amending Regulation E (Electronic Fund Transfers) and the Official Staff Commentary. The final rule addresses: (1) disclosures and authorizations for electronic check conversions (2) authorization of returned check service fees (3) issuance of access devices on unsolicited basis (4) time limits and scope of error investigations (5) authorizations for preauthorized or recurring transfers and (6) disclosures at automated teller machines.

ELECTRONIC CHECK CONVERSION (ECK)

The rule subjects merchants and other payees that initiate ECK transactions to Regulation E and clarifies the responsibilities of merchants and payees for obtaining authorizations from consumers for ECK transactions. The final rule specifies the disclosures that merchants and other payees must provide to consumers to authorize an ECK transaction and sets out model disclosures that can be used to satisfy these requirements. However, a merchant may obtain a single authorization from a consumer to process the check as either an EFT transaction (such as an ARC transaction under NACHA Rules) or as a check image or paper check.

PREAUTHORIZED OR RECURRING TRANSFERS

The rule removes a prior Official Staff Commentary that prohibited the use of a tape recorded authorization to obtain consumer consent for recurring transactions. Merchants will need to establish procedures to ensure that oral or other electronic authorizations for recurring transactions meet the requirements of the E-SIGN Act.

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ERROR RESOLUTION

Under Regulation E, a financial institution may satisfy its obligation to investigate an error by reviewing its own records, such as the payment instructions, if the error alleged concerns a transfer to or from a third party with whom the financial institution does not have an agreement for the type of transaction involved. Under the final rule, a financial institution is required to review any additional information within its records pertaining to a consumer's account that would assist in resolving the error.

DISCLOSURES AT ATMs

Currently, Regulation E provides that an ATM operator that imposes a fee on a consumer for initiating an EFT must post a sign at the ATM that a fee will be imposed. The final rule permits ATM operators to alternatively provide notice on ATM signage that a surcharge *may* be imposed (in place of a disclosure that a surcharge *will* be imposed) if there are circumstances under which an ATM fee may not be charged.

PAYROLL CARDS

The Federal Reserve adopted an interim rule that establishes new requirements for payroll cards under Regulation E. The interim rule provides that payroll card accounts that are established directly or indirectly by an employer on behalf of a consumer, to which transfers of the consumer's wages and salary are made on a recurring basis, are "accounts" under Regulation E. A one-time transfer by an employer to a consumer by means of a card, such as a transfer of petty cash, bonus payments or reimbursement of travel expenses, would not be treated as an "account" subject to Regulation E.

A financial institution that issues payroll cards will not be required to deliver a monthly periodic statement to cardholders if the financial institution: (i) makes balance information available by telephone; (ii) makes an electronic history of account transactions over at least the past 60 days available through such means as a website; and (iii) upon the request of the consumer, provides a written statement of account history covering at least the 60-day period prior to the request.

The final rule is effective thirty days from the date of publication in the Federal Register, with mandatory compliance by January 1, 2007. The interim rule relating to payroll cards is effective July 1, 2007. Comments on the interim rule are due sixty days from the date of publication in the Federal Register.

A copy of the final rule and interim rule can be found on our web site at http://www.schwartzandballen.com/whats_new.html.

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