

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

May 24, 2005

To Our Clients and Friends

Re: Truth in Savings Rule on Overdraft Protection Programs

The Federal Reserve Board has amended its Regulation DD, Truth in Savings, to address disclosures relating to “courtesy” overdraft protection programs that pay inadvertent or occasional customer overdrafts. The action requires depository institutions that advertise overdraft protection programs to disclose all applicable fees, both for the statement period and the calendar year to date, and to include certain other disclosures in advertisements of overdraft services. The rule is effective as of July 1, 2006.¹

REQUIRED DISCLOSURES

Institutions that promote payment of overdrafts in advertisements must include certain disclosures in their advertisements, and must separately disclose on periodic statements the total amount of fees or charges imposed for paying overdrafts and the total amount of fees charged for returning items unpaid. The disclosure is to be provided for the statement period as well as for the year to date. Institutions that do not advertise overdraft protection programs would not be required to make these disclosures.

An institution advertises an overdraft protection program when it states the overdraft limit for an account on a customer’s periodic statement, or when it provides an account balance that includes available overdraft funds on an ATM receipt. An institution, however, does not promote an overdraft protection program, and therefore does not trigger the requirement of disclosure of fees on periodic statements, solely by responding to customer inquiries, discussing overdraft programs in person with a consumer or promoting a traditional line of credit that is subject to Regulation Z, Truth in Lending.

¹ In February 2005, the Federal banking agencies issued guidance to depository institutions regarding the administration of overdraft protection programs. See our Client and Friends memorandum of February 18, 2005, which can be found at www.schwartzandballen.com/FRB_developments.html

SCHWARTZ & BALLEEN LLP

The amendment specifies disclosures that are required at the time an account is opened if a fee is to be charged for overdraft protection programs. The staff commentary accompanying the amendment to the regulation provides examples of advertisements that would be regarded as misleading. For example, an advertisement may not describe an account as “free” if it promotes an overdraft protection program for which a fee is charged, unless it clearly and conspicuously indicates that there is a cost associated with the service.

A copy of the final 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.