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**MEMORANDUM**

November 28, 2006

To Our Clients and Friends

Re: Amendments to Regulation E

The Federal Reserve Board has amended Regulation E, Electronic Fund Transfers, to clarify that the requirement to obtain a consumer's authorization to initiate an electronic fund transfer ("EFT") to collect a fee for an EFT or a check that has been returned unpaid applies to any person that collects the fee, not to the account-holding financial institution. The amendment is effective January 1, 2007. The Board is also proposing to amend Regulation E to create a small-dollar exception to the requirement that terminal receipts be made available to consumers at the time of the transaction.

**AUTHORIZATION FOR COLLECTION OF CERTAIN FEES**

In January 2006, the Board amended Regulation E to provide that a payee can obtain a consumer's authorization to electronically collect fees for items returned due to insufficient or uncollected funds in the consumer's account when notice is provided to the consumer stating that the fee will be collected by means of an EFT, along with a disclosure of the specific amount of the fee, and the consumer goes forward with the underlying transaction. In August 2006, the Board clarified the rule to provide that the requirement to obtain a consumer's authorization to electronically collect fees for items returned due to insufficient or uncollected funds in the consumer's account applies to the person initiating an EFT to collect the fee in this manner, and not to the financial institution holding the consumer's account. The Board has now finalized and revised its August 2006 action to apply to any fees collected for an EFT or a check that has been returned unpaid and is not limited to fees collected after an item has been returned due to insufficient or uncollected funds in a consumer's account.

For POS transactions, the person collecting the fee must provide consumers with two separate notices, one that is posted in a prominent and conspicuous location,

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and a second that the consumer may retain. If a retainable notice cannot be provided at the time of the transaction (e.g., because the terminals or registers are not capable of printing the necessary disclosures) the notice may be sent to the consumer's address as soon as reasonably practicable after an EFT has been initiated to collect the fee.

Although the rule is effective January 1, 2007, to facilitate compliance and minimize the implementation costs, there is a one-year delayed compliance date, until January 1, 2008, for the requirement to disclose the amount of the returned-item fee (or an explanation of how the fee is determined) on the copy of the notice provided to the consumer in connection with a POS transaction.

### **SMALL-DOLLAR EXCEPTION TO RECEIPT REQUIREMENT**

The Board is proposing to amend Regulation E to eliminate for small-dollar transactions the requirement that a receipt setting forth transaction information about the EFT be made available to the consumer when a debit card is used to pay for a purchase at a POS terminal. The Board is proposing to create an exception from the terminal receipt requirement for EFTs of \$15 or less. The Board believes that the proposed rule would facilitate electronic transactions in circumstances where the receipt requirement is sufficiently burdensome or impractical so as to potentially deter merchants from allowing consumers to use electronic methods of payment. The Board indicated that the risks to consumers of not receiving a receipt for their transactions would be minimal given the small value of the transaction. The Board also noted that consumers would continue to receive a listing of each transaction on their periodic statements, regardless of the transaction amount, and would have the right to assert errors that may arise from any such transaction, provided such notice was given within the required time frames.

Public comments will be accepted for 60 days after publication of the proposal in the *Federal Register*.

The Federal Reserve's notices can be found on our web site at [http://www.schwartzandballen.com/whats\\_new.html](http://www.schwartzandballen.com/whats_new.html).

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