

SCHWARTZ & BALLEN LLP
1990 M STREET, N.W. • SUITE 500
WASHINGTON, DC 20036-3465
(202) 776-0700

FACSIMILE
(202) 776-0720

www.schwartzandballen.com

M E M O R A N D U M

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To Our Clients and Friends

Re: Proposed Rule on Unfair or Deceptive Acts or Practices for Credit Cards and Overdrafts

The Office of Thrift Supervision (“OTS”) is requesting public comment on a rule prohibiting savings associations from engaging in unfair or deceptive acts or practices that violate the Federal Trade Commission Act with regard to credit cards and overdraft service fees on deposit accounts. The Federal Reserve Board and National Credit Union Administration will shortly issue identical proposed rules that will apply to banks and credit unions. Comments are due in approximately 75 days. The rules are expected to be finalized by the end of 2008.

The proposed rule prohibits the following for credit cards:

- Treating credit card payments as late unless consumers are provided with a reasonable amount of time to make payment. The proposal provides a safe harbor for periodic statements sent at least 21 days prior to due date
- Allocating amounts paid in excess of the minimum periodic payment on outstanding credit card balances with different annual percentage rates (“APR”) in a manner less beneficial to consumers than one of three specified methods
- Increasing the APR on an outstanding credit card balance unless certain exceptions apply (*e.g.*, promotional rate expired or delinquent payment)
- Assessing fees if the consumer exceeds his or her credit limit solely due to a hold placed on available credit, unless the transaction amount also would exceed the credit limit
- Computing finance charges based on balance in billing cycles preceding most recent billing cycle (so-called “double-cycle billing”)

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- Charging to the credit card fees or security deposits for issuance or availability of credit, if the fees utilize the majority of available credit. Additional restrictions on fees are also proposed
- Advertising multiple APR ranges or credit limit ranges in firm offers of credit unless the factors for qualifying for lowest APR and highest credit limit are also disclosed

With regard to deposit account overdraft programs, the proposed rule prohibits assessing an overdraft fee:

- Without first providing the consumer a reasonable opportunity to opt out of the payment of overdrafts for all transactions that overdraw a consumer's account, regardless of transaction type
- If the overdraft is caused solely by a hold on money that exceeds the actual purchase amount of the transaction, unless the purchase amount also would have caused the overdraft.

A copy of the proposal can be found on our website at 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.