

**SCHWARTZ & BALLEN LLP**  
1990 M STREET, N.W. • SUITE 500  
WASHINGTON, DC 20036-3465  
[WWW.SCHWARTZANDBALLEN.COM](http://WWW.SCHWARTZANDBALLEN.COM)

TELEPHONE  
(202) 776-0700

FACSIMILE  
(202) 776-0720

**MEMORANDUM**

May 28, 2010

To Our Clients and Friends

Re: Clarifications Pertaining to Overdraft Services

The Federal Reserve Board (the “Board”) has amended Regulation E (“Electronic Fund Transfers”) and Regulation DD (“Truth in Savings”) to clarify its rules regarding depository institutions’ practices relating to overdraft services. The actions are generally effective in 30 days after publication in the *Federal Register*.

**OPT-IN REQUIREMENT**

Regulation E limits the ability of financial institutions to assess overdraft fees for paying automated teller machine (“ATM”) and one-time debit card transactions that overdraw a consumer’s account, unless the consumer affirmatively consents, or opts in, to the institution’s payment of overdrafts for those transactions. The Board’s clarifications provide that Regulation E does not provide any exceptions for allowing overdraft fees for ATM and one-time debit card transactions to be imposed without consumer consent. The Board indicated that adopting exceptions to the fee prohibition would undermine the consumer’s ability to understand the institution’s overdraft practices and to make an informed choice. Accordingly, the prohibition on assessing overdraft fees for ATM and one-time debit card transactions without a consumer’s affirmative consent (*i.e.*, opt in) applies in all circumstances, including institutions with a policy and practice of declining ATM and one-time debit card transactions when an account has insufficient funds.

**TRUTH-IN-SAVINGS DISCLOSURES**

The Board has also amended Regulation DD and the Official Staff Commentary to address the application of the rule to retail sweep programs and the terminology for overdraft fee disclosures, and to make amendments that conform to the Board’s final Regulation E amendments addressing overdraft services.

A copy of the Board's action can be found at our website on the What's New page at <http://www.schwartzandballen.com>

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