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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 Board Proposed Amendments to Regulation DD

The Federal Reserve Board (the “Board”) is proposing amendments to Regulation DD, which implements the Truth in Savings Act (“TISA”), and the accompanying staff commentary to address concerns about the uniformity and adequacy of institutions’ disclosure of overdraft fees generally and about advertised automated overdraft services (“bounced-check protection services”). The Board is concerned that “bounced check protection services” are often offered to consumers with inadequate information and are often marketed as an alternative to a traditional line of credit without clear disclosure of the fees involved. Comments are due sixty days after publication of the proposed amendments in the *Federal Register*.

DISCLOSURES CONCERNING OVERDRAFT FEES GENERALLY

- Currently under Regulation DD institutions issuing periodic statements are required to itemize fees by type. Under the Board’s proposal institutions that provide periodic statements would be required to disclose the total amount of fees imposed for overdrafts and the total amount of fees for returned items for the statement period and for the calendar year to date. The total amount of overdraft fees is to include all overdrafts on the account, whether created by check, automated teller (“ATM”) withdrawal or electronic transfer.
- Institutions would be required to specify in the account-opening disclosures given to consumers as required by the TISA whether overdraft protection fees may be imposed in connection with checks, ATM withdrawals, or other electronic funds transfers.

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ADDITIONAL PROTECTIONS FOR BOUNCED-CHECK PROTECTION SERVICES

- Institutions that market automated overdraft payments services that are not covered by the Truth in Lending Act would have to include in their advertisements about the service:
 - the fee for the payment of each overdraft;
 - the types of transactions covered;
 - the time period by which the consumer must repay or cover any overdraft; and
 - the circumstances under which the institution would not pay an overdraft.

Advertisements through broadcast media, billboards, and telephone response machines would be exempt from this requirement.

- TISA currently prohibits advertisements, announcements or solicitations that are misleading, inaccurate or that misrepresent the deposit contract in advertisements for prospective accounts. The Board is proposing to apply this prohibition to communications with consumers about the terms of their current accounts.
- The staff commentary to Regulation DD would be revised to provide five examples of advertisements that would ordinarily be deemed to be misleading:
 - representing an overdraft protection service as a “line of credit”;
 - representing that the institution will honor all checks or transactions, when the institution retains discretion not to honor any transaction;
 - representing that consumers may overdraw their accounts and maintain a negative balance for an indefinite or extended period when the terms of the service require consumers to promptly return the deposit account to a positive balance;
 - describing a service solely as protection against bounced checks when the overdraft service may be imposed in connection with ATM withdrawals and other electronic fund transfers; and
 - describing an account as “free” or “no cost” and also promoting a service for which there is a fee, unless the advertisement clearly and conspicuously indicates there is a cost associated with the service.

The Board’s proposed amendments to Regulation DD can be found at http://www.schwartzandballen.com/whats_new.html.

If you have any questions concerning the Board’s proposal, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.