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MEMORANDUM

October 10, 2016

To Our Clients and Friends

Re: CFPB Issues Final Prepaid Account Rule

The Consumer Financial Protection Bureau (CFPB) has issued a final rule that provides broad comprehensive consumer protections for prepaid financial products. The rule, which amends Regulations E (Electronic Fund Transfers) and Z (Truth in Lending), contains three elements - public disclosure requirements, limited liability and error resolution requirements, and credit protections similar to those governing the credit card industry. The rule is effective October 1, 2017.

The rule extends Regulation E coverage to prepaid accounts and expands Regulation Z coverage to overdraft features that are offered in conjunction with prepaid accounts. Prepaid accounts are defined as those marketed or labeled as “prepaid” and redeemable at merchants for goods and services or usable at ATMs; and accounts that are issued on a prepaid basis or capable of being loaded with funds and whose primary function is to conduct transactions with merchants or at ATMs, or to conduct person-to-person transactions. Payroll card accounts and government benefit accounts that are currently subject to Regulation E are also treated as prepaid accounts. Gift cards and certificates as well as certain other accounts are excluded from coverage.

PRE-ACQUISITION DISCLOSURES

Financial institutions are required to provide short form and long form disclosures before a consumer acquires a prepaid account (i.e., before the consumer purchases, opens or chooses to be paid by a prepaid account). The short form must disclose:

- Static (standard) fees
- Additional types of fees that may be charged
- The two additional fee types that generated the highest revenue from customers
- Information regarding registering the prepaid account
- Whether the prepaid account is covered by deposit insurance
- A statement regarding overdraft features
- For payroll card accounts and government benefit accounts, a statement regarding alternative wage or benefit payment option

The long form disclosure must be presented in the form of a table that includes:

- The name of the prepaid account program
- Additional information regarding registration

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- Information about all fees that may be imposed in connection with the prepaid account and the conditions under which they may be imposed
- Additional information regarding deposit insurance coverage
- Additional information regarding overdraft credit features
- The financial institution's contact information
- A statement directing the consumer to cfpb.gov/prepaid for general information about prepaid accounts or to submit a complaint

Financial institutions must provide the pre-acquisition disclosures electronically for accounts that are acquired online or via a mobile device. They may, however, be provided without E-Sign Act consent.

LIMITED LIABILITY AND ERROR RESOLUTION

The rule extends Regulation E's limited liability and error resolution requirements to all prepaid accounts, regardless of whether the financial institution has completed its consumer identification and verification process with respect to the account. However, the rule does not require provisional credit for unverified accounts. Once an account has been verified, the financial institution must comply with Regulation E's provisional credit requirements and timeframe for errors that occur prior to as well as after account verification.

CREDIT PROTECTION

The rule also applies to overdraft credit features that are offered in connection with prepaid accounts. Credit features that are offered are required to be distinct from the asset portion of the prepaid account. Issuers must wait at least 30 days after the prepaid account is registered before offering to link a covered separate credit feature to a prepaid account. Issuers must allow consumers at least 21 days to repay the debt incurred in connection with using such features.

A copy of the CFPB's rule is available on our website at <http://www.schwartzandballen.com/news.html>

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