

Do You Consent to the Fee? Plaintiffs Pursue Class Actions Against ATM Operators for Failure to Post Proper Notice on Machines

Federal Courts have seen a rash of recent class actions targeting ATM operators. Generally, these new class actions assert, among other claims, that ATM operators have failed to comply with the notice requirements of the Electronic Funds Transfer Act ("EFTA"). Under EFTA, an ATM operator means any person who (1) operates an automated teller machine at which consumers initiate electronic fund transfers; and (2) is not the financial institution that holds the account of such consumer from which the transfer is made.

Pursuant to EFTA, ATM operators must notify consumers of any fees that will be incurred as a result of an electronic funds transfer, in addition to the amount of the fee imposed for the particular service. Moreover, the fee notice required by EFTA must be provided to the consumer in two ways:

- (1) **On the machine** – The ATM must have a notice posted in a prominent and conspicuous location at or on the exterior of the ATM; and
- (2) **On the screen** – The fee notice shall also appear on the screen of the ATM, or on a paper notice issued from the ATM, after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

IMPORTANT - An ATM **MUST** display both types of notice to comply with EFTA. Failure to include either the "on the screen" notice or the "on the machine" notice may result in a violation of EFTA

The majority of the recent class action filings focus on ATM operators' failure to include the fee notice on the exterior of the machine. In fact, several class actions have involved the same class representative plaintiff against different banks. It appears that certain plaintiffs (or lawyers) are canvassing areas in search of non-compliant ATMs for the purpose of initiating an EFTA claim.

A violation of the EFTA notice requirements can subject the ATM operator to civil liability for actual and statutory damages, costs and attorneys fees. In fact, in an EFTA class action, the statutory penalty to the ATM operator could equal the lesser of \$500,000 or 1 per centum of the net worth of the defendant.

If you have any questions or require any additional information, please contact [Brian Jackson](mailto:bjackson@millermartin.com) at bjackson@millermartin.com, [Kevin Baltz](mailto:kbaltz@millermartin.com) at kbaltz@millermartin.com or any other member of Miller & Martin's [Financial Institutions Practice Group](#) or [Class & Collective Actions Practice Group](#).

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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