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Legal Updates & News

Legal Updates

Beltway Report

May 2007

Related Practices:

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Scrabble for Bankers

How many words can you spell with the letters B, E, M, Z, and DD? The Federal Reserve Board wants to know. It has requested public comment on proposed amendments to five consumer financial services and fair lending regulations (Regulations B, E, M, Z, and DD) clarifying consumer electronic disclosure requirements. The proposed amendments simplify the Board's rules by withdrawing 2001 interim final rule sections restating provisions of the Electronic Signatures in Global and National Commerce Act ("E-Sign Act") and provisions imposing undue burdens on electronic banking and commerce; and retaining certain provisions providing guidance on electronic disclosures. The same proposal mandates certain disclosures for online credit card solicitations pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

For further information, contact Obrea Poindexter at opoindexter@mofo.com.

Table It

The Feds like tables. On May 23, 2007, the FRB revamped Regulation Z, which implements the Truth in Lending Act, and proposed substantive and formatting revisions. The proposed revisions rely heavily on the tabular format pioneered by the "Schumer Box" and extend it to initial disclosures, periodic statements, and solicitations.

The proposed changes include: (1) revisions to all credit card disclosures; (2) substantive revisions in the change-in-terms requirements; and (3) changes to the "Effective APR" disclosure. For example, the proposed revisions would require that creditors send a change-in-terms notice at least 45 days before applying a rate increase, including one triggered by a late payment or delinquency even if the reason for the increase was included in the cardholder agreement. In addition, the proposed revisions would add a new disclosure to be included in the table about the effect of the creditor's payment allocation method.

Practice Tip: This disclosure requirement could address concerns raised about "universal default" provisions and "penalty pricing." While the FRB proposal could resolve some of the creditor practices concerns, it is unlikely it will fully satisfy the Congressional appetite to deal with allegedly "unfair" credit card practices.

For further information, contact Obrea Poindexter at opoindexter@mofo.com.

Big Box Banking Shelved?

Worried that Big Box stores might enter banking, the House Financial Services Committee passed H.R. 698, the Industrial Bank Holding Company Act of 2007. The bill would restore the historic separation between banking and commerce, prevent branch banking by some commercially-owned ILCs, and bolster the examination and enforcement authority of the FDIC as a holding company regulator. The bill maintains the separation between banking and commerce by prohibiting new commercially-owned ILCs effective January 29, 2007, and restricting expanded business plans and

branching across state lines for some commercially-owned ILCs.

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Mosh Pit

In case you missed it on C-Span, some members of Congress think the FTC should regulate banks. U.S Representatives Barney Frank and John Dingell sent a joint letter to federal financial services regulators and the Federal Trade Commission, calling for the strengthening of protections for financial consumers against unfair and deceptive trade practices. While observing that clear authority exists under the Federal Trade Commission Act and the Home Ownership and Equity Protection Act with regard to unfair and deceptive trade practices, the letter criticized the lack of formal rule writing by the agencies against abusive financial practices. The letter threatened removal of the exemption for financial institutions and regulators under the FTC Act if federal regulators do not develop a meaningful strategy for improving federal financial consumer protection.

Insider Stuff

The Federal Reserve Board on May 29 issued a final rule under Regulation O relating to insider lending by insured depository institutions. The amendments would eliminate several statutory reporting and disclosure requirements that the federal banking agencies have not found particularly useful in monitoring insider lending or preventing insider abuse. The final rule does not alter the substantive restrictions on loans by insured depository institutions to their insiders or to insiders of their correspondent banks.