

MEMORANDUM

To: Subscribers to *Law of Electronic Fund Transfer Systems*

From: A.S. Pratt & Sons

Subject: Highlights

Enclosed you will find your latest update to *Law of Electronic Fund Transfer Systems*. This update contains new and revised information addressing the following areas:

- ***Electronic Disclosure—Regulation E.*** In December 2007, the Federal Reserve Board adopted revisions to Regulation E, along with other consumer regulations such as Regulations B (Equal Credit Opportunity) and Z (Truth-in-Lending) to withdraw portions of the interim final rules (compliance with which has remained optional since their adoption) for the electronic delivery of disclosures issued March 30, 2001, and to retain certain provisions of the interim rules that provided regulatory relief or guidance regarding electronic disclosures. See ¶ 15.01[6] and Appendix B.
- ***Privately Owned ATMs.*** In 2007, the federal banking regulators revised their Bank Secrecy Act/Anti-Money Laundering (BSA-AML) Examination Manual to include a section entitled “Privately Owned Automated Teller Machines. See ¶ 6.03[1][c].
- ***FACT Act Regulations on the Use of Affiliate Information.*** In October 2007, the federal agencies adopted regulations governing the use of affiliate-provided information for marketing purposes. See ¶ 19.02[1][c].
- ***FACT Act Red Flag Regulations.*** In October 2007, the federal agencies adopted red flag regulations regarding identity theft. See ¶ 19.02[1][c].
- ***Interagency Examination Procedures Regarding Telemarketing and Junk Faxes.*** In June 2007, the Federal Financial Institution Examination Council revised the interagency examination procedures on telemarketing and junk faxes to clarify certain

responsibilities of institutions that make telemarketing calls only to existing customers, as well as the responsibilities of those that call non-customers. See ¶ 12.05[4].

- ***FACT Act Accuracy in Reporting.*** In December 2007, the federal agencies issued a notice of proposed rulemaking on procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies. See ¶ 19.02[1][c].
- ***Multi-factor Authentication.*** The FDIC offered additional guidance regarding authentication in Internet banking, in response to the “common misinterpretation” that the federal banking agencies require multi-factor authentication in high-risk transactions. See ¶ 10.04[1].
- ***Prevention of Internet Child Pornography.*** In August 2007, the FDIC issued a Financial Institutions Letter suggesting how financial institutions may take a proactive role against internet child pornography. See ¶ 10.03[3].

Recent Court Decisions

- ***On-screen ATM Surcharge Disclosure.*** A federal district court in Ohio held that a bank’s on-screen disclosure had adequately disclosed its \$2.00 surcharge even though it disclosed that the ATM “may” charge the fee. *Clemmer v. Key Bank*. See Chapter 12. A couple other district courts considered actions brought to challenge the failure of banks to disclose on-screen that a surcharge “will” be imposed. *Martz v. PNC Bank*, *Mayotte v. Associated Bank*, and *Voeks v. Wal-Mart Stores, Inc.* See ¶ 15.02[2][b].
- ***Investigation of Alleged Unauthorized Transfers.*** A federal district court in Illinois considered claims asserted by an eighty-year old wheelchair-bound woman who complained that her bank had failed to conduct a reasonable investigation of her assertions that someone had used her debit card without her permission. *Wilson v. Harris*. See ¶ 16.02[4][b].
- ***Definition of Unauthorized EFT.*** A Pennsylvania state court applied Regulation E Comment 2m-5, which specifies that the reversal of a direct deposit made in error is not an unauthorized EFT when it involves a credit made to the wrong consumer’s account, a duplicate credit made to a consumer’s account, or a credit in the wrong amount. *Atkins v. Wachovia Bank*. See ¶ 14.02[3][a].

- **Coverage of EFTA.** A federal district court in Florida held that the EFT Act did not apply to disputes about holds placed by gasoline stations substantially above the amount of debits authorized by consumers. *Grillasca v. Amerada Hess Corp.* See ¶¶ 12.04[1] and 14.02[3][a].
- **Insurance Coverage for TCPA Violations.** A federal district in Virginia held that a bank's general liability insurance policy did not cover the bank's transmitting of unsolicited fax advertisements in alleged violation of the TCPA. *Resource Bank v. Progressive Casualty Ins. Co.*, 2007 U.S. Dist. LEXIS 65142 (E.D. Va. Sept. 4, 2007). See ¶ 12.05[4]