Commercial Financial Services Brief: Requirement for ATM Posted Fee Notice Removed

January 8, 2013

The federal Electronic Funds Transfer Act required that if an automated teller machine (ATM) operator imposed fees on consumers for providing electronic fund transfer services, the operator was required to provide notice to consumers (at the time the service was provided) that a fee was being imposed and the amount of the fee. The notice was required to be posted in a prominent and conspicuous location on or at the ATM at which the transfer was initiated, in addition to appearing on the screen of the ATM or on a paper notice issued from the ATM.

This double notice requirement was the subject of innumerable lawsuits. The reason for the lawsuits: no fee may be imposed for any subject fund transfer unless the consumer received the notices and elected to continue with the transaction. Many cases dealt with claims that the posted notice was missing or defaced and, without 24 hour surveillance of the ATM, it was difficult for the operator to establish that the notice initially had been posted and then later removed. In short, the posting requirement was an invitation to a class action lawsuit. There also were lawsuits brought challenging whether the required notice had been posted in a prominent and conspicuous location. The recent decision of the U.S. District Court for the District of Minnesota in *Brown v. Wells Fargo & Company* and *Wells Fargo Bank, N.A*., went so far as to hold that, as a matter of law, Wells Fargo Bank had failed to provide a prominent and conspicuous fee notice on its ATMs where the screen was recessed into the ATM and the notice was posted on the side of the hood surrounding the recessed screen.

The industry turned to Congress for relief, which enacted a bill, H.R. 4367, that was signed by the President on December 20, 2012. That legislation removes the posted notice requirement from the Electronic Funds Transfer Act, effective immediately, and thereby provides some welcome relief from the potential for class action lawsuits regarding ATM notices.

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