

Class Actions Against Community Banks Cite ATM Signage and Disclosure Issues

The Consumer Advocacy Center (CAC) and other plaintiff attorneys continue to file Class actions against community banks. The purported public purpose of these suits is to help consumers “vindicate their rights against banks who charge deceptive late fees . . . and other businesses that attempt to take advantage of the ordinary consumer.”

In a recent case, an Illinois bank settled an ATM disclosure action for \$113,750, plus payment of \$86,250 in attorneys’ fees to the CAC. Similar cases are being filed around the country. The suits allege violations of the EFT Act, Reg E, the Expedited Funds Availability Act and Reg CC.¹

They allege that the banks failed in their statutory duty to post fee notices externally next to each machine, as well as fee and withdrawal restriction notices on the ATM screens themselves when charging non-customers a transaction service fee for using the ATM. The statutes require posting external notice of potential fees and notice that any funds deposited may not immediately be available for withdrawal. In most cases, notice was posted on the screens, and non-customers had to agree to a possible fee before continuing, but the absence of the external sign on the physical ATM created statutory non-compliance. In one case, signage on the ATM had been vandalized; the bank now has to prove it had no opportunity to replace the stolen fee notice signs in order to come within the “safe harbor” provision and defeat the monetary consequences which the statutes impose. The other alternative is to forego any service fees to non-customers.

To avoid compliance issues and potential class action exposure, schedule a physical inspection of all ATMs to ensure that they contain appropriate disclosures on all ATM screens and external surroundings. Additionally, if the bank has raised any of these fees, all screen signage must provide notice of the current and actual fees charged.

For more information, contact Kate Russum, Senior Claims Attorney at 800-274-5222.

¹ Settlement agreement available on the CAC Web site. Specific statutory references for your legal or compliance departments to review are:

- › 15 USC § 1693b(d)(3) and 12 CFR § 205.15(c);
- › 15 USC § 1693b(d)(3)(C), and Reg. E, 12 CFR §205.16(e); and
- › 12 USC § 4004(d)(2) and 12 CFR §229.18(c)(1)