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November 18, 2004

Jennifer J. Johnson
Secretary
Federal Reserve System
Board of Governors
20th Street and Constitution Ave NW
Washington, DC 20551

Docket No. R-1210
Comment on Proposal to Amend Regulation E

Dear Ms. Johnson:

Certegy Check Services, Inc. ("Certegy") appreciates the opportunity to present its comments on the Federal Reserve Board's (the "Board's") recent proposal to amend Regulation E ("Reg E"). Certegy provides risk based authorization of check and electronic payment transactions to retailers and other businesses nationwide, and has offered ECK services for POS retail and accounts receivable conversion to its clients for several years.

Summary:

Certegy would advocate that the model clause for an ECK authorization notice should be shortened, and that three separate versions of the model language are unnecessary. However, it is very important to Certegy that the authorization notice provides flexibility to process the transaction as either an EFT or traditional check.

General Comments:

Certegy lauds the Board's efforts to provide additional guidance regarding the rights, liabilities and responsibilities of parties engaged in electronic check conversion ("ECK"). Certegy also supports the Board's goal of clear and consistent disclosure to consumers. However Certegy is concerned about the repercussions of the Board extending its statutory authority over merchants and other check payees who are not financial institutions for the purpose of enforcing authorization notice requirements. Although the Board indicates it has found some inadequate ECK authorization notices being used, the Board is not clear as to how it expects to enforce compliance with Reg E requirements for merchants and other check payees.

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Actually, the Board may not need to extend its authority for oversight of compliance with this provision. Certegy would like to point out that the existing Appendix B to Reg E lists the Federal agencies that have authority to enforce Reg E. The last agency on the list is the Federal Trade Commission, which is identified as being the appropriate enforcing agency for "Retailers, Consumer Finance Companies, ... and all others not covered above." Accordingly, Certegy recommends that enforcement of notice requirements for non-financial institutions should continue to lie with the FTC.

Specific Issues:

The Board specifically requested comment on a number of issues, such as whether the consumer's authorization should be signed to be effective. Our analysis of these issues is set out below.

Issue: As stated in the Supplementary Information, the consumer notice for authorization of an ECK transaction can be a generic statement posted on a sign or a written statement at POS ... and must be clear and conspicuous. The Board also stated that at POS, a written signed authorization may be viewed as a more effective means than signage for informing consumers that their checks are being converted. Comment is solicited on whether merchants or other payees should be required to obtain the consumer's written signed authorization to convert checks received at POS.

Certegy submits that consumer authorization of an ECK should not be a burdensome process for the consumer or the retailer. Certegy favors the Board's present concept that consumer authorization is effective when the consumer goes forward with the transaction after having been given notice that the transaction will be processed as an EFT. As the Board is aware, ACH originators are subject to authorization requirements established by the National Automated Clearinghouse Association (NACHA) as well as authorization requirements under Reg E. Under NACHA rules, a signature must be obtained from the consumer to authorize an ACH transaction. Certegy has found the signature requirement to be a major deterrent to utilization of ECK by its clients. Because of this resistance by merchants and retailers, the growth volume of POS ECK has been substantially less than potential cost savings indicate it should be.

It is our understanding that NACHA is currently re-evaluating its authorization procedures and may drop the signature requirement. Certegy feels it would be counterproductive if NACHA were to decide to no longer require a signature while the Board adds a signature requirement. The goal of both NACHA and the Board should be to require that the appropriate disclosures be made to the consumer at the time of the transaction, while at the same time making the ECK process attractive to business.

Certegy suggests that the commentary could provide that if the authorization notice has been given in accordance with the applicable Reg E requirements, (ie, the merchant has the authorization notice posted conspicuously at the POS), and the consumer proceeds with the transaction, the consumer's authorization for ECK has been conclusively given. Alternatively, the commentary could provide that there is a rebuttable presumption that the consumer has seen and understood the notice before proceeding with the transaction. It should also be noted that consumer awareness of ECK transactions would be broadened under the proposed amendments to the model clauses for initial account disclosures. Consumers will receive the following disclosure from their financial institution about giving authorization for an ECK transaction:

You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information on your check to: (i) Pay for purchases; or (ii) Pay bills.

Issue: The Supplementary Information says that by allowing payees to obtain a consumer's authorization to use information from a check to initiate an EFT, or alternatively, to process the transaction as a check, the consumer does not know whether his or her rights will be governed by check law or Reg E until the consumer receives the account activity statement identifying the transaction as a check transaction or as an EFT. Therefore, comment is solicited on whether a disclosure stating that a consumer authorizes an EFT, or in the alternative, a check transaction, may result in any consumer harm or create other risks. In particular, comment is solicited on whether payees that obtain alternative authorization should be required to specify the circumstances under which a check that can be used to initiate an EFT will be processed as a check. (p 13)

The new model clause which contemplates either ECK or traditional check settlement is a welcome and much needed change from the position currently taken by the Board's staff that when an ECK authorization notice has been given, the check can no longer be processed traditionally. Certegy does not envision any harm or risk in giving the consumer a disclosure that the transaction will be processed either as an EFT or a check transaction. The reason is that there are sufficient regulatory safeguards in place to protect the consumer from liability or loss if a consumer is a victim of either a check forgery or an unauthorized transaction on their account. Once the consumer's check has been accepted for payment, we don't see the distinction between traditional check settlement and ECK as being particularly meaningful or important to most consumers.

Certegy also feels the model language authorizing electronic collection of insufficient funds charges is clear and to the point, and agrees that it should be part of the notice when the payee intends to collect a returned check fee electronically. It should be pointed out, however, that either uncollected or insufficient funds in the consumer's account may result in an unpaid return.

Accordingly, the reference is too narrow and should be modified to read "If there are insufficient or uncollected funds in your account".

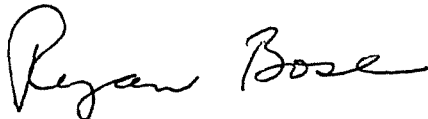
Certegy agrees it should be optional for payees to specify the circumstances under which a check will be processed as either an EFT or a check. Certegy does not think this is an area of concern to consumers, and it could be very difficult for a payee or its processor to determine all the circumstances where an ECK winds up being processed as a check. This is based on factors that can vary by transaction, such as an administrative return when the consumer's financial institution does not have ACH capabilities.

Certegy appreciates the efforts of the Board to educate consumers about ECK and other electronic transactions through issuance of its "When Is Your Check Not A Check" pamphlet. Certegy also thinks it is valuable for the Board to provide model clauses for the consumer ECK authorization notice. However in Certegy's view, some of the language the proposed model clauses makes an ECK appear undesirable to a consumer and requires details that may not be accurate. Certegy feels a notice consisting of the first sentence in clause A-6(a), in which the consumer authorizes an EFT, would be sufficient and appropriate disclosure. The second sentence of clause A-6(a), which says that funds may be withdrawn quickly, and that the check may not be returned by the financial institution, is misleading and unnecessary. Check imaging and other technological improvements in payment processing are also causing funds to be withdrawn faster from the maker's account. Check truncation, imaging, and bank policies also result in many situations where checks are not being returned by the maker's financial institution.

Finally, Certegy does not feel it is necessary to retain all three proposed model authorization clauses in A-6. Sample notice (a) covers all situations and negates the need for other clauses in sample notice (b) and (c). As was stated in the Supplementary Information, a merchant or other payee has to construct a notice that best describes its individual practices, but sample notice (a) allows the most flexibility.

We will be happy to discuss any aspect of Certegy's position concerning the proposed amendments to Reg E.

Yours truly,

A handwritten signature in black ink that reads "Ryan Bose". The signature is written in a cursive, flowing style.

Ryan L. Bose
Senior Attorney