



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

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March 21, 2001

Caroline M. Gilroy-Brown, Esq.
Partridge Snow & Hahn LLP
180 South Main Street
Providence, RI 02903-7120

Dear Ms. Gilroy-Brown:

This letter is written in response to your correspondence of December 20, 2000 to the Division of Banks (the "Division") relative to the applicability of G.L. chapter 167B, the Commonwealth's statute governing electronic branches and electronic fund transfers, to transactions wherein a consumer would obtain advances against a home equity line of credit using a credit card at an automated teller machine ("ATM"). You also pose the same inquiry in the case of a transaction involving the use of a credit card to obtain such an advance by presenting the card to a vendor as part of a purchase transaction.

The Division has reviewed certain sections of said chapter 167B and the cognate federal provisions and Official Staff Interpretations to Federal Regulation E, 12 CFR 205, the regulation promulgated under the Electronic Fund Transfer Act, 15 USC 1693 et seq., for applicability to your inquiry. Section 2 of said chapter 167B provides that an official staff interpretation that interprets a provision of Regulation E that is similar in substance to a provision of chapter 167B shall be deemed by the Division to be an advisory ruling issued by the Division.

In response to your inquiry relative to the use of a credit card to seek an advance on a home equity line of credit through the use of an ATM, the following analysis is provided. Section 1 of chapter 167B sets forth definitions for application to the terms as used in the chapter. An "Electronic fund transfer" is defined, in part, as "any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic branch, telephone instrument, or computer or magnetic tape or point-of-sale terminal so as to order, instruct, or authorize a financial institution to debit or credit an *account*." (*emphasis supplied*) An "Account" is defined as a "demand deposit, negotiable withdrawal order account, savings deposit, share account or other consumer asset account, other than an occasional or incidental credit balance in an open end credit plan...". The Official Staff Interpretation to Federal Regulation E provides at Section 205.3(b) with respect to the definition of "Electronic Fund Transfer", that "the term electronic fund transfer does not include: i. A payment that does not debit or credit a consumer asset account...". Additionally, Section 205.3(a) of Regulation E titled "Coverage" states that the regulation applies "to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account."



In addition to the above definitional sections, section 205.12 of Regulation E, and the Official Staff Interpretation thereto, provide additional clarification on the relation of Regulation E to other regulations such as Regulation Z, 12 CFR part 226, governing Truth in Lending. The Interpretation states, in part, that for "transactions involving access devices that also constitute credit cards, whether Regulation E or Regulation Z applies, depends on the nature of the transaction. For example, if the transaction is purely an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error resolution requirements of Regulation Z apply." With respect to the issuance rules, the Commentary states that "for access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or maintain a specified minimum balance). Regulation Z rules apply if there is another type of credit feature, for example, one permitting direct extensions of credit that do not involve the asset account."

It is the Division's position, consistent with that expressed in the Official Staff Interpretation to section 205.12 of Regulation E, that a determination of whether Regulation E or Regulation Z applies, requires a review of the nature of the transaction. The use of an access device that is also a credit card for a transaction that is purely an extension of credit and does not include a debit to a consumer asset account would not be subject to the provisions of chapter 167B. Accordingly, assuming the advance obtained from a home equity line of credit using a credit card at an ATM is purely an extension of credit, the transaction would not be subject to the provisions of chapter 167B. The Commonwealth's Truth in Lending statute, G.L. chapter 140D and 209 CMR 32.00 *et seq* would be applicable.

With respect to your inquiry as to the applicability of chapter 167B to a transaction where a consumer would obtain an advance against a home equity line of credit using a credit card presented to a vendor as part of a purchase transaction, it doesn't appear from the limited description in your letter that the transaction would involve a debit to a consumer asset account. If, in fact, the transaction is purely a credit transaction, chapter 167B would not be applicable, however, the transaction would be subject to Truth in Lending requirements in said chapter 140D and 209 CMR 32.00 *et seq*.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,



Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel