

§ 230.8, Nt.

12 CFR Ch. II (1-1-06 Edition)

(ii) Outdoor media, such as billboards; or

(iii) Telephone response machines.

(2) *Indoor signs.* (i) Signs inside the premises of a depository institution (or the premises of a deposit broker) are not subject to paragraphs (b), (c), (d) or (e)(1) of this section.

(ii) If a sign exempt by paragraph (e)(2) of this section states a rate of return, it shall:

(A) State the rate as an “annual percentage yield,” using that term or the term “APY.” The sign shall not state any other rate, except that the interest rate may be stated in conjunction with the annual percentage yield to which it relates.

(B) Contain a statement advising consumers to contact an employee for further information about applicable fees and terms.

[57 FR 43376, Sept. 21, 1992, as amended at 58 FR 15081, Mar. 19, 1993; Reg. DD, 60 FR 5130, Jan. 26, 1995; Reg. DD, 63 FR 40638, July 30, 1998; Reg. DD, 63 FR 52107, Sept. 29, 1998]

EFFECTIVE DATE NOTE: At 70 FR 29593, May 24, 2005, § 230.8 was amended by revising paragraph (a), and adding a new paragraph (f), effective July 1, 2006. For the convenience of the user, the revised and added text is set forth as follows:

§ 230.8 Advertising.

(a) *Misleading or inaccurate advertisements.* An advertisement shall not:

(1) Be misleading or inaccurate or misrepresent a depository institution’s deposit contract; or

(2) Refer to or describe an account as “free” or “no cost” (or contain a similar term) if any maintenance or activity fee may be imposed on the account. The word “profit” shall not be used in referring to interest paid on an account.

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(f) *Additional disclosures in connection with the payment of overdrafts.* Institutions that promote the payment of overdrafts in an advertisement shall include in the advertisement the disclosures required by § 230.11(b) of this part.

§ 230.9 Enforcement and record retention.

(a) *Administrative enforcement.* Section 270 of the act contains the provisions relating to administrative sanctions for failure to comply with the requirements of the act and this part. Compli-

ance is enforced by the agencies listed in that section.

(b) *Civil liability.* Section 271 of the Act contains the provisions relating to civil liability for failure to comply with the requirements of the act and this part; Section 271 is repealed effective September 30, 2001.

(c) *Record retention.* A depository institution shall retain evidence of compliance with this part for a minimum of two years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for enforcing this part may require depository institutions under their jurisdiction to retain records for a longer period if necessary to carry out their enforcement responsibilities under section 270 of the act.

[57 FR 43376, Sept. 21, 1992, as amended by Reg. DD, 63 FR 52107, Sept. 29, 1998]

§ 230.10 Electronic communication.

(a) *Definition.* “Electronic communication” means a message transmitted electronically between a depository institution and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) *General rule.* In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*) and the rules of this part, a depository institution may provide by electronic communication any disclosure required by this part to be in writing.

(c) *When consent is required.* Under the E-Sign Act, a depository institution is required to obtain a consumer’s affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under §§ 230.4(a)(2) and 230.8 are deemed not to be related to a transaction.

(d) *Address or location to receive electronic communication.* A depository institution that uses electronic communication to provide disclosures required by this part shall:

(1) Send the disclosure to the consumer’s electronic address; or

(2) Make the disclosure available at another location such as an Internet web site; and