§ 1005.2 Definitions.

Except as otherwise provided in subpart B, for purposes of this part, the following definitions apply:

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§ 1005.3 Coverage.

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. For purposes of §§ 1005.3(b)(2) and (3), 1005.10(b), (d), and (e), 1005.13, and 1005.20 this part applies to any person, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376.

(b) *Electronic fund transfer.* (1) *Definition.* The term ''electronic fund transfer'' means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. The term includes, but is not limited to:

(i) Point-of-sale transfers;

(ii) Automated teller machine transfers;

(iii) Direct deposits or withdrawals of funds;

(iv) Transfers initiated by telephone; and

(v) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

(2) *Electronic fund transfer using information from a check.* (i) This part applies where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer's account. The consumer must authorize the transfer.

(ii) The person initiating an electronic fund transfer using the consumer's check as a source of information for the transfer must provide a notice that the transaction will or may be processed as an electronic fund transfer, and obtain a consumer's authorization for each transfer. A con-sumer authorizes a one-time electronic fund transfer (in providing a check to a merchant or other payee for the MICR encoding, that is, the routing number of the financial institution, the consumer's account number and the serial number) when the consumer receives notice and goes forward with the underlying transaction. For point-of-sale transfers, the notice must be posted in a prominent and conspicuous location, and a copy thereof, or a substantially similar notice, must be provided to the consumer at the time of the transaction.

(iii) A person may provide notices that are substantially similar to those set forth in appendix A–6 to comply with the requirements of this paragraph (b)(2).

(3) *Collection of returned item fees via electronic fund transfer.*(i) *General.* The person initiating an electronic fund transfer to collect a fee for the return of an electronic fund transfer or a check that is unpaid, including due to insufficient or uncollected funds in the consumer's account, must obtain the consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer from his or her account to pay the fee for the returned item or transfer if the person collecting the fee provides notice to the consumer stating that the person may electronically collect the fee, and the consumer goes forward with the underlying transaction. The notice must state that the fee will be collected by means of an electronic fund transfer from the consumer's account if the payment is returned unpaid and must disclose the dollar amount of the fee. If the fee may vary due to the amount of the transaction or due to other factors, then, except as otherwise provided in paragraph (b)(3)(ii) of this section, the person collecting the fee may disclose, in place of the dollar amount of the fee, an explanation of how the fee will be determined.

(ii) *Point-of-sale transactions.* If a fee for an electronic fund transfer or check returned unpaid may be collected electronically in connection with a point-of-sale transaction, the person initiating an electronic fund transfer to collect the fee must post the notice described in paragraph (b)(3)(i) of this