

Federal Reserve System

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Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies.

(b) Notice for branch offices.

COMMUNITY REINVESTMENT ACT NOTICE

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board (Board) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Board also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the Federal Reserve Bank of _____ (address), and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) a map showing the assessment area containing this branch, which is the area in which the Board evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the Federal Reserve System publishes a list of the banks that are scheduled for CRA examination by the Reserve Bank in that quarter. This list is available from (title of responsible official), Federal Reserve Bank of _____ (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and (title of responsible official), Federal Reserve Bank of _____ (address). Your letter, together with any response by us, will be considered by the Federal Reserve System in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Reserve Bank. You may also request from the Reserve Bank an announcement of our applications covered by the CRA filed with the Reserve Bank. We are an affiliate of (name of holding company), a bank

holding company. You may request from (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies.

[Reg. BB, 60 FR 22200, May 4, 1995]

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

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APPENDIX A TO PART 229—ROUTING NUMBER GUIDE TO NEXT-DAY AVAILABILITY CHECKS AND LOCAL CHECKS

APPENDIX B TO PART 229 [RESERVED]

APPENDIX C TO PART 229—MODEL AVAILABILITY POLICY DISCLOSURES, CLAUSES, AND NOTICES; MODEL SUBSTITUTE CHECK POLICY DISCLOSURE AND NOTICES

APPENDIX D TO PART 229—INDORSEMENT, RECONVERTING BANK IDENTIFICATION, AND TRUNCATING BANK IDENTIFICATION STANDARDS

APPENDIX E TO PART 229—COMMENTARY

APPENDIX F TO PART 229—OFFICIAL BOARD INTERPRETATIONS; PREEMPTION DETERMINATIONS

AUTHORITY: 12 U.S.C. 4001-4010, 12 U.S.C. 5001-5018.

SOURCE: 53 FR 19433, May 27, 1988, unless otherwise noted.

Subpart A—General

§ 229.1 Authority and purpose; organization.

(a) Authority and purpose. This part is issued by the Board of Governors of the Federal Reserve System (Board) to implement the Expedited Funds Availability Act (12 U.S.C. 4001-4010) (the EFA Act) and the Check Clearing for the 21st Century Act (12 U.S.C. 5001-5018) (the Check 21 Act).

(b) Organization. This part is divided into subparts and appendices as follows—

(1) Subpart A contains general information. It sets forth—

(i) The authority, purpose, and organization;

(ii) Definition of terms; and

(iii) Authority for administrative enforcement of this part's provisions.

(2) Subpart B of this part contains rules regarding the duty of banks to make funds deposited into accounts available for withdrawal, including availability schedules. Subpart B of this part also contains rules regarding exceptions to the schedules, disclosure of funds availability policies, payment of interest, liability of banks for failure to comply with subpart B of this part, and other matters.

(3) Subpart C of this part contains rules to expedite the collection and return of checks by banks. These rules

cover the direct return of checks, the manner in which the paying bank and returning banks must return checks to the depository bank, notification of nonpayment by the paying bank, indorsement and presentment of checks, same-day settlement for certain checks, the liability of banks for failure to comply with subpart C of this part, and other matters.

(4) Subpart D of this part contains rules relating to substitute checks. These rules address the creation and legal status of substitute checks; the substitute check warranties and indemnity; expedited recredit procedures for resolving improper charges and warranty claims associated with substitute checks provided to consumers; and the disclosure and notices that banks must provide.

[53 FR 19433, May 27, 1988, as amended at 57 FR 36598, Aug. 14, 1992; 57 FR 46972, Oct. 14, 1992; Reg. CC, 60 FR 51670, Oct. 3, 1995; 69 FR 47309, Aug. 4, 2004]

EFFECTIVE DATE NOTE: At 82 FR 27578, June 15, 2017, § 229.1 was amended by revising paragraph (b)(3) and adding paragraphs (b)(5) through (10), effective July 1, 2018. For the convenience of the user, the added and revised text is set forth as follows:

§ 229.1 Authority and purpose; organization.

* * * * *

(b) * * *

(3) Subpart C of this part contains rules to expedite the collection and return of checks and electronic checks by banks. These rules cover the direct return of checks and electronic checks, the manner in which the paying bank and returning banks must return checks and electronic checks to the depository bank, notification of nonpayment by the paying bank, indorsement and presentment of checks and electronic checks, same-day settlement for certain checks, the liability of banks for failure to comply with subpart C of this part, and other matters.

* * * * *

(5) Appendix A of this part contains a routing number guide to next day-availability checks. The guide lists the routing numbers of checks drawn on Federal Reserve Banks and Federal Home Loan Banks, and U.S. Treasury checks and Postal money orders that are subject to next-day availability.

(6) Appendix B of this part is reserved.

(7) Appendix C of this part contains model funds-availability policy disclosures, clauses,

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and notices and a model disclosure and notices related to substitute-check policies.

(8) Appendix D of this part is reserved.

(9) Appendix E of this part contains Board interpretations, which are labeled "Commentary," of the provisions of this part. The Commentary provides background material to explain the Board's intent in adopting a particular part of the regulation and provides examples to aid in understanding how a particular requirement is to work. The Commentary is an official Board interpretation under section 611(e) of the EFA Act (12 U.S.C. 4010(e)).

(10) Appendix F of this part contains the Board's determinations of the EFA Act and Regulation CC's preemption of state laws that were in effect on September 1, 1989.

§ 229.2 Definitions.

As used in this part, and unless the context requires otherwise, the following terms have the meanings set forth in this section, and the terms not defined in this section have the meanings set forth in the Uniform Commercial Code:

(a) *Account*. (1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, *account* means a deposit as defined in 12 CFR 204.2(a)(1)(i) that is a transaction account as described in 12 CFR 204.2(e). As defined in these sections, *account* generally includes accounts at a bank from which the account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, electronic payment, or other similar means for the purpose of making payments or transfers to third persons or others. *Account* also includes accounts at a bank from which the account holder may make third party payments at an ATM, remote service unit, or other electronic device, including by debit card, but the term does not include savings deposits or accounts described in 12 CFR 204.2(d)(2) even though such accounts permit third party transfers. An account may be in the form of—

- (i) A demand deposit account,
- (ii) A negotiable order of withdrawal account,
- (iii) A share draft account,
- (iv) An automatic transfer account, or
- (v) Any other transaction account described in 12 CFR 204.2(e).

(2) For purposes of subpart B of this part and, in connection therewith, this subpart A, *account* does not include an account where the account holder is a bank, where the account holder is an office of an institution described in paragraphs (e)(1) through (e)(6) of this section or an office of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 U.S.C. 3101) that is located outside the United States, or where the direct or indirect account holder is the Treasury of the United States.

(3) For purposes of subpart D of this part and, in connection therewith, this subpart A, *account* means any deposit, as defined in 12 CFR 204.2(a)(1)(i), at a bank, including a demand deposit or other transaction account and a savings deposit or other time deposit, as those terms are defined in 12 CFR 204.2.

(b) *Automated clearinghouse* or *ACH* means a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular on automated clearinghouse items or under rules of an automated clearinghouse association.

(c) *Automated teller machine* or *ATM* means an electronic device at which a natural person may make deposits to an account by cash or check and perform other account transactions.

(d) *Available for withdrawal* with respect to funds deposited means available for all uses generally permitted to the customer for actually and finally collected funds under the bank's account agreement or policies, such as for payment of checks drawn on the account, certification of checks drawn on the account, electronic payments, withdrawals by cash, and transfers between accounts.

(e) *Bank* means—

(1) An *insured bank* as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or a bank that is eligible to apply to become an insured bank under section 5 of that Act (12 U.S.C. 1815);

(2) A *mutual savings bank* as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(3) A *savings bank* as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

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(4) An *insured credit union* as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or a credit union that is eligible to make application to become an insured credit union under section 201 of that Act (12 U.S.C. 1781);

(5) A *member* as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422);

(6) A *savings association* as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) that is an insured depository institution as defined in section 3 of that Act (12 U.S.C. 1813(c)(2)) or that is eligible to apply to become an insured depository institution under section 5 of that Act (12 U.S.C. 1815); or

(7) An *agency* or a *branch* of a *foreign bank* as defined in section 1(b) of the International Banking Act (12 U.S.C. 3101).

For purposes of subparts C and D of this part and, in connection therewith, this subpart A, the term *bank* also includes any person engaged in the business of banking, as well as a Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit of general local government acts as a paying bank. Unless otherwise specified, the term *bank* includes all of a bank's offices in the United States, but not offices located outside the United States.

NOTE: For purposes of subpart D of this part and, in connection therewith, this subpart A, *bank* also includes the Treasury of the United States or the United States Postal Service to the extent that the Treasury or the Postal Service acts as a paying bank.

(f) *Banking day* means that part of any business day on which an office of a bank is open to the public for carrying on substantially all of its banking functions.

(g) *Business day* means a calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is not a business day.

(h) *Cash* means United States coins and currency.

(i) *Cashier's check* means a check that is—

(1) Drawn on a bank;

(2) Signed by an officer or employee of the bank on behalf of the bank as drawer;

(3) A direct obligation of the bank; and

(4) Provided to a customer of the bank or acquired from the bank for remittance purposes.

(j) *Certified check* means a check with respect to which the drawee bank certifies by signature on the check of an officer or other authorized employee of the bank that—

(1) (i) The signature of the drawer on the check is genuine; and

(ii) The bank has set aside funds that—

(A) Are equal to the amount of the check, and

(B) Will be used to pay the check; or

(2) The bank will pay the check upon presentment.

(k) *Check* means—

(1) A negotiable demand draft drawn on or payable through or at an office of a bank;

(2) A negotiable demand draft drawn on a Federal Reserve Bank or a Federal Home Loan Bank;

(3) A negotiable demand draft drawn on the Treasury of the United States;

(4) A demand draft drawn on a state government or unit of general local government that is not payable through or at a bank;

(5) A United States Postal Service money order; or

(6) A traveler's check drawn on or payable through or at a bank.

(7) The term *check* includes an original check and a substitute check.

NOTE: The term *check* does not include a noncash item or an item payable in a medium other than United States money. A draft may be a *check* even though it is described on its face by another term, such as *money order*. For purposes of subparts C and D, and in connection therewith, subpart A, of this part, the term *check* also includes a demand draft of the type described above that is nonnegotiable.

(1) [Reserved]

(m) *Check processing region* means the geographical area served by an office of

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a Federal Reserve Bank for purposes of its check processing activities.

(n) *Consumer account* means any account used primarily for personal, family, or household purposes.

(o) *Depository bank* means the first bank to which a check is transferred even though it is also the paying bank or the payee. A check deposited in an account is deemed to be transferred to the bank holding the account into which the check is deposited, even though the check is physically received and indorsed first by another bank.

(p) *Electronic payment* means a wire transfer or an ACH credit transfer.

(q) *Forward collection* means the process by which a bank sends a check on a cash basis to a collecting bank for settlement or to the paying bank for payment.

(r) *Local check* means a check payable by or at a local paying bank, or a check payable by a nonbank payor and payable through a local paying bank.

(s) *Local paying bank* means a paying bank that is located in the same check-processing region as the physical location of the branch, contractual branch, or proprietary ATM of the depository bank in which that check was deposited.

(t) *Merger transaction* means—

(1) A merger or consolidation of two or more banks; or

(2) The transfer of substantially all of the assets of one or more banks or branches to another bank in consideration of the assumption by the acquiring bank of substantially all of the liabilities of the transferring banks, including the deposit liabilities.

(u) *Noncash item* means an item that would otherwise be a check, except that—

(1) A passbook, certificate, or other document is attached;

(2) It is accompanied by special instructions, such as a request for special advice of payment or dishonor;

(3) It consists of more than a single thickness of paper, except a check that qualifies for handling by automated check processing equipment; or

(4) It has not been preprinted or post-encoded in magnetic ink with the routing number of the paying bank.

(v) *Nonlocal check* means a check payable by, through, or at a nonlocal paying bank.

(w) *Nonlocal paying bank* means a paying bank that is not a local paying bank with respect to the depository bank.

(x) *Nonproprietary ATM* means an ATM that is not a proprietary ATM.

(y) [Reserved]

(z) *Paying bank* means—

(1) The bank by which a check is payable, unless the check is payable at another bank and is sent to the other bank for payment or collection;

(2) The bank at which a check is payable and to which it is sent for payment or collection;

(3) The Federal Reserve Bank or Federal Home Loan Bank by which a check is payable;

(4) The bank through which a check is payable and to which it is sent for payment or collection, if the check is not payable by a bank; or

(5) The state or unit of general local government on which a check is drawn and to which it is sent for payment or collection.

For purposes of subparts C and D, and in connection therewith, subpart A, *paying bank* includes the bank through which a check is payable and to which the check is sent for payment or collection, regardless of whether the check is payable by another bank, and the bank whose routing number appears on a check in fractional or magnetic form and to which the check is sent for payment or collection.

NOTE: For purposes of subpart D of this part and, in connection therewith, this subpart A, *paying bank* also includes the Treasury of the United States or the United States Postal Service for a check that is payable by that entity and that is sent to that entity for payment or collection.

(aa) *Proprietary ATM* means an ATM that is—

(1) Owned or operated by, or operated exclusively for, the depository bank;

(2) Located on the premises (including the outside wall) of the depository bank; or

(3) Located within 50 feet of the premises of the depository bank, and not identified as being owned or operated by another entity.

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If more than one bank meets the owned or operated criterion of paragraph (aa)(1) of this section, the ATM is considered proprietary to the bank that operates it.

(bb) *Qualified returned check* means a returned check that is prepared for automated return to the depository bank by placing the check in a carrier envelope or placing a strip on the check and encoding the strip or envelope in magnetic ink. A qualified returned check need not contain other elements of a check drawn on the depository bank, such as the name of the depository bank.

(cc) *Returning bank* means a bank (other than the paying or depository bank) handling a returned check or notice in lieu of return. A returning bank is also a collecting bank for purposes of UCC 4-202(b).

(dd) *Routing number* means—

(1) The number printed on the face of a check in fractional form or in nine-digit form; or

(2) The number in a bank's indorsement in fractional or nine-digit form.

(ee) *Similarly situated bank* means a bank of similar size, located in the same community, and with similar check handling activities as the paying bank or returning bank.

(ff) *State* means a state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands. For purposes of subpart D of this part and, in connection therewith, this subpart A, *state* also means Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and any other territory of the United States.

(gg) *Teller's check* means a check provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.

(hh) *Traveler's check* means an instrument for the payment of money that—

(1) Is drawn on or payable through or at a bank;

(2) Is designated on its face by the term *traveler's check* or by any substantially similar term or is commonly known and marketed as a traveler's check by a corporation or bank that is an issuer of traveler's checks;

(3) Provides for a specimen signature of the purchaser to be completed at the time of purchase; and

(4) Provides for a countersignature of the purchaser to be completed at the time of negotiation.

(ii) *Uniform Commercial Code, Code, or U.C.C.* means the Uniform Commercial Code as adopted in a state.

(jj) *United States* means the states, including the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

(kk) *Unit of general local government* means any city, county, parish, town, township, village, or other general purpose political subdivision of a state. The term does not include special purpose units of government, such as school districts or water districts.

(ll) *Wire transfer* means an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt or on a day stated in the order, that is transmitted by electronic or other means through Fedwire, the Clearing House Interbank Payments System, other similar network, between banks, or on the books of a bank. *Wire transfer* does not include an electronic fund transfer as defined in section 903(6) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(6)).

(mm) *Fedwire* has the same meaning as that set forth in §210.26(e) of this chapter.

(nn) *Good faith* means honesty in fact and observance of reasonable commercial standards of fair dealing.

(oo) *Interest compensation* means an amount of money calculated at the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest compensation is payable, divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the last preceding day for which there is a published rate.

(pp) *Contractual branch*, with respect to a bank, means a branch of another bank that accepts a deposit on behalf of the first bank.

(qq) *Claimant bank* means a bank that submits a claim for a recredit for a substitute check to an indemnifying bank under § 229.55.

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(rr) *Collecting bank* means any bank handling a check for forward collection, except the paying bank.

(ss) *Consumer* means a natural person who—

(1) With respect to a check handled for forward collection, draws the check on a consumer account; or

(2) With respect to a check handled for return, deposits the check into or cashes the check against a consumer account.

(tt) *Customer* means a person having an account with a bank.

(uu) *Indemnifying bank* means a bank that provides an indemnity under § 229.53 with respect to a substitute check.

(vv) *Magnetic ink character recognition line* and *MICR line* mean the numbers, which may include the routing number, account number, check number, check amount, and other information, that are printed near the bottom of a check in magnetic ink in accordance with American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (hereinafter ANS X9.13) for an original check and American National Standard Specifications for an Image Replacement Document—IRD, X9.100–140 (hereinafter ANS X9.100–140) for a substitute check (unless the Board by rule or order determines that different standards apply).

(ww) *Original check* means the first paper check issued with respect to a particular payment transaction.

(xx) *Paper or electronic representation of a substitute check* means any copy of or information related to a substitute check that a bank handles for forward collection or return, charges to a customer's account, or provides to a person as a record of a check payment made by the person.

(yy) *Person* means a natural person, corporation, unincorporated company, partnership, government unit or instrumentality, trust, or any other entity or organization.

(zz) *Reconverting bank* means—

(1) The bank that creates a substitute check; or

(2) With respect to a substitute check that was created by a person that is not a bank, the first bank that transfers, presents, or returns that substitute check or, in lieu thereof, the

first paper or electronic representation of that substitute check.

(aaa) *Substitute check* means a paper reproduction of an original check that—

(1) Contains an image of the front and back of the original check;

(2) Bears a MICR line that, except as provided under ANS X9.100–140 (unless the Board by rule or order determines that a different standard applies), contains all the information appearing on the MICR line of the original check at the time that the original check was issued and any additional information that was encoded on the original check's MICR line before an image of the original check was captured;

(3) Conforms in paper stock, dimension, and otherwise with ANS X9.100–140 (unless the Board by rule or order determines that a different standard applies); and

(4) Is suitable for automated processing in the same manner as the original check.

(bbb) *Sufficient copy and copy*. (1) A *sufficient copy* is a copy of an original check that accurately represents all of the information on the front and back of the original check as of the time the original check was truncated or is otherwise sufficient to determine whether or not a claim is valid.

(2) A *copy* of an original check means any paper reproduction of an original check, including a paper printout of an electronic image of the original check, a photocopy of the original check, or a substitute check.

(ccc) *Transfer and consideration*. The terms *transfer* and *consideration* have the meanings set forth in the Uniform Commercial Code and in addition, for purposes of subpart D—

(1) The term *transfer* with respect to a substitute check or a paper or electronic representation of a substitute check means delivery of the substitute check or other representation of the substitute check by a bank to a person other than a bank; and

(2) A bank that transfers a substitute check or a paper or electronic representation of a substitute check directly to a person other than a bank has received *consideration* for the substitute check or other paper or electronic representation of the substitute

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check if it has charged, or has the right to charge, the person's account or otherwise has received value for the original check, a substitute check, or a representation of the original check or substitute check.

(ddd) *Truncate* means to remove an original check from the forward collection or return process and send to a recipient, in lieu of such original check, a substitute check or, by agreement, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without the subsequent delivery of the original check.

(eee) *Truncating bank* means—

(1) The bank that truncates the original check; or

(2) If a person other than a bank truncates the original check, the first bank that transfers, presents, or returns, in lieu of such original check, a substitute check or, by agreement with the recipient, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without the subsequent delivery of the original check.

(fff) *Remotely created check* means a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn. For purposes of this definition, "account" means an account as defined in paragraph (a) of this section as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

[53 FR 19433, May 27, 1988, as amended at 53 FR 31292, Aug. 18, 1988; 53 FR 44324, Nov. 2, 1988; Reg. CC, 54 FR 13850, Apr. 6, 1989; 57 FR 46972, Oct. 14, 1992; 58 FR 2, Jan. 4, 1993; 60 FR 51670, Oct. 3, 1995; 62 FR 13809, Mar. 24, 1997; 69 FR 47309, 47310, Aug. 4, 2004; 70 FR 71225, Nov. 28, 2005]

EFFECTIVE DATE NOTE: At 82 FR 27578, June 15, 2017, § 229.2 was amended by revising paragraphs (dd), (uu), (vv), and (bbb), and by adding paragraphs (ggg) and (hhh), effective July 1, 2018. For the convenience of the user, the added and revised text is set forth as follows:

§ 229.2 Definitions.

* * * * *

(dd) *Routing number* means—

(1) The number printed on the face of a check in fractional form on in nine-digit form;

(2) The number in a bank's indorsement in fractional or nine-digit form; or

(3) For purposes of subpart C and subpart D, the bank-identification number contained in an electronic check or electronic returned check.

* * * * *

(uu) *Indemnifying bank*. Indemnifying bank means—

(1) For the purposes of § 229.34, a bank that provides an indemnity under § 229.34 with respect to remote deposit capture or an electronically-created item, or

(2) For the purposes of § 229.53, a bank that provides an indemnity under § 229.53 with respect to a substitute check.

(vv) *Magnetic ink character recognition line* and *MICR line* mean the numbers, which may include the routing number, account number, check number, check amount, and other information, that are (unless the Board by rule or order determines that different standards apply)—

(1) Printed near the bottom of a check in magnetic ink in accordance with American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (hereinafter ANS X9.13) for an original check and American National Standard Specifications for an Image Replacement Document—IRD, X9.100-140 (hereinafter ANS X9.100-140) for a substitute check, or

(2) For purposes of subpart C and subpart D, contained in a record specified for MICR line data in an electronic check or electronic returned check in accordance with American National Standard Specifications for Electronic Exchange of Check Image Data—Domestic, X9.100-187 (hereinafter ANS X9.100-187).

* * * * *

(bbb) *Copy and sufficient copy*. (1) A *copy of an original check* means—

(i) Any paper reproduction of an original check, including a paper printout of an electronic image of the check, a photocopy of the original check, or a substitute check; or

(ii) Any electronic reproduction of a check that a recipient has agreed to receive from the sender instead of a paper reproduction.

(2) A *sufficient copy* is a copy of an original check that accurately represents all of the information on the front and back of the original check as of the time the original

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check was truncated or is otherwise sufficient to determine whether or not a claim is valid.

* * * * *

(ggg) *Electronic check* and *electronic returned check* mean an electronic image of, and electronic information derived from, a paper check or paper returned check, respectively, that—

(1) Is sent to a receiving bank pursuant to an agreement between the sender and the receiving bank; and

(2) Conforms with ANS X9.100-187, unless the Board by rule or order determines that a different standard applies or the parties otherwise agree.

(hhh) *Electronically-created item* means an electronic image that has all the attributes of an electronic check or electronic returned check but was created electronically and not derived from a paper check.

§ 229.3 Administrative enforcement.

(a) *Enforcement agencies.* Compliance with this part is enforced under—

(1) Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818 *et seq.*) in the case of—

(i) National banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) Member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board; and

(iii) Banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) Section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(3) The Federal Credit Union Act (12 U.S.C. 1751 *et seq.*) by the National Credit Union Administration Board with respect to any federal credit union or credit union insured by the National Credit Union Share Insurance Fund.

The terms used in paragraph (a)(1) of this section that are not defined in this part or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) *Additional powers.* (1) For the purposes of the exercise by any agency referred to in paragraph (a) of this section of its powers under any statute referred to in that paragraph, a violation of any requirement imposed under the EFA Act is deemed to be a violation of a requirement imposed under that statute.

(2) In addition to its powers under any provision of law specifically referred to in paragraph (a) of this section, each of the agencies referred to in that paragraph may exercise, for purposes of enforcing compliance with any requirement imposed under this part, any other authority conferred on it by law.

(c) *Enforcement by the Board.* (1) Except to the extent that enforcement of the requirements imposed under this part is specifically committed to some other government agency, the Board shall enforce such requirements.

(2) If the Board determines that—

(i) Any bank that is not a bank described in paragraph (a) of this section; or

(ii) Any other person subject to the authority of the Board under the EFA Act and this part,

has failed to comply with any requirement imposed by this part, the Board may issue an order prohibiting any bank, any Federal Reserve Bank, or any other person subject to the authority of the Board from engaging in any activity or transaction that directly or indirectly involves such noncomplying bank or person (including any activity or transaction involving the receipt, payment, collection, and clearing of checks, and any related function of the payment system with respect to checks).

[53 FR 19433, May 27, 1988, as amended by Reg. CC, 55 FR 21855, May 30, 1990; 57 FR 36600, Aug. 14, 1992; 69 FR 47310, Aug. 4, 2004]

Subpart B—Availability of Funds and Disclosure of Funds Availability Policies

§ 229.10 Next-day availability.

(a) *Cash deposits.* (1) A bank shall make funds deposited in an account by cash available for withdrawal not later than the business day after the banking day on which the cash is deposited, if the deposit is made in person to an employee of the depository bank.

(2) A bank shall make funds deposited in an account by cash available for withdrawal not later than the second business day after the banking day on which the cash is deposited, if the deposit is not made in person to an employee of the depository bank.

(b) *Electronic payments—(1) In general.* A bank shall make funds received for deposit in an account by an electronic payment available for withdrawal not later than the business day after the banking day on which the bank received the electronic payment.

(2) *When an electronic payment is received.* An electronic payment is received when the bank receiving the payment has received both—

(i) Payment in actually and finally collected funds; and

(ii) Information on the account and amount to be credited.

A bank receives an electronic payment only to the extent that the bank has received payment in actually and finally collected funds.

(c) *Certain check deposits—(1) General rule.* A depository bank shall make funds deposited in an account by check available for withdrawal not later than the business day after the banking day on which the funds are deposited, in the case of—

(i) A check drawn on the Treasury of the United States and deposited in an account held by a payee of the check;

(ii) A U.S. Postal Service money order deposited—

(A) In an account held by a payee of the money order; and

(B) In person to an employee of the depository bank.

(iii) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank and deposited—

(A) In an account held by a payee of the check; and

(B) In person to an employee of the depository bank;

(iv) A check drawn by a state or a unit of general local government and deposited—

(A) In an account held by a payee of the check;

(B) In a depository bank located in the state that issued the check, or the same state as the unit of general local government that issued the check;

(C) In person to an employee of the depository bank; and

(D) With a special deposit slip or deposit envelope, if such slip or envelope is required by the depository bank under paragraph (c)(3) of this section.

(v) A cashier's, certified, or teller's check deposited—

(A) In an account held by a payee of the check;

(B) In person to an employee of the depository bank; and

(C) With a special deposit slip or deposit envelope, if such slip or envelope is required by the depository bank under paragraph (c)(3) of this section.

(vi) A check deposited in a branch of the depository bank and drawn on the same or another branch of the same bank if both branches are located in the same state or the same check processing region; and,

(vii) The lesser of—

(A) \$100, or

(B) The aggregate amount deposited on any one banking day to all accounts of the customer by check or checks not subject to next-day availability under paragraphs (c)(1) (i) through (vi) of this section.

(2) *Checks not deposited in person.* A depository bank shall make funds deposited in an account by check or checks available for withdrawal not later than the second business day after the banking day on which funds are deposited, in the case of a check deposit described in and that meets the requirements of paragraphs (c)(1) (ii), (iii), (iv), and (v), of this section, except that it is not deposited in person to an employee of the depository bank.

(3) *Special deposit slip.* (i) As a condition to making the funds available for withdrawal in accordance with this section, a depository bank may require that a state or local government check or a cashier's, certified, or teller's

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check be deposited with a special deposit slip or deposit envelope that identifies the type of check.

(ii) If a depository bank requires the use of a special deposit slip or deposit envelope, the bank must either provide the special deposit slip or deposit envelope to its customers or inform its customers how the slip or envelope may be prepared or obtained and make the slip or envelope reasonably available.

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§ 229.12 Availability schedule.

(a) *Effective date.* The availability schedule contained in this section is effective September 1, 1990.

(b) *Local checks and certain other checks.* Except as provided in paragraphs (d), (e), and (f) of this section, a depository bank shall make funds deposited in an account by a check available for withdrawal not later than the second business day following the banking day on which funds are deposited, in the case of—

(1) A local check;

(2) A check drawn on the Treasury of the United States that is not governed by the availability requirements of § 229.10(c);

(3) A U.S. Postal Service money order that is not governed by the availability requirements of § 229.10(c); and

(4) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; if any check referred to in this paragraph (b)(4) is a local check that is not governed by the availability requirements of § 229.10(c).

(c) *Nonlocal checks*—(1) *In general.* Except as provided in paragraphs (d), (e), and (f) of this section, a depository bank shall make funds deposited in an account by a check available for withdrawal not later than the fifth business day following the banking day on which funds are deposited, in the case of—

(i) A nonlocal check; and

(ii) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; a cashier's, certified, or teller's check; or a

check deposited in a branch of the depository bank and drawn on the same or another branch of the same bank, if any check referred to in this paragraph (c)(1)(ii) is a nonlocal check that is not governed by the availability requirements of § 229.10(c).

(2) Nonlocal checks specified in appendix B-2 to this part must be made available for withdrawal not later than the times prescribed in that appendix.

(d) *Time period adjustment for withdrawal by cash or similar means.* A depository bank may extend by one business day the time that funds deposited in an account by one or more checks subject to paragraphs (b), (c), or (f) of this section are available for withdrawal by cash or similar means. Similar means include electronic payment, issuance of a cashier's or teller's check, or certification of a check, or other irrevocable commitment to pay, but do not include the granting of credit to a bank, a Federal Reserve Bank, or a Federal Home Loan Bank that presents a check to the depository bank for payment. A depository bank shall, however, make \$400 of these funds available for withdrawal by cash or similar means not later than 5:00 p.m. on the business day on which the funds are available under paragraphs (b), (c), or (f) of this section. This \$400 is in addition to the \$100 available under § 229.10(c)(1)(vii).

(e) *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The depository bank may extend the time periods set forth in this section by one business day in the case of any deposit, other than a deposit described in § 229.10, that is—

(1) Deposited in an account at a branch of a depository bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands; and

(2) Deposited by a check drawn on or payable at or through a paying bank not located in the same state as the depository bank.

(f) *Deposits at nonproprietary ATMs.* A depository bank shall make funds deposited in an account at a nonproprietary ATM by cash or check available for withdrawal not later than the fifth

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business day following the banking day on which the funds are deposited.

[53 FR 19433, May 27, 1988, as amended by Reg. CC, 55 FR 50818, Dec. 11, 1990; 56 FR 7801, Feb. 26, 1991; 56 FR 66343, Dec. 23, 1991; 57 FR 36601, Aug. 14, 1992; 60 FR 51670, Oct. 3, 1995]

§ 229.13 Exceptions.

(a) *New accounts.* For purposes of this paragraph, checks subject to § 229.10(c)(1)(v) include traveler's checks.

(1) A deposit in a new account—

(i) Is subject to the requirements of § 229.10 (a) and (b) to make funds from deposits by cash and electronic payments available for withdrawal on the business day following the banking day of deposit or receipt;

(ii) Is subject to the requirements of § 229.10(c)(1) (i) through (v) and § 229.10(c)(2) only with respect to the first \$5,000 of funds deposited on any one banking day; but the amount of the deposit in excess of \$5,000 shall be available for withdrawal not later than the ninth business day following the banking day on which funds are deposited; and

(iii) Is not subject to the availability requirements of §§ 229.10(c)(1)(vi) and (vii) and 229.12.

(2) An account is considered a new account during the first 30 calendar days after the account is established. An account is not considered a new account if each customer on the account has had, within 30 calendar days before the account is established, another account at the depository bank for at least 30 calendar days.

(b) *Large deposits.* Sections 229.10(c) and 229.12 do not apply to the aggregate amount of deposits by one or more checks to the extent that the aggregate amount is in excess of \$5,000 on any one banking day. For customers that have multiple accounts at a depository bank, the bank may apply this exception to the aggregate deposits to all accounts held by the customer, even if the customer is not the sole holder of the accounts and not all of the holders of the accounts are the same.

(c) *Redeposited checks.* Sections 229.10(c) and 229.12 do not apply to a check that has been returned unpaid and redeposited by the customer or the

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depository bank. This exception does not apply—

(1) To a check that has been returned due to a missing indorsement and redeposited after the missing indorsement has been obtained, if the reason for return indication on the check states that it was returned due to a missing indorsement; or

(2) To a check that has been returned because it was post dated, if the reason for return indicated on the check states that it was returned because it was post dated, and if the check is no longer postdated when redeposited.

(d) *Repeated overdrafts.* If any account or combination of accounts of a depository bank's customer has been repeatedly overdrawn, then for a period of six months after the last such overdraft, §§ 229.10(c) and 229.12 do not apply to any of the accounts. A depository bank may consider a customer's account to be repeatedly overdrawn if—

(1) On six or more banking days within the preceding six months, the account balance is negative, or the account balance would have become negative if checks or other charges to the account had been paid; or

(2) On two or more banking days within the preceding six months, the account balance is negative, or the account balance would have become negative, in the amount of \$5,000 or more, if checks or other charges to the account had been paid.

(e) *Reasonable cause to doubt collectibility*—(1) *In general.* Sections 229.10(c) and 229.12 do not apply to a check deposited in an account at a depository bank if the depository bank has reasonable cause to believe that the check is uncollectible from the paying bank. Reasonable cause to believe a check is uncollectible requires the existence of facts that would cause a well-grounded belief in the mind of a reasonable person. Such belief shall not be based on the fact that the check is of a particular class or is deposited by a particular class of persons. The reason for the bank's belief that the check is uncollectible shall be included in the notice required under paragraph (g) of this section.

(2) *Overdraft and returned check fees.* A depository bank that extends the time when funds will be available for

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withdrawal as described in paragraph (e)(1) of this section, and does not furnish the depositor with written notice at the time of deposit shall not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks of other debits to the account, if—

(i) The overdraft or return of the check would not have occurred except for the fact that the deposited funds were delayed under paragraph (e)(1) of this section; and

(ii) The deposited check was paid by the paying bank.

Notwithstanding the foregoing, the depository bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the notice of exception required in paragraph (g) of this section and, when required, refunds any such fees upon the request of the customer. The notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the exception is paid and how to obtain a refund.

(f) *Emergency conditions.* Sections 229.10(c) and 229.12 do not apply to funds deposited by check in a depository bank in the case of—

(1) An interruption of communications or computer or other equipment facilities;

(2) A suspension of payments by another bank;

(3) A war; or

(4) An emergency condition beyond the control of the depository bank,

if the depository bank exercises such diligence as the circumstances require.

(g) *Notice of exception—(1) In general.* Subject to paragraphs (g)(2) and (g)(3) of this section, when a depository bank extends the time when funds will be available for withdrawal based on the application of an exception contained in paragraphs (b) through (e) of this section, it must provide the depositor with a written notice.

(i) The notice shall include the following information—

(A) A number or code, which need not exceed four digits, that identifies the customer's account;

(B) The date of the deposit;

(C) The amount of the deposit that is being delayed;

(D) The reason the exception was invoked; and

(E) The time period within which the funds will be available for withdrawal.

(ii) *Timing of notice.* The notice shall be provided to the depositor at the time of the deposit, unless the deposit is not made in person to an employee of the depository bank, or, if the facts upon which a determination to invoke one of the exceptions in paragraphs (b) through (e) of this section to delay a deposit only become known to the depository bank after the time of the deposit. If the notice is not given at the time of the deposit, the depository bank shall mail or deliver the notice to the customer as soon as practicable, but no later than the first business day following the day the facts become known to the depository bank, or the deposit is made, whichever is later.

(2) *One-time exception notice.* In lieu of providing notice pursuant to paragraph (g)(1) of this section, a depository bank that extends the time when the funds deposited in a nonconsumer account will be available for withdrawal based on an exception contained in paragraph (b) or (c) of this section may provide a single notice to the customer that includes the following information—

(i) The reason(s) the exception may be invoked; and

(ii) The time period within which deposits subject to the exception generally will be available for withdrawal.

This one-time notice shall be provided only if each type of exception cited in the notice will be invoked for most check deposits in the account to which the exception could apply. This notice shall be provided at or prior to the time notice must be provided under paragraph (g)(1)(ii) of this section.

(3) *Notice of repeated overdrafts exception.* In lieu of providing notice pursuant to paragraph (g)(1) of this section, a depository bank that extends the time when funds deposited in an account will be available for withdrawal based on the exception contained in paragraph (d) of this section may provide a notice to the customer for each time period during which the exception will be in effect. The notice shall include the following information—

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(i) The account number of the customer;

(ii) The fact that the availability of funds deposited in the customer's account will be delayed because the repeated overdrafts exception will be invoked;

(iii) The time period within which deposits subject to the exception generally will be available for withdrawal; and

(iv) The time period during which the exception will apply.

This notice shall be provided at or prior to the time notice must be provided under paragraph (g)(1)(ii) of this section and only if the exception cited in the notice will be invoked for most check deposits in the account.

(4) *Emergency conditions exception notice.* When a depository bank extends the time when funds will be available for withdrawal based on the application of the emergency conditions exception contained in paragraph (f) of this section, it must provide the depositor with notice in a reasonable form and within a reasonable time given the circumstances. The notice shall include the reason the exception was invoked and the time period within which funds shall be made available for withdrawal, unless the depository bank, in good faith, does not know at the time the notice is given the duration of the emergency and, consequently, when the funds must be made available. The depository bank is not required to provide a notice if the funds subject to the exception become available before the notice must be sent.

(5) *Record retention.* A depository bank shall retain a record, in accordance with § 229.21(g), of each notice provided pursuant to its application of the reasonable cause exception under paragraph (e) of this section, together with a brief statement of the facts giving rise to the bank's reason to doubt the collectibility of the check.

(h) *Availability of deposits subject to exceptions.* (1) If an exception contained in paragraphs (b) through (f) of this section applies, the depository bank may extend the time periods established under §§ 229.10(c) and 229.12 by a reasonable period of time.

(2) If a depository bank invokes an exception contained in paragraphs (b) through (e) of this section with respect to a check described in § 229.10(c)(1) (i) through (v) or § 229.10(c)(2), it shall make the funds available for withdrawal not later than a reasonable period after the day the funds would have been required to be made available had the check been subject to 229.12.

(3) If a depository bank invokes an exception under paragraph (f) of this section based on an emergency condition, the depository bank shall make the funds available for withdrawal not later than a reasonable period after the emergency has ceased or the period established in §§ 229.10(c) and 229.12, whichever is later.

(4) For the purposes of this section, a "reasonable period" is an extension of up to one business day for checks described in § 229.10(c)(1)(vi), five business days for checks described in § 229.12(b) (1) through (4), and six business days for checks described in § 229.12(c) (1) and (2) or § 229.12(f). A longer extension may be reasonable, but the bank has the burden of so establishing.

[53 FR 19433, May 27, 1988, as amended by Reg. CC, 54 FR 13850, Apr. 6, 1989; Reg. CC, 55 FR 21855, May 30, 1990; 57 FR 3279, Jan. 29, 1992; 57 FR 36598, Aug. 14, 1992; 60 FR 51671, Oct. 3, 1995; Reg. CC, 62 FR 13809, Mar. 24, 1997; 69 FR 47310, Aug. 4, 2004]

§ 229.14 Payment of interest.

(a) *In general.* A depository bank shall begin to accrue interest or dividends on funds deposited in an interest-bearing account not later than the business day on which the depository bank receives credit for the funds. For the purposes of this section, the depository bank may—

(1) Rely on the availability schedule of its Federal Reserve Bank, Federal Home Loan Bank, or correspondent bank to determine the time credit is actually received; and

(2) Accrue interest or dividends on funds deposited in interest-bearing accounts by checks that the depository bank sends to paying banks or subsequent collecting banks for payment or collection based on the availability of funds the depository bank receives from the paying or collecting banks.

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(b) *Special rule for credit unions.* Paragraph (a) of this section does not apply to any account at a bank described in § 229.2(e)(4), if the bank—

(1) Begins the accrual of interest or dividends at a later date than the date described in paragraph (a) of this section with respect to all funds, including cash, deposited in the account; and

(2) Provides notice of its interest or dividend payment policy in the manner required under § 229.16(d).

(c) *Exception for checks returned unpaid.* This subpart does not require a bank to pay interest or dividends on funds deposited by a check that is returned unpaid.

§ 229.15 General disclosure requirements.

(a) *Form of disclosures.* A bank shall make the disclosures required by this subpart clearly and conspicuously in writing. Disclosures, other than those posted at locations where employees accept consumer deposits and ATMs and the notice on preprinted deposit slips, must be in a form that the customer may keep. The disclosures shall be grouped together and shall not contain any information not related to the disclosures required by this subpart. If contained in a document that sets forth other account terms, the disclosures shall be highlighted within the document by, for example, use of a separate heading.

(b) *Uniform reference to day of availability.* In its disclosure, a bank shall describe funds as being available for withdrawal on “the _____ business day after” the day of deposit. In this calculation, the first business day is the business day following the banking day the deposit was received, and the last business day is the day on which the funds are made available.

(c) *Multiple accounts and multiple account holders.* A bank need not give multiple disclosures to a customer that holds multiple accounts if the accounts are subject to the same availability policies. Similarly, a bank need not give separate disclosures to each customer on a jointly held account.

(d) *Dormant or inactive accounts.* A bank need not give availability disclosures to a customer that holds a dormant or inactive account.

§ 229.16 Specific availability policy disclosure.

(a) *General.* To meet the requirements of a specific availability policy disclosure under §§ 229.17 and 229.18(d), a bank shall provide a disclosure describing the bank’s policy as to when funds deposited in an account are available for withdrawal. The disclosure must reflect the policy followed by the bank in most cases. A bank may impose longer delays on a case-by-case basis or by invoking one of the exceptions in § 229.13, provided this is reflected in the disclosure.

(b) *Content of specific availability policy disclosure.* The specific availability policy disclosure shall contain the following, as applicable—

(1) A summary of the bank’s availability policy;

(2) A description of any categories of deposits or checks used by the bank when it delays availability (such as local or nonlocal checks); how to determine the category to which a particular deposit or check belongs; and when each category will be available for withdrawal (including a description of the bank’s business days and when a deposit is considered received);¹

(3) A description of any of the exceptions in § 229.13 that may be invoked by the bank, including the time following a deposit that funds generally will be

¹A bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose that certain checks, such as some credit union share drafts that are payable by one bank but payable through another bank, will be treated as local or nonlocal checks based upon the location of the bank by which they are payable and not on the basis of the location of the bank whose routing number appears on the check. A bank that makes funds from nonlocal checks available for withdrawal within the time periods required for local checks under §§ 229.12 and 229.13 is not required to provide this disclosure on payable-through checks to its customers. The statement concerning payable-through checks must describe how the customer can determine whether these checks will be treated as local or nonlocal, or state that special rules apply to such checks and that the customer may ask about the availability of these checks.

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available for withdrawal and a statement that the bank will notify the customer if the bank invokes one of the exceptions;

(4) A description, as specified in paragraph (c)(1) of this section, of any case-by-case policy of delaying availability that may result in deposited funds being available for withdrawal later than the time periods stated in the bank's availability policy; and

(5) A description of how the customer can differentiate between a proprietary and a nonproprietary ATM, if the bank makes funds from deposits at nonproprietary ATMs available for withdrawal later than funds from deposits at proprietary ATMs.

(c) *Longer delays on a case-by-case basis*—(1) *Notice in specific policy disclosure.* A bank that has a policy of making deposited funds available for withdrawal sooner than required by this subpart may extend the time when funds are available up to the time periods allowed under this subpart on a case-by-case basis, provided the bank includes the following in its specific policy disclosure—

(i) A statement that the time when deposited funds are available for withdrawal may be extended in some cases, and the latest time following a deposit that funds will be available for withdrawal;

(ii) A statement that the bank will notify the customer if funds deposited in the customer's account will not be available for withdrawal until later than the time periods stated in the bank's availability policy; and

(iii) A statement that customers should ask if they need to be sure about when a particular deposit will be available for withdrawal.

(2) *Notice at time of case-by-case delay*—(i) *In general.* When a depository bank extends the time when funds will be available for withdrawal on a case-by-case basis, it must provide the depositor with a written notice. The notice shall include the following information—

(A) A number or code, which need not exceed four digits, that identifies the customer's account.

(B) The date of the deposit;

(C) The amount of the deposit that is being delayed; and

(D) The day the funds will be available for withdrawal.

(ii) *Timing of notice.* The notice shall be provided to the depositor at the time of the deposit, unless the deposit is not made in person to an employee of the depository bank or the decision to extend the time when the deposited funds will be available is made after the time of the deposit. If notice is not given at the time of the deposit, the depository bank shall mail or deliver the notice to the customer not later than the first business day following the banking day the deposit is made.

(3) *Overdraft and returned check fees.* A depository bank that extends the time when funds will be available for withdrawal on a case-by-case basis and does not furnish the depositor with written notice at the time of deposit shall not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks or other debits to the account, if—

(i) The overdraft or return of the check or other debit would not have occurred except for the fact that the deposited funds were delayed under paragraph (c)(1) of this section; and

(ii) The deposited check was paid by the paying bank.

Notwithstanding the foregoing, the depository bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the notice required in paragraph (c)(2) of this section and, when required, refunds any such fees upon the request of the customer. The notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the delay is paid and how to obtain a refund.

(d) *Credit union notice of interest payment policy.* If a bank described in § 229.2(e)(4) begins to accrue interest or dividends on all deposits made in an interest-bearing account, including cash deposits, at a later time than the day specified in § 229.14(a), the bank's specific policy disclosures shall contain an

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explanation of when interest or dividends on deposited funds begin to accrue.

[53 FR 19433, May 27, 1988, as amended at 53 FR 31292, Aug. 18, 1988; 53 FR 44324, Nov. 2, 1988; Reg. CC, 54 FR 13850, Apr. 6, 1989; 60 FR 51671, Oct. 3, 1995; Reg. CC, 62 FR 13810, Mar. 24, 1997; 69 FR 47311, Aug. 4, 2004]

§ 229.17 Initial disclosures.

Before opening a new account, a bank shall provide a potential customer with the applicable specific availability policy disclosure described in § 229.16.

[Reg. CC, 60 FR 51671, Oct. 3, 1995]

§ 229.18 Additional disclosure requirements.

(a) *Deposit slips.* A bank shall include on all preprinted deposit slips furnished to its customers a notice that deposits may not be available for immediate withdrawal.

(b) *Locations where employees accept consumer deposits.* A bank shall post in a conspicuous place in each location where its employees receive deposits to consumer accounts a notice that sets forth the time periods applicable to the availability of funds deposited in a consumer account.

(c) *Automated teller machines.* (1) A depository bank shall post or provide a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal.

(2) A depository bank that operates an off-premises ATM from which deposits are removed not more than two times each week, as described in § 229.19(a)(4), shall disclose at or on the ATM the days on which deposits made at the ATM will be considered received.

(d) *Upon request.* A bank shall provide to any person, upon oral or written request, a notice containing the applicable specific availability policy disclosure described in § 229.16.

(e) *Changes in policy.* A bank shall send a notice to holders of consumer accounts at least 30 days before implementing a change to the bank's availability policy regarding such accounts, except that a change that expedites the availability of funds may be disclosed not later than 30 days after implementation.

§ 229.19 Miscellaneous.

(a) *When funds are considered deposited.* For the purposes of this subpart—

(1) Funds deposited at a staffed facility, ATM, or contractual branch are considered deposited when they are received at the staffed facility, ATM, or contractual branch;

(2) Funds mailed to the depository bank are considered deposited on the day they are received by the depository bank;

(3) Funds deposited to a night depository, lock box, or similar facility are considered deposited on the day on which the deposit is removed from such facility and is available for processing by the depository bank;

(4) Funds deposited at an ATM that is not on, or within 50 feet of, the premises of the depository bank are considered deposited on the day the funds are removed from the ATM, if funds normally are removed from the ATM not more than two times each week; and

(5) Funds may be considered deposited on the next banking day, in the case of funds that are deposited—

(i) On a day that is not a banking day for the depository bank; or

(ii) After a cut-off hour set by the depository bank for the receipt of deposits of 2:00 p.m. or later, or, for the receipt of deposits at ATMs, contractual branches, or off-premise facilities, of 12:00 noon or later. Different cut-off hours later than these times may be established for the receipt of different types of deposits, or receipt of deposits at different locations.

(b) *Availability at start of business day.* Except as otherwise provided in § 229.12(d), if any provision of this subpart requires that funds be made available for withdrawal on any business day, the funds shall be available for withdrawal by the later of:

(1) 9:00 a.m. (local time of the depository bank); or

(2) The time the depository bank's teller facilities (including ATMs) are available for customer account withdrawals.

(c) *Effect on policies of depository bank.* This part does not—

(1) Prohibit a depository bank from making funds available to a customer for withdrawal in a shorter period of

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time than the time required by this subpart;

(2) Affect a depository bank's right—

(i) To accept or reject a check for deposit;

(ii) To revoke any settlement made by the depository bank with respect to a check accepted by the bank for deposit, to charge back the customer's account for the amount of a check based on the return of the check or receipt of a notice of nonpayment of the check, or to claim a refund of such credit; and

(iii) To charge back funds made available to its customer for an electronic payment for which the bank has not received payment in actually and finally collected funds;

(3) Require a depository bank to open or otherwise to make its facilities available for customer transactions on a given business day; or

(4) Supersede any policy of a depository bank that limits the amount of cash a customer may withdraw from its account on any one day, if that policy—

(i) Is not dependent on the time the funds have been deposited in the account, as long as the funds have been on deposit for the time period specified in §§ 229.10, 229.12, or 229.13; and

(ii) In the case of withdrawals made in person to an employee of the depository bank—

(A) Is applied without discrimination to all customers of the bank; and

(B) Is related to security, operating, or bonding requirements of the depository bank.

(d) *Use of calculated availability.* A depository bank may provide availability to its nonconsumer accounts based on a sample of checks that represents the average composition of the customer's deposits, if the terms for availability based on the sample are equivalent to or more prompt than the availability requirements of this subpart.

(e) *Holds on other funds.* (1) A depository bank that receives a check for deposit in an account may not place a hold on any funds of the customer at the bank, where—

(i) The amount of funds that are held exceeds the amount of the check; or

(ii) The funds are not made available for withdrawal within the times specified in §§ 229.10, 229.12, and 229.13.

(2) A depository bank that cashes a check for a customer over the counter, other than a check drawn on the depository bank, may not place a hold on funds in an account of the customer at the bank, if—

(i) The amount of funds that are held exceeds the amount of the check; or

(ii) The funds are not made available for withdrawal within the times specified in §§ 229.10, 229.12, and 229.13.

(f) *Employee training and compliance.* Each bank shall establish procedures to ensure that the bank complies with the requirements of this subpart, and shall provide each employee who performs duties subject to the requirements of this subpart with a statement of the procedures applicable to that employee.

(g) *Effect of merger transaction—*(1) *In general.* For purposes of this subpart, except for the purposes of the new accounts exception of § 229.13(a), and when funds are considered deposited under § 229.19(a), two or more banks that have engaged in a merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

(2) *Merger transactions on or after July 1, 1998, and before March 1, 2000.* If banks have consummated a merger transaction on or after July 1, 1998, and before March 1, 2000, the merged banks may be considered separate banks until March 1, 2001.

[Reg. CC, 53 FR 19433, May 27, 1988, as amended by 54 FR 13850, Apr. 6, 1989; 60 FR 51671, Oct. 3, 1995; 62 FR 13810, Mar. 24, 1997; 64 FR 14577, Mar. 26, 1999]

§ 229.20 Relation to state law.

(a) *In general.* Any provision of a law or regulation of any state in effect on or before September 1, 1989, that requires funds deposited in an account at a bank chartered by the state to be made available for withdrawal in a shorter time than the time provided in subpart B, and, in connection therewith, subpart A, shall—

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(1) Supersede the provisions of the EFA Act and subpart B, and, in connection therewith, subpart A, to the extent the provisions relate to the time by which funds deposited or received for deposit in an account are available for withdrawal; and

(2) Apply to all federally insured banks located within the state.

No amendment to a state law or regulation governing the availability of funds that becomes effective after September 1, 1989, shall supersede the EFA Act and subpart B, and, in connection therewith, subpart A, but unamended provisions of state law shall remain in effect.

(b) *Preemption of inconsistent law.* Except as provided in paragraph (a), the EFA Act and subpart B, and, in connection therewith, subpart A, supersede any provision of inconsistent state law.

(c) *Standards for preemption.* A provision of a state law in effect on or before September 2, 1989, is not inconsistent with the EFA Act, or subpart B, or in connection therewith, subpart A, if it requires that funds shall be available in a shorter period of time than the time provided in this subpart. Inconsistency with the EFA Act and subpart B, and in connection therewith, subpart A, may exist when state law—

(1) Permits a depository bank to make funds deposited in an account by cash, electronic payment, or check available for withdrawal in a longer period of time than the maximum period of time permitted under subpart B, and, in connection therewith, subpart A; or

(2) Provides for disclosures or notices concerning funds availability relating to accounts.

(d) *Preemption determinations.* The Board may determine, upon the request of any state, bank, or other interested party, whether the EFA Act and subpart B, and, in connection therewith, subpart A, preempt provisions of state laws relating to the availability of funds.

(e) *Procedures for preemption determinations.* A request for a preemption determination shall include the following—

(1) A copy of the full text of the state law in question, including any imple-

menting regulations or judicial interpretations of that law; and

(2) A comparison of the provisions of state law with the corresponding provisions in the EFA Act and subparts A and B of this part, together with a discussion of the reasons why specific provisions of state law are either consistent or inconsistent with corresponding sections of the EFA Act and subparts A and B of this part.

A request for a preemption determination shall be addressed to the Secretary, Board of Governors of the Federal Reserve System.

[53 FR 19433, May 27, 1988, as amended at 69 FR 47311, Aug. 4, 2004]

§ 229.21 Civil liability.

(a) *Civil liability.* A bank that fails to comply with any requirement imposed under subpart B, and in connection therewith, subpart A, of this part or any provision of state law that supersedes any provision of subpart B, and in connection therewith, subpart A, with respect to any person is liable to that person in an amount equal to the sum of—

(1) Any actual damage sustained by that person as a result of the failure;

(2) Such additional amount as the court may allow, except that—

(i) In the case of an individual action, liability under this paragraph shall not be less than \$100 nor greater than \$1,000; and

(ii) In the case of a class action—

(A) No minimum recovery shall be applicable to each member of the class; and

(B) The total recovery under this paragraph in any class action or series of class actions arising out of the same failure to comply by the same depository bank shall not be more than the lesser of \$500,000 or 1 percent of the net worth of the bank involved; and

(3) In the case of a successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) *Class action awards.* In determining the amount of any award in any class action, the court shall consider, among other relevant factors—

(1) The amount of any damages awarded;

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(2) The frequency and persistence of failures of compliance;

(3) The resources of the bank;

(4) The number of persons adversely affected; and

(5) The extent to which the failure of compliance was intentional.

(c) *Bona fide errors*—(1) *General rule*. A bank is not liable in any action brought under this section for a violation of this subpart if the bank demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) *Examples*. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to the bank's obligation under this subpart is not a bona fide error.

(d) *Jurisdiction*. Any action under this section may be brought in any United States district court or in any other court of competent jurisdiction, and shall be brought within one year after the date of the occurrence of the violation involved.

(e) *Reliance on Board rulings*. No provision of this subpart imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, regardless of whether such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason after the act or omission has occurred.

(f) *Exclusions*. This section does not apply to claims that arise under subpart C of this part or to actions for wrongful dishonor.

(g) *Record retention*. (1) A bank shall retain evidence of compliance with the requirements imposed by this subpart for not less than two years. Records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information.

(2) If a bank has actual notice that it is being investigated, or is subject to an enforcement proceeding by an agency charged with monitoring that bank's compliance with the EFA Act

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and this subpart, or has been served with notice of an action filed under this section, it shall retain the records pertaining to the action or proceeding pending final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

[53 FR 19433, May 27, 1988, as amended at 69 FR 47311, Aug. 4, 2004]

Subpart C—Collection of Checks

§ 229.30 Paying bank's responsibility for return of checks.

(a) *Return of checks*. If a paying bank determines not to pay a check, it shall return the check in an expeditious manner as provided in either paragraph (a)(1) or (a)(2) of this section.

(1) *Two-day/four-day test*. A paying bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depository bank not later than 4:00 p.m. (local time of the depository bank) of—

(i) The second business day following the banking day on which the check was presented to the paying bank, if the paying bank is located in the same check processing region as the depository bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank, if the paying bank is not located in the same check processing region as the depository bank.

If the last business day on which the paying bank may deliver a returned check to the depository bank is not a banking day for the depository bank, the paying bank meets the two-day/four-day test if the returned check is received by the depository bank on or before the depository bank's next banking day.

(2) *Forward collection test*. A paying bank also returns a check in an expeditious manner if it sends the returned check in a manner that a similarly situated bank would normally handle a check—

(i) Of similar amount as the returned check;

(ii) Drawn on the depository bank; and

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(iii) Deposited for forward collection in the similarly situated bank by noon on the banking day following the banking day on which the check was presented to the paying bank.

Subject to the requirement for expeditious return, a paying bank may send a returned check to the depository bank, or to any other bank agreeing to handle the returned check expeditiously under § 229.31(a). A paying bank may convert a check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depository bank, the amount of the returned check, and a "2" in the case of an original check (or a "5" in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100-140. This paragraph does not affect a paying bank's responsibility to return a check within the deadlines required by the U.C.C., Regulation J (12 CFR part 210), or § 229.30(c).

(b) *Unidentifiable depository bank.* A paying bank that is unable to identify the depository bank with respect to a check may send the returned check to any bank that handled the check for forward collection even if that bank does not agree to handle the check expeditiously under § 229.31(a). A paying bank sending a returned check under this paragraph to a bank that handled the check for forward collection must advise the bank to which the check is sent that the paying bank is unable to identify the depository bank. The expeditious return requirements in § 229.30(a) do not apply to the paying bank's return of a check under this paragraph.

(c) *Extension of deadline.* The deadline for return or notice of nonpayment under the U.C.C. or Regulation J (12 CFR part 210), or § 229.36(f)(2) is extended to the time of dispatch of such return or notice of nonpayment where a paying bank uses a means of delivery that would ordinarily result in receipt by the bank to which it is sent—

(1) On or before the receiving bank's next banking day following the other-

wise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2 p.m. or later set by the receiving bank under U.C.C. 4-108, for all deadlines other than those described in paragraph (c)(2) of this section; this deadline is extended further if a paying bank uses a highly expeditious means of transportation, even if this means of transportation would ordinarily result in delivery after the receiving bank's next cutoff hour or banking day referred to above; or

(2) Prior to the cut-off hour for the next processing cycle (if sent to a returning bank), or on the next banking day (if sent to the depository bank), for a deadline falling on a Saturday that is a banking day (as defined in the applicable U.C.C.) for the paying bank.

(d) *Identification of returned check.* A paying bank returning a check shall clearly indicate on the front of the check that it is a returned check and the reason for return. If the check is a substitute check, the paying bank shall place this information within the image of the original check that appears on the front of the substitute check.

(e) *Depository bank without accounts.* The expeditious return requirements of paragraph (a) of this section do not apply to checks deposited in a depository bank that does not maintain accounts.

(f) *Notice in lieu of return.* If a check is unavailable for return, the paying bank may send in its place a copy of the front and back of the returned check, or, if no such copy is available, a written notice of nonpayment containing the information specified in § 229.33(b). The copy or notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the expeditious return requirements of this section and to the other requirements of this subpart.

(g) *Reliance on routing number.* A paying bank may return a returned check based on any routing number designating the depository bank appearing

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on the returned check in the depository bank's indorsement.

[53 FR 19433, May 27, 1988, as amended at 53 FR 31292, Aug. 18, 1988; Reg. CC, 55 FR 21855, May 30, 1990; 57 FR 46972, Oct. 14, 1993; Reg. CC, 62 FR 13810, Mar. 24, 1997; 69 FR 47311, Aug. 4, 2004]

EFFECTIVE DATE NOTE: At 82 FR 27579, June 15, 2017, § 229.30 was revised, effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 229.30 Electronic checks and electronic information.

(a) *Checks under this subpart.* Electronic checks and electronic returned checks are subject to this subpart as if they were checks or returned checks, except where "paper check" or "paper returned check" is specified. For the purposes of this subpart, the term "check" or "returned check" as used in Subpart A includes "electronic check" or "electronic returned check," except where "paper check" or "paper returned check" is specified.

(b) *Writings.* If a bank is required to provide information in writing under this subpart, the bank may satisfy that requirement by providing the information electronically if the receiving bank agrees to receive that information electronically.

§ 229.31 Returning bank's responsibility for return of checks.

(a) *Return of checks.* A returning bank shall return a returned check in an expeditious manner as provided in either paragraph (a)(1) or (a)(2) of this section.

(1) *Two-day/four-day test.* A returning bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depository bank not later than 4:00 p.m. (local time) of—

(i) The second business day following the banking day on which the check was presented to the paying bank if the paying bank is located in the same check processing region as the depository bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank if the paying bank is not located in the same check processing region as the depository bank.

If the last business day on which the returning bank may deliver a returned check to the depository bank is not a

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banking day for the depository bank, the returning bank meets this requirement if the returned check is received by the depository bank on or before the depository bank's next banking day.

(2) *Forward collection test.* A returning bank also returns a check in an expeditious manner if it sends the returned check in a manner that a similarly situated bank would normally handle a check—

(i) Of similar amount as the returned check;

(ii) Drawn on the depository bank; and

(iii) Received for forward collection by the similarly situated bank at the time the returning bank received the returned check, except that a returning bank may set a cut-off hour for the receipt of returned checks that is earlier than the similarly situated bank's cut-off hour for checks received for forward collection, if the cut-off hour is not earlier than 2:00 p.m.

Subject to the requirement for expeditious return, the returning bank may send the returned check to the depository bank, or to any bank agreeing to handle the returned check expeditiously under § 229.31(a). The returning bank may convert the returned check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depository bank, the amount of the returned check, and a "2" in the case of an original check (or a "5" in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100-140. The time for expeditious return under the forward collection test, and the deadline for return under the U.C.C. and Regulation J (12 CFR part 210), are extended by one business day if the returning bank converts a returned check to a qualified returned check. This extension does not apply to the two-day/four-day test specified in paragraph (a)(1) of this section or when a returning bank is returning a check directly to the depository bank.

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(b) *Unidentifiable depository bank.* A returning bank that is unable to identify the depository bank with respect to a returned check may send the returned check to—

(1) Any collecting bank that handled the check for forward collection if the returning bank was not a collecting bank with respect to the returned check; or

(2) A prior collecting bank, if the returning bank was a collecting bank with respect to the returned check;

even if that collecting bank does not agree to handle the returned check expeditiously under § 229.31(a). A returning bank sending a returned check under this paragraph must advise the bank to which the check is sent that the returning bank is unable to identify the depository bank. The expeditious return requirements in paragraph (a) of this section do not apply to return of a check under this paragraph. A returning bank that receives a returned check from a paying bank under § 229.30(b), or from a returning bank under this paragraph, but that is able to identify the depository bank, must thereafter return the check expeditiously to the depository bank.

(c) *Settlement.* A returning bank shall settle with a bank sending a returned check to it for return by the same means that it settles or would settle with the sending bank for a check received for forward collection drawn on the depository bank. This settlement is final when made.

(d) *Charges.* A returning bank may impose a charge on a bank sending a returned check for handling the returned check.

(e) *Depository bank without accounts.* The expeditious return requirements of paragraph (a) of this section do not apply to checks deposited with a depository bank that does not maintain accounts.

(f) *Notice in lieu of return.* If a check is unavailable for return, the returning bank may send in its place a copy of the front and back of the returned check, or, if no copy is available, a written notice of nonpayment containing the information specified in § 229.33(b). The copy or notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu

of return is considered a returned check subject to the expeditious return requirements of this section and to the other requirements of this subpart.

(g) *Reliance on routing number.* A returning bank may return a returned check based on any routing number designating the depository bank appearing on the returned check in the depository bank's indorsement or in magnetic ink on a qualified returned check.

[53 FR 19433, May 27, 1988, as amended at 53 FR 31292, Aug. 18, 1988; Reg. CC, 54 FR 13850, Apr. 6, 1989; 69 FR 47311, Aug. 4, 2004]

EFFECTIVE DATE NOTE: At 82 FR 27579, June 15, 2017, § 229.31 was revised, effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 229.31 Paying bank's responsibility for return of checks and notices of non-payment.

(a) *Return of checks.* (1) Subject to the requirement of expeditious return under paragraph (b) of this section, a paying bank may send a returned check to the depository bank, to any other bank agreeing to handle the returned check, or as provided in paragraph (a)(2) of this section.

(2) A paying bank that is unable to identify the depository bank with respect to a check may send the returned check to any bank that handled the check for forward collection and must advise the bank to which the check is sent that the paying bank is unable to identify the depository bank.

(3) A paying bank may convert a check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depository bank, the amount of the returned check, and a "2" in the case of an original check (or a "5" in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100-140.

(4) Except as provided in paragraph (g) of this section, this section does not affect a paying bank's responsibility to return a check within the deadlines required by the UCC or Regulation J (12 CFR part 210).

(b) *Expeditious return of checks.* (1) Except as provided in paragraph (d) of this section, if a paying bank determines not to pay a check, it shall return the check in an expeditious manner such that the check would normally be received by the depository bank not

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later than 2 p.m. (local time of the depository bank) on the second business day following the banking day on which the check was presented to the paying bank.

(2) If the second business day following the banking day on which the check was presented to the paying bank is not a banking day for the depository bank, the paying bank satisfies the expeditious return requirement if it sends the returned check in a manner such that the depository bank would normally receive the returned check not later than 2 p.m. (local time of the depository bank) on the depository bank's next banking day.

(c) *Notice of nonpayment.* (1) If a paying bank determines not to pay a check in the amount of \$5,000 or more, it shall provide notice of nonpayment such that the notice would normally be received by the depository bank not later than 2 p.m. (local time of the depository bank) on the second business day following the banking day on which the check was presented to the paying bank. If the day the paying bank is required to provide notice is not a banking day for the depository bank, receipt of notice not later than 2 p.m. (local time of the depository bank) on the depository bank's next banking day constitutes timely notice. Notice may be provided by any reasonable means, including the returned check, a writing (including a copy of the check), or telephone.

(2)(i) To the extent available to the paying bank, notice must include the information contained in the check's MICR line when the check is received by the paying bank, as well as—

- (A) Name of the payee(s);
- (B) Amount;
- (C) Date of the indorsement of the depository bank;
- (D) The bank name, routing number, and trace or sequence number associated with the indorsement of the depository bank; and
- (E) Reason for nonpayment.

(ii) If the paying bank is not sure of the accuracy of an item of information, it shall include the information required by this paragraph to the extent possible, and identify any item of information for which the bank is not sure of the accuracy.

(iii) The notice may include other information from the check that may be useful in identifying the check being returned and the customer.

(d) *Exceptions to the expeditious return of checks and notice of nonpayment requirements.* The expeditious return and notice of nonpayment requirements of paragraphs (b) and (c) of this section do not apply if—

- (1) The check is deposited in a depository bank that is not subject to subpart B of this part; or
- (2) A paying bank is unable to identify the depository bank with respect to the check.

(e) *Identification of returned check.* A paying bank returning a check shall clearly indicate on the front of the check that it is a returned check and the reason for return. If the paying bank is returning a substitute check or an electronic returned check, the paying bank shall include this information such that the information would be retained on any subsequent substitute check.

(f) *Notice in Lieu of Return.* If a check is unavailable for return, the paying bank may send in its place a copy of the front and back of the returned check, or, if no such copy is available, a written notice of nonpayment containing the information specified in paragraph (c)(2) of this section. The copy or written notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the requirements of this subpart.

(g) *Extension of deadline.* The deadline for return or notice of dishonor or nonpayment under the UCC or Regulation J (12 CFR part 210), or § 229.36(d)(3) and (4) is extended to the time of dispatch of such return or notice if the depository bank (or the receiving bank, if the depository bank is unidentifiable) receives the returned check or notice—

(1) On or before the depository bank's (or receiving bank's) next banking day following the otherwise applicable deadline by the earlier of the close of that banking day or a cut-off hour of 2 p.m. (local time of the depository bank or receiving bank) or later set by the depository bank (or receiving bank) under UCC 4-108, for all deadlines other than those described in paragraph (g)(2) of this section; or

(2) Prior to the cut-off hour for the next processing cycle (if sent to a returning bank), or on the next banking day (if sent to the depository bank), for a deadline falling on a Saturday that is a banking day (as defined in the UCC) for the paying bank.

(h) *Payable-through and payable-at checks.* A check payable at or through a paying bank is considered to be drawn on that bank for purposes of the expeditious return and notice of nonpayment requirements of this subpart.

(i) *Reliance on routing number.* A paying bank may return a returned check based on any routing number designating the depository bank appearing on the returned check in the depository bank's indorsement.

§ 229.32 Depository bank's responsibility for returned checks.

(a) *Acceptance of returned checks.* A depository bank shall accept returned checks and written notices of nonpayment

- (1) At a location at which presentation of checks for forward collection

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is requested by the depository bank; and

(2) (i) At a branch, head office, or other location consistent with the name and address of the bank in its indorsement on the check;

(ii) If no address appears in the indorsement, at a branch or head office associated with the routing number of the bank in its indorsement on the check;

(iii) If the address in the indorsement is not in the same check processing region as the address associated with the routing number of the bank in its indorsement on the check, at a location consistent with the address in the indorsement and at a branch or head office associated with the routing number in the bank's indorsement; or

(iv) If no routing number or address appears in its indorsement on the check, at any branch or head office of the bank.

A depository bank may require that returned checks be separated from forward collection checks.

(b) *Payment.* A depository bank shall pay the returning or paying bank returning the check to it for the amount of the check prior to the close of business on the banking day on which it received the check ("payment date") by—

(1) Debit to an account of the depository bank on the books of the returning or paying bank;

(2) Cash;

(3) Wire transfer; or

(4) Any other form of payment acceptable to the returning or paying bank;

provided that the proceeds of the payment are available to the returning or paying bank in cash or by credit to an account of the returning or paying bank on or as of the payment date. If the payment date is not a banking day for the returning or paying bank or the depository bank is unable to make the payment on the payment date, payment shall be made by the next day that is a banking day for the returning or paying bank. These payments are final when made.

(c) *Misrouted returned checks and written notices of nonpayment.* If a bank receives a returned check or written no-

tice of nonpayment on the basis that it is the depository bank, and the bank determines that it is not the depository bank with respect to the check or notice, it shall either promptly send the returned check or notice to the depository bank directly or by means of a returning bank agreeing to handle the returned check expeditiously under § 229.31(a), or send the check or notice back to the bank from which it was received.

(d) *Charges.* A depository bank may not impose a charge for accepting and paying checks being returned to it.

[53 FR 19433, May 27, 1988, as amended by Reg. CC, 54 FR 13850, Apr. 6, 1989]

EFFECTIVE DATE NOTE: At 82 FR 27580, June 15, 2017, § 229.32 was revised, effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 229.32 Returning bank's responsibility for return of checks.

(a) *Return of checks.* (1) Subject to the requirement of expeditious return under paragraph (b) of this section, a returning bank may send a returned check to the depository bank, to any other bank agreeing to handle the returned check, or as provided in paragraph (a)(2) of this section.

(2) A returning bank that is unable to identify the depository bank with respect to a check may send the returned check to any collecting bank that handled the returned check for forward collection if the returning bank was not a collecting bank with respect to the returned check, or to a prior collecting bank, if the returning bank was a collecting bank with respect to the returned check. A returning bank sending a returned check under this paragraph to a bank must advise the bank to which the returned check is sent that the returning bank is unable to identify the depository bank.

(3) A returning bank may convert a check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depository bank, the amount of the returned check, and a "2" in the case of an original check (or a "5" in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100-140.

(b) *Expeditious return of checks.* (1) Except as provided in paragraph (c) of this section, a returning bank shall return a returned check in an expeditious manner such that the check would normally be received by the depository bank not later than 2 p.m. (local

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time of the depository bank) on the second business day following the banking day on which the check was presented to the paying bank.

(2) If the second business day following the banking day on which the check was presented to the paying bank is not a banking day for the depository bank, the returning bank satisfies the expeditious return requirement if it sends the returned check in a manner such that the depository bank would normally receive the returned check not later than 2 p.m. (local time of the depository bank) on the depository bank's next banking day.

(c) *Exceptions to the expeditious return of checks.* The expeditious return requirement of paragraph (b) of this section does not apply if—

(1) The check is deposited in a depository bank that is not subject to subpart B of this part;

(2) A paying bank is unable to identify the depository bank with respect to the check; or

(3) The bank handles a misrouted returned check pursuant to § 229.33(f).

(d) *Notice in Lieu of Return.* If a check is unavailable for return, the returning bank may send in its place a copy of the front and back of the returned check, or, if no such copy is available, a written notice of nonpayment containing the information specified in § 229.31(c). The copy or written notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the requirements of this section and the other requirements of this subpart.

(e) *Settlement.* A returning bank shall settle with a bank sending a returned check to it for return by the same means that it settles or would settle with the sending bank for a check received for forward collection drawn on the depository bank. This settlement is final when made.

(f) *Charges.* A returning bank may impose a charge on a bank sending a returned check for handling the returned check.

(g) *Reliance on routing number.* A returning bank may return a returned check based on any routing number designating the depository bank appearing on the returned check in the depository bank's indorsement or in magnetic ink on a qualified returned check.

§ 229.33 Notice of nonpayment.

(a) *Requirement.* If a paying bank determines not to pay a check in the amount of \$2,500 or more, it shall provide notice of nonpayment such that the notice is received by the depository bank by 4:00 p.m. (local time) on the second business day following the banking day on which the check was

presented to the paying bank. If the day the paying bank is required to provide notice is not a banking day for the depository bank, receipt of notice on the depository bank's next banking day constitutes timely notice. Notice may be provided by any reasonable means, including the returned check, a writing (including a copy of the check), telephone, Fedwire, telex, or other form of telegraph.

(b) *Content of notice.* Notice must include the—

(1) Name and routing number of the paying bank;

(2) Name of the payee(s);

(3) Amount;

(4) Date of the indorsement of the depository bank;

(5) Account number of the customer(s) of the depository bank;

(6) Branch name or number of the depository bank from its indorsement;

(7) Trace number associated with the indorsement of the depository bank; and

(8) Reason for nonpayment.

The notice may include other information from the check that may be useful in identifying the check being returned and the customer, and, in the case of a written notice, must include the name and routing number of the depository bank from its indorsement. If the paying bank is not sure of an item of information, it shall include the information required by this paragraph to the extent possible, and identify any item of information for which the bank is not sure of the accuracy.

(c) *Acceptance of notice.* The depository bank shall accept notices during its banking day—

(1) Either at the telephone or telegraph number of its return check unit indicated in the indorsement, or, if no such number appears in the indorsement or if the number is illegible, at the general purpose telephone or telegraph number of its head office or the branch indicated in the indorsement; and

(2) At any other number held out by the bank for receipt of notice of nonpayment, and, in the case of written notice, as specified in § 229.32(a).

(d) *Notification to customer.* If the depository bank receives a returned check or notice of nonpayment, it shall

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send or give notice to its customer of the facts by midnight of the banking day following the banking day on which it received the returned check or notice, or within a longer reasonable time.

(e) *Depository bank without accounts.* The requirements of this section do not apply to checks deposited in a depository bank that does not maintain accounts.

[53 FR 19433, May 27, 1988, as amended at 69 FR 47311, Aug. 4, 2004]

EFFECTIVE DATE NOTE: At 82 FR 27580, June 15, 2017, § 229.33 was revised, effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 229.33 Depository bank's responsibility for returned checks and notices of nonpayment.

(a) *Right to assert claim.* (1) A paying bank or returning bank may be liable to a depository bank under § 229.38 for failing to return a check in an expeditious manner only if the depository bank has arrangements in place such that the paying bank or returning bank could return a returned check to the depository bank electronically, directly or indirectly, by commercially reasonable means.

(2) For purposes of paragraph (a)(1) of this section, the depository bank that has asserted a claim has the burden of proof for demonstrating that the depository bank's arrangements meet the standard of paragraph (a)(1).

(b) *Acceptance of electronic returned checks and electronic notices of nonpayment.* A depository bank's agreement with the transferor bank governs the terms under which the depository bank will accept electronic returned checks and electronic written notices of nonpayment.

(c) *Acceptance of paper returned checks and paper notices of nonpayment.* (1) A depository bank shall accept paper returned checks and paper notices of nonpayment during its banking day—

(i) At a location, if any, at which presentation of paper checks for forward collection is requested by the depository bank; and

(ii)(A) At a branch, head office, or other location consistent with the name and address of the bank in its indorsement on the check;

(B) If no address appears in the indorsement, at a branch or head office associated with the routing number of the bank in its indorsement on the check; or

(C) If no routing number or address appears in its indorsement on the check, at any branch or head office of the bank.

(2) A depository bank may require that paper returned checks be separated from paper forward collection checks.

(d) *Acceptance of oral notices of nonpayment.* A depository bank shall accept oral notices of nonpayment during its banking day—

(1) At the telephone number indicated in the indorsement; and

(2) At any other number held out by the bank for receipt of notice of nonpayment.

(e) *Payment.* (1) A depository bank shall pay the returning bank or paying bank returning the check to it for the amount of the check prior to the close of business on the depository bank's banking day on which it received the check ("payment date") by—

(i) Debit to an account of the depository bank on the books of the returning bank or paying bank;

(ii) Cash;

(iii) Wire transfer; or

(iv) Any other form of payment acceptable to the returning bank or paying bank.

(2) The proceeds of the payment must be available to the returning bank or paying bank in cash or by credit to an account of the returning bank or paying bank on or as of the payment date. If the payment date is not a banking day for the returning bank or paying bank or the depository bank is unable to make the payment on the payment date, payment shall be made by the next day that is a banking day for the returning bank or paying bank. These payments are final when made.

(f) *Misrouted returned checks and written notices of nonpayment.* If a bank receives a returned check or written notice of nonpayment on the basis that it is the depository bank, and the bank determines that it is not the depository bank with respect to the check or notice, it shall either promptly send the returned check or notice to the depository bank directly or by means of a returning bank agreeing to handle the returned check or notice, or send the check or notice back to the bank from which it was received.

(g) *Charges.* A depository bank may not impose a charge for accepting and paying checks being returned to it.

(h) *Notification to customer.* If the depository bank receives a returned check, notice of nonpayment, or notice of recovery under § 229.35(b), it shall send or give notice to its customer of the facts by midnight of the banking day following the banking day on which it received the returned check, notice of nonpayment, or notice of recovery, or within a longer reasonable time.

(i) *Depository bank without accounts.* The requirements of this section with respect to notices of nonpayment do not apply to checks deposited in a depository bank that does not maintain accounts.

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§ 229.34 Warranties.

(a) *Warranties.* Each paying bank or returning bank that transfers a returned check and receives a settlement or other consideration for it warrants to the transferee returning bank, to any subsequent returning bank, to the depository bank, and to the owner of the check, that—

(1) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned the check within its deadline under the U.C.C., Regulation J (12 CFR part 210), or § 229.30(c) of this part;

(2) It is authorized to return the check;

(3) The check has not been materially altered; and

(4) In the case of a notice in lieu of return, the original check has not and will not be returned.

These warranties are not made with respect to checks drawn on the Treasury of the United States, U.S. Postal Service money orders, or checks drawn on a state or a unit of general local government that are not payable through or at a bank.

(b) *Warranty of notice of nonpayment.* Each paying bank that gives a notice of nonpayment warrants to the transferee bank, to any subsequent transferee bank, to the depository bank, and to the owner of the check that—

(1) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned or will return the check within its deadline under the U.C.C., Regulation J (12 CFR part 210), or § 229.30(c) of this part;

(2) It is authorized to send the notice; and

(3) The check has not been materially altered.

These warranties are not made with respect to checks drawn on a state or a unit of general local government that are not payable through or at a bank.

(c) *Warranty of settlement amount, encoding, and offset.* (1) Each bank that presents one or more checks to a paying bank and in return receives a settlement or other consideration warrants to the paying bank that the total amount of the checks presented is

equal to the total amount of the settlement demanded by the presenting bank from the paying bank.

(2) Each bank that transfers one or more checks or returned checks to a collecting, returning, or depository bank and in return receives a settlement or other consideration warrants to the transferee bank that the accompanying information, if any, accurately indicates the total amount of the checks or returned checks transferred.

(3) Each bank that presents or transfers a check or returned check warrants to any bank that subsequently handles it that, at the time of presentation or transfer, the information encoded after issue in magnetic ink on the check or returned check is correct. For purposes of this paragraph, the information encoded after issue on the check or returned check includes any information placed in the MICR line of a substitute check that represents that check or returned check.

(4) If a bank settles with another bank for checks presented, or for returned checks for which it is the depository bank, in amount exceeding the total amount of the checks, the settling bank may set off the excess settlement amount against subsequent settlements for checks presented, or for returned checks for which it is the depository bank, that it receives from the other bank.

(d) *Transfer and presentment warranties with respect to a remotely created check.* (1) A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants to the transferee bank, any subsequent collecting bank, and the paying bank that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. For purposes of this paragraph (d)(1), “account” includes an account as defined in § 229.2(a) as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

(2) If a paying bank asserts a claim for breach of warranty under paragraph (d)(1) of this section, the warranting bank may defend by proving that the

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customer of the paying bank is precluded under U.C.C. 4-406, as applicable, from asserting against the paying bank the unauthorized issuance of the check.

(e) *Damages.* Damages for breach of these warranties shall not exceed the consideration received by the bank that presents or transfers a check or returned check, plus interest compensation and expenses related to the check or returned check, if any.

(f) *Tender of defense.* If a bank is sued for breach of a warranty under this section, it may give a prior bank in the collection or return chain written notice of the litigation, and the bank notified may then give similar notice to any other prior bank. If the notice states that the bank notified may come in and defend and that failure to do so will bind the bank notified in an action later brought by the bank giving the notice as to any determination of fact common to the two litigations, the bank notified is so bound unless after reasonable receipt of the notice the bank notified does come in and defend.

(g) *Notice of claim.* Unless a claimant gives notice of a claim for breach of warranty under this section to the bank that made the warranty within 30 days after the claimant has reason to know of the breach and the identity of the warranting bank, the warranting bank is discharged to the extent of any loss caused by the delay in giving notice of the claim.

[53 FR 19433, May 27, 1988, as amended by Reg. CC, 54 FR 13850, Apr. 6, 1989; 57 FR 46972, Oct. 14, 1992; 62 FR 13810, Mar. 24, 1997; 69 FR 47311, Aug. 4, 2004; 70 FR 71225, Nov. 28, 2005]

EFFECTIVE DATE NOTE: At 82 FR 27581, June 15, 2017, §229.34 was revised, effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 229.34 Warranties and indemnities.

(a) *Warranties with respect to electronic checks and electronic returned checks.* (1) Each bank that transfers or presents an electronic check or electronic returned check and receives a settlement or other consideration for it warrants that—

(i) The electronic image accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated and the electronic information includes an accurate record of all MICR line information re-

quired for a substitute check under §229.2(aaa) and the amount of the check, and

(ii) No person will receive a transfer, presentment, or return of, or otherwise be charged for an electronic check or electronic returned check, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid.

(2) Each bank that makes the warranties under paragraph (a)(1) of this section makes the warranties to—

(i) In the case of transfers for collection or presentment, the transferee bank, any subsequent collecting bank, the paying bank, and the drawer; and

(ii) In the case of transfers for return, the transferee returning bank, any subsequent returning bank, the depository bank, and the owner.

(b) *Transfer and presentment warranties with respect to a remotely created check.* (1) A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants to the transferee bank, any subsequent collecting bank, and the paying bank that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. For purposes of this paragraph (b)(1), “account” includes an account as defined in §229.2(a) as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

(2) If a paying bank asserts a claim for breach of warranty under paragraph (b)(1) of this section, the warranting bank may defend by proving that the customer of the paying bank is precluded under UCC 4-406, as applicable, from asserting against the paying bank the unauthorized issuance of the check.

(c) *Settlement amount, encoding, and offset warranties.* (1) Each bank that presents one or more checks to a paying bank and in return receives a settlement or other consideration warrants to the paying bank that the total amount of the checks presented is equal to the total amount of the settlement demanded by the presenting bank from the paying bank.

(2) Each bank that transfers one or more checks or returned checks to a collecting bank, returning bank, or depository bank and in return receives a settlement or other consideration warrants to the transferee bank that the accompanying information, if any, accurately indicates the total amount of the checks or returned checks transferred.

(3) Each bank that presents or transfers a check or returned check warrants to any bank that subsequently handles it that, at the time of presentment or transfer, the information encoded after issue regarding the check or returned check is accurate. For

purposes of this paragraph, the information encoded after issue regarding the check or returned check means any information that could be encoded in the MICR line of a paper check.

(4) If a bank settles with another bank for checks presented, or for returned checks for which it is the depository bank, in an amount exceeding the total amount of the checks, the settling bank may set off the excess settlement amount against subsequent settlements for checks presented, or for returned checks for which it is the depository bank, that it receives from the other bank.

(d) *Returned check warranties.* (1) Each paying bank or returning bank that transfers a returned check and receives a settlement or other consideration for it warrants to the transferee returning bank, to any subsequent returning bank, to the depository bank, and to the owner of the check, that—

(i) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned the check within its deadline under the UCC or § 229.31(g) of this part;

(ii) It is authorized to return the check;

(iii) The check has not been materially altered; and

(iv) In the case of a notice in lieu of return, the check has not and will not be returned.

(2) These warranties are not made with respect to checks drawn on the Treasury of the United States, U.S. Postal Service money orders, or checks drawn on a state or a unit of general local government that are not payable through or at a bank.

(e) *Notice of nonpayment warranties.* (1) Each paying bank that gives a notice of nonpayment warrants to the transferee bank, to any subsequent transferee bank, to the depository bank, and to the owner of the check that—

(i) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned or will return the check within its deadline under the UCC or § 229.31(g) of this part;

(ii) It is authorized to send the notice; and

(iii) The check has not been materially altered.

(2) These warranties are not made with respect to checks drawn on the Treasury of the United States, U.S. Postal Service money orders, or check drawn on a state or a unit of general local government that are not payable through or at a bank.

(f) *Remote deposit capture indemnity.* (1) The indemnity described in paragraph (f)(2) of this section is provided by a depository bank that—

(i) Is a truncating bank under § 229.2(eee)(2) because it accepts deposit of an electronic image or other electronic information related to an original check;

(ii) Does not receive the original check;

(iii) Receives settlement or other consideration for an electronic check or substitute check related to the original check; and

(iv) Does not receive a return of the check unpaid.

(2) A bank described in paragraph (f)(1) of this section shall indemnify, as set forth in § 229.34(i), a depository bank that accepts the original check for deposit for losses incurred by that depository bank if the loss is due to the check having already been paid.

(3) A depository bank may not make an indemnity claim under paragraph (f)(2) of this section if the original check it accepted for deposit bore a restrictive indorsement inconsistent with the means of deposit.

(g) *Indemnities with respect to electronically-created items.* Each bank that transfers or presents an electronically-created item and receives a settlement or other consideration for it shall indemnify, as set forth in § 229.34(i), each transferee bank, any subsequent collecting bank, the paying bank, and any subsequent returning bank against losses that result from the fact that—

(1) The electronic image or electronic information is not derived from a paper check;

(2) The person on whose account the electronically-created item is drawn did not authorize the issuance of the item in the amount stated on the item or to the payee stated on the item (for purposes of this paragraph (g)(2), “account” includes an account as defined in section 229.2(a) as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank); or

(3) A person receives a transfer, presentment, or return of, or otherwise is charged for an electronically-created item such that the person is asked to make payment based on an item or check it has already paid.

(h) *Damages.* Damages for breach of the warranties in this section shall not exceed the consideration received by the bank that presents or transfers a check or returned check, plus interest compensation and expenses related to the check or returned check, if any.

(i) *Indemnity amounts.* (1) The amount of the indemnity in paragraphs (f)(2) and (g) of this section shall not exceed the sum of—

(i) The amount of the loss of the indemnified bank, up to the amount of the settlement or other consideration received by the indemnifying bank; and

(ii) Interest and expenses of the indemnified bank (including costs and reasonable attorney’s fees and other expenses of representation).

(2)(i) If a loss described in paragraph (f)(2) or (g) of this section results in whole or in part from the indemnified bank’s negligence or failure to act in good faith, then the indemnity amount described in paragraph (i)(1) of this section shall be reduced in proportion

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to the amount of negligence or bad faith attributable to the indemnified bank.

(i) Nothing in this paragraph (i)(2) affects the rights of a person under the UCC or other applicable provision of state or federal law.

(j) *Tender of defense.* If a bank is sued for breach of a warranty or for indemnity under this section, it may give a prior bank in the collection or return chain written notice of the litigation, and the bank notified may then give similar notice to any other prior bank. If the notice states that the bank notified may come in and defend and that failure to do so will bind the bank notified in an action later brought by the bank giving the notice as to any determination of fact common to the two litigations, the bank notified is so bound unless after reasonable receipt of the notice the bank notified does come in and defend.

(k) *Notice of claim.* Unless a claimant gives notice of a claim for breach of warranty or for indemnity under this section to the bank that made the warranty or indemnification within 30 days after the claimant has reason to know of the breach or facts and circumstances giving rise to the indemnity and the identity of the warranting or indemnifying bank, the warranting or indemnifying bank is discharged to the extent of any loss caused by the delay in giving notice of the claim.

§ 229.35 Indorsements.

(a) *Indorsement standards.* A bank (other than a paying bank) that handles a check during forward collection or a returned check shall indorse the check in a manner that permits a person to interpret the indorsement, in accordance with the indorsement standard set forth in appendix D of this part.

(b) *Liability of bank handling check.* A bank that handles a check for forward collection or return is liable to any bank that subsequently handles the check to the extent that the subsequent bank does not receive payment for the check because of suspension of payments by another bank or otherwise. This paragraph applies whether or not a bank has placed its indorsement on the check. This liability is not affected by the failure of any bank to exercise ordinary care, but any bank failing to do so remains liable. A bank seeking recovery against a prior bank shall send notice to that prior bank reasonably promptly after it learns the facts entitling it to recover. A bank may recover from the bank with which it settled for the check by revoking the settlement, charging

back any credit given to an account, or obtaining a refund. A bank may have the rights of a holder with respect to each check it handles.

(c) *Indorsement by a bank.* After a check has been indorsed by a bank, only a bank may acquire the rights of a holder—

(1) Until the check has been returned to the person initiating collection; or

(2) Until the check has been specially indorsed by a bank to a person who is not a bank.

(d) *Indorsement for depositary bank.* A depositary bank may arrange with another bank to apply the other bank's indorsement as the depositary bank indorsement, provided that any indorsement of the depositary bank on the check avoids the area reserved for the depositary bank indorsement as specified in appendix D. The other bank indorsing as depositary bank is considered the depositary bank for purposes of subpart C of this part.

[53 FR 19433, May 27, 1988, as amended by Reg. CC, 55 FR 21855, May 30, 1990; 69 FR 47311, Aug. 4, 2004]

EFFECTIVE DATE NOTE: At 82 FR 27582, June 15, 2017, § 229.35 was amended by revising paragraphs (a) and (d), effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 229.35 Indorsements.

(a) *Indorsement standards.* A bank (other than a paying bank) that handles a check during forward collection or a returned check shall indorse the check in a manner that permits a person to interpret the indorsement, in accordance with American National Standard (ANS) Specifications for Physical Check Endorsements, X9.100-111 (ANS X9.100-111), for a paper check other than a substitute check; ANS Specifications for an Image Replacement Document, X9.100-140 (ANS X9.100-140), for a substitute check; and ANS Specifications for Electronic Exchange of Check and Image Data—Domestic, X9.100-187 (ANS X9.100-187), for an electronic check; unless the Board by rule or order determines that different standards apply or the parties otherwise agree.

* * * * *

(d) *Indorsement for depositary bank.* A depositary bank may arrange with another bank to apply the other bank's indorsement as the depositary bank indorsement, provided that any indorsement of the depositary bank on the check avoids the area reserved for the

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depository bank indorsement as specified in the indorsement standard applicable to the check under paragraph (a) of this section. The other bank indorsing as depository bank is considered the depository bank for purposes of subpart C of this part.

§ 229.36 Presentment and issuance of checks.

(a) *Payable through and payable at checks.* A check payable at or through a paying bank is considered to be drawn on that bank for purposes of the expeditious return and notice of non-payment requirements of this subpart.

(b) *Receipt at bank office or processing center.* A check is considered received by the paying bank when it is received:

(1) At a location to which delivery is requested by the paying bank;

(2) At an address of the bank associated with the routing number on the check, whether in magnetic ink or in fractional form;

(3) At any branch or head office, if the bank is identified on the check by name without address; or

(4) At a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address.

(c) [Reserved]

(d) *Liability of bank during forward collection.* Settlements between banks for the forward collection of a check are final when made; however, a collecting bank handling a check for forward collection may be liable to a prior collecting bank, including the depository bank, and the depository bank's customer.

(e) *Issuance of payable-through checks.*

(1) A bank that arranges for checks payable by it to be payable through another bank shall require that the following information be printed conspicuously on the face of each check:

(i) The name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable; and

(ii) The words "payable through" followed by the name of the payable-through bank.

(2) A bank is responsible for damages under § 229.38 to the extent that a check payable by it and not payable through another bank is labelled as provided in this section.

(f) *Same-day settlement.* (1) A check is considered presented, and a paying bank must settle for or return the check pursuant to paragraph (f)(2) of this section, if a presenting bank delivers the check in accordance with reasonable delivery requirements established by the paying bank and demands payment under this paragraph (f)—

(i) At a location designated by the paying bank for receipt of checks under this paragraph (f) that is in the check processing region consistent with the routing number encoded in magnetic ink on the check and at which the paying bank would be considered to have received the check under paragraph (b) of this section or, if no location is designated, at any location described in paragraph (b) of this section; and

(ii) By 8 a.m. on a business day (local time of the location described in paragraph (f)(1)(i) of this section).

A paying bank may require that checks presented for settlement pursuant to this paragraph (f)(1) be separated from other forward-collection checks or returned checks.

(2) If presentment of a check meets the requirements of paragraph (f)(1) of this section, the paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on the business day it receives the check, it either:

(i) Settles with the presenting bank for the amount of the check by credit to an account at a Federal Reserve Bank designated by the presenting bank; or

(ii) Returns the check.

(3) Notwithstanding paragraph (f)(2) of this section, if a paying bank closes on a business day and receives presentment of a check on that day in accordance with paragraph (f)(1) of this section, the paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on its next banking day, it either:

(i) Settles with the presenting bank for the amount of the check by credit to an account at a Federal Reserve Bank designated by the presenting bank; or

(ii) Returns the check.

If the closing is voluntary, unless the paying bank settles for or returns the

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check in accordance with paragraph (f)(2) of this section, it shall pay interest compensation to the presenting bank for each day after the business day on which the check was presented until the paying bank settles for the check, including the day of settlement.

[Reg. CC, 53 FR 19433, May 27, 1988, as amended by 54 FR 32047, Aug. 4, 1989; 55 FR 21855, May 30, 1990; 57 FR 46972, Oct. 14, 1992; 60 FR 51671, Oct. 3, 1995; 62 FR 13810, Mar. 24, 1997; 64 FR 59613, Nov. 3, 1999]

EFFECTIVE DATE NOTE: At 82 FR 27583, June 15, 2017, § 229.36 was revised, effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 229.36 Presentment and issuance of checks.

(a) *Receipt of electronic checks.* The terms under which a paying bank will accept presentment of an electronic check is governed by the paying bank's agreement with the presenting bank.

(b) *Receipt of paper checks.* (1) A paper check is considered received by the paying bank when it is received—

(i) At a location to which delivery is requested by the paying bank;

(ii) At an address of the bank associated with the routing number on the check, whether contained in the MICR line or in fractional form;

(iii) At a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address; or

(iv) At any branch or head office, if the bank is identified on the check by name without address.

(2) A bank may require that checks presented to it as a paying bank be separated from returned checks.

(c) *Liability of bank during forward collection.* Settlements between banks for the forward collection of a check are final when made; however, a collecting bank handling a check for forward collection may be liable to a prior collecting bank, including the depository bank, and the depository bank's customer.

(d) *Same-day settlement.* (1) A paper check is considered presented, and a paying bank must settle for or return the check pursuant to paragraph (d)(2) of this section, if a presenting bank delivers the check in accordance with reasonable delivery requirements established by the paying bank and demands payment under this paragraph (d)—

(i) At a location designated by the paying bank for receipt of paper checks under this paragraph (d) at which the paying bank would be considered to have received the paper check under paragraph (b) of this section or, if no location is designated, at any

location described in paragraph (b) of this section; and

(ii) By 8 a.m. on a business day (local time of the location described in paragraph (d)(1)(i) of this section).

(2) A paying bank may require that paper checks presented for settlement pursuant to paragraph (d)(1) of this section be separated from other forward-collection checks or returned checks.

(3) If presentment of a paper check meets the requirements of paragraph (d)(1) of this section, the paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on the business day it receives the check, it either—

(i) Settles with the presenting bank for the amount of the check by credit to an account at a Federal Reserve Bank designated by the presenting bank; or

(ii) Returns the check.

(4) Notwithstanding paragraph (d)(3) of this section, if a paying bank closes on a business day and receives presentment of a paper check on that day in accordance with paragraph (d)(1) of this section—

(i) The paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on its next banking day, it either—

(A) Settles with the presenting bank for the amount of the check by credit to an account at a Federal Reserve Bank designated by the presenting bank; or

(B) Returns the check.

(ii) If the closing is voluntary, unless the paying bank settles for or returns the check in accordance with paragraph (d)(3) of this section, it shall pay interest compensation to the presenting bank for each day after the business day on which the check was presented until the paying bank settles for the check, including the day of settlement.

§ 229.37 Variation by agreement.

The effect of the provisions of subpart C may be varied by agreement, except that no agreement can disclaim the responsibility of a bank for its own lack of good faith or failure to exercise ordinary care, or can limit the measure of damages for such lack or failure; but the parties may determine by agreement the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

§ 229.38 Liability.

(a) *Standard of care; liability; measure of damages.* A bank shall exercise ordinary care and act in good faith in complying with the requirements of this subpart. A bank that fails to exercise

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ordinary care or act in good faith under this subpart may be liable to the depository bank, the depository bank's customer, the owner of a check, or another party to the check. The measure of damages for failure to exercise ordinary care is the amount of the loss incurred, up to the amount of the check, reduced by the amount of the loss that party would have incurred even if the bank had exercised ordinary care. A bank that fails to act in good faith under this subpart may be liable for other damages, if any, suffered by the party as a proximate consequence. Subject to a bank's duty to exercise ordinary care or act in good faith in choosing the means of return or notice of nonpayment, the bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person, or for loss or destruction of a check or notice of nonpayment in transit or in the possession of others. This section does not affect a paying bank's liability to its customer under the U.C.C. or other law.

(b) *Paying bank's failure to make timely return.* If a paying bank fails both to comply with § 229.30(a) and to comply with the deadline for return under the U.C.C., Regulation J (12 CFR part 210), or § 229.30(c) in connection with a single nonpayment of a check, the paying bank shall be liable under either § 229.30(a) or such other provision, but not both.

(c) *Comparative negligence.* If a person, including a bank, fails to exercise ordinary care or act in good faith under this subpart in indorsing a check (§ 229.35), accepting a returned check or notice of nonpayment (§§ 229.32(a) and 229.33(c)), or otherwise, the damages incurred by that person under § 229.38(a) shall be diminished in proportion to the amount of negligence or bad faith attributable to that person.

(d) *Responsibility for certain aspects of checks*—(1) A paying bank, or in the case of a check payable through the paying bank and payable by another bank, the bank by which the check is payable, is responsible for damages under paragraph (a) of this section to the extent that the condition of the check when issued by it or its customer adversely affects the ability of a bank to indorse the check legibly in accord-

ance with § 229.35. A depository bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a check arising after the issuance of the check and prior to acceptance of the check by it adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. A re-converting bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a substitute check transferred, presented, or returned by it—

(i) Adversely affects the ability of a subsequent bank to indorse the check legibly in accordance with § 229.35; or

(ii) Causes an indorsement that previously was applied in accordance with § 229.35 to become illegible.

NOTE: Responsibility under this paragraph (d) shall be treated as negligence of the paying bank, depository bank, or re-converting bank for purposes of paragraph (c) of this section.

(2) *Responsibility for payable through checks.* In the case of a check that is payable by a bank and payable through a paying bank located in a different check processing region than the bank by which the check is payable, the bank by which the check is payable is responsible for damages under paragraph (a) of this section, to the extent that the check is not returned to the depository bank through the payable through bank as quickly as the check would have been required to be returned under § 229.30(a) had the bank by which the check is payable—

(i) Received the check as paying bank on the day the payable through bank received the check; and

(ii) Returned the check as paying bank in accordance with § 229.30(a)(1).

Responsibility under this paragraph shall be treated as negligence of the bank by which the check is payable for purposes of paragraph (c) of this section.

(e) *Timeliness of action.* If a bank is delayed in acting beyond the time limits set forth in this subpart because of interruption of communication or computer facilities, suspension of payments by a bank, war, emergency conditions, failure of equipment, or other circumstances beyond its control, its

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time for acting is extended for the time necessary to complete the action, if it exercises such diligence as the circumstances require.

(f) Exclusion. Section 229.21 of this part and section 611 (a), (b), and (c) of the EFA Act (12 U.S.C. 4010 (a), (b), and (c)) do not apply to this subpart.

(g) Jurisdiction. Any action under this subpart may be brought in any United States district court, or in any other court of competent jurisdiction, and shall be brought within one year after the date of the occurrence of the violation involved.

(h) Reliance on Board rulings. No provision of this subpart imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, regardless of whether the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason after the act or omission has occurred.

[53 FR 19433, May 27, 1988, as amended by Reg. CC, 54 FR 13850, Apr. 6, 1989; 54 FR 32047, Aug. 4, 1989; 69 FR 47311, Aug. 4, 2004]

EFFECTIVE DATE NOTE: At 82 FR 27583, June 15, 2017, §229.38 was amended by revising paragraphs (b), (c) and (d), effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

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* * * * *

(b) Paying bank's failure to make timely return. If a paying bank fails both to comply with its expeditious return requirements under § 229.31(b) and with the deadline for return under the UCC, Regulation J (12 CFR part 210), or the extension of deadline under § 229.31(g) in connection with a single nonpayment of a check, the paying bank shall be liable under either § 229.31(b) or such other provision, but not both.

(c) Comparative negligence. If a person, including a bank, fails to exercise ordinary care or act in good faith under this subpart in indorsing a check (§ 229.35), accepting a returned check or notice of nonpayment (§ 229.33(b), (c), and (d)), or otherwise, the damages incurred by that person under § 229.38(a) shall be diminished in proportion to the amount of negligence or bad faith attributable to that person.

(d) Responsibility for certain aspects of checks. (1) A paying bank, or in the case of a check payable through the paying bank and payable by another bank, the bank by which

the check is payable, is responsible for damages under paragraph (a) of this section to the extent that the condition of the check when issued by it or its customer adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. A depository bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a check arising after the issuance of the check and prior to acceptance of the check by it adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. A reconverting bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a substitute check transferred, presented, or returned by it—

(i) Adversely affects the ability of a subsequent bank to indorse the check legibly in accordance with § 229.35; or

(ii) Causes an indorsement that previously was applied in accordance with § 229.35 to become illegible.

(2) Responsibility under this paragraph (d) shall be treated as negligence of the paying bank, depository bank, or reconverting bank for purposes of paragraph (c) of this section.

* * * * *

§ 229.39 Insolvency of bank.

(a) Duty of receiver. A check or returned check in, or coming into, the possession of a paying, collecting, depository, or returning bank that suspends payment, and which is not paid, shall be returned by the receiver, trustee, or agent in charge of the closed bank to the bank or customer that transferred the check to the closed bank.

(b) Preference against paying or depository bank. If a paying bank finally pays a check, or if a depository bank becomes obligated to pay a returned check, and suspends payment without making a settlement for the check or returned check with the prior bank that is or becomes final, the prior bank has a preferred claim against the paying bank or the depository bank.

(c) Preference against collecting, paying, or returning bank. If a collecting, paying, or returning bank receives settlement from a subsequent bank for a check or returned check, which settlement is or becomes final, and suspends payments without making a settlement for the check with the prior bank, which is or becomes final, the prior bank has a preferred claim

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against the collecting or returning bank.

(d) *Preference against presenting bank.* If a paying bank settles with a presenting bank for one or more checks, and if the presenting bank breaches a warranty specified in § 229.34(c) (1) or (3) with respect to those checks and suspends payments before satisfying the paying bank's warranty claim, the paying bank has a preferred claim against the presenting bank for the amount of the warranty claim.

(e) *Finality of settlement.* If a paying or depository bank gives, or a collecting, paying, or returning bank gives or receives, a settlement for a check or returned check and thereafter suspends payment, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of a certain time or the happening of certain events.

[Reg. CC, 53 FR 19433, May 27, 1988, as amended at 57 FR 46973, Oct. 14, 1992; Reg. CC, 62 FR 13810, Mar. 24, 1997]

EFFECTIVE DATE NOTE: At 82 FR 27583, June 15, 2017, § 229.39 was revised, effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 229.39 Insolvency of bank.

(a) *Duty of receiver to return unpaid checks.* A check or returned check in, or coming into, the possession of a paying bank, collecting bank, depository bank, or returning bank that suspends payment, and which is not paid, shall be returned by the receiver, trustee, or agent in charge of the closed bank to the bank or customer that transferred the check to the closed bank.

(b) *Claims against banks for checks not returned by receiver.* If a check or returned check is not returned by the receiver, trustee, or agent in charge of the closed bank under paragraph (a) of this section, a bank shall have claims with respect to the check or returned check as follows:

(1) If the paying bank has finally paid the check, or if a depository bank is obligated to pay the returned check, and suspends payment without making a settlement for the check or returned check with the prior bank that is or becomes final, the prior bank has a claim against the paying bank or the depository bank.

(2) If a collecting bank, paying bank, or returning bank receives settlement from a subsequent bank for a check or returned check, which settlement is or becomes final, and suspends payments without making a settlement for the check with the prior bank,

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which is or becomes final, the prior bank has a claim against the collecting bank or returning bank.

(c) *Preferred claim against presenting bank for breach of warranty.* If a paying bank settles with a presenting bank for one or more checks, and if the presenting bank breaches a warranty specified in § 229.34(c)(1) or (3) with respect to those checks and suspends payments before satisfying the paying bank's warranty claim, the paying bank has a preferred claim against the presenting bank for the amount of the warranty claim.

(d) *Finality of settlement.* If a paying bank or depository bank gives, or a collecting bank, paying bank, or returning bank gives or receives, a settlement for a check or returned check and thereafter suspends payment, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of a certain time or the happening of certain events.

§ 229.40 Effect of merger transaction.

(a) *In general.* For purposes of this subpart, two or more banks that have engaged in a merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

(b) *Merger transactions on or after July 1, 1998, and before March 1, 2000.* If banks have consummated a merger transaction on or after July 1, 1998, and before March 1, 2000, the merged banks may be considered separate banks until March 1, 2001.

[Reg. CC, 53 FR 19433, May 27, 1988, as amended at 64 FR 14577, Mar. 26, 1999]

EFFECTIVE DATE NOTE: At 82 FR 27584, June 15, 2017, § 229.40 was revised, effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 229.40 Effect of merger transaction.

For purposes of this subpart, two or more banks that have engaged in a merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

§ 229.41 Relation to State law.

The provisions of this subpart supersede any inconsistent provisions of the U.C.C. as adopted in any state, or of any other state law, but only to the extent of the inconsistency.

§ 229.42 Exclusions.

The expeditious-return (§§ 229.30(a) and 229.31(a)), notice-of-nonpayment

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(§ 229.33), and same-day settlement (§ 229.36(f)) requirements of this subpart do not apply to a check drawn upon the United States Treasury, to a U.S. Postal Service money order, or to a check drawn on a state or a unit of general local government that is not payable through or at a bank.

[Reg. CC, 62 FR 13810, Mar. 24, 1997]

EFFECTIVE DATE NOTE: At 82 FR 27584, June 15, 2017, § 229.42 was revised, effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 229.42 Exclusions.

The expeditious return (§§ 229.31(b) and 229.32(b)), notice of nonpayment (§ 229.31(c)), and same-day settlement (§ 229.36(d)) requirements of this subpart do not apply to a check drawn upon the United States Treasury, to a U.S. Postal Service money order, or to a check drawn on a state or a unit of general local government that is not payable through or at a bank.

§ 229.43 Checks payable in Guam, American Samoa, and the Northern Mariana Islands.

(a) *Definitions.* The definitions in § 229.2 apply to this section, unless otherwise noted. In addition, for the purposes of this section—

(1) *Pacific island bank* means an office of an institution that would be a bank as defined in § 229.2(e) but for the fact that the office is located in Guam, American Samoa, or the Northern Mariana Islands;

(2) *Pacific island check* means a demand draft drawn on or payable through or at a Pacific island bank, which is not a check as defined in § 229.2(k).

(b) *Rules applicable to Pacific island checks.* To the extent a bank handles a Pacific island check as if it were a check defined in § 229.2(k), the bank is subject to the following sections of this part (and the word “check” in each such section is construed to include a Pacific island check)—

(1) § 229.31, except that the returning bank is not subject to the requirement to return a Pacific island check in an expeditious manner;

(2) § 229.32;

(3) § 229.34(c)(2), (c)(3), (d), (e), and (f);

(4) § 229.35; for purposes of § 229.35(c), the Pacific island bank is deemed to be a bank;

(5) § 229.36(d);

(6) § 229.37;

(7) § 229.38(a) and (c) through (h);

(8) § 229.39(a), (b), (c) and (e); and

(9) §§ 229.40 through 229.42.

[Reg. CC, 62 FR 13810, Mar. 24, 1997, as amended at 70 FR 71225, Nov. 28, 2005]

EFFECTIVE DATE NOTE: At 82 FR 27584, June 15, 2017, § 229.43 was amended by revising paragraphs (a)(2) and (b), effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 229.43 Checks payable in Guam, American Samoa, and the Northern Mariana Islands.

(a) * * *

(2) *Pacific island check* means—

(i) A demand draft drawn on or payable through or at a Pacific island bank, which is not a check as defined in § 229.2(k); and

(ii) An electronic image of, and electronic information derived from, a demand draft or returned demand draft drawn on or payable through or at a Pacific island bank that—

(A) Is sent to a receiving bank pursuant to an agreement between the sender and the receiving bank; and

(B) Conforms with ANS X9.100–187, unless the Board by rule or order determines that a different standard applies or the parties otherwise agree.

(b) *Rules applicable to Pacific island checks.* To the extent a bank handles a Pacific island check as if it were a check defined in § 229.2(k) or an electronic check defined in § 229.2(ggg), the bank is subject to the following sections of this part (and the word “check” in each such section is construed to include a Pacific island check)—

(1) Section 229.30(a) (Checks under this subpart), and (b) (Writings);

(2) Section 229.32 (Returning bank’s responsibilities for return of checks) except that the returning bank is not subject to the requirement to return a Pacific Island check in an expeditious manner;

(3) Section 229.33(b) (Acceptance of electronic returned checks and electronic notices of nonpayment), (c) (Acceptance of paper returned checks and paper notices of nonpayment), § 229.33(d) (Acceptances of oral notices of nonpayment), § 229.33(e) (Payment), § 229.33(f) (Misrouted returned checks and written notices of nonpayment), § 229.33(g) (Charges);

(4) Section 229.34(a) (Warranties with respect to electronic checks and electronic returned checks), § 229.34(b) (Transfer and presentment warranties with respect to a remotely-created check), § 229.34(c)(2) (Cash letter total warranty), § 229.34(c)(3) (Encoding warranty), § 229.34(f) (Remote deposit capture warranty), § 229.34(g) (Indemnities with respect to electronically-created items),

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§ 229.34(h) (Damages), § 229.34(i) (Indemnity amounts), and § 229.34(j) (Tender of defense);

(5) Section 229.35 (Indorsements); for purposes of § 229.35(c) (Indorsement by a bank), the Pacific island bank is deemed to be a bank;

(6) Section 229.36(c) (Liability of bank during forward collection);

(7) Section 229.37 (Variation by agreement);

(8) Section 229.38 (Liability), except for § 229.38(b) (Paying bank’s failure to make timely return);

(9) Section 229.39 (Insolvency of bank), except for § 229.39(c) (Preferred claim against presenting bank for breach of warranty); and

(10) Section 229.40 (Effect of merger transaction), § 229.41 (Relation to state law) and § 229.42 (Exclusions).

Subpart D—Substitute Checks

AUTHORITY: 12 U.S.C. 5001–5018.

SOURCE: 69 FR 47311, Aug. 4, 2004, unless otherwise noted.

§ 229.51 General provisions governing substitute checks.

(a) Legal equivalence. A substitute check for which a bank has provided the warranties described in § 229.52 is the legal equivalent of an original check for all persons and all purposes, including any provision of federal or state law, if the substitute check—

(1) Accurately represents all of the information on the front and back of the original check as of the time the original check was truncated; and

(2) Bears the legend, “This is a legal copy of your check. You can use it the same way you would use the original check.”

(b) Reconverting bank duties. A bank shall ensure that a substitute check for which it is the reconverting bank—

(1) Bears all indorsements applied by parties that previously handled the check in any form (including the original check, a substitute check, or another paper or electronic representation of such original check or substitute check) for forward collection or return;

(2) Identifies the reconverting bank in a manner that preserves any previous reconverting bank identifications, in accordance with ANS X9.100–140 and appendix D of this part; and

(3) Identifies the bank that truncated the original check, in accordance with

ANS X9.100–140 and appendix D of this part.

(c) Applicable law. A substitute check that is the legal equivalent of an original check under paragraph (a) of this section shall be subject to any provision, including any provision relating to the protection of customers, of this part, the U.C.C., and any other applicable federal or state law as if such substitute check were the original check, to the extent such provision of law is not inconsistent with the Check 21 Act or this subpart.

EFFECTIVE DATE NOTE: At 82 FR 27584, June 15, 2017, § 229.51 was amended by revising paragraphs (b)(2) and (3), effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

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* * * * *

(b) * * *

(2) Identifies the reconverting bank in a manner that preserves any previous reconverting-bank identifications, in accordance with ANS X9.100–140; and

(3) Identifies the bank that truncated the original check, in accordance with ANS X9.100–140.

* * * * *

§ 229.52 Substitute check warranties.

(a) Content and provision of substitute check warranties. A bank that transfers, presents, or returns a substitute check (or a paper or electronic representation of a substitute check) for which it receives consideration warrants to the parties listed in paragraph (b) of this section that—

(1) The substitute check meets the requirements for legal equivalence described in § 229.51(a)(1)–(2); and

(2) No depositary bank, drawee, drawer, or indorser will receive presentment or return of, or otherwise be charged for, the substitute check, the original check, or a paper or electronic representation of the substitute check or original check such that that person will be asked to make a payment based on a check that it already has paid.

(b) Warranty recipients. A bank makes the warranties described in paragraph (a) of this section to the person to which the bank transfers, presents, or

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returns the substitute check or a paper or electronic representation of such substitute check and to any subsequent recipient, which could include a collecting or returning bank, the depository bank, the drawer, the drawee, the payee, the depositor, and any indorser. These parties receive the warranties regardless of whether they received the substitute check or a paper or electronic representation of a substitute check.

EFFECTIVE DATE NOTE: At 82 FR 27584, June 15, 2017, §229.52 was amended by revising paragraph (a), effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 229.52 Substitute check warranties.

(a) Content and provision of substitute-check warranties. (1) A bank that transfers, presents, or returns a substitute check (or a paper or electronic representation of a substitute check) for which it receives consideration warrants to the parties listed in paragraph (b) of this section that—

(i) The substitute check meets the requirements for legal equivalence described in § 229.51(a)(1) and (2); and

(ii) No depository bank, drawee, drawer, or indorser will receive presentment or return of, or otherwise be charged for, the substitute check, the original check, or a paper or electronic representation of the substitute check or original check such that that person will be asked to make a payment based on a check that it already has paid.

(2) A bank that rejects a check submitted for deposit and returns to its customer a substitute check (or a paper or electronic representation of a substitute check) makes the warranties in paragraph (a)(1) of this section regardless of whether the bank received consideration.

* * * * *

§ 229.53 Substitute check indemnity.

(a) *Scope of indemnity.* A bank that transfers, presents, or returns a substitute check or a paper or electronic representation of a substitute check for which it receives consideration shall indemnify the recipient and any subsequent recipient (including a collecting or returning bank, the depository bank, the drawer, the drawee, the payee, the depositor, and any indorser) for any loss incurred by any recipient of a substitute check if that loss occurred due to the receipt of a sub-

stitute check instead of the original check.

(b) *Indemnity amount—(1) In general.* Unless otherwise indicated by paragraph (b)(2) or (b)(3) of this section, the amount of the indemnity under paragraph (a) of this section is as follows:

(i) If the loss resulted from a breach of a substitute check warranty provided under §229.52, the amount of the indemnity shall be the amount of any loss (including interest, costs, reasonable attorney’s fees, and other expenses of representation) proximately caused by the warranty breach.

(ii) If the loss did not result from a breach of a substitute check warranty provided under §229.52, the amount of the indemnity shall be the sum of—

(A) The amount of the loss, up to the amount of the substitute check; and

(B) Interest and expenses (including costs and reasonable attorney’s fees and other expenses of representation) related to the substitute check.

(2) *Comparative negligence.* (i) If a loss described in paragraph (a) of this section results in whole or in part from the indemnified person’s negligence or failure to act in good faith, then the indemnity amount described in paragraph (b)(1) of this section shall be reduced in proportion to the amount of negligence or bad faith attributable to the indemnified person.

(ii) Nothing in this paragraph (b)(2) reduces the rights of a consumer or any other person under the U.C.C. or other applicable provision of state or federal law.

(3) *Effect of producing the original check or a sufficient copy—*

(i) If an indemnifying bank produces the original check or a sufficient copy, the indemnifying bank shall—

(A) Be liable under this section only for losses that are incurred up to the time that the bank provides that original check or sufficient copy to the indemnified person; and

(B) Have a right to the return of any funds it has paid under this section in excess of those losses.

(ii) The production by the indemnifying bank of the original check or a sufficient copy under paragraph (b)(3)(i) of this section shall not absolve the indemnifying bank from any liability under any warranty that the

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bank has provided under § 229.52 or other applicable law.

(c) *Subrogation of rights*—(1) *In general.* An indemnifying bank shall be subrogated to the rights of the person that it indemnifies to the extent of the indemnity it has provided and may attempt to recover from another person based on a warranty or other claim.

(2) *Duty of indemnified person for subrogated claims.* Each indemnified person shall have a duty to comply with all reasonable requests for assistance from an indemnifying bank in connection with any claim the indemnifying bank brings against a warrantor or other person related to a check that forms the basis for the indemnification.

EFFECTIVE DATE NOTE: At 82 FR 27585, June 15, 2017, § 229.53 was amended by revising paragraph (a), effective July 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 229.53 Substitute check indemnity.

(a) *Scope of indemnity.* (1) A bank that transfers, presents, or returns a substitute check or a paper or electronic representation of a substitute check for which it receives consideration shall indemnify the recipient and any subsequent recipient (including a collecting or returning bank, the depository bank, the drawer, the drawee, the payee, the depositor, and any indorser) for any loss incurred by any recipient of a substitute check if that loss occurred due to the receipt of a substitute check instead of the original check.

(2) A bank that rejects a check submitted for deposit and returns to its customer a substitute check (or a paper or electronic representation of a substitute check) shall indemnify the recipient as described in paragraph (a)(1) of this section regardless of whether the bank received consideration.

* * * * *

§ 229.54 Expedited recredit for consumers.

(a) *Circumstances giving rise to a claim.* A consumer may make a claim under this section for a recredit with respect to a substitute check if the consumer asserts in good faith that—

(1) The bank holding the consumer's account charged that account for a substitute check that was provided to the consumer (although the consumer need not be in possession of that sub-

stitute check at the time he or she submits a claim);

(2) The substitute check was not properly charged to the consumer account or the consumer has a warranty claim with respect to the substitute check;

(3) The consumer suffered a resulting loss; and

(4) Production of the original check or a sufficient copy is necessary to determine whether or not the substitute check in fact was improperly charged or whether the consumer's warranty claim is valid.

(b) *Procedures for making claims.* A consumer shall make his or her claim for a recredit under this section with the bank that holds the consumer's account in accordance with the timing, content, and form requirements of this section.

(1) *Timing of claim.* (i) The consumer shall submit his or her claim such that the bank receives the claim by the end of the 40th calendar day after the later of the calendar day on which the bank mailed or delivered, by a means agreed to by the consumer—

(A) The periodic account statement that contains information concerning the transaction giving rise to the claim; or

(B) The substitute check giving rise to the claim.

(ii) If the consumer cannot submit his or her claim by the time specified in paragraph (b)(1)(i) of this section because of extenuating circumstances, the bank shall extend the 40-calendar-day period by an additional reasonable amount of time.

(iii) If a consumer makes a claim orally and the bank requires the claim to be in writing, the consumer's claim is timely if the oral claim was received within the time described in paragraphs (b)(1)(i)–(ii) of this section and the written claim was received within the time described in paragraph (b)(3)(ii) of this section.

(2) *Content of claim.* (i) The consumer's claim shall include the following information:

(A) A description of the consumer's claim, including the reason why the consumer believes his or her account was improperly charged for the substitute check or the nature of his or

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her warranty claim with respect to such check;

(B) A statement that the consumer suffered a loss and an estimate of the amount of that loss;

(C) The reason why production of the original check or a sufficient copy is necessary to determine whether or not the charge to the consumer's account was proper or the consumer's warranty claim is valid; and

(D) Sufficient information to allow the bank to identify the substitute check and investigate the claim.

(ii) If a consumer attempts to make a claim but fails to provide all the information in paragraph (b)(2)(i) of this section that is required to constitute a claim, the bank shall inform the consumer that the claim is not complete and identify the information that is missing.

(3) *Form and submission of claim; computation of time for bank action.* The bank holding the account that is the subject of the consumer's claim may, in its discretion, require the consumer to submit the information required by this section in writing. A bank that requires a written submission—

(i) May permit the consumer to submit the written claim electronically;

(ii) Shall inform a consumer who submits a claim orally of the written claim requirement at the time of the oral claim and may require such consumer to submit the written claim such that the bank receives the written claim by the 10th business day after the banking day on which the bank received the oral claim; and

(iii) Shall compute the time periods for acting on the consumer's claim described in paragraph (c) of this section from the date on which the bank received the written claim.

(c) *Action on claims.* A bank that receives a claim that meets the requirements of paragraph (b) of this section shall act as follows:

(1) *Valid consumer claim.* If the bank determines that the consumer's claim is valid, the bank shall—

(i) Recredit the consumer's account for the amount of the consumer's loss, up to the amount of the substitute check, plus interest if the account is an interest-bearing account, no later than the end of the business day after the

banking day on which the bank makes that determination; and

(ii) Send to the consumer the notice required by paragraph (e)(1) of this section.

(2) *Invalid consumer claim.* If a bank determines that the consumer's claim is not valid, the bank shall send to the consumer the notice described in paragraph (e)(2) of this section.

(3) *Recredit pending investigation.* If the bank has not taken an action described in paragraph (c)(1) or (c)(2) of this section before the end of the 10th business day after the banking day on which the bank received the claim, the bank shall—

(i) By the end of that business day—

(A) Recredit the consumer's account for the amount of the consumer's loss, up to the lesser of the amount of the substitute check or \$2,500, plus interest on that amount if the account is an interest-bearing account; and

(B) Send to the consumer the notice required by paragraph (e)(1) of this section; and

(ii) Recredit the consumer's account for the remaining amount of the consumer's loss, if any, up to the amount of the substitute check, plus interest if the account is an interest-bearing account, no later than the end of the 45th calendar day after the banking day on which the bank received the claim and send to the consumer the notice required by paragraph (e)(1) of this section, unless the bank prior to that time has determined that the consumer's claim is or is not valid in accordance with paragraph (c)(1) or (c)(2) of this section.

(4) *Reversal of recredit.* A bank may reverse a recredit that it has made to a consumer account under paragraph (c)(1) or (c)(3) of this section, plus interest that the bank has paid, if any, on that amount, if the bank—

(i) Determines that the consumer's claim was not valid; and

(ii) Notifies the consumer in accordance with paragraph (e)(3) of this section.

(d) *Availability of recredit—*(1) *Next-day availability.* Except as provided in paragraph (d)(2) of this section, a bank shall make any amount that it recredits to a consumer account under this section available for withdrawal

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no later than the start of the business day after the banking day on which the bank provides the recredit.

(2) *Safeguard exceptions.* A bank may delay availability to a consumer of a recredit provided under paragraph (c)(3)(i) of this section until the start of the earlier of the business day after the banking day on which the bank determines the consumer's claim is valid or the 45th calendar day after the banking day on which the bank received the oral or written claim, as required by paragraph (b) of this section, if—

(i) The consumer submits the claim during the 30-calendar-day period beginning on the banking day on which the consumer account was established;

(ii) Without regard to the charge that gave rise to the recredit claim—

(A) On six or more business days during the six-month period ending on the calendar day on which the consumer submitted the claim, the balance in the consumer account was negative or would have become negative if checks or other charges to the account had been paid; or

(B) On two or more business days during such six-month period, the balance in the consumer account was negative or would have become negative in the amount of \$5,000 or more if checks or other charges to the account had been paid; or

(iii) The bank has reasonable cause to believe that the claim is fraudulent, based on facts that would cause a well-grounded belief in the mind of a reasonable person that the claim is fraudulent. The fact that the check in question or the consumer is of a particular class may not be the basis for invoking this exception.

(3) *Overdraft fees.* A bank that delays availability as permitted in paragraph (d)(2) of this section may not impose an overdraft fee with respect to drafts drawn by the consumer on such recredited funds until the fifth calendar day after the calendar day on which the bank sent the notice required by paragraph (e)(1) of this section.

(e) *Notices relating to consumer expedited recredit claims—*(1) *Notice of recredit.* A bank that recredits a consumer account under paragraph (c) of this section shall send notice to the consumer of the recredit no later than

the business day after the banking day on which the bank recredits the consumer account. This notice shall describe—

(i) The amount of the recredit; and

(ii) The date on which the recredited funds will be available for withdrawal.

(2) *Notice that the consumer's claim is not valid.* If a bank determines that a substitute check for which a consumer made a claim under this section was in fact properly charged to the consumer account or that the consumer's warranty claim for that substitute check was not valid, the bank shall send notice to the consumer no later than the business day after the banking day on which the bank makes that determination. This notice shall—

(i) Include the original check or a sufficient copy, except as provided in § 229.58;

(ii) Demonstrate to the consumer that the substitute check was properly charged or the consumer's warranty claim is not valid; and

(iii) Include the information or documents (in addition to the original check or sufficient copy), if any, on which the bank relied in making its determination or a statement that the consumer may request copies of such information or documents.

(3) *Notice of a reversal of recredit.* A bank that reverses an amount it previously recredited to a consumer account shall send notice to the consumer no later than the business day after the banking day on which the bank made the reversal. This notice shall include the information listed in paragraph (e)(2) of this section and also describe—

(i) The amount of the reversal, including both the amount of the recredit (including the interest component, if any) and the amount of interest paid on the recredited amount, if any, being reversed; and

(ii) The date on which the bank made the reversal.

(f) *Other claims not affected.* Providing a recredit in accordance with this section shall not absolve the bank from liability for a claim made under any other provision of law, such as a claim for wrongful dishonor of a check under the U.C.C., or from liability for additional damages, such as damages under

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§ 229.53 or § 229.56 of this subpart or U.C.C. 4-402.

§ 229.55 Expedited recredit for banks.

(a) *Circumstances giving rise to a claim.* A bank that has an indemnity claim under § 229.53 with respect to a substitute check may make an expedited recredit claim against an indemnifying bank if—

(1) The claimant bank or a bank that the claimant bank has indemnified—

(i) Has received a claim for expedited recredit from a consumer under § 229.54; or

(ii) Would have been subject to such a claim if the consumer account had been charged for the substitute check;

(2) The claimant bank is obligated to provide an expedited recredit with respect to such substitute check under § 229.54 or otherwise has suffered a resulting loss; and

(3) The production of the original check or a sufficient copy is necessary to determine the validity of the charge to the consumer account or the validity of any warranty claim connected with such substitute check.

(b) *Procedures for making claims.* A claimant bank shall send its claim to the indemnifying bank, subject to the timing, content, and form requirements of this section.

(1) *Timing of claim.* The claimant bank shall submit its claim such that the indemnifying bank receives the claim by the end of the 120th calendar day after the date of the transaction that gave rise to the claim.

(2) *Content of claim.* The claimant bank's claim shall include the following information—

(i) A description of the consumer's claim or the warranty claim related to the substitute check, including why the bank believes that the substitute check may not be properly charged to the consumer account;

(ii) A statement that the claimant bank is obligated to recredit a consumer account under § 229.54 or otherwise has suffered a loss and an estimate of the amount of that recredit or loss, including interest if applicable;

(iii) The reason why production of the original check or a sufficient copy is necessary to determine the validity

of the charge to the consumer account or the warranty claim; and

(iv) Sufficient information to allow the indemnifying bank to identify the substitute check and investigate the claim.

(3) *Requirements relating to copies of substitute checks.* If the information submitted by a claimant bank under paragraph (b)(2) of this section includes a copy of any substitute check, the claimant bank shall take reasonable steps to ensure that the copy cannot be mistaken for the legal equivalent of the check under § 229.51(a) or sent or handled by any bank, including the indemnifying bank, for forward collection or return.

(4) *Form and submission of claim; computation of time.* The indemnifying bank may, in its discretion, require the claimant bank to submit the information required by this section in writing, including a copy of the paper or electronic claim submitted by the consumer, if any. An indemnifying bank that requires a written submission—

(i) May permit the claimant bank to submit the written claim electronically;

(ii) Shall inform a claimant bank that submits a claim orally of the written claim requirement at the time of the oral claim; and

(iii) Shall compute the 10-day time period for acting on the claim described in paragraph (c) of this section from the date on which the bank received the written claim.

(c) *Action on claims.* No later than the 10th business day after the banking day on which the indemnifying bank receives a claim that meets the requirements of paragraph (b) of this section, the indemnifying bank shall—

(1) Recredit the claimant bank for the amount of the claim, up to the amount of the substitute check, plus interest if applicable;

(2) Provide to the claimant bank the original check or a sufficient copy; or

(3) Provide information to the claimant bank regarding why the indemnifying bank is not obligated to comply with paragraph (c)(1) or (c)(2) of this section.

(d) *Recredit does not abrogate other liabilities.* Providing a recredit to a claimant bank under this section does

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not absolve the indemnifying bank from liability for claims brought under any other law or from additional damages under § 229.53 or § 229.56.

(e) *Indemnifying bank's right to a refund.* (1) If a claimant bank reverses a recredit it previously made to a consumer account under § 229.54 or otherwise receives reimbursement for a substitute check that formed the basis of its claim under this section, the claimant bank shall provide a refund promptly to any indemnifying bank that previously advanced funds to the claimant bank. The amount of the refund to the indemnifying bank shall be the amount of the reversal or reimbursement obtained by the claimant bank, up to the amount previously advanced by the indemnifying bank.

(2) If the indemnifying bank provides the claimant bank with the original check or a sufficient copy under paragraph (c)(2) of this section, § 229.53(b)(3) governs the indemnifying bank's entitlement to repayment of any amount provided to the claimant bank that exceeds the amount of losses the claimant bank incurred up to that time.

§ 229.56 Liability.

(a) *Measure of damages—(1) In general.* Except as provided in paragraph (a)(2) or (a)(3) of this section or § 229.53, any person that breaches a warranty described in § 229.52 or fails to comply with any requirement of this subpart with respect to any other person shall be liable to that person for an amount equal to the sum of—

(i) The amount of the loss suffered by the person as a result of the breach or failure, up to the amount of the substitute check; and

(ii) Interest and expenses (including costs and reasonable attorney's fees and other expenses of representation) related to the substitute check.

(2) *Offset of recredits.* The amount of damages a person receives under paragraph (a)(1) of this section shall be reduced by any amount that the person receives and retains as a recredit under § 229.54 or § 229.55.

(3) *Comparative negligence.* (i) If a person incurs damages that resulted in whole or in part from that person's negligence or failure to act in good faith, then the amount of any damages

due to that person under paragraph (a)(1) of this section shall be reduced in proportion to the amount of negligence or bad faith attributable to that person.

(ii) Nothing in this paragraph (a)(3) reduces the rights of a consumer or any other person under the U.C.C. or other applicable provision of federal or state law.

(b) *Timeliness of action.* Delay by a bank beyond any time limits prescribed or permitted by this subpart is excused if the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank and if the bank uses such diligence as the circumstances require.

(c) *Jurisdiction.* A person may bring an action to enforce a claim under this subpart in any United States district court or in any other court of competent jurisdiction. Such claim shall be brought within one year of the date on which the person's cause of action accrues. For purposes of this paragraph, a cause of action accrues as of the date on which the injured person first learns, or by which such person reasonably should have learned, of the facts and circumstances giving rise to the cause of action, including the identity of the warranting or indemnifying bank against which the action is brought.

(d) *Notice of claims.* Except as otherwise provided in this paragraph (d), unless a person gives notice of a claim under this section to the warranting or indemnifying bank within 30 calendar days after the person has reason to know of both the claim and the identity of the warranting or indemnifying bank, the warranting or indemnifying bank is discharged from liability in an action to enforce a claim under this subpart to the extent of any loss caused by the delay in giving notice of the claim. A timely recredit claim by a consumer under § 229.54 constitutes timely notice under this paragraph.

§ 229.57 Consumer awareness.

(a) *General disclosure requirement and content.* Each bank shall provide, in accordance with paragraph (b) of this section, a brief disclosure to each of its consumer customers that describes—

(1) That a substitute check is the legal equivalent of an original check; and

(2) The consumer recredit rights that apply when a consumer in good faith believes that a substitute check was not properly charged to his or her account.

(b) *Distribution—(1) Disclosure to consumers who receive paid checks with periodic account statements.* A bank shall provide the disclosure described in paragraph (a) of this section to a consumer customer who receives paid original checks or paid substitute checks with his or her periodic account statement—

(i) No later than the first regularly scheduled communication with the consumer after October 28, 2004, for each consumer who is a customer of the bank on that date; and

(ii) At the time the customer relationship is initiated, for each customer relationship established after October 28, 2004.

(2) *Disclosure to consumers who receive substitute checks on an occasional basis—*

(i) The bank shall provide the disclosure described in paragraph (a) of this section to a consumer customer of the bank who requests an original check or a copy of a check and receives a substitute check. If feasible, the bank shall provide this disclosure at the time of the consumer's request; otherwise, the bank shall provide this disclosure no later than the time at which the bank provides a substitute check in response to the consumer's request.

(ii) The bank shall provide the disclosure described in paragraph (a) of this section to a consumer customer of the bank who receives a returned substitute check, at the time the bank provides such substitute check.

(3) *Multiple account holders.* A bank need not give separate disclosures to each customer on a jointly held account.

§ 229.58 Mode of delivery of information.

A bank may deliver any notice or other information that it is required to provide under this subpart by United States mail or by any other means through which the recipient has agreed to receive account information. If a bank is required to provide an original check or a sufficient copy, the bank instead may provide an electronic image of the original check or sufficient copy if the recipient has agreed to receive that information electronically.

§ 229.59 Relation to other law.

The Check 21 Act and this subpart supersede any provision of federal or state law, including the Uniform Commercial Code, that is inconsistent with the Check 21 Act or this subpart, but only to the extent of the inconsistency.

§ 229.60 Variation by agreement.

Any provision of § 229.55 may be varied by agreement of the banks involved. No other provision of this subpart may be varied by agreement by any person or persons.

APPENDIX A TO PART 229—ROUTING NUMBER GUIDE TO NEXT-DAY AVAILABILITY CHECKS AND LOCAL CHECKS

A. Each bank is assigned a routing number by an agent of the American Bankers Association. The routing number takes two forms: a fractional form and a nine-digit form. A paying bank generally is identified on the face of a check by its routing number in both the fractional form (which generally appears in the upper right-hand corner of the check) and the nine-digit form (which is printed in magnetic ink along the bottom of the check). Where a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable-through bank, not the payor bank.

B. The first four digits of the nine-digit routing number (and the denominator of the fractional routing number) form the "Federal Reserve routing symbol," and the first two digits of the routing number identify the Federal Reserve District in which the bank is located. Thus, 01 will be the first two digits of the routing number of a bank in the First Federal Reserve District (Boston), and 12 will be the first two digits of the routing number of a bank in the Twelfth District

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(San Francisco). Adding 2 to the first digit denotes a thrift institution. Thus, 21 identifies a thrift in the First District, and 32 denotes a thrift in the Twelfth District.

FOURTH FEDERAL RESERVE DISTRICT
 [Federal Reserve Bank of Cleveland]

Head Office

| | | | |
|------|------|------|------|
| 0110 | 0610 | 0920 | 2216 |
| 0111 | 0611 | 0921 | 2219 |
| 0112 | 0612 | 0929 | 2220 |
| 0113 | 0613 | 0960 | 2223 |
| 0114 | 0620 | 1010 | 2260 |
| 0115 | 0621 | 1011 | 2280 |
| 0116 | 0622 | 1012 | 2310 |
| 0117 | 0630 | 1019 | 2311 |
| 0118 | 0631 | 1020 | 2312 |
| 0119 | 0632 | 1021 | 2313 |
| 0210 | 0640 | 1022 | 2319 |
| 0211 | 0641 | 1023 | 2360 |
| 0212 | 0642 | 1030 | 2410 |
| 0213 | 0650 | 1031 | 2412 |
| 0214 | 0651 | 1039 | 2420 |
| 0215 | 0652 | 1040 | 2421 |
| 0216 | 0653 | 1041 | 2422 |
| 0219 | 0654 | 1049 | 2423 |
| 0220 | 0655 | 1070 | 2430 |
| 0223 | 0660 | 1110 | 2432 |
| 0260 | 0670 | 1111 | 2433 |
| 0280 | 0710 | 1113 | 2434 |
| 0310 | 0711 | 1119 | 2440 |
| 0311 | 0712 | 1120 | 2441 |
| 0312 | 0719 | 1122 | 2442 |
| 0313 | 0720 | 1123 | 2510 |
| 0319 | 0724 | 1130 | 2514 |
| 0360 | 0730 | 1131 | 2515 |
| 0410 | 0739 | 1140 | 2519 |
| 0412 | 0740 | 1149 | 2520 |
| 0420 | 0749 | 1163 | 2521 |
| 0421 | 0750 | 1210 | 2522 |
| 0422 | 0759 | 1211 | 2530 |
| 0423 | 0810 | 1212 | 2531 |
| 0430 | 0812 | 1213 | 2532 |
| 0432 | 0813 | 1220 | 2539 |
| 0433 | 0815 | 1221 | 2540 |
| 0434 | 0819 | 1222 | 2550 |
| 0440 | 0820 | 1223 | 2560 |
| 0441 | 0829 | 1224 | 2570 |
| 0442 | 0830 | 1230 | 2610 |
| 0510 | 0839 | 1231 | 2611 |
| 0514 | 0840 | 1232 | 2612 |
| 0515 | 0841 | 1233 | 2613 |
| 0519 | 0842 | 1240 | 2620 |
| 0520 | 0843 | 1241 | 2621 |
| 0521 | 0863 | 1242 | 2622 |
| 0522 | 0865 | 1243 | 2630 |
| 0530 | 0910 | 1250 | 2631 |
| 0531 | 0911 | 1251 | 2632 |
| 0532 | 0912 | 1252 | 2640 |
| 0539 | 0913 | 2111 | 2641 |
| 0540 | 0914 | 2112 | 2642 |
| 0550 | 0915 | 2113 | 2650 |
| 0560 | 0918 | 2114 | 2651 |
| 0570 | 0919 | 2115 | 2652 |
| | | 2116 | 2653 |
| | | 2117 | 2654 |
| | | 2118 | 2655 |
| | | 2119 | 2660 |
| | | 2210 | 2670 |
| | | 2211 | 2710 |
| | | 2212 | 2711 |
| | | 2213 | 2712 |
| | | 2214 | 2719 |
| | | 2215 | 2720 |

Federal Reserve System

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| | |
|------|------|
| 2724 | 3023 |
| 2730 | 3030 |
| 2739 | 3031 |
| 2740 | 3039 |
| 2749 | 3040 |
| 2750 | 3041 |
| 2759 | 3049 |
| 2810 | 3070 |
| 2812 | 3110 |
| 2813 | 3111 |
| 2815 | 3113 |
| 2819 | 3119 |
| 2820 | 3120 |
| 2829 | 3122 |
| 2830 | 3123 |
| 2839 | 3130 |
| 2840 | 3131 |
| 2841 | 3140 |
| 2842 | 3149 |
| 2843 | 3163 |
| 2863 | 3210 |
| 2865 | 3211 |
| 2910 | 3212 |
| 2911 | 3213 |
| 2912 | 3220 |
| 2913 | 3221 |
| 2914 | 3222 |
| 2915 | 3223 |
| 2918 | 3224 |
| 2919 | 3230 |
| 2920 | 3231 |
| 2921 | 3232 |
| 2929 | 3233 |
| 2960 | 3240 |
| 3010 | 3241 |
| 3011 | 3242 |
| 3012 | 3243 |
| 3019 | 3250 |
| 3020 | 3251 |
| 3021 | 3252 |
| 3022 | |

¹The first two digits identify the bank's Federal Reserve District. For example, 01 identifies the First Federal Reserve District (Boston), and 12 identifies the Twelfth District (San Francisco). Adding 2 to the first digit denotes a thrift institution. For example, 21 identifies a thrift in the First District, and 32 denotes a thrift in the Twelfth District.

FEDERAL RESERVE BANKS

| | |
|-------------|-------------|
| 0110 0001 5 | 0530 0020 6 |
| 0111 0048 1 | 0539 0008 9 |
| 0210 0120 8 | 0610 0014 6 |
| 0212 0400 5 | 0620 0019 0 |
| 0213 0500 1 | 0630 0019 9 |
| 0220 0026 6 | 0640 0010 1 |
| 0310 0004 0 | 0650 0021 0 |
| 0410 0001 4 | 0660 0010 9 |
| 0420 0043 7 | 0710 0030 1 |
| 0430 0030 0 | 0711 0711 0 |
| 0440 0050 3 | 0720 0029 0 |
| 0510 0003 3 | 0730 0033 8 |
| 0519 0002 3 | 0740 0020 1 |
| 0520 0027 8 | 0750 0012 9 |

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|-------------|-------------|
| 0810 0004 5 | 1110 0003 8 |
| 0820 0013 8 | 1120 0001 1 |
| 0830 0059 3 | 1130 0004 9 |
| 0840 0003 9 | 1140 0072 1 |
| 0910 0008 0 | 1210 0037 4 |
| 0920 0026 7 | 1220 0016 6 |
| 1010 0004 8 | 1230 0001 3 |
| 1020 0019 9 | 1240 0031 3 |
| 1030 0024 0 | 1250 0001 1 |
| 1040 0012 6 | |

FEDERAL HOME LOAN BANKS

| | |
|-------------|-------------|
| 0110 0053 6 | 0740 0101 9 |
| 0212 0639 1 | 0810 0091 9 |
| 0260 0973 9 | 0910 0091 2 |
| 0410 0291 5 | 1010 0091 2 |
| 0420 0091 6 | 1011 0194 7 |
| 0430 0143 5 | 1110 1083 7 |
| 0430 1862 2 | 1119 1083 0 |
| 0610 0876 6 | 1210 0070 1 |
| 0710 0450 1 | 1240 0287 4 |
| 0730 0091 4 | 1250 0050 3 |

[53 FR 19433, May 27, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting appendix A to part 229, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

APPENDIX B TO PART 229 [RESERVED]

APPENDIX C TO PART 229—MODEL AVAILABILITY POLICY DISCLOSURES, CLAUSES, AND NOTICES; MODEL SUBSTITUTE CHECK POLICY DISCLOSURE AND NOTICES

This appendix contains model availability policy and substitute check policy disclosures, clauses, and notices to facilitate compliance with the disclosure and notice requirements of Regulation CC (12 CFR part 229). Although use of these models is not required, banks using them properly (with the exception of models C-22 through C-25) to make disclosures required by Regulation CC are deemed to be in compliance.

Model Availability Policy Disclosures

- C-1 Next-day availability
- C-2 Next-day availability and §229.13 exceptions
- C-3 Next-day availability, case-by-case holds to statutory limits, and §229.13 exceptions
- C-4 Holds to statutory limits on all deposits (includes chart)
- C-5 Holds to statutory limits on all deposits
- C-5A Substitute check policy disclosure

Model Clauses

- C-6 Holds on other funds (check cashing)
- C-7 Holds on other funds (other account)
- C-8 Appendix B availability (nonlocal checks)

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- C-9 Automated teller machine deposits (extended hold)
- C-10 Cash withdrawal limitation
- C-11 Credit union interest payment policy
- C-11A Availability of Funds Deposited at Other Locations

Model Notices

- C-12 Exception hold notice
- C-13 Reasonable cause hold notice
- C-14 One-time notice for large deposit and redeposited check exception holds
- C-15 One-time notice for repeated overdraft exception holds
- C-16 Case-by-case hold notice
- C-17 Notice at locations where employees accept consumer deposits
- C-18 Notice at locations where employees accept consumer deposits (case-by-case holds)
- C-19 Notice at automated teller machines
- C-20 Notice at automated teller machines (delayed receipt)
- C-21 Deposit slip notice
- C-22 Expedited Recredit Claim, Valid Claim Refund Notice
- C-23 Expedited Recredit Claim, Provisional Refund Notice
- C-24 Expedited Recredit Claim, Denial Notice
- C-25 Expedited Recredit Claim, Reversal Notice

Model Availability Policy Disclosures

C-1—Next-Day Availability

Your Ability To Withdraw Funds

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once the funds are available, you can withdraw them in cash and we will use them to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

C-2—Next-day availability and § 229.13 exceptions

Your Ability To Withdraw Funds

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can with-

draw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

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C-3—Next-Day Availability, Case-by-Case Holds to Statutory Limits, and §229.13 Exceptions

Your Ability To Withdraw Funds

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the fifth business day after the day of your deposit. The first \$100 of your deposits, however, may be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

C-4—Holds to Statutory Limits On All Deposits (Includes Chart)

Your Ability To Withdraw Funds

Our policy is to delay the availability of funds from your cash and check deposits. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

- U.S. Treasury checks that are payable to you.
- Wire transfers.

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• Checks drawn on (*bank name*) [unless (*any limitations related to branches in different states or check processing regions*)].

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

- Cash.
- State and local government checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].
- Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].

• Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day we receive your deposit.

Other Check Deposits

To find out when funds from other check deposits will be available, look at the first four digits of the routing number on the check:

Personal Check

| | |
|---------------------------|----------------------|
| Pay to the | _____ 19__ |
| order of _____ \$ _____ | |
| (Bank name and Location) | _____ dollars |
| 123456789 | 0000000000 000 _____ |

Routing number

Business Check

| | |
|---------------------------|--------------------------------|
| Name of Company | _____ 19__ |
| Address, City, State | |
| Pay to the | _____ \$ _____ |
| order of _____ \$ _____ | _____ dollars |
| (Bank name and Location) | _____ |
| 000000000 | 123456789 0000000000 000 _____ |

Routing number

Some checks are marked "payable through" and have a four-or nine-digit number nearby. For these checks, use this four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if

these checks are local or nonlocal. Once you have determined the first four digits of the routing number (1234 in the examples above), the following chart will show you when funds from the check will be available:

| First four digits from routing number | When funds are available | When funds are available if a deposit is made on a Monday |
|---------------------------------------|---|---|
| [local numbers] | \$100 on the first business day after the day of your deposit. Remaining funds on the second business day after the day of your deposit. | Tuesday. Wednesday. |
| All other numbers | \$100 on the first business day after the day of your deposit. Remaining funds on the fifth business day after the day of your deposit. | Tuesday. Monday of the following week. |

If you deposit both categories of checks, \$100 from the checks will be available on the first business day after the day of your deposit, not \$100 from each category of check.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

C-5—Holds to Statutory Limits on All Deposits

Your Ability To Withdraw Funds

Our policy is to delay the availability of funds from your cash and check deposits. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability Of A Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

- U.S. Treasury checks that are payable to you.
 - Wire transfers.
 - Checks drawn on (*bank name*) [unless (*any limitations related to branches in different states or check processing regions*)].
- If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:
- Cash.
 - State and local government checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].
 - Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].

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• Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day we receive your deposit.

Other Check Deposits

The delay for other check deposits depends on whether the check is a local or a nonlocal check. To see whether a check is a local or a nonlocal check, look at the routing number on the check:

Personal Check

| | | |
|--------------------------|----------------|-----------|
| | | _____19__ |
| Pay to the | order of _____ | \$_____ |
| | | dollars |
| (Bank name and Location) | | |
| | _____ | |
| 123456789 | 0000000000 | 000 |
| | Routing number | |

Business Check

| | | |
|--------------------------|----------------|----------------|
| Name of Company | | |
| Address, City, State | | |
| | | _____19__ |
| Pay to the | order of _____ | \$_____ |
| | | dollars |
| (Bank name and Location) | | |
| _____ | | |
| 000000000 | 123456789 | 0000000000 000 |
| | Routing number | |

If the first four digits of the routing number (1234 in the examples above) are (list of local numbers), then the check is a local check. Otherwise, the check is a nonlocal check. Some checks are marked "payable through" and have a four- or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the

nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make funds from local and nonlocal checks available as follows.

1. Local checks. The first \$100 from a deposit of local checks will be available on the

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first business day after the day of your deposit. The remaining funds will be available on the second business day after the day of your deposit.

For example, if you deposit a local check of \$700 on a Monday, \$100 of the deposit is available on Tuesday. The remaining \$600 is available on Wednesday.

2. Nonlocal checks. The first \$100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the fifth business day after the day of your deposit.

For example, if you deposit a \$700 nonlocal check on a Monday, \$100 of the deposit is available on Tuesday. The remaining \$600 is available on Monday of the following week.

3. Local and nonlocal checks. If you deposit both categories of checks, \$100 from the checks will be available on the first business day after the day of your deposit, not \$100 from each category of check.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

Special Rules For New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be avail-

able until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

C-5A—Substitute Check Policy Disclosure

Substitute Checks and Your Rights—[Important Information About Your Checking Account]

Substitute Checks and Your Rights

What Is a Substitute Check?

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

What Are My Rights Regarding Substitute Checks?

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to (*amount, not lower than \$2,500*) of your refund (plus interest if your account earns interest) within (*number of days, not more than 10*) business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not

later than (*number of days, not more than 45*) calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

How Do I Make a Claim for a Refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at (*contact information, for example phone number, mailing address, e-mail address*). You must contact us within (*number of days, not less than 40*) calendar days of the date that we mailed (or otherwise delivered) by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include—

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check [and/or] the following information to help us identify the substitute check: (*identifying information, for example the check number, the name of the person to whom you wrote the check, the amount of the check*).

Model Clauses

C-6—Holds on Other Funds (Check Cashing)

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it.

C-7—Holds on Other Funds (Other Account)

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.

C-8—Appendix B Availability (Nonlocal Checks)

3. *Certain other checks.* We can process nonlocal checks drawn on financial institu-

tions in certain areas faster than usual. Therefore, funds from deposits of checks drawn on institutions in those areas will be available to you more quickly. Call us if you would like a list of the routing numbers for these institutions.

C-9—Automated Teller Machine Deposits (Extended Hold)

Deposits at Automated Teller Machines

Funds from any deposits (cash or checks) made at automated teller machines (ATMs) we do not own or operate will not be available until the fifth business day after the day of your deposit. This rule does not apply at ATMs that we own or operate.

(*A list of our ATMs is enclosed, or A list of ATMs where you can make deposits but that are not owned or operated by us is enclosed, or All ATMs that we own or operate are identified as our machines.*)

C-10—Cash Withdrawal Limitation

Cash Withdrawal Limitation

We place certain limitations on withdrawals in cash. In general, \$100 of a deposit is available for withdrawal in cash on the first business day after the day of deposit. In addition, a total of \$400 of other funds becoming available on a given day is available for withdrawal in cash at or after (*time no later than 5:00 p.m.*) on that day. Any remaining funds will be available for withdrawal in cash on the following business day.

C-11—Credit Union Interest Payment Policy

Interest Payment Policy

If we receive a deposit to your account on or before the tenth of the month, you begin earning interest on the deposit (whether it was a deposit of cash or checks) as of the first day of that month. If we receive the deposit after the tenth of the month, you begin earning interest on the deposit as of the first of the following month. For example, a deposit made on June 7 earns interest from June 1, while a deposit made on June 17 earns interest from July 1.

C-11A—Availability of Funds Deposited at Other Locations

Deposits at Other Locations

This availability policy only applies to funds deposited at (*location*). Please inquire for information about the availability of funds deposited at other locations.

Model Notices

C-12—Exception Hold Notice

Notice of Hold

Account number: (*number*)

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Date of deposit: *(date)*

We are delaying the availability of *(amount being held)* from this deposit. These funds will be available on the *(number)* business day after the day of your deposit.

We are taking this action because:

- A check you deposited was previously returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- The checks you deposited on this day exceed \$5,000.
- An emergency, such as failure of computer or communications equipment, has occurred.
- We believe a check you deposited will not be paid for the following reasons [*]:

[*If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, *(description of procedure for obtaining refund)*.]

C-13—Reasonable Cause Hold Notice

Notice of Hold

Account number: *(number)*

Date of deposit: *(date)*

We are delaying the availability of the funds you deposited by the following check: *(description of check, such as amount and drawer)*.

These funds will be available on the *(number)* business day after the day of your deposit. The reason for the delay is explained below:

- We received notice that the check is being returned unpaid.
- We have confidential information that indicates that the check may not be paid.
- The check is drawn on an account with repeated overdrafts.
- We are unable to verify the endorsement of a joint payee.
- Some information on the check is not consistent with other information on the check.
- There are erasures or other apparent alterations on the check.
- The routing number of the paying bank is not a current routing number.
- The check is postdated or has a stale date.
- Information from the paying bank indicates that the check may not be paid.
- We have been notified that the check has been lost or damaged in collection.
- Other:

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, *(description of procedure for obtaining refund)*.]

C-14—One-Time Notice for Large Deposit and Redeposited Check Exception Holds

Notice of Hold

If you deposit into your account:

- Checks totaling more than \$5,000 on any one day, the first \$5,000 deposited on any one banking day will be available to you according to our general policy. The amount in excess of \$5,000 will generally be available on the *(number)* business day after the day of deposit for checks drawn on *(bank name)*, the *(number)* business day after the day of deposit for local checks and *(number)* business day after the day of deposit for nonlocal checks. If checks (not drawn on us) that otherwise would receive next-day availability exceed \$5,000, the excess will be treated as either local or nonlocal checks depending on the location of the paying bank. If your check deposit, exceeding \$5,000 on any one day, is a mix of local checks, nonlocal checks, checks drawn on *(bank name)*, or checks that generally receive next-day availability, the excess will be calculated by first adding together the *(type of check)*, then the *(type of check)*, then the *(type of check)*, then the *(type of check)*.

- A check that has been returned unpaid, the funds will generally be available on the *(number)* business day after the day of deposit for checks drawn on *(bank name)*, the *(number)* business day after the day of deposit for local checks and the *(number)* business day after the day of deposit for nonlocal checks. Checks (not drawn on us) that otherwise would receive next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

C-15—One-Time Notice for Repeated Overdraft Exception Hold

Notice of Hold

Account Number: *(number)* Date of Notice: *(date)*

We are delaying the availability of checks deposited into your account due to repeated overdrafts of your account. For the next six months, deposits will generally be available on the *(number)* business day after the day of your deposit for checks drawn on *(bank name)*, the *(number)* business day after the day of your deposit for local checks, and the *(number)* business day after the day of deposit for nonlocal checks. Checks (not drawn on us) that otherwise would have received

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next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

C-16—Case-by-Case Hold Notice

Notice of Hold

Account number: *(number)*
Date of deposit: *(date)*

We are delaying the availability of *(amount being held)* from this deposit. These funds will be available on the *(number)* business day after the day of your deposit [*(subject to our cash withdrawal limitation policy)*].

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, *(description of procedure for obtaining refund)*.]

C-17—Notice at locations where employees accept consumer deposits

FUNDS AVAILABILITY POLICY

| Description of deposit | When funds can be withdrawn by cash or check |
|--|---|
| Direct deposits | The day we receive the deposit |
| Cash, wire transfers, cashier's, certified, teller's, or government checks, checks on <i>(bank name)</i> [unless <i>(any limitation related to branches in different check processing regions)</i>], and the first \$100 of a day's deposits of other checks. | The first business day after the day of deposit. |
| Local checks | The second business day after the day of deposit. |
| Nonlocal checks | The fifth business day after the day of deposit. |

C-18—Notice at locations where employees accept consumer deposits (case-by-case holds)

FUNDS AVAILABILITY POLICY

Our general policy is to allow you to withdraw funds deposited in your account on the *(number)* business day after the day we receive your deposit. Funds from electronic direct deposits will be available on the day we receive the deposit. In some cases, we may delay your ability to withdraw funds beyond the *(number)* business day. Then, the funds will generally be available by the fifth business day after the day of deposit.

C-19—Notice at Automated Teller Machines

AVAILABILITY OF DEPOSITS

Funds from deposits may not be available for immediate withdrawal. Please refer to

your institution's rules governing funds availability for details.

C-20—Notice at Automated Teller Machines (Delayed Receipt)

NOTICE

Deposits at this ATM between *(day)* and *(day)* will not be considered received until *(day)*. The availability of funds from the deposit may be delayed as a result.

C-21—Deposit Slip Notice

Deposits may not be available for immediate withdrawal.

C-22—Expedited Recredit Claim, Valid Claim Refund Notice

Notice of Valid Claim and Refund

We have determined that your substitute check claim is valid. We are refunding *(amount)* [of which [*(amount)* represents fees] [and] [*(amount)* represents accrued interest]] to your account. You may withdraw these funds as of *(date)*. [This refund is the amount in excess of the \$2,500 [plus interest] that we credited to your account on *(date)*.]

C-23—Expedited Recredit Claim, Provisional Refund Notice

Notice of Provisional Refund

In response to your substitute check claim, we are refunding *(amount)* [of which [*(amount)* represents fees] [and] [*(amount)* represents accrued interest]] to your account, while we complete our investigation of your claim. You may withdraw these funds as of *(date)*. [Unless we determine that your claim is not valid, we will credit the remaining amount of your refund to your account no later than the 45th calendar day after we received your claim.]

If, based on our investigation, we determine that your claim is not valid, we will reverse the refund by withdrawing the amount of the refund [plus interest that we have paid you on that amount] from your account. We will notify you within one day of any such reversal.

C-24—Expedited Recredit Claim, Denial Notice

Denial of Claim

Based on our review, we are denying your substitute check claim. As the enclosed *(type of document, for example original check or sufficient)* shows, *(describe reason for denial, for example the check was properly posted, the signature is authentic, there was no warranty breach)*.

[We have also enclosed a copy of the other information we used to make our decision.] [Upon your request, we will send you a copy

of the other information that we used to make our decision.]

C-25—Expedited Recredit Claim, Reversal
Notice

Reversal of Refund

In response to your substitute check claim, we provided a refund of (*amount*) by crediting your account on (*date(s)*). We now have determined that your substitute check claim was not valid. As the enclosed (*type of document, for example original check or sufficient copy*) shows, (*describe reason for reversal, for example the check was properly posted, the signature is authentic, there was no warranty breach*). As a result, we have reversed the refund to your account [plus interest that we have paid you on that amount] by withdrawing (*amount*) from your account on (*date*).

[We have also enclosed a copy of the other information we used to make our decision.] [Upon your request, we will send you a copy of the information we used to make our decision.]

[53 FR 19433, May 27, 1988, as amended at 53 FR 31293, Aug. 18, 1988; Reg. CC, 55 FR 21855, May 30, 1990; 55 FR 50818, Dec. 11, 1990; 56 FR 7802, Feb. 26, 1991; 57 FR 3280, Jan. 29, 1992; 60 FR 51671, Oct. 3, 1995; 62 FR 13811, Mar. 24, 1997; 62 FR 48752, Sept. 17, 1997; 69 FR 47315, 47316, Aug. 4, 2004]

APPENDIX D TO PART 229—
INDORSEMENT, RECONVERTING BANK
IDENTIFICATION, AND TRUNCATING
BANK IDENTIFICATION STANDARDS

(1) The depository bank shall indorse an original check or substitute check according to the following specifications:

(i) The indorsement shall contain—

(A) The bank's nine-digit routing number, set off by an arrow at each end of the number and pointing toward the number, and, if the depository bank is a reconverting bank with respect to the check, an asterisk outside the arrow at each end of the routing number to identify the bank as a reconverting bank;

(B) The indorsement date; and

(C) The bank's name or location, if the depository bank applies the indorsement physically.

(ii) The indorsement also may contain—

(A) A branch identification;

(B) A trace or sequence number;

(C) A telephone number for receipt of notification of large-dollar returned checks; and

(D) Other information, provided that the inclusion of such information does not interfere with the readability of the indorsement.

(iii) The indorsement, if applied to an existing paper check, shall be placed on the back of the check so that the routing number is wholly contained in the area 3.0 inches

from the leading edge of the check to 1.5 inches from the trailing edge of the check.³¹

(iv) When printing its depository bank indorsement (or a depository bank indorsement that previously was applied electronically) onto a substitute check at the time that the substitute check is created, a reconverting bank shall place the indorsement on the back of the check between 1.88 and 2.74 inches from the leading edge of the check. The reconverting bank may omit the depository bank's name and location from the indorsement.

(2) Each subsequent collecting bank or returning bank indorser shall protect the identifiability and legibility of the depository bank indorsement by indorsing an original check or substitute check according to the following specifications:

(i) The indorsement shall contain only—

(A) The bank's nine-digit routing number (without arrows) and, if the collecting bank or returning bank is a reconverting bank with respect to the check, an asterisk at each end of the number to identify the bank as a reconverting bank;

(B) The indorsement date, and

(C) An optional trace or sequence number.

(ii) The indorsement, if applied to an existing paper check, shall be placed on the back of the check from 0.0 inches to 3.0 inches from the leading edge of the check.

(iii) When printing its collecting bank or returning bank indorsement (or a collecting bank or returning bank indorsement that previously was applied electronically) onto a substitute check at the time that the substitute check is created, a reconverting bank shall place the indorsement on the back of the check between 0.25 and 2.50 inches from the trailing edge of the check.

(3) A reconverting bank shall comply with the following specifications when creating a substitute check:

(i) If it is a depository bank, collecting bank, or returning bank with respect to the substitute check, the reconverting bank shall place its own indorsement onto the back of the check as specified in this appendix.

(ii) A reconverting bank that also is the paying bank with respect to the substitute check shall so identify itself by placing on the back of the check, between 0.25 and 2.50 inches from the trailing edge of the check, its nine-digit routing number (without arrows) and an asterisk at each end of the number.

³¹The leading edge is defined as the right side of the check looking at it from the front. The trailing edge is defined as the left side of the check looking at it from the front. See American National Standards Specifications for the Placement and Location of MICR Printing, X9.13.

(iii) The reconverting bank shall place on the front of the check, outside the image of the original check, its nine-digit routing number (without arrows) and an asterisk at each end of the number, in accordance with ANS X9.100–140.

(iv) The reconverting bank shall place on the front of the check, outside the image of the original check, the truncating bank's nine-digit routing number (without arrows) and a bracket at each end of the number, in accordance with ANS X9.100–140.

(4) Any indorsement, reconverting bank identification, or truncating bank identification placed on an original check or substitute check shall be printed in black ink.

[69 FR 47316, Aug. 4, 2004]

EFFECTIVE DATE NOTE: At 82 FR 27585, June 15, 2017, appendix D to part 229 was removed and reserved, effective July 1, 2018.

APPENDIX E TO PART 229—COMMENTARY

I. Introduction

A. Background

1. The Board interpretations, which are labeled “Commentary” and follow each section of Regulation CC (12 CFR Part 229), provide background material to explain the Board's intent in adopting a particular part of the regulation; the Commentary also provides examples to aid in understanding how a particular requirement is to work. Under section 611(e) of the Expedited Funds Availability Act (12 U.S.C. 4010(e)), no provision of section 611 imposing any liability shall apply to any act done or omitted in good faith conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. The Commentary is an “interpretation” of a regulation by the Board within the meaning of section 611.

II. Section 229.2 Definitions

A. Background

1. Section 229.2 defines the terms used in the regulation. For the most part, terms are defined as they are in section 602 of the Expedited Funds Availability Act (12 U.S.C. 4001). The Board has made a number of changes for the sake of clarity, to conform the terminology to that which is familiar to the banking industry, to define terms that are not defined in the EFA Act, and to carry out the purposes of the EFA Act. The Board also has incorporated by reference the definitions of the Uniform Commercial Code where appropriate. Some of Regulation CC's defini-

tions are self-explanatory and therefore are not discussed in this Commentary.

B. 229.2(a) Account

1. The EFA Act defines account to mean “a demand deposit account or similar transaction account at a depository institution.” The regulation defines account, for purposes other than subpart D, in terms of the definition of “transaction account” in the Board's Regulation D (12 CFR part 204). This definition of account, however, excludes certain deposits, such as nondocumentary obligations (see 12 CFR 204.2(a)(1)(vii)), that are covered under the definition of “transaction account” in Regulation D. The definition applies to accounts with general third party payment powers but does not cover time deposits or savings deposits, including money market deposit accounts, even though they may have limited third party payment powers. The Board believes that it is appropriate to exclude these accounts because of the reference to demand deposits in the EFA Act, which suggests that the EFA Act is intended to apply only to accounts that permit unlimited third party transfers.

2. The term account also differs from the definition of transaction account in Regulation D because the term account refers to accounts held at banks. Under Subparts A and C, the term bank includes not only any depository institution, as defined in the EFA Act, but also any person engaged in the business of banking, such as a Federal Reserve Bank, a Federal Home Loan Bank, or a private banker that is not subject to Regulation D. Thus, accounts at these institutions benefit from the expeditious return requirements of Subpart C.

3. Interbank deposits, including accounts of offices of domestic banks or foreign banks located outside the United States, and direct and indirect accounts of the United States Treasury (including Treasury General Accounts and Treasury Tax and Loan deposits) are exempt from subpart B and, in connection therewith, subpart A. However, interbank deposits are included as accounts for purposes of subparts C and D and, in connection therewith, subpart A.

4. The Check 21 Act defines account to mean any deposit account at a bank. Therefore, for purposes of subpart D and, in connection therewith, subpart A, account means any deposit, as that term is defined by §204.2(a)(1)(i) of Regulation D, at a bank. Many deposits that are not accounts for purposes of the other subparts of Regulation CC, such as savings deposits, are accounts for purposes of subpart D.

C. 229.2(b) Automated Clearinghouse (ACH)

1. The Board has defined automated clearinghouse as a facility that processes debit and credit transfers under rules established

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by a Federal Reserve Bank operating circular governing automated clearinghouse items or the rules of an ACH association. ACH credit transfers are included in the definition of electronic payment.

2. The reference to “debit and credit transfers” does not refer to the corresponding debit and credit entries that are part of the same transaction, but to different kinds of ACH payments. In an ACH credit transfer, the originator orders that its account be debited and another account credited. In an ACH debit transfer, the originator, with prior authorization, orders another account to be debited and the originator’s account to be credited.

3. A facility that handles only wire transfers (defined elsewhere) is not an ACH.

D. 229.2(c) Automated Teller Machine (ATM)

1. ATM is not defined in the EFA Act. The regulation defines an ATM as an electronic device at which a natural person may make deposits to an account by cash or check and perform other account transactions. Point-of-sale terminals, machines that only dispense cash, night depositories, and lobby deposit boxes are not ATMs within the meaning of the definition, either because they do not accept deposits of cash or checks (e.g., point-of-sale terminals and cash dispensers) or because they only accept deposits (e.g., night depositories and lobby boxes) and cannot perform other transactions. A lobby deposit box or similar receptacle in which written payment orders or deposits may be placed is not an ATM.

2. A facility may be an ATM within this definition even if it is a branch under state or federal law, although an ATM is not a branch as that term is used in this regulation.

E. 229.2(d) Available for Withdrawal

1. Under this definition, when funds become available for withdrawal, the funds may be put to all uses for which the customer may use actually and finally collected funds in the customer’s account under the customer’s account agreement with the bank. Examples of such uses include payment of checks drawn on the account, certification of checks, electronic payments, and cash withdrawals. Funds are available for these uses notwithstanding provisions of other law that may restrict the use of uncollected funds (e.g., 18 U.S.C. 1004; 12 U.S.C. 331).

2. If a bank makes funds available to a customer for a specific purpose (such as paying checks that would otherwise overdraw the customer’s account and be returned for insufficient funds) before the funds must be made available under the bank’s policy or this regulation, it may nevertheless apply a hold consistent with this regulation to those

funds for other purposes (such as cash withdrawals). For purposes of this regulation, funds are considered available for withdrawal even though they are being held by the bank to satisfy an obligation of the customer other than the customer’s potential liability for the return of the check. For example, a bank does not violate its obligations under this subpart by holding funds to satisfy a garnishment, tax levy, or court order restricting disbursements from the account; or to satisfy the customer’s liability arising from the certification of a check, sale of a cashier’s or teller’s check, guaranty or acceptance of a check, or similar transaction to be debited from the customer’s account.

F. 229.2(e) Bank

1. The EFA Act uses the term depository institution, which it defines by reference to section 19(b)(1)(A)(i) through (vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i) through (vi)). This regulation uses the term bank, a term that conforms to the usage the Board has previously adopted in Regulation J. Bank is also used in Articles 4 and 4A of the Uniform Commercial Code.

2. Bank is defined to include depository institutions, such as commercial banks, savings banks, savings and loan associations, and credit unions as defined in the EFA Act, and U.S. branches and agencies of foreign banks. For purposes of Subpart B, the term does not include corporations organized under section 25A of the Federal Reserve Act, 12 U.S.C. 611–631 (Edge corporations) or corporations having an agreement or undertaking with the Board under section 25 of the Federal Reserve Act, 12 U.S.C. 601–604a (agreement corporations). For purposes of Subparts C and D, and in connection therewith, Subpart A, any Federal Reserve Bank, Federal Home Loan Bank, or any other person engaged in the business of banking is regarded as a bank. The phrase “any other person engaged in the business of banking” is derived from U.C.C. 1–201(4), and is intended to cover entities that handle checks for collection and payment, such as Edge and agreement corporations, commercial lending companies under 12 U.S.C. 3101, certain industrial banks, and private bankers, so that virtually all checks will be covered by the same rules for forward collection and return, even though they may not be covered by the requirements of Subpart B. For the purposes of Subparts C and D, and in connection therewith, Subpart A, the term also may include a state or a unit of general local government to the extent that it pays warrants or other drafts drawn directly on the state or local government itself, and the warrants or other drafts are sent to the state or local government for payment or collection.

3. Unless otherwise specified, the term bank includes all of a bank's offices in the United States. The regulation does not cover foreign offices of U.S. banks.

4. For purposes of subpart D and, in connection therewith, subpart A, the term bank also includes the Treasury of the United States and the United States Postal Service to the extent that they act as paying banks because the Check 21 Act includes these two entities in the definition of the term bank to the extent that they act as payors.

G. 229.2(f) Banking Day and (g) Business Day

1. The EFA Act defines business day as any day excluding Saturdays, Sundays, and legal holidays. Legal holiday, however, is not defined, and the variety of local holidays, together with the practice of some banks to close midweek, makes the EFA Act's definition difficult to apply. The Board believes that two kinds of business days are relevant. First, when determining the day when funds are deposited or when a bank must perform certain actions (such as returning a check), the focus should be on a day that the bank is actually open for business. Second, when counting days for purposes of determining when funds must be available under the regulation or when notice of nonpayment must be received by the depository bank, there would be confusion and uncertainty in trying to follow the schedule of a particular bank, and there is less need to identify a day when a particular bank is open. Most banks that act as intermediaries (large correspondents and Federal Reserve Banks) follow the same holiday schedule. Accordingly, the regulation has two definitions: Business day generally follows the standard Federal Reserve Bank holiday schedule (which is followed by most large banks), and banking day is defined to mean that part of a business day on which a bank is open for substantially all of its banking activities.

2. The definition of banking day corresponds to the definition of banking day in U.C.C. 4-104(a)(3), except that a banking day is defined in terms of a business day. Thus, if a bank is open on Saturday, Saturday might be a banking day for purposes of the U.C.C., but it would not be a banking day for purposes of Regulation CC because Saturday is never a business day under the regulation.

3. The definition of banking day is phrased in terms of when "an office of a bank is open" to indicate that a bank may observe a banking day on a per-branch basis. A deposit made at an ATM or off-premise facility (such as a remote depository or a lock box) is considered made at the branch holding the account into which the deposit is made for the purpose of determining the day of deposit. All other deposits are considered made at the branch at which the deposit is received. For example, under §229.19(a)(1), funds deposited at an ATM are considered deposited at the

time they are received at the ATM. On a calendar day that is a banking day for the branch or other location of the depository bank at which the account is maintained, a deposit received at an ATM before the ATM's cut-off hour is considered deposited on that banking day, and a deposit received at an ATM after the ATM's cut-off hour is considered deposited on the next banking day of the branch or other location where the account is maintained. On a calendar day that is not a banking day for the account-holding location, all ATM deposits are considered deposited on that location's next banking day. This rule for determining the day of deposit also would apply to a deposit to an off-premise facility, such as a night depository or lock box, which is considered deposited when removed from the facility and available for processing under §229.19(a)(3). If an unstaffed facility, such as a night depository or lock box, is on branch premises, the day of deposit is determined by the banking day at the branch at which the deposit is received, whether or not it is the branch at which the account is maintained.

H. 229.2(h) Cash

1. Cash means U.S. coins and currency. The phrase in the EFA Act "including Federal Reserve notes" has been deleted as unnecessary. (See 31 U.S.C. 5103.)

I. 229.2(i) Cashier's Check

1. The regulation adds to the second item in the EFA Act's definition of cashier's check the phrase, "on behalf of the bank as drawer," to clarify that the term cashier's check is intended to cover only checks that a bank draws on itself. The definition of cashier's check includes checks provided to a customer of the bank in connection with customer deposit account activity, such as account disbursements and interest payments. The definition also includes checks acquired from a bank by noncustomers for remittance purposes, such as certain loan disbursement checks. Cashier's checks provided to customers or others are often labeled as "cashier's check," "officer's check," or "official check." The definition excludes checks that a bank draws on itself for other purposes, such as to pay employees and vendors, and checks issued by the bank in connection with a payment service, such as a payroll or a bill-paying service. Cashier's checks generally are sold by banks to substitute the bank's credit for the customer's credit and thereby enhance the collectibility of the checks. A check issued in connection with a payment service generally is provided as a convenience to the customer rather than as a guarantee of the check's collectibility. In addition, such checks are often more difficult to distinguish from other types of

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checks than are cashier's checks as defined by this regulation.

J. 229.2(j) Certified Check

1. The EFA Act defines a certified check as one to which a bank has certified that the drawer's signature is genuine and that the bank has set aside funds to pay the check. Under the Uniform Commercial Code, certification of a check means the bank's signed agreement that it will honor the check as presented (U.C.C. 3-409). The regulation defines certified check to include both the EFA Act's and U.C.C.'s definitions.

K. 229.2(k) Check

1. Check is defined in section 602(7) of the EFA Act as a negotiable demand draft drawn on or payable through an office of a depository institution located in the United States, excluding noncash items. The regulation includes six categories of instruments within the definition of check.

2. The first category is negotiable demand drafts drawn on, or payable through or at, an office of a bank. As the definition of bank includes only offices located in the United States, this category is limited to checks drawn on, or payable through or at, a banking office located in the United States.

3. The EFA Act treats drafts payable through a bank as checks, even though under the U.C.C. the payable-through bank is a collecting bank to make presentment and generally is not authorized to make payment (U.C.C. 4-106(a)). The EFA Act does not expressly address items that are payable at a bank. This regulation treats both payable-through and payable-at demand drafts as checks. The Board believes that treating demand drafts payable at a bank as checks will not have a substantial effect on the operations of payable-at banks—by far the largest proportion of payable-at items are not negotiable demand drafts, but time items, such as commercial paper, bonds, notes, bankers' acceptances, and securities. These time items are not covered by the requirements of the EFA Act or this regulation. (The treatment of payable-through drafts is discussed in greater detail in connection with the definitions of local check and paying bank.)

4. The second category is checks drawn on Federal Reserve Banks and Federal Home Loan Banks. Principal and interest payments on federal debt instruments often are paid with checks drawn on a Federal Reserve Bank as fiscal agent of the United States, and these fiscal agency checks are indistinguishable from other checks drawn on Federal Reserve Banks. (See 31 CFR Part 355.) Federal Reserve Bank checks also are used by some banks as substitutes for cashier's or teller's checks. Similarly, savings and loan associations often use checks drawn on Fed-

eral Home Loan Banks as teller's checks. The definition of check includes checks drawn on Federal Home Loan Banks and Federal Reserve Banks because in many cases they are the functional equivalent of Treasury checks or teller's checks.

5. The third and fourth categories of instrument included in the definition of check refer to government checks. The EFA Act refers to checks drawn on the U.S. Treasury, even though these instruments are not drawn on or payable through an office of a depository institution, and checks drawn by state and local governments. The EFA Act also gives the Board authority to define functionally equivalent instruments as depository checks.¹ Thus, the EFA Act is intended to apply to instruments other than those that meet the strict definition of check in section 602(7) of the EFA Act. Checks and warrants drawn by states and local governments often are used for the purposes of making unemployment compensation payments and other payments that are important to the recipients. Consequently, the Board has expressly defined check to include drafts drawn on the U.S. Treasury and drafts or warrants drawn by a state or a unit of general local government on itself.

6. The fifth category of instrument included in the definition of check is U.S. Postal Service money orders. These instruments are defined as checks because they often are used as a substitute for checks by consumers, even though money orders are not negotiable under Postal Service regulations. The Board has not provided specific rules for other types of money orders; these instruments generally are drawn on or payable through or payable at banks and are treated as checks on that basis.

7. The sixth and final category of instrument included in the definition of check is traveler's checks drawn on or payable through or at a bank. Traveler's check is defined in paragraph (hh) of this section.

8. Finally, for the purposes of Subparts C and D, and in connection therewith, Subpart A, the definition of check includes nonnegotiable demand drafts because these instruments are often handled as cash items in the forward collection process.

9. A substitute check as defined in § 229.2(aaa) is a check for purposes of Regulation CC and the U.C.C., even if that substitute check does not meet the requirements for legal equivalence set forth in § 229.51(a).

10. The definition of check does not include an instrument payable in a foreign currency

¹Section 602(11) of the EFA Act (12 U.S.C. 4001(11)) defines "depository check" as "any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board."

(i.e., other than in United States money as defined in 31 U.S.C. 5101) or a credit card draft (i.e., a sales draft used by a merchant or a draft generated by a bank as a result of a cash advance), or an ACH debit transfer. The definition of check includes a check that a bank may supply to a customer as a means of accessing a credit line without the use of a credit card.

L. 229.2(1) [Reserved]

M. 229.2(m) Check Processing Region

1. The EFA Act defines this term as “the geographic area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations.” The Board has defined check processing region as the territory served by one of the Federal Reserve head offices, branches, or regional check processing centers. Appendix A includes a list of routing numbers arranged by Federal Reserve Bank office. The definition of check processing region is key to determining whether a check is considered local or nonlocal.

N. 229.2(n) Consumer Account

1. Consumer account is defined as an account used primarily for personal, family, or household purposes. An account that does not meet the definition of consumer account is a nonconsumer account. A clearing account maintained at a bank directly by a brokerage firm is not a consumer account, even if the account is used to pay checks drawn by consumers using the funds in that account. The bank’s relationship is with the brokerage firm, and the account is used by the brokerage firm to facilitate the clearing of its customers’ checks. Because for purposes of Regulation CC the term account includes only deposit accounts, a consumer’s revolving credit relationship or other line of credit with a bank is not a consumer account, even if the consumer draws on such credit lines by using a check. Both consumer and nonconsumer accounts are subject to the requirements of this regulation, including the requirement that funds be made available according to specific schedules and that the bank make specified disclosures of its availability policies. Section 229.18(b) (notices at branch locations) and §229.18(e) (notice of changes in policy) apply only to consumer accounts. Section 229.13(g)(2) (one-time exception notice) and §229.19(d) (use of calculated availability) apply only to nonconsumer accounts.

O. 229.2(o) Depository Bank

1. The regulation uses the term depository bank rather than the term receiving depository institution. Receiving depository institution is a term unique to the EFA Act,

while depository bank is the term used in Article 4 of the U.C.C. and Regulation J.

2. A depository bank includes the bank in which the check is first deposited. If a foreign office of a U.S. or foreign bank sends checks to its U.S. correspondent bank for forward collection, the U.S. correspondent is the depository bank because foreign offices of banks are not included in the definition of bank.

3. If a customer deposits a check in its account at a bank, the customer’s bank is the depository bank with respect to the check. For example, if a person deposits a check into an account at a nonproprietary ATM, the bank holding the account into which the check is deposited is the depository bank even though another bank may service the nonproprietary ATM and send the check for collection. (Under §229.35 the depository bank may agree with the bank servicing the nonproprietary ATM to have the servicing bank place its own indorsement on the check as the depository bank. For the purposes of Subpart C, the bank applying its indorsement as the depository bank indorsement on the check is the depository bank.)

4. For purposes of Subpart B, a bank may act as both the depository bank and the paying bank with respect to a check, if the check is payable by the bank in which it was deposited, or if the check is payable by a nonbank payor and payable through or at the bank in which it was deposited. A bank also is considered a depository bank with respect to checks it receives as payee. For example, a bank is a depository bank with respect to checks it receives for loan repayment, even though these checks are not deposited in an account at the bank. Because these checks would not be “deposited to accounts,” they would not be subject to the availability or disclosure requirements of Subpart B.

P. 229.2(p) Electronic Payment

1. Electronic payment is defined to mean a wire transfer as defined in §229.2(11) or an ACH credit transfer. The EFA Act requires that funds deposited by wire transfer be made available for withdrawal on the business day following deposit but expressly leaves the definition of the term wire transfer to the Board. Because ACH credit transfers frequently involve important consumer payments, such as wages, the regulation requires that funds deposited by ACH credit transfers be available for withdrawal on the business day following deposit.

2. ACH debit transfers, even though they may be transmitted electronically, are not defined as electronic payments because the receiver of an ACH debit transfer has the right to return the transfer, which would reverse the credit given to the originator. Thus, ACH debit transfers are more like

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checks than wire transfers. Further, bank customers that receive funds by originating ACH debit transfers are primarily large corporations, which generally would be able to negotiate with their banks for prompt availability.

3. A point-of-sale transaction would not be considered an electronic payment unless the transaction was effected by means of an ACH credit transfer or wire transfer.

Q. 229.2(q) Forward Collection

1. Forward collection is defined to mean the process by which a bank sends a check to the paying bank for collection, including sending the check to an intermediary collecting bank for settlement, as distinguished from the process by which the check is returned unpaid. Noncash collections are not included in the term forward collection.

R. 229.2(r) Local Check

1. Local check is defined as a check payable by or at a local paying bank, or, in the case of nonbank payors, payable through a local paying bank. A check payable by a local bank but payable through a nonlocal bank is a local check. Conversely, a check payable through a local bank but payable by a nonlocal bank is a nonlocal check. Where two banks are named on a check and neither is designated as a payable-through bank, the check is considered payable by either bank and may be considered local or nonlocal depending on the bank to which it is sent for payment. Generally, the depository bank may rely on the routing number to determine whether a check is local or nonlocal. Appendix A includes a list of routing numbers arranged by Federal Reserve Bank Office to assist persons in determining whether or not such a check is local. If, however, a check is payable by one bank but payable through another bank, the routing number appearing on the check will be that of the payable-through bank, not the paying bank. Many credit union share drafts and certain other checks payable by banks are payable through other banks. In such cases, the routing number cannot be relied on to determine whether the check is local or nonlocal. For payable-through checks that meet the labeling requirements of §229.36(e), the depository bank may rely on the four-digit routing symbol of the paying bank that is printed on the face of the check as required by that section, e.g., in the title plate, but not on the first four digits of the payable-through bank's routing number printed in magnetic ink in the MICR line or in fractional form, to determine whether the check is local or nonlocal.

S. 229.2(s) Local Paying Bank

1. "Local paying bank" is defined as a paying bank located in the same check-processing region as the branch, contractual

branch, or proprietary ATM of the depository bank. For example, a check deposited at a contractual branch would be deemed local or nonlocal based on the location of the contractual branch with respect to the location of the paying bank.

Examples.

a. If a check that is payable by a bank that is located in the same check processing region as the depository bank is payable through a bank located in another check processing region, the check is considered local or nonlocal depending on the location of the bank by which it is payable even if the check is sent to the nonlocal bank for collection.

b. The location of the depository bank is determined by the physical location of the branch or proprietary ATM at which a check is deposited, regardless of whether the deposit is made in person, by mail, or otherwise. For example, if a branch of the depository bank located in one check-processing region sends a check that was deposited at that branch to the depository bank's central facility in another check-processing region, and the central facility is in the same check-processing region as the paying bank, the check is still considered nonlocal. (See the commentary to the definition of "paying bank.")

c. If a person deposits a check to an account by mailing or otherwise sending the check to a facility or office that is not a bank, the check is considered local or nonlocal depending on the location of the bank whose indorsement appears on the check as the depository bank.

T. 229.2(t) Merger Transaction

1. Merger transaction is a term used in Subparts B and C in connection with transition rules for merged banks. It encompasses mergers, consolidations, and purchase/assumption transactions of the type that usually must be approved under the Bank Merger Act (12 U.S.C. 1828(c)) or similar statutes; it does not encompass acquisitions of a bank under the Bank Holding Company Act (12 U.S.C. 1842) where an acquired bank maintains its separate corporate existence.

2. Regulation CC adopts a one-year transition period for banks that are party to a merger transaction during which the merged banks will continue to be treated as separate entities. (See §§229.19(g) and 229.40.)

U. 229.2(u) Noncash Item

1. The EFA Act defines the term check to exclude noncash items, and defines noncash items to include checks to which another document is attached, checks accompanied by special instructions, or any similar item classified as a noncash item in the Board's regulation. To qualify as a noncash item, an item must be handled as such and may not

be handled as a cash item by the depository bank.

2. The regulation's definition of noncash item also includes checks that consist of more than a single thickness of paper (except checks that qualify for handling by automated check processing equipment, e.g. those placed in carrier envelopes) and checks that have not been preprinted or post-encoded in magnetic ink with the paying bank's routing number, as well as checks with documents attached or accompanied by special instructions. (In the context of this definition, paying bank refers to the paying bank as defined for purposes of Subpart C.)

3. A check that has been preprinted or post-encoded with a routing number that has been retired (e.g., because of a merger) for at least three years is a noncash item unless the current number is added for processing purposes by placing the check in an encoded carrier envelope or adding a strip to the check.

4. Checks that are accompanied by special instructions are also noncash items. For example, a person concerned about whether a check will be paid may request the depository bank to send a check for collection as a noncash item with an instruction to the paying bank to notify the depository bank promptly when the check is paid or dishonored.

5. For purposes of forward collection, a copy of a check is neither a check nor a noncash item, but may be treated as either. For purposes of return, a copy is generally a notice in lieu of return. (See §§ 229.30(f) and 229.31(f).)

V. 229.2(v) [Reserved]

W. 229.2(w) [Reserved]

X. 229.2(x) [Reserved]

Y. 229.2(y) [Reserved]

Z. 229.2(z) Paying Bank

1. The regulation uses this term in lieu of the EFA Act's "originating depository institution." For purposes of all subparts of Regulation CC, the term paying bank includes the bank by which a check is payable, the payable-at bank to which a check is sent, or, if the check is payable by a nonbank payor, the bank through which the check is payable and to which it is sent for payment or collection. For purposes of subparts C and D, the term paying bank also includes the payable-through bank and the bank whose routing number appears on the check, regardless of whether the check is payable by a different bank, provided that the check is sent for payment or collection to the payable through bank or the bank whose routing number appears on the check.

2. Under §§ 229.30 and 229.36(a), a bank designated as a payable-through bank or pay-

able-at bank and to which the check is sent for payment or collection is responsible for the expedited return of checks and notice of nonpayment requirements of Subpart C. The payable-through or payable-at bank may contract with the payor with respect to its liability in discharging these responsibilities. The Board believes that the EFA Act makes a clear connection between availability and the time it takes for checks to be cleared and returned. Allowing the payable-through bank additional time to forward checks to the payor and await return or pay instructions from the payor would delay the return of these checks, increasing the risks to depository banks. Subpart C places on payable-through and payable-at banks the requirements of expeditious return based on the time the payable-through or payable-at bank received the check for forward collection.

3. If a check is sent for forward collection based on the routing number, the bank associated with the routing number is a paying bank for the purposes of Subparts C and D requirements, including notice of nonpayment, even if the check is not drawn by a customer of that bank or the check is fraudulent.

4. The phrase "and to which [the check] is sent for payment or collection" includes sending not only the physical check, but information regarding the check under a truncation arrangement.

5. Federal Reserve Banks and Federal Home Loan Banks are also paying banks under all subparts of the regulation with respect to checks payable by them, even though such banks are not defined as banks for purposes of Subpart B.

6. In accordance with the Check 21 Act, for purposes of subpart D and, in connection therewith, subpart A, paying bank includes the Treasury of the United States or the United States Postal Service with respect to a check payable by that entity and sent to that entity for payment or collection, even though the Treasury and Postal Service are not defined as banks for purposes of subparts B and C. Because the Federal Reserve Banks act as fiscal agents for the Treasury and the U.S. Postal Service and in that capacity are designated as presentment locations for Treasury checks and U.S. Postal Service money orders, a Treasury check or U.S. Postal Service money order presented to a Federal Reserve Bank is considered to be presented to the Treasury or U.S. Postal Service, respectively.

AA. 229.2(aa) Proprietary ATM

1. All deposits at nonproprietary ATMs are treated as deposits of nonlocal checks, and deposits at proprietary ATMs generally are treated as deposits at banking offices. The Conference Report on the EFA Act indicates

that the special availability rules for deposits received through nonproprietary ATMs are provided because “nonproprietary ATMs today do not distinguish among check deposits or between check and cash deposits” (H.R. Rep. No. 261, 100th Cong., 1st Sess. at 179 (1987)). Thus, a deposit of any combination of cash and checks at a nonproprietary ATM may be treated as if it were a deposit of nonlocal checks, because the depository bank does not know the makeup of the deposit and consequently is unable to place different holds on cash, local check, and nonlocal check deposits made at the ATM.

2. A colloquy between Senators Proxmire and Dodd during the floor debate on the Competitive Equality Banking Act (133 Cong. Rec. S11289 (Aug. 4, 1987)) indicates that whether a bank operates the ATM is the primary criterion in determining whether the ATM is proprietary to that bank. Because a bank should be capable of ascertaining the composition of deposits made to an ATM operated by that bank, an exception to the availability schedules is not warranted for these deposits. If more than one bank meets the “owns or operates” criterion, the ATM is considered proprietary to the bank that operates it. For the purpose of this definition, the bank that operates an ATM is the bank that puts checks deposited into the ATM into the forward collection stream. An ATM owned by one or more banks, but operated by a nonbank servicer, is considered proprietary to the bank or banks that own it.

3. The EFA Act also includes location as a factor in determining whether an ATM that is either owned or operated by a bank is proprietary to that bank. The definition of proprietary ATM includes an ATM located on the premises of the bank, either inside the branch or on its outside wall, regardless of whether the ATM is owned or operated by that bank. Because the EFA Act also defines a proprietary ATM as one that is “in close proximity” to the bank, the regulation defines an ATM located within 50 feet of a bank to be proprietary to that bank unless it is identified as being owned or operated by another entity. The Board believes that the statutory proximity test was designed to apply to situations where it would appear to the depositor that the ATM is run by his or her bank, because of the proximity of the ATM to the bank. The Board believes that an ATM located within 50 feet of a banking office would be presumed proprietary to that bank unless it is clearly identified as being owned or operated by another entity.

BB. 229.2(bb) Qualified Returned Check

1. Subpart C requires the paying bank and returning bank(s) to return checks in an expeditious manner. The banks may meet this responsibility by returning a check to the depository bank by the same general means

used for forward collection of a check from the depository bank to the paying bank. One way to speed the return process is to prepare the returned check for automated processing. Qualified returned checks are identified by placing a “2” in the case of an original check (or a “5” in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier in accordance with American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (hereinafter “ANS X9.13”) for original checks or American National Standard Specifications for an Image Replacement Document—IRD, X9.100-140 (hereinafter “ANS X9.100-140”) for substitute checks.

2. Generally, under the standard of care imposed by §229.38, a paying or returning bank would be liable for any damages incurred due to misencoding of the routing number, the amount of the check, or return identifier on a qualified returned check unless the error was due to problems with the depository bank’s indorsement. (See also discussion of §229.38(c).) A qualified returned check that contains an encoding error would still be a qualified returned check for purposes of the regulation.

3. A qualified returned check need not contain the elements of a check drawn on the depository bank, such as the name of the depository bank. Because indorsements and other information on carrier envelopes or strips will not appear on a returned check itself, banks will wish to retain carrier envelopes and/or microfilm or other records of carrier envelopes or strips with their check records.

CC. 229.2(cc) Returning Bank

1. Returning bank is defined to mean any bank (excluding the paying bank and the depository bank) handling a returned check. A returning bank may or may not be a bank that handled the returned check in the forward collection process. A returning bank includes a bank that agrees to handle a returned check for expeditious return to the depository bank under §229.31(a). A returning bank is also a collecting bank for the purpose of a collecting bank’s duty to exercise ordinary care under U.C.C. 4-202(b) and is analogous to a collecting bank for purposes of final settlement. (See Commentary to §229.35(b).)

DD. 229.2(dd) Routing Number

1. Each bank is assigned a routing number by an agent of the American Bankers Association. The routing number takes two forms—a fractional form and a nine-digit form. A paying bank is identified by both the fractional form routing number (which normally appears in the upper right hand corner of the check) and the nine-digit form. The

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nine-digit routing number of the paying bank generally is printed in magnetic ink near the bottom of the check (the MICR strip; see ANSI X9.13-1983). Subpart C requires depository banks and subsequent collecting banks to place their routing numbers in nine-digit form in their indorsements.

EE. 229.2(ee) [Reserved]

FF. 229.2(ff) [Reserved]

GG. 229.2(gg) Teller's Check

1. Teller's check is defined in the EFA Act to mean a check issued by a depository institution and drawn on another depository institution. The definition in the regulation includes not only checks drawn by a bank on another bank, but also checks payable through or at a bank. This would include checks drawn on a nonbank, as long as the check is payable through or at a bank. The definition does not include checks that are drawn by a nonbank on a nonbank even if payable through or at a bank. The definition includes checks provided to a customer of the bank in connection with customer deposit account activity, such as account disbursements and interest payments. The definition also includes checks acquired from a bank by a noncustomer for remittance purposes, such as certain loan disbursement checks. The definition excludes checks used by the bank to pay employees or vendors and checks issued by the bank in connection with a payment service, such as a payroll or a bill-paying service. Teller's checks generally are sold by banks to substitute the bank's credit for the customer's credit and thereby enhance the collectibility of the checks. A check issued in connection with a payment service generally is provided as a convenience to the customer rather than as a guarantee of the check's collectibility. In addition, such checks are often more difficult to distinguish from other types of checks than are teller's checks as defined by this regulation.

HH. 229.2(hh) Traveler's Check

1. The EFA Act and regulation require that traveler's checks be treated as cashier's, teller's, or certified checks when a new depositor opens an account. (See §229.13(a); 12 U.S.C. 4003(a)(1)(C).) The EFA Act does not define traveler's check.

2. One element of the definition states that a traveler's check is "drawn on or payable through or at a bank." Sometimes traveler's checks that are not issued by banks do not have any words on them identifying a bank as drawee or paying agent, but instead bear unique routing numbers with an 8000 prefix that identifies a bank as paying agent.

3. Because a traveler's check is payable by, at, or through a bank, it is also a check for purposes of this regulation. When not subject

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to the next-day availability requirement for new accounts, a traveler's check should be treated as a local or nonlocal check depending on the location of the paying bank. The depository bank may rely on the designation of the paying bank by the routing number to determine whether local or nonlocal treatment is required.

II. 229.2(ii) Uniform Commercial Code

1. Uniform Commercial Code is defined as the version of the Code adopted by the individual states. For purposes of uniform citation, all citations to the U.C.C. in this part refer to the Official Text as approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

JJ. 229.2(jj) [Reserved]

KK. 229.2(kk) Unit of General Local Government

1. Unit of general local government is defined to include a city, county, parish, town, township, village, or other general purpose political subdivision of a state. The term does not include special purpose units, such as school districts, water districts, or Indian nations.

LL. 229.2(ll) Wire Transfer

1. The EFA Act delegates to the Board the authority to define the term wire transfer. The regulation defines wire transfer as an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary, upon receipt or on a day stated in the order, that is transmitted by electronic or other means over certain networks or on the books of banks and that is used primarily to transfer funds between commercial accounts. "Unconditional" means that no condition, such as presentation of documents, must be met before the bank receiving the order is to make payment. A wire transfer may be transmitted by electronic or other means. "Electronic means" include computer-to-computer links, on-line terminals, telegrams (including TWX, TELEX, or similar methods of communication), telephone calls, or other similar methods. Fedwire (the Federal Reserve's wire transfer network), CHIPS (Clearing House Interbank Payments System, operated by the New York Clearing House), and book transfers among banks or within one bank are covered by this definition. Credits for credit and debit card transactions are not wire transfers. The term wire transfer excludes electronic fund transfers as that term is defined by the Electronic Fund Transfer Act.

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MM. 229.2(mm) [Reserved]

NN. 229.2(nn) Good Faith

1. This definition of good faith derives from U.C.C. 3-103(a)(4).

OO. 229.2(oo) Interest Compensation

1. This calculation of *interest compensation* derives from U.C.C. 4A-506(b). (See §§ 229.34(e) and 229.36(f).)

PP. 229.2(pp) Contractual Branch

1. When one bank arranges for another bank to accept deposits on its behalf, the second bank is a contractual branch of the first bank. For further discussion of contractual branch deposits and related disclosures, see §§ 229.2(s) and 229.19(a) of the regulation and the commentary to §§ 229.2(s), 229.10(c), 229.14(a), 229.16(a), 229.18(b), and 229.19(a).

QQ. 229.2(qq) [Reserved]

RR. 229.2(rr) [Reserved]

SS. 229.2(ss) [Reserved]

TT. 229.2(tt) [Reserved]

UU. 229.2(uu) [Reserved]

VV. 229.2(vv) MICR Line

1. Information in the MICR line of a check must be printed in accordance with ANS X9.13 for original checks and ANS X9.100-140 for substitute checks. These standards could vary the requirements for printing the MICR line, such as by indicating circumstances under which the use of magnetic ink is not required.

WW. 229.2(ww) Original Check

1. The definition of original check distinguishes the first paper check signed or otherwise authorized by the drawer to effect a particular payment transaction from a substitute check or other paper or electronic representation that is derived from an original check or substitute check. There is only one original check for any particular payment transaction. However, multiple substitute checks could be created to represent that original check at various points in the check collection and return process.

XX. 229.2(xx) Paper or Electronic Representation of a Substitute Check

1. Receipt of a paper or electronic representation of a substitute check does not trigger indemnity or expedited recredit rights, although the recipient nonetheless could have a warranty claim or a claim under other check law with respect to that document or the underlying payment transaction. A paper or electronic representation of a substitute check would include a representation of a substitute check that was drawn on an ac-

count, as well as a representation of a substitute traveler's check, credit card check, or other item that meets the substitute check definition. The following examples illustrate the scope of the definition.

Examples.

a. A bank receives electronic presentment of a substitute check that has been converted to electronic form and charges the customer's account for that electronic item. The periodic account statement that the bank provides to the customer includes information about the electronically-presented substitute check in a line-item list describing all the checks the bank charged to the customer's account during the previous month. The electronic file that the bank received for presentment and charged to the customer's account would be an electronic representation of a substitute check, and the line-item appearing on the customer's account statement would be a paper representation of a substitute check.

b. A paying bank receives and settles for a substitute check and then realizes that its settlement was for the wrong amount. The paying bank sends an adjustment request to the presenting bank to correct the error. The adjustment request is not a paper or electronic representation of a substitute check under the definition because it is not being handled for collection or return as a check. Rather, it is a separate request that is related to a check. As a result, no substitute check warranty, indemnity, or expedited recredit rights attach to the adjustment.

YY. 229.2(yy) [Reserved]

ZZ. 229.2(zz) Reconverting Bank

1. A substitute check is "created" when and where a paper reproduction of an original check that meets the requirements of § 229.2(aaa) is physically printed. A bank is a reconverting bank if it creates a substitute check directly or if another person by agreement creates a substitute check on the bank's behalf. A bank also is a reconverting bank if it is the first bank that receives a substitute check created by a nonbank and transfers, presents, or returns that substitute check or, in lieu thereof, the first paper or electronic representation of such substitute check.

Examples.

a. Bank A, by agreement, sends an electronic check file for collection to Bank B. Bank B chooses to use that file to print a substitute check that meets the requirements of § 229.2(aaa). Bank B is the reconverting bank as of the time it prints the substitute check.

b. Company A, which is not a bank, by agreement receives check information electronically from Bank A. Bank A becomes the reconverting bank when Company A prints a substitute check on behalf of Bank A in accordance with that agreement.

c. A depository bank's customer, which is a nonbank business, receives a check for payment, truncates that original check, and creates a substitute check to deposit with its bank. The depository bank receives that substitute check from its customer and is the first bank to handle the substitute check. The depository bank becomes the reconverting bank as of the time that it transfers or presents the substitute check (or in lieu thereof the first paper or electronic representation of the substitute check) for forward collection.

d. A bank is the payable-through bank for checks that are drawn on a nonbank payor, which is the bank's customer. When the customer decides not to pay a check that is payable through the bank, the customer creates a substitute check for purposes of return. The payable-through bank becomes the reconverting bank when it returns the substitute check (or in lieu thereof the first paper or electronic representation of the substitute check) to a returning bank or the depository bank.

e. A paying bank returns a substitute check to the depository bank, which in turn gives that substitute check back to its nonbank customer. That customer then redeposits the substitute check for collection at a different bank. Because the substitute check was already transferred by a bank, the second depository bank does not become a reconverting bank when it transfers or presents that substitute check for collection.

2. In some cases there will be one or more banks between the truncating bank and the reconverting bank.

Example.

A depository bank truncates the original check and sends an electronic representation of the original check for collection to an intermediary bank. The intermediary bank sends the electronic representation of the original check to the presenting bank, which creates a substitute check to present to the paying bank. The presenting bank is the reconverting bank.

3. A check could move from electronic form to substitute check form several times during the collection and return process. It therefore is possible that there could be multiple substitute checks, and thus multiple reconverting banks, with respect to the same underlying payment.

AAA. 229.2(aaa) Substitute Check

1. "A paper reproduction of an original check" could include a reproduction created

directly from the original check or a reproduction of the original check that is created from some other source that contains an image of the original check, such as an electronic representation of an original check or substitute check, or a previous substitute check.

2. Because a substitute check must be a piece of paper, an electronic file or electronic check image that has not yet been printed in accordance with the substitute check definition is not a substitute check.

3. Because a substitute check must be a representation of a check, a paper reproduction of something that is not a check cannot be a substitute check. For example, a savings bond or a check drawn on a non-U.S. branch of a foreign bank cannot be reconverted to a substitute check.

4. As described in §229.51(b) and the commentary thereto, a reconverting bank is required to ensure that a substitute check contains all indorsements applied by previous parties that handled the check in any form. Therefore, the image of the original check that appears on the back of a substitute check would include indorsements that were physically applied to the original check before an image of the original check was captured. An indorsement that was applied physically to the original check after an image of the original check was captured would be conveyed as an electronic indorsement (see paragraph 3 of the commentary to §229.35(a)). The back of the substitute check would contain a physical representation of any indorsements that were applied electronically to the check after an image of the check was captured but before creation of the substitute check.

Example.

Bank A, which is the depository bank, captures an image of an original check, indorses it electronically and, by agreement, transmits to Bank B an electronic image of the check accompanied by the electronic indorsement. Bank B then creates a substitute check to send to Bank C. The back of the substitute check created by Bank B must contain a representation of the indorsement previously applied electronically by Bank A and Bank B's own indorsement. (For more information on indorsement requirements, see §229.35, appendix D, and the commentary thereto.)

5. Some substitute checks will not be created directly from the original check, but rather will be created from a previous substitute check. The back of a subsequent substitute check will contain an image of the full length of the back of the previous substitute check. ANS X9.100-140 requires preservation of the full length of the back of the previous substitute check in order to preserve previous indorsements and reconverting bank identifications. By contrast,

the front of a subsequent substitute check will not contain an image of the entire previous substitute check. Rather, the image field of the subsequent substitute check will contain the image of the front of the original check that appeared on the previous substitute check at the time the previous substitute check was converted to electronic form. The portions of the front of the subsequent substitute check other than the image field will contain information applied by the subsequent reconverting bank, such as its reconverting bank identification, the MICR line, the legal equivalence legend, and optional security information.

Examples.

a. The back of a subsequent substitute check would contain the following indorsements, all of which would be preserved through the image of the back of the previous substitute check: (1) The indorsements that were applied physically to the original check before an image of the original check was captured; (2) a physical representation of indorsements that were applied electronically to the original check after an image of the original check was captured but before creation of the first substitute check; and (3) indorsements that were applied physically to the previous substitute check. In addition, the reconverting bank for the subsequent substitute check must overlay onto the back of that substitute check a physical representation of any indorsements that were applied electronically after the previous substitute check was converted to electronic form but before creation of the subsequent substitute check.

b. Because information could have been physically added to the image of the front of the original check that appeared on the previous substitute check, the original check image that appears on the front of a subsequent substitute check could contain information in addition to that which appeared on the original check at the time it was truncated.

6. The MICR line applied to a substitute check must contain information in all fields of the MICR line that were encoded on the original check at any time before an image of the original check was captured. This includes all the MICR-line information that was preprinted on the original check, plus any additional information that was added to the MICR line before the image of the original check was captured (for example, the amount of the check). The information in each field of the substitute check's MICR line must be the same information as in the corresponding field of the MICR line of the original check, except as provided by ANS X9.100-140 (unless the Board by rule or order determines that a different standard ap-

plies). Industry standards may not, however, vary the requirement that a substitute check at the time of its creation must bear a full-field MICR line.

7. ANS X9.100-140, provides that a substitute check must have a "4" in position 44 and that a qualified returned substitute check must have a "4" in position 44 of the forward-collection MICR line as well as a "5" in position 44 of the qualified return MICR line. The "4" and "5" indicate that the document is a substitute check so that the size of the check image remains constant throughout the collection and return process, regardless of the number of substitute checks created that represent the same original check (see also §§229.30(a)(2) and 229.31(a)(2) and the commentary thereto regarding requirements for qualified returned substitute checks). An original check generally has a blank position 44 for forward collection. Because a reconverting bank must encode position 44 of a substitute check's forward collection MICR line with a "4," the reconverting bank must vary any character that appeared in position 44 of the forward-collection MICR line of the original check. A bank that misencodes or fails to encode position 44 at the time it attempts to create a substitute check has failed to create a substitute check. A bank that receives a properly-encoded substitute check may further encode that item but does so subject to the encoding warranties in Regulation CC and the U.C.C.

8. A substitute check's MICR line could contain information in addition to the information required at the time the substitute check is created. For example, if the amount field of the original check was not encoded and the substitute check therefore did not, when created, have an encoded amount field, the MICR line of the substitute check later could be amount-encoded.

9. A bank may receive a substitute check that contains a MICR-line variation but nonetheless meets the MICR-line replication requirements of §229.2(aaa)(2) because that variation is permitted by ANS X9.100-140. If such a substitute check contains a MICR-line error, a bank that receives it may, but is not required to, repair that error. Such a repair must be made in accordance with ANS X9.100-140 for repairing a MICR line, which generally allows a bank to correct an error by applying a strip that may or may not contain information in all fields encoded on the check's MICR line. A bank's repair of a MICR-line error on a substitute check is subject to the encoding warranties in Regulation CC and the U.C.C.

10. A substitute check must conform to all the generally applicable industry standards for substitute checks set forth in ANS X9.100-140, which incorporates other industry standards by reference. Thus, multiple substitute check images contained on the same

page of an account statement are not substitute checks.

BBB. 229.2(bbb) Sufficient Copy and Copy

1. A copy must be a paper reproduction of a check. An electronic image therefore is not a copy or a sufficient copy. However, if a customer has agreed to receive such information electronically, a bank that is required to provide an original check or sufficient copy may satisfy that requirement by providing an electronic image in accordance with § 229.58 and the commentary thereto.

2. A bank under § 229.53(b)(3) may limit its liability for an indemnity claim and under §§ 229.54(e)(2) and 229.55(c)(2) may respond to an expedited recredit claim by providing the claimant with a copy of a check that accurately represents all of the information on the front and back of the original check as of the time the original check was truncated or that otherwise is sufficient to determine the validity of the claim against the bank.

Examples.

a. A copy of an original check that accurately represents all the information on the front and back of the original check as of the time of truncation would constitute a sufficient copy if that copy resolved the claim. For example, if resolution of the claim required accurate payment and indorsement information, an accurate copy of the front and back of a legible original check (including but not limited to a substitute check) would be a sufficient copy.

b. A copy of the original check that does not accurately represent all the information on both the front and back of the original check also could be a sufficient copy if such copy contained all the information necessary to determine the validity of the relevant claim. For instance, if a consumer received a substitute check that contained a blurry image of a legible original check, the consumer might seek an expedited recredit because his or her account was charged for \$1,000, but he or she believed that the check was written for only \$100. If the amount that appeared on the front of the original check was legible, an accurate copy of only the front of the original check that showed the amount of the check would be sufficient to determine whether or not the consumer's claim regarding the amount of the check was valid.

CCC. 229.2(ccc) Transfer and Consideration

1. Under §§ 229.52 and 229.53, a bank is responsible for the warranties and indemnity when it transfers, presents, or returns a substitute check (or a paper or electronic representation thereof) for consideration. Drawers and other nonbank persons that receive checks from a bank are not transferees that receive consideration as those terms are de-

finied in the U.C.C. However, the Check 21 Act clearly contemplates that such nonbank persons that receive substitute checks (or representations thereof) from a bank will receive the warranties and indemnity from all previous banks that handled the check. To ensure that these parties are covered by the substitute check warranties and indemnity in the manner contemplated by the Check 21 Act, § 229.2(ccc) incorporates the U.C.C. definitions of the term transfer and consideration by reference and expands those definitions to cover a broader range of situations. Delivering a check to a nonbank that is acting on behalf of a bank (such as a third-party check processor or presentation point) is a transfer of the check to that bank.

Examples.

a. A paying bank pays a substitute check and then provides that paid substitute check (or a representation thereof) to a drawer with a periodic statement. Under the expanded definitions, the paying bank thereby transfers the substitute check (or representation thereof) to the drawer for consideration and makes the substitute check warranties described in § 229.52. A drawer that suffers a loss due to receipt of a substitute check may have warranty, indemnity, and, if the drawer is a consumer, expedited recredit rights under the Check 21 Act and subpart D. A drawer that suffers a loss due to receipt of a paper or electronic representation of a substitute check would receive the substitute check warranties but would not have indemnity or expedited recredit rights.

b. The expanded definitions also operate such that a paying bank that pays an original check (or a representation thereof) and then creates a substitute check to provide to the drawer with a periodic statement transfers the substitute check for consideration and thereby provides the warranties and indemnity.

c. The expanded definitions ensure that a bank that receives a returned check in any form and then provides a substitute check to the depositor gives the substitute check warranties and indemnity to the depositor.

d. The expanded definitions apply to substitute checks representing original checks that are not drawn on deposit accounts, such as checks used to access a credit card or a home equity line of credit.

DDD. 229.2(ddd) Truncate

1. Truncate means to remove the original check from the forward collection or return process and to send in lieu of the original check either a substitute check or, by agreement, information relating to the original check. Truncation does not include removal of a substitute check from the check collection or return process.

EEE. 229.2(eee) Truncating Bank

1. A bank is a truncating bank if it truncates an original check or if it is the first bank to transfer, present, or return another form of an original check that was truncated by a person that is not a bank.

Example.

a. A bank's customer that is a nonbank business receives a check for payment and deposits either a substitute check or an electronic representation of the original check with its depository bank instead of the original check. That depository bank is the truncating bank when it transfers, presents, or returns the substitute check or electronic representation in lieu of the original check. That bank also would be the reconverting bank if it were the first bank to transfer, present, or return a substitute check that it received from (or created from the information given by) its nonbank customer (see §229.2(yy) and the commentary thereto).

2. A truncating bank does not make the subpart D warranties and indemnity unless it also is the reconverting bank. Therefore, a bank that truncates the original check and sends an electronic file to a collecting bank does not provide subpart D protections to the recipient of that electronic item. However, a recipient of an electronic item may protect itself against losses associated with that item by agreement with the truncating bank.

FFF. 229.2(fff) Remotely Created Check

1. A check authorized by a consumer over the telephone that is not created by the paying bank and bears a legend on the signature line, such as "Authorized by Drawer," is an example of a remotely created check. A check that bears the signature applied, or purported to be applied, by the person on whose account the check is drawn is not a remotely created check. A typical forged check, such as a stolen personal check fraudulently signed by a person other than the drawer, is not covered by the definition of a remotely created check.

2. The term signature as used in this definition has the meaning set forth at U.C.C. 3-401. The term "applied by" refers to the physical act of placing the signature on the check.

3. The definition of a "remotely created check" differs from the definition of a "remotely created consumer item" under the U.C.C. A "remotely created check" may be drawn on an account held by a consumer, corporation, unincorporated company, partnership, government unit or instrumentality, trust, or any other entity or organization. A "remotely created consumer item" under the U.C.C., however, must be drawn on a consumer account.

4. Under Regulation CC (12 CFR part 229), the term "check" includes a negotiable demand draft drawn on or payable through or at an office of a bank. In the case of a "payable through" or "payable at" check, the signature of the person on whose account the check is drawn would include the signature of the payor institution or the signatures of the customers who are authorized to draw checks on that account, depending on the arrangements between the "payable through" or "payable at" bank, the payor institution, and the customers.

5. The definition of a remotely created check includes a remotely created check that has been reconverted to a substitute check.

III. Section 229.3 Administrative Enforcement
[Reserved]

IV. Section 229.10 Next-Day Availability

A. Business Days and Banking Days

1. This section, as well as other provisions of this subpart governing the availability of funds, provides that funds must be made available for withdrawal not later than a specified number of business days following the banking day on which the funds are deposited. Thus, a deposit is considered made only on a banking day, i.e., a day that the bank is open to the public for carrying on substantially all of its banking functions. For example, if a deposit is made at an ATM on a Saturday, Sunday, or other day on which the bank is closed to the public, the deposit is considered received on that bank's next banking day.

2. Nevertheless, business days are used to determine the number of days following the banking day of deposit that funds must be available for withdrawal. For example, if a deposit of a local check were made on a Monday, the availability schedule requires that funds be available for withdrawal on the second business day after deposit. Therefore, funds must be made available on Wednesday regardless of whether the bank was closed on Tuesday for other than a standard legal holiday as specified in the definition of business day.

B. 229.10(a) Cash Deposits

1. This paragraph implements the EFA Act's requirement for next-day availability for cash deposits to accounts at a depository bank "staffed by individuals employed by such institution."² Under this paragraph, cash deposited in an account at a staffed

²Nothing in the EFA Act or this regulation affects terms of account arrangements, such as negotiable order of withdrawal accounts, which may require prior notice of withdrawal. (See 12 CFR 204.2(e)(2).)

teller station on a Monday must become available for withdrawal by the start of business on Tuesday. It must become available for withdrawal by the start of business on Wednesday if it is deposited by mail, at a proprietary ATM, or by other means other than at a staffed teller station.

C. 229.10(b) Electronic Payments

1. The EFA Act provides next-day availability for funds received for deposit by wire transfer. The regulation uses the term electronic payment, rather than wire transfer, to include both wire transfers and ACH credit transfers under the next-day availability requirement. (See discussion of definitions of automated clearinghouse, electronic payment, and wire transfer in §229.2.)

2. The EFA Act requires that funds received by wire transfer be available for withdrawal not later than the business day following the day a wire transfer is received. This paragraph clarifies what constitutes receipt of an electronic payment. For the purposes of this paragraph, a bank receives an electronic payment when the bank receives both payment in finally collected funds and the payment instructions indicating the customer accounts to be credited and the amount to be credited to each account. For example, in the case of Fedwire, the bank receives finally collected funds at the time the payment is made. (See 12 CFR 210.31.) Finally collected funds generally are received for an ACH credit transfer when they are posted to the receiving bank's account on the settlement day. In certain cases, the bank receiving ACH credit payments will not receive the specific payment instructions indicating which accounts to credit until after settlement day. In these cases, the payments are not considered received until the information on the account and amount to be credited is received.

3. This paragraph also establishes the extent to which an electronic payment is considered made. Thus, if a participant on a private network fails to settle and the receiving bank receives finally settled funds representing only a partial amount of the payment, it must make only the amount that it actually received available for withdrawal.

4. The availability requirements of this regulation do not preempt or invalidate other rules, regulations, or agreements which require funds to be made available on a more prompt basis. For example, the next-day availability requirement for ACH credits in this section does not preempt ACH association rules and Treasury regulations (31 CFR part 210), which provide that the proceeds of these credit payments be available to the recipient for withdrawal on the day the bank receives the funds.

D. 229.10(c) Certain Check Deposits

1. The EFA Act generally requires that funds be made available on the business day following the banking day of deposit for Treasury checks, state and local government checks, cashier's checks, certified checks, teller's checks, and "on us" checks, under specified conditions. (Treasury checks are checks drawn on the Treasury of the United States and have a routing number beginning with the digits "0000.") This section also requires next-day availability for additional types of checks not addressed in the EFA Act. Checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank and U.S. Postal Service money orders also must be made available on the first business day following the day of deposit under specified conditions. For the purposes of this section, all checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank that contain in the MICR line a routing number that is listed in appendix A are subject to the next-day availability requirement if they are deposited in an account held by a payee of the check and in person to an employee of the depository bank, regardless of the purposes for which the checks were issued. For all new accounts, even if the new account exception is not invoked, traveler's checks must be included in the \$5,000 aggregation of checks deposited on any one banking day that are subject to the next-day availability requirement. (See §229.13(a).)

2. Deposit in Account of Payee. One statutory condition to receipt of next-day availability of Treasury checks, state and local government checks, cashier's checks, certified checks, and teller's checks is that the check must be "endorsed only by the person to whom it was issued." The EFA Act could be interpreted to include a check that has been indorsed in blank and deposited into an account of a third party that is not named as payee. The Board believes that such a check presents greater risks than a check deposited by the payee and that Congress did not intend to require next-day availability for such checks. The regulation, therefore, provides that funds must be available on the business day following deposit only if the check is deposited in an account held by a payee of the check. For the purposes of this section, payee does not include transferees other than named payees. The regulation also applies this condition to Postal Service money orders and checks drawn on Federal Reserve Banks and Federal Home Loan Banks.

3. Deposits Made to an Employee of the Depository Bank.

a. In most cases, next-day availability of the proceeds of checks subject to this section is conditioned on the deposit of these checks in person to an employee of the depository

bank. If the deposit is not made to an employee of the depository bank on the premises of such bank, the proceeds of the deposit must be made available for withdrawal by the start of business on the second business day after deposit, under paragraph (c)(2) of this section. For example, second-day availability rather than next-day availability would be allowed for deposits of checks subject to this section made at a proprietary ATM, night depository, through the mail or a lock box, or at a teller station staffed by a person who is not an employee of the depository bank. Second-day availability also may be allowed for deposits picked up by an employee of the depository bank at the customer's premises; such deposits would be considered made upon receipt at the branch or other location of the depository bank. Employees of a contractual branch would not be considered employees of the depository bank for the purposes of this regulation, and deposits at contractual branches would be treated the same as deposits to a proprietary ATM for the purposes of this regulation. (See also, Commentary to §229.19(a).)

b. In the case of Treasury checks, the EFA Act and regulation do not condition the receipt of next-day availability to deposits at staffed teller stations. Therefore, Treasury checks deposited at a proprietary ATM must be accorded next-day availability, if the check is deposited to an account of a payee of the check.

4. "On Us" Checks. The EFA Act and regulation require next-day availability for "on us" checks, i.e., checks deposited in a branch of the depository bank and drawn on the same or another branch of the same bank, if both branches are located in the same state or check processing region. Thus, checks deposited in one branch of a bank and drawn on another branch of the same bank must receive next-day availability even if the branch on which the checks are drawn is located in another check processing region but in the same state as the branch in which the check is deposited. For the purposes of this requirement, deposits at facilities that are not located on the premises of a brick-and-mortar branch of the bank, such as off-premise ATMs and remote depositories, are not considered deposits made at branches of the depository bank.

5. First \$100.

a. The EFA Act and regulation also require that up to \$100 of the aggregate deposit by check or checks not subject to next-day availability on any one banking day be made available on the next business day. For example, if \$70 were deposited in an account by check(s) on a Monday, the entire \$70 must be available for withdrawal at the start of business on Tuesday. If \$200 were deposited by check(s) on a Monday, this section requires that \$100 of the funds be available for withdrawal at the start of business on Tuesday.

The portion of the customer's deposit to which the \$100 must be applied is at the discretion of the depository bank, as long as it is not applied to any checks subject to next-day availability. The \$100 next-day availability rule does not apply to deposits at nonproprietary ATMs.

b. The \$100 that must be made available under this rule is in addition to the amount that must be made available for withdrawal on the business day after deposit under other provisions of this section. For example, if a customer deposits a \$1,000 Treasury check, and a \$1,000 local check in its account on Monday, \$1,100 must be made available for withdrawal on Tuesday—the proceeds of the \$1,000 Treasury check, as well as the first \$100 of the local check.

c. A depository bank may aggregate all local and nonlocal check deposits made by the customer on a given banking day for the purposes of the \$100 next-day availability rule. Thus, if a customer has two accounts at the depository bank, and on a particular banking day makes deposits to each account, \$100 of the total deposited to the two accounts must be made available on the business day after deposit. Banks may aggregate deposits to individual and joint accounts for the purposes of this provision.

d. If the customer deposits a \$500 local check, and gets \$100 cash back at the time of deposit, the bank need not make an additional \$100 available for withdrawal on the following day. Similarly, if the customer depositing the local check has a negative book balance, or negative available balance in its account at the time of deposit, the \$100 that must be available on the next business day may be made available by applying the \$100 to the negative balance, rather than making the \$100 available for withdrawal by cash or check on the following day.

6. Special Deposit Slips.

a. Under the EFA Act, a depository bank may require the use of a special deposit slip as a condition to providing next-day availability for certain types of checks. This condition was included in the EFA Act because many banks determine the availability of their customers' check deposits in an automated manner by reading the MICR-encoded routing number on the deposited checks. Using these procedures, a bank can determine whether a check is a local or nonlocal check, a check drawn on the Treasury, a Federal Reserve Bank, a Federal Home Loan Bank, or a branch of the depository bank, or a U.S. Postal Service money order. Appendix A includes the routing numbers of certain categories of checks that are subject to next-day availability. The bank cannot require a special deposit slip for these checks.

b. A bank cannot distinguish whether the check is a state or local government check, cashier's check, certified check, or teller's check by reading the MICR-encoded routing

number, because these checks bear the same routing number as other checks drawn on the same bank that are not accorded next-day availability. Therefore, a bank may require a special deposit slip for these checks.

c. The regulation specifies that if a bank decides to require the use of a special deposit slip (or a special deposit envelope in the case of a deposit at an ATM or other unstaffed facility) as a condition to granting next-day availability under paragraphs (c)(1)(iv) or (c)(1)(v) of this section or second-day availability under paragraph (c)(2) of this section, and if the deposit slip that must be used is different from the bank's regular deposit slips, the bank must either provide the special slips to its customers or inform its customers how such slips may be obtained and make the slips reasonably available to the customers.

d. A bank may meet this requirement by providing customers with an order form for the special deposit slips and allowing sufficient time for the customer to order and receive the slips before this condition is imposed. If a bank provides deposit slips in its branches for use by its customers, it also must provide the special deposit slips in the branches. If special deposit envelopes are required for deposits at an ATM, the bank must provide such envelopes at the ATM.

e. Generally, a teller is not required to advise depositors of the availability of special deposit slips merely because checks requiring special deposit slips for next-day availability are deposited without such slips. If a bank provides the special deposit slips only upon the request of a depositor, however, the teller must advise the depositor of the availability of the special deposit slips, or the bank must post a notice advising customers that the slips are available upon request. Such notice need not be posted at each teller window, but the notice must be posted in a place where consumers seeking to make deposits are likely to see it before making their deposits. For example, the notice might be posted at the point where the line forms for teller service in the lobby. The notice is not required at any drive-through teller windows nor is it required at night depository locations, or at locations where consumer deposits are not accepted. If a bank prepares a deposit for a depositor, it must use a special deposit slip where appropriate. A bank may require the customer to segregate the checks subject to next-day availability for which special deposit slips could be required, and to indicate on a regular deposit slip that such checks are being deposited, if the bank so instructs its customers in its initial disclosure.

V. Section 229.11 [Reserved]

VI. Section 229.12 Availability Schedule

A. 229.12(a) Effective Date

1. The availability schedule set forth in this section supersedes the temporary schedule that was effective September 1, 1988, through August 31, 1990.

B. 229.12(b) Local Checks and Certain Other Checks

1. Local checks must be made available for withdrawal not later than the second business day following the banking day on which the checks were deposited.

2. In addition, the proceeds of Treasury checks and U.S. Postal Service money orders not subject to next-day (or second-day) availability under §229.10(c), checks drawn on Federal Reserve Banks and Federal Home Loan Banks, checks drawn by a state or unit of general local government, cashier's checks, certified checks, and teller's checks not subject to next-day (or second-day) availability under §229.10(c) and payable in the same check processing region as the depository bank, must be made available for withdrawal by the second business day following deposit.

3. Exceptions are made for withdrawals by cash or similar means and for deposits in banks located outside the 48 contiguous states. Thus, the proceeds of a local check deposited on a Monday generally must be made available for withdrawal on Wednesday.

C. 229.12(c) Nonlocal Checks

1. Nonlocal checks must be made available for withdrawal not later than the fifth business day following deposit, i.e., proceeds of a nonlocal check deposited on a Monday must be made available for withdrawal on the following Monday. In addition, a check described in §229.10(c) that does not meet the conditions for next-day availability (or second-day availability) is treated as a nonlocal check, if the check is drawn on or payable through or at a nonlocal paying bank. Adjustments are made to the schedule for withdrawals by cash or similar means and deposits in banks located outside the 48 contiguous states.

2. Reduction in Schedules.

a. Section 603(d)(1) of the EFA Act (12 U.S.C. 4002(d)(1)) requires the Board to reduce the statutory schedules for any category of checks where most of those checks would be returned in a shorter period of time than provided in the schedules. The conferees indicated that "if the new system makes it possible for two-thirds of the items of a category of checks to meet this test in a shorter period of time, then the Federal

Reserve must shorten the schedules accordingly." H.R. Rep. No. 261, 100th Cong., 1st Sess. at 179 (1987).

b. Reduced schedules are provided for certain nonlocal checks where significant improvements can be made to the EFA Act's schedules due to transportation arrangements or proximity between the check processing regions of the depository bank and the paying bank, allowing for faster collection and return. Appendix B sets forth the specific reduction of schedules applicable to banks located in certain check processing regions.

c. A reduction in schedules may apply even in those cases where the determination that the check is nonlocal cannot be made based on the routing number on the check. For example, a nonlocal credit union payable-through share draft may be subject to a reduction in schedules if the routing number of the payable-through bank that appears on the draft is included in appendix B, even though the determination that the payable-through share draft is nonlocal is based on the location of the credit union and not the routing number on the draft.

D. 229.12(d) Time Period Adjustment for Withdrawal by Cash or Similar Means

1. The EFA Act provides an adjustment to the availability rules for cash withdrawals. Funds from local and nonlocal checks need not be available for cash withdrawal until 5:00 p.m. on the day specified in the schedule. At 5:00 p.m., \$400 of the deposit must be made available for cash withdrawal. This \$400 is in addition to the first \$100 of a day's deposit, which must be made available for withdrawal at the start of business on the first business day following the banking day of deposit. If the proceeds of local and nonlocal checks become available for withdrawal on the same business day, the \$400 withdrawal limitation applies to the aggregate amount of the funds that became available for withdrawal on that day. The remainder of the funds must be available for cash withdrawal at the start of business on the business day following the business day specified in the schedule.

2. The EFA Act recognizes that the \$400 that must be provided on the day specified in the schedule may exceed a bank's daily ATM cash withdrawal limit, and explicitly provides that the EFA Act does not supersede the bank's policy in this regard. The Board believes that the rationale for accommodating a bank's ATM withdrawal limit also applies to other cash withdrawal limits established by that bank. Section 229.19(c)(4) of the regulation addresses the relation between a bank's cash withdrawal limit (for over-the-counter cash withdrawals as well as ATM cash withdrawals) and the requirements of this subpart.

3. The Board believes that the Congress included this special cash withdrawal rule to provide a depository bank with additional time to learn of the nonpayment of a check before it must make funds available to its customer. If a customer deposits a local check on a Monday, and that check is returned by the paying bank, the depository bank may not receive the returned check until Thursday, the day after funds for a local check ordinarily must be made available for withdrawal. The intent of the special cash withdrawal rule is to minimize this risk to the depository bank. For this rule to minimize the depository bank's risk, it must apply not only to cash withdrawals, but also to withdrawals by other means that result in an irrevocable debit to the customer's account or commitment to pay by the bank on the customer's behalf during the day. Thus, the cash withdrawal rule also includes withdrawals by electronic payment, issuance of a cashier's or teller's check, certification of a check, or other irrevocable commitment to pay, such as authorization of an on-line point-of-sale debit. The rule also would apply to checks presented over the counter for payment on the day of presentment by the depositor or another person. Such checks could not be dishonored for insufficient funds if an amount sufficient to cover the check had become available for cash withdrawal under this rule; however, payment of such checks would be subject to the bank's cut-off hour established under U.C.C. 4-108. The cash withdrawal rule does not apply to checks and other provisional debits presented to the bank for payment that the bank has the right to return.

E. 229.12(e) Extension of Schedule for Certain Deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands

1. The EFA Act and regulation provide an extension of the availability schedules for check deposits at a branch of a bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands. The schedules for local checks, nonlocal checks (including nonlocal checks subject to the reduced schedules of appendix B), and deposits at nonproprietary ATMs are extended by one business day for checks deposited to accounts in banks located in these jurisdictions that are drawn on or payable at or through a paying bank not located in the same jurisdiction as the depository bank. For example, a check deposited in a bank in Hawaii and drawn on a San Francisco paying bank must be made available for withdrawal not later than the third business day following deposit. This extension does not apply to deposits that must be made available for withdrawal on the next business day.

2. The Congress did not provide this extension of the schedules to checks drawn on a

paying bank located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands and deposited in an account at a depository bank in the 48 contiguous states. Therefore, a check deposited in a San Francisco bank drawn on a Hawaii paying bank must be made available for withdrawal not later than the second rather than the third business day following deposit.

F. 229.12(f) Deposits at Nonproprietary ATMs

1. The EFA Act and regulation provide a special rule for deposits made at nonproprietary ATMs. This paragraph does not apply to deposits made at proprietary ATMs. All deposits at a nonproprietary ATM must be made available for withdrawal by the fifth business day following the banking day of deposit. For example, a deposit made at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than Monday of the following week. The provisions of §229.10(c)(1)(vii) requiring a depository bank to make up to \$100 of an aggregate daily deposit available for withdrawal on the first business day after the banking day of deposit do not apply to deposits at a nonproprietary ATM.

VII. Section 229.13 Exceptions

A. Introduction

1. While certain safeguard exceptions (such as those for new accounts and checks the bank has reasonable cause to believe are uncollectible) are established in the EFA Act, the Congress gave the Board the discretion to determine whether certain other exceptions should be included in its regulations. Specifically, the EFA Act gives the Board the authority to establish exceptions to the schedules for large or redeposited checks and for accounts that have been repeatedly overdrawn. These exceptions apply to local and nonlocal checks as well as to checks that must otherwise be accorded next-day (or second-day) availability under §229.10(c).

2. Many checks will not be returned to the depository bank by the time funds must be made available for withdrawal under the next-day (or second-day), local, and nonlocal schedules. In order to reduce risk to depository banks, the Board has exercised its statutory authority to adopt these exceptions to the schedules in the regulation to allow the depository bank to extend the time within which it is required to make funds available.

3. The EFA Act also gives the Board the authority to suspend the schedules for any classification of checks, if the schedules result in an unacceptable level of fraud losses. The Board will adopt regulations or issue orders to implement this statutory authority

if and when circumstances requiring its implementation arise.

B. 229.13(a) New Accounts

1. Definition of New Account.

a. The EFA Act provides an exception to the availability schedule for new accounts. An account is defined as a new account during the first 30 calendar days after the account is opened. An account is opened when the first deposit is made to the account. An account is not considered a new account, however, if each customer on the account has a transaction account relationship with the depository bank, including a dormant account, that is at least 30 calendar days old or if each customer has had an established transaction account with the depository bank within the 30 calendar days prior to opening the second account.

b. The following are examples of what constitutes, and does not constitute, a new account:

i. If the customer has an established account with a bank and opens a second account with the bank, the second account is not subject to the new account exception.

ii. If a customer's account were closed and another account opened as a successor to the original account (due, for example, to the theft of checks or a debit card used to access the original account), the successor account is not subject to the new account exception, assuming the previous account relationship is at least 30 days old. Similarly, if a customer closes an established account and opens a separate account within 30 days, the new account is not subject to the new account exception.

iii. If a customer has a savings deposit or other deposit that is not an account (as that term is defined in §229.2(a)) at the bank, and opens an account, the account is subject to the new account exception.

iv. If a person that is authorized to sign on a corporate account (but has no other relationship with the bank) opens a personal account, the personal account is subject to the new account exception.

v. If a customer has an established joint account at a bank, and subsequently opens an individual account with that bank, the individual account is not subject to the new account exception.

vi. If two customers that each have an established individual account with the bank open a joint account, the joint account is not subject to the new account exception. If one of the customers on the account has no current or recent established account relationship with the bank, however, the joint account is subject to the new account exception, even if the other individual on the account has an established account relationship with the bank.

2. Rules Applicable to New Accounts.

a. During the new account exception period, the schedules for local and nonlocal checks do not apply, and, unlike the other exceptions provided in this section, the regulation provides no maximum time frames within which the proceeds of these deposits must be made available for withdrawal. Maximum times within which funds must be available for withdrawal during the new account period are provided, however, for certain other deposits. Deposits received by cash and electronic payments must be made available for withdrawal in accordance with § 229.10.

b. Special rules also apply to deposits of Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks and Federal Home Loan Banks, state and local government checks, cashier's checks, certified checks, teller's checks, and, for the purposes of the new account exception only, traveler's checks. The first \$5,000 of funds deposited to a new account on any one banking day by these check deposits must be made available for withdrawal in accordance with § 229.10(c). Thus, the first \$5,000 of the proceeds of these check deposits must be made available on the first business day following deposit, if the deposit is made in person to an employee of the depository bank and the other conditions of next-day availability are met. Funds must be made available on the second business day after deposit for deposits that are not made over the counter, in accordance with § 229.10(c)(2). (Proceeds of Treasury check deposits must be made available on the first business day after deposit, even if the check is not deposited in person to an employee of the depository bank.) Funds in excess of the first \$5,000 deposited by these types of checks on a banking day must be available for withdrawal not later than the ninth business day following the banking day of deposit. The requirements of § 229.10(c)(1)(vi) and (vii) that "on us" checks and the first \$100 of a day's deposit be made available for withdrawal on the next business day do not apply during the new account period.

3. Representation by Customer. The depository bank may rely on the representation of the customer that the customer has no established account relationship with the bank, and has not had any such account relationship within the past 30 days, to determine whether an account is subject to the new account exception.

C. 229.13(b) Large Deposits

1. Under the large deposit exception, a depository bank may extend the hold placed on check deposits to the extent that the amount of the aggregate deposit on any banking day exceeds \$5,000. This exception applies to local and nonlocal checks, as well as to checks that otherwise would be made

available on the next (or second) business day after the day of deposit under § 229.10(c). Although the first \$5,000 of a day's deposit is subject to the availability otherwise provided for checks, the amount in excess of \$5,000 may be held for an additional period of time as provided in § 229.13(h). When the large deposit exception is applied to deposits composed of a mix of checks that would otherwise be subject to differing availability schedules, the depository bank has the discretion to choose the portion of the deposit to which it applies the exception. Deposits by cash or electronic payment are not subject to this exception for large deposits.

2. The following example illustrates the operation of the large deposit exception. If a customer deposits \$2,000 in cash and a \$9,000 local check on a Monday, \$2,100 (the proceeds of the cash deposit and \$100 from the local check deposit) must be made available for withdrawal on Tuesday. An additional \$4,900 of the proceeds of the local check must be available for withdrawal on Wednesday in accordance with the local schedule, and the remaining \$4,000 may be held for an additional period of time under the large deposit exception.

3. Where a customer has multiple accounts with a depository bank, the bank may apply the large deposit exception to the aggregate deposits to all of the customer's accounts, even if the customer is not the sole holder of the accounts and not all of the holders of the customer's accounts are the same. Thus, a depository bank may aggregate the deposits made to two individual accounts in the same name, to an individual and a joint account with one common name, or to two joint accounts with at least one common name for the purpose of applying the large deposit exception. Aggregation of deposits to multiple accounts is permitted because the Board believes that the risk to the depository bank associated with large deposits is similar regardless of how the deposits are allocated among the customer's accounts.

D. 229.13(c) Redeposited Checks

1. The EFA Act gives the Board the authority to promulgate an exception to the schedule for checks that have been returned unpaid and redeposited. Section 229.13(c) provides such an exception for checks that have been returned unpaid and redeposited by the customer or the depository bank. This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c).

2. This exception addresses the increased risk to the depository bank that checks that have been returned once will be uncollectible when they are presented to the paying bank a second time. The Board, however, does not believe that this increased risk is present for

checks that have been returned due to a missing indorsement. Thus, the exception does not apply to checks returned unpaid due to missing indorsements and redeposited after the missing indorsement has been obtained, if the reason for return indicated on the check (see §229.30(d)) states that it was returned due to a missing indorsement. For the same reason, this exception does not apply to a check returned because it was postdated (future dated), if the reason for return indicated on the check states that it was returned because it was postdated, and if it is no longer postdated when redeposited.

3. To determine when funds must be made available for withdrawal, the banking day on which the check is redeposited is considered to be the day of deposit. A depository bank that made \$100 of a check available for withdrawal under §229.10(c)(1)(vii) can charge back the full amount of the check, including the \$100, if the check is returned unpaid, and the \$100 need not be made available again if the check is redeposited.

E. 229.13(d) Repeated Overdrafts

1. The EFA Act gives the Board the authority to establish an exception for “deposit accounts which have been overdrawn repeatedly.” This paragraph provides two tests to determine what constitutes repeated overdrafts. Under the first test, a customer’s accounts are considered repeatedly overdrawn if, on six banking days within the preceding six months, the available balance in any account held by the customer is negative, or the balance would have become negative if checks or other charges to the account had been paid, rather than returned. This test can be met based on separate occurrences (e.g., checks that are returned for insufficient funds on six different days), or based on one occurrence (e.g., a negative balance that remains on the customer’s account for six banking days). If the bank dishonors a check that otherwise would have created a negative balance, however, the incident is considered an overdraft only on that day.

2. The second test addresses substantial overdrafts. Such overdrafts increase the risk to the depository bank of dealing with the repeated overdrafter. Under this test, a customer incurs repeated overdrafts if, on two banking days within the preceding six months, the available balance in any account held by the customer is negative in an amount of \$5,000 or more, or would have become negative in an amount of \$5,000 or more if checks or other charges to the account had been paid.

3. The exception relates not only to overdrafts caused by checks drawn on the account, but also overdrafts caused by other debit charges (e.g. ACH debits, point-of-sale transactions, returned checks, account fees, etc.). If the potential debit is in excess of available funds, the exception applies regard-

less of whether the items were paid or returned unpaid. An overdraft resulting from an error on the part of the depository bank, or from the imposition of overdraft charges for which the customer is entitled to a refund under §§229.13(e) or 229.16(c), cannot be considered in determining whether the customer is a repeated overdrafter. The exception excludes accounts with overdraft lines of credit, unless the credit line has been exceeded or would have been exceeded if the checks or other charges to the account had been paid.

4. This exception applies to local and nonlocal checks, as well as to checks that otherwise would be made available on the next (or second) business day after the day of deposit under §229.10(c). When a bank places or extends a hold under this exception, it need not make the first \$100 of a deposit available for withdrawal on the next business day, as otherwise would be required by §229.10(c)(1)(vii).

F. 229.13(e) Reasonable Cause To Doubt Collectibility

1. In the case of certain check deposits, if the bank has reasonable cause to believe the check is uncollectible, it may extend the time funds must be made available for withdrawal. This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under §229.10(c). When a bank places or extends a hold under this exception, it need not make the first \$100 of a deposit available for withdrawal on the next business day, as otherwise would be required by §229.10(c)(1)(vii). If the reasonable cause exception is invoked, the bank must include in the notice to its customer, required by §229.13(g), the reason that the bank believes that the check is uncollectible.

2. The following are several examples of circumstances under which the reasonable cause exception may be invoked:

a. If a bank received a notice from the paying bank that a check was not paid and is being returned to the depository bank, the depository bank could place a hold on the check or extend a hold previously placed on that check, and notify the customer that the bank had received notice that the check is being returned. The exception could be invoked even if the notice were incomplete, if the bank had reasonable cause to believe that the notice applied to that particular check.

b. The depository bank may have received information from the paying bank, prior to the presentment of the check, that gives the bank reasonable cause to believe that the check is uncollectible. For example, the paying bank may have indicated that payment has been stopped on the check, or that the drawer’s account does not currently have

sufficient funds to honor the check. Such information may provide sufficient basis to invoke this exception. In these cases, the depository bank could invoke the exception and disclose as the reason the exception is being invoked the fact that information from the paying bank indicates that the check may not be paid.

c. The fact that a check is deposited more than six months after the date on the check (*i.e.* a stale check) is a reasonable indication that the check may be uncollectible, because under U.C.C. 4-404 a bank has no duty to its customer to pay a check that is more than six months old. Similarly, if a check being deposited is postdated (future dated), the bank may have a reasonable cause to believe the check is uncollectible, because the check may not be properly payable under U.C.C. 4-401. The bank, in its notice, should specify that the check is stale-dated or postdated.

d. There are reasons that may cause a bank to believe that a check is uncollectible that are based on confidential information. For example, a bank could conclude that a check being deposited is uncollectible based on its reasonable belief that the depositor is engaging in kiting activity. Reasonable belief as to the insolvency or pending insolvency of the drawer of the check or the drawee bank and that the checks will not be paid also may justify invoking this exception. In these cases, the bank may indicate, as the reason it is invoking the exception, that the bank has confidential information that indicates that the check might not be paid.

3. The Board has included a reasonable cause exception notice as a model notice in appendix C (C-13). The model notice includes several reasons for which this exception may be invoked. The Board does not intend to provide a comprehensive list of reasons for which this exception may be invoked; another reason that does not appear on the model notice may be used as the basis for extending a hold, if the reason satisfies the conditions for invoking this exception. A depository bank may invoke the reasonable cause exception based on a combination of factors that give rise to a reasonable cause to doubt the collectibility of a check. In these cases, the bank should disclose the primary reasons for which the exception was invoked in accordance with paragraph (g) of this section.

4. The regulation provides that the determination that a check is uncollectible shall not be based on a class of checks or persons. For example, a depository bank cannot invoke this exception simply because the check is drawn on a paying bank in a rural area and the depository bank knows it will not have the opportunity to learn of non-payment of that check before funds must be made available under the availability schedules. Similarly, a depository bank cannot invoke the reasonable cause exception based

on the race or national origin of the depositor.

5. If a depository bank invokes this exception with respect to a particular check and does not provide a written notice to the depositor at the time of deposit, the depository bank may not assess any overdraft fee (such as an "NSF" charge) or charge interest for use of overdraft credit, if the check is paid by the paying bank and these charges would not have occurred had the exception not been invoked. A bank may assess an overdraft fee under these circumstances, however, if it provides notice to the customer, in the notice of exception required by paragraph (g) of this section, that the fee may be subject to refund, and refunds the charges upon the request of the customer. The notice must state that the customer may be entitled to a refund of any overdraft fees that are assessed if the check being held is paid, and indicate where such requests for a refund of overdraft fees should be directed.

G. 229.13(f) Emergency Conditions

1. Certain emergency conditions may arise that delay the collection or return of checks, or delay the processing and updating of customer accounts. In the circumstances specified in this paragraph, the depository bank may extend the holds that are placed on deposits of checks that are affected by such delays, if the bank exercises such diligence as the circumstances require. For example, if a bank learns that a check has been delayed in the process of collection due to severe weather conditions or other causes beyond its control, an emergency condition covered by this section may exist and the bank may place a hold on the check to reflect the delay. This exception applies to local and nonlocal checks, as well as checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank places or extends a hold under this exception, it need not make the first \$100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii). In cases where the emergency conditions exception does not apply, as in the case of deposits of cash or electronic payments under § 229.10 (a) and (b), the depository bank may not be liable for a delay in making funds available for withdrawal if the delay is due to a bona fide error such as an unavoidable computer malfunction.

H. 229.13(g) Notice of Exception

1. In general.

a. If a depository bank invokes any of the safeguard exceptions to the schedules listed above, other than the new account or emergency conditions exception, and extends the hold on a deposit beyond the time periods

permitted in §§ 229.10(c) and 229.12, it must provide a notice to its customer. Except in the cases described in paragraphs (g)(2) and (g)(3) of this section, notices must be given each time an exception hold is invoked and must state the customer's account number, the date of deposit, the reason the exception was invoked, and the time period within which funds will be available for withdrawal. For a customer that is not a consumer, a depository bank satisfies the written-notice requirement by sending an electronic notice that displays the text and is in a form that the customer may keep, if the customer agrees to such means of notice. Information is in a form that the customer may keep if, for example, it can be downloaded or printed. For a customer who is a consumer, a depository bank satisfies the written-notice requirement by sending an electronic notice in compliance with the requirements of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001 *et seq.*), which include obtaining the consumer's affirmative consent to such means of notice.

b. With respect to paragraph (g)(1), the requirement that the notice state the time period within which the funds shall be made available may be satisfied if the notice identifies the date the deposit is received and information sufficient to indicate when funds will be available and the amounts that will be available at those times. For example, for a deposit involving more than one check, the bank need not provide a notice that discloses when funds from each individual check in the deposit will be available for withdrawal; instead, the bank may provide a total dollar amount for each of the time periods when funds will be available, or provide the customer with an explanation of how to determine the amount of the deposit that will be held and when the funds will be available for deposit. Appendix C (C–12) contains a model notice.

c. For deposits made in person to an employee of the depository bank, the notice generally must be given to the person making the deposit, i.e., the "depositor", at the time of deposit. The depositor need not be the customer holding the account. For other deposits, such as deposits received at an ATM, lobby deposit box, night depository, or through the mail, notice must be mailed to the customer not later than the close of the business day following the banking day on which the deposit was made.

d. Notice to the customer also may be provided at a later time, if the facts upon which the determination to invoke the exception do not become known to the depository bank until after notice would otherwise have to be given. In these cases, the bank must mail the notice to the customer as soon as practicable, but not later than the business day following the day the facts become known. A bank is deemed to have knowledge when the

facts are brought to the attention of the person or persons in the bank responsible for making the determination, or when the facts would have been brought to their attention if the bank had exercised due diligence.

e. In those cases described in paragraphs (g)(2) and (g)(3), the depository bank need not provide a notice every time an exception hold is applied to a deposit. When paragraph (g)(2) or (g)(3) requires disclosure of the time period within which deposits subject to the exception generally will be available for withdrawal, the requirement may be satisfied if the one-time notice states when "on us," local, and nonlocal checks will be available for withdrawal if an exception is invoked.

2. One-time exception notice.

a. Under paragraph (g)(2), if a nonconsumer account (see Commentary to § 229.2(n)) is subject to the large deposit or redeposited check exception, the depository bank may give its customer a single notice at or prior to the time notice must be provided under paragraph (g)(1). Notices provided under paragraph (g)(2) must contain the reason the exception may be invoked and the time period within which deposits subject to the exception will be available for withdrawal (see Model Notice C–14). A depository bank may provide a one-time notice to a nonconsumer customer under paragraph (g)(2) only if each exception cited in the notice (the large deposit and/or the redeposited check exception) will be invoked for most check deposits to the customer's account to which the exception could apply. A one-time notice may state that the depository bank will apply exception holds to certain subsets of deposits to which the large deposit or redeposited check exception may apply, and the notice should identify such subsets. For example, the depository bank may apply the redeposited check exception only to checks that were redeposited automatically by the depository bank in accordance with an agreement with the customer, rather than to all redeposited checks. In lieu of sending the one-time notice, a depository bank may send individual hold notices for each deposit subject to the large deposit or redeposited check exception in accordance with § 229.13(g)(1) (see Model Notice C–12).

b. In the case of a deposit of multiple checks, the depository bank has the discretion to place an exception hold on any combination of checks in excess of \$5,000. The notice should enable a customer to determine the availability of the deposit in the case of a deposit of multiple checks. For example, if a customer deposits a \$5,000 local check and a \$5,000 nonlocal check, under the large deposit exception, the depository bank may make funds available in the amount of (1) \$100 on the first business day after deposit, \$4,900 on the second business day after deposit (local check), and \$5,000 on the eleventh

business day after deposit (nonlocal check with 6-day exception hold), or (2) \$100 on the first business day after deposit, \$4,900 on the fifth business day after deposit (nonlocal check), and \$5,000 on the seventh business day after deposit (local check with 5-day exception hold). The notice should reflect the bank's priorities in placing exception holds on next-day (or second-day), local, and nonlocal checks.

3. Notice of repeated overdraft exception. Under paragraph (g)(3), if an account is subject to the repeated overdraft exception, the depository bank may provide one notice to its customer for each time period during which the exception will apply. Notices sent pursuant to paragraph (g)(3) must state the customer's account number, the fact the exception was invoked under the repeated overdraft exception, the time period within which deposits subject to the exception will be made available for withdrawal, and the time period during which the exception will apply (see Model Notice C-15). A depository bank may provide a one-time notice to a customer under paragraph (g)(3) only if the repeated overdraft exception will be invoked for most check deposits to the customer's account.

4. Emergency conditions exception notice.

a. If an account is subject to the emergency conditions exception under §229.13(f), the depository bank must provide notice in a reasonable form within a reasonable time, depending on the circumstances. For example, a depository bank may learn of a weather emergency or a power outage that affects the paying bank's operations. Under these circumstances, it likely would be reasonable for the depository bank to provide an emergency conditions exception notice in the same manner and within the same time as required for other exception notices. On the other hand, if a depository bank experiences a weather or power outage emergency that affects its own operations, it may be reasonable for the depository bank to provide a general notice to all depositors via postings at branches and ATMs, or through newspaper, television, or radio notices.

b. If the depository bank extends the hold placed on a deposit due to an emergency condition, the bank need not provide a notice if the funds would be available for withdrawal before the notice must be sent. For example, if on the last day of a hold period the depository bank experiences a computer failure and customer accounts cannot be updated in a timely fashion to reflect the funds as available balances, notices are not required if the funds are made available before the notices must be sent.

5. Record retention. A depository bank must retain a record of each notice of a reasonable cause exception for a period of two years, or such longer time as provided in the record retention requirements of §229.21.

This record must contain a brief description of the facts on which the depository bank based its judgment that there was reasonable cause to doubt the collectibility of a check. In many cases, such as where the exception was invoked on the basis of a notice of nonpayment received, the record requirement may be met by retaining a copy of the notice sent to the customer. In other cases, such as where the exception was invoked on the basis of confidential information, a further description to the facts, such as insolvency of drawer, should be included in the record.

I. 229.13(h) Availability of Deposits Subject to Exceptions

1. If a depository bank invokes any exception other than the new account exception, the bank may extend the time within which funds must be made available under the schedule by a reasonable period of time. This provision establishes that an extension of up to one business day for "on us" checks, five business days for local checks, and six business days for nonlocal checks and checks deposited in a nonproprietary ATM is reasonable. Under certain circumstances, however, a longer extension of the schedules may be reasonable. In these cases, the burden is placed on the depository bank to establish that a longer period is reasonable.

2. For example, assume a bank extended the hold on a local check deposit by five business days based on its reasonable cause to believe that the check is uncollectible. If, on the day before the extended hold is scheduled to expire, the bank receives a notification from the paying bank that the check is being returned unpaid, the bank may determine that a longer hold is warranted, if it decides not to charge back the customer's account based on the notification. If the bank decides to extend the hold, the bank must send a second notice, in accordance with paragraph (g) of this section, indicating the new date that the funds will be available for withdrawal.

3. With respect to Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, state and local government checks, cashier's checks, certified checks, and teller's checks subject to the next-day (or second-day) availability requirement, the depository bank may extend the time funds must be made available for withdrawal under the large deposit, redeposited check, repeated overdraft, or reasonable cause exception by a reasonable period beyond the delay that would have been permitted under the regulation had the checks not been subject to the next-day (or second-day) availability requirement. The additional hold is added to the local or nonlocal schedule that would apply based on the location of the paying bank.

4. One business day for “on us” checks, five business days for local checks, and six business days for nonlocal checks or checks deposited in a nonproprietary ATM, in addition to the time period provided in the schedule, should provide adequate time for the depository bank to learn of the nonpayment of virtually all checks that are returned. For example, if a customer deposits a \$7,000 cashier’s check drawn on a nonlocal bank, and the depository bank applies the large deposit exception to that check, \$5,000 must be available for withdrawal on the first business day after the day of deposit and the remaining \$2,000 must be available for withdrawal on the eleventh business day following the day of deposit (six business days added to the five-day schedule for nonlocal checks), unless the depository bank establishes that a longer hold is reasonable.

5. In the case of the application of the emergency conditions exception, the depository bank may extend the hold placed on a check by not more than a reasonable period following the end of the emergency or the time funds must be available for withdrawal under §§ 229.10(c) or 229.12, whichever is later.

6. This provision does not apply to holds imposed under the new account exception. Under that exception, the maximum time period within which funds must be made available for withdrawal is specified for deposits that generally must be accorded next-day availability under § 229.10. This subpart does not specify the maximum time period within which the proceeds of local and nonlocal checks must be made available for withdrawal during the new account period.

VIII. Section 229.14 Payment of Interest

A. 229.14(a) In General

1. This section requires that a depository bank begin accruing interest on interest-bearing accounts not later than the day on which the depository bank receives credit for the funds deposited.³ A depository bank gen-

³This section implements section 606 of the EFA Act (12 U.S.C. 4005). The EFA Act keys the requirement to pay interest to the time the depository bank receives provisional credit for a check. Provisional credit is a term used in the U.C.C. that is derived from the Code’s concept of provisional settlement. (See U.C.C. 4-214 and 4-215.) Provisional credit is credit that is subject to charge-back if the check is returned unpaid; once the check is finally paid, the right to charge back expires and the provisional credit becomes final. Under Subpart C, a paying bank no longer has an automatic right to charge back credits given in settlement of a check, and the concept of provisional settlement is no longer useful and has been eliminated by the regulation. Accordingly, this section

erally receives credit on checks within one or two days following deposit. A bank receives credit on a cash deposit, an electronic payment, and the deposit of a check that is drawn on the depository bank itself on the day the cash, electronic payment, or check is received. In the case of a deposit at a nonproprietary ATM, credit generally is received on the day the bank that operates the ATM credits the depository bank for the amount of the deposit. In the case of a deposit at a contractual branch, credit is received on the day the depository bank receives credit for the amount of the deposit, which may be different from the day the contractual branch receives credit for the deposit.

2. Because account includes only transaction accounts, other interest-bearing accounts of the depository bank, such as money market deposit accounts, savings deposits, and time deposits, are not subject to this requirement; however, a bank may accrue interest on such deposits in the same way that it accrues interest under this paragraph for simplicity of operation. The Board intends the term interest to refer to payments to or for the account of any customer as compensation for the use of funds, but to exclude the absorption of expenses incident to providing a normal banking function or a bank’s forbearance from charging a fee in connection with such a service. (See 12 CFR 217.2(d).) Thus, earnings credits often applied to corporate accounts are not interest payments for the purposes of this section.

3. It may be difficult for a depository bank to track which day the depository bank receives credit for specific checks in order to accrue interest properly on the account to which the check is deposited. This difficulty may be pronounced if the bank uses different means of collecting checks based on the time of day the check is received, the dollar amount of the check, and/or the paying bank to which it must be sent. Thus, for the purpose of the interest accrual requirement, a bank may rely on an availability schedule from its Federal Reserve Bank, Federal Home Loan Bank, or correspondent to determine when the depository bank receives credit. If availability is delayed beyond that specified in the availability schedule, a bank may charge back interest erroneously accrued or paid on the basis of that schedule.

4. This paragraph also permits a depository bank to accrue interest on checks deposited

uses the term credit rather than provisional credit, and this section applies regardless of whether a credit would be provisional or final under the U.C.C. Credit does not include a bookkeeping entry (sometimes referred to as deferred credit) that does not represent funds actually available for the bank’s use.

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to all of its interest-bearing accounts based on when the bank receives credit on all checks sent for payment or collection. For example, if a bank receives credit on 20 percent of the funds deposited in the bank by check as of the business day of deposit (e.g., "on us" checks), 70 percent as of the business day following deposit, and 10 percent on the second business day following deposit, the bank can apply these percentages to determine the day interest must begin to accrue on check deposits to all interest-bearing accounts, regardless of when the bank received credit on the funds deposited in any particular account. Thus, a bank may begin accruing interest on a uniform basis for all interest-bearing accounts, without the need to track the type of check deposited to each account.

5. This section is not intended to limit a policy of a depository bank that provides that interest accrues only on balances that exceed a specified amount, or on the minimum balance maintained in the account during a given period, provided that the balance is determined based on the date that the depository bank receives credit for the funds. This section also is not intended to limit any policy providing that interest accrues sooner than required by this paragraph.

B. 229.14(b) Special Rule for Credit Unions

1. This provision implements a requirement in section 606(b) of the EFA Act, and provides an exemption from the payment-of-interest requirements for credit unions that do not begin to accrue interest or dividends on their customer accounts until a later date than the day the credit union receives credit for those deposits, including cash deposits. These credit unions are exempt from the payment-of-interest requirements, as long as they provide notice of their interest accrual policies in accordance with §229.16(d). For example, if a credit union has a policy of computing interest on all deposits received by the 10th of the month from the first of that month, and on all deposits received after the 10th of the month from the first of the next month, that policy is not superseded by this regulation, if the credit union provides proper disclosure of this policy to its customers.

2. The EFA Act limits this exemption to credit unions; other types of banks must comply with the payment-of-interest requirements. In addition, credit unions that compute interest from the day of deposit or day of credit should not change their existing practices in order to avoid compliance with the requirement that interest accrue from the day the credit union receives credit.

C. 229.14(c) Exception for Checks Returned Unpaid

1. This provision is based on section 606(c) of the EFA Act (12 U.S.C. 4005(c)) and provides that interest need not be paid on funds deposited in an interest-bearing account by check that has been returned unpaid, regardless of the reason for return.

IX. Section 229.15 General Disclosure Requirements

A. 229.15(a) Form of Disclosures

1. This paragraph sets forth the general requirements for the disclosures required under Subpart B. All of the disclosures must be given in a clear and conspicuous manner, must be in writing, and, in most cases, must be in a form the customer may keep. A disclosure is in a form that the customer may keep if, for example, it can be downloaded or printed. For a customer that is not a consumer, a depository bank satisfies the written-disclosure requirement by sending an electronic disclosure that displays the text and is in a form that the customer may keep, if the customer agrees to such means of disclosure. For a customer who is a consumer, a depository bank satisfies the written-notice requirement by sending an electronic notice in compliance with the requirements of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001 *et seq.*), which include obtaining the consumer's affirmative consent to such means of notice. Disclosures posted at locations where employees accept consumer deposits, at ATMs, and on preprinted deposit slips need not be in a form that the customer may keep. Appendix C of the regulation contains model forms, clauses, and notices to assist banks in preparing disclosures.

2. Disclosures concerning availability must be grouped together and may not contain any information that is not related to the disclosures required by this subpart. Therefore, banks may not intersperse the required disclosures with other account disclosures, and may not include other account information that is not related to their availability policy within the text of the required disclosures. Banks may, however, include information that is related to their availability policies. For example, a bank may inform its customers that, even when the bank has already made funds available for withdrawal, the customer is responsible for any problem with the deposit, such as the return of a deposited check.

3. The regulation does not require that the disclosures be segregated from other account terms and conditions. For example, banks may include the disclosure of their specific availability policy in a booklet or pamphlet that sets out all of the terms and conditions

of the bank's accounts. The required disclosures must, however, be grouped together and highlighted or identified in some manner, for example, by use of a separate heading for the disclosures, such as "When Deposits are Available for Withdrawal."

4. A bank may, by agreement or at the consumer's request, provide any disclosure or notice required by subpart B in a language other than English, provided that the bank makes a complete disclosure available in English at the customer's request.

B. 229.15(b) Uniform Reference to Day of Availability

1. This paragraph requires banks to disclose in a uniform manner when deposited funds will be available for withdrawal. Banks must disclose when deposited funds are available for withdrawal by stating the business day on which the customer may begin to withdraw funds. The business day funds will be available must be disclosed as "the _____ business day after" the day of deposit, or substantially similar language. The business day of availability is determined by counting the number of business days starting with the business day following the banking day on which the deposit is received, as determined under § 229.19(a), and ending with the business day on which the customer may begin to withdraw funds. For example, a bank that imposes delays of four intervening business days for nonlocal checks must describe those checks as being available on "the fifth business day after" the day of the deposit.

C. 229.15(c) Multiple Accounts and Multiple Account Holders

1. This paragraph clarifies that banks need not provide multiple disclosures under the regulation. A single disclosure to a customer that holds multiple accounts, or a single disclosure to one of the account holders of a jointly held account, satisfies the disclosure requirements of the regulation.

D. 229.15(d) Dormant or Inactive Accounts

1. This paragraph makes clear that banks need not provide disclosure of their specific availability policies to customers that hold accounts that are either dormant or inactive. The determination that certain accounts are dormant or inactive must be made by the bank. If a bank considers an account dormant or inactive for purposes other than this regulation and no longer provides statements and other mailings to an account for this reason, such an account is considered dormant or inactive for purposes of this regulation.

X. Section 229.16 Specific Availability Policy Disclosure

A. 229.16(a) General

1. This section describes the information that must be disclosed by banks to comply with §§ 229.17 and 229.18(d), which require that banks furnish notices of their specific policy regarding availability of deposited funds. The disclosure provided by a bank must reflect the availability policy followed by the bank in most cases, even though a bank may in some cases make funds available sooner or impose a longer delay.

2. The disclosure must reflect the policy and practice of the bank regarding availability as to most accounts and most deposits into those accounts. In disclosing the availability policy that it follows in most cases, a bank may provide a single disclosure that reflects one policy to all its transaction account customers, even though some of its customers may receive faster availability than that reflected in the policy disclosure. Thus, a bank need not disclose to some customers that they receive faster availability than indicated in the disclosure. If, however, a bank has a policy of imposing delays in availability on any customers longer than those specified in its disclosure, those customers must receive disclosures that reflect the longer applicable availability periods. A bank may establish different availability policies for different groups of customers, such as customers in a particular geographic area or customers of a particular branch. For purposes of providing a specific availability policy, the bank may allocate customers among groups through good faith use of a reasonable method. A bank may also establish different availability policies for deposits at different locations, such as deposits at a contractual branch.

3. A bank may disclose that funds are available for withdrawal on a given day notwithstanding the fact that the bank uses the funds to pay checks received before that day. For example, a bank may disclose that its policy is to make funds available from deposits of local checks on the second business day following the day of deposit, even though it may use the deposited funds to pay checks prior to the second business day; the funds used to pay checks in this example are not available for withdrawal until the second business day after deposit because the funds are not available for all uses until the second business day. (See the definition of available for withdrawal in § 229.2(d).)

B. 229.16(b) Content of Specific Policy Disclosure

1. This paragraph sets forth the items that must be included, as applicable, in a bank's specific availability policy disclosure. The

information that must be disclosed by a particular bank will vary considerably depending upon the bank's availability policy. For example, a bank that makes deposited funds available for withdrawal on the business day following the day of deposit need simply disclose that deposited funds will be available for withdrawal on the first business day after the day of deposit, the bank's business days, and when deposits are considered received.

2. On the other hand, a bank that has a policy of routinely delaying on a blanket basis the time when deposited funds are available for withdrawal would have a more detailed disclosure. Such blanket hold policies might be for the maximum time allowed under the federal law or might be for shorter periods. These banks must disclose the types of deposits that will be subject to delays, how the customer can determine the type of deposit being made, and the day that funds from each type of deposit will be available for withdrawal.

3. Some banks may have a combination of next-day availability and blanket delays. For example, a bank may provide next-day availability for all deposits except for one or two categories, such as deposits at nonproprietary ATMs and nonlocal personal checks over a specified dollar amount. The bank would describe the categories that are subject to delays in availability and tell the customer when each category would be available for withdrawal, and state that other deposits will be available for withdrawal on the first business day after the day of deposit. Similarly, a bank that provides availability on the second business day for most of its deposits would need to identify the categories of deposits which, under the regulation, are subject to next-day availability and state that all other deposits will be available on the second business day.

4. Because many banks' availability policies may be complex, a bank must give a brief summary of its policy at the beginning of the disclosure. In addition, the bank must describe any circumstances when actual availability may be longer than the schedules disclosed. Such circumstances would arise, for example, when the bank invokes one of the exceptions set forth in §229.13 of the regulation, or when the bank delays or extends the time when deposited funds are available for withdrawal up to the time periods allowed by the regulation on a case-by-case basis. Also, a bank that must make certain checks available faster under appendix B (reduction of schedules for certain nonlocal checks) must state that some check deposits will be available for withdrawal sooner because of special rules and that a list of the pertinent routing numbers is available upon request.

5. Generally, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the

check must disclose to its customers that certain checks, such as some credit union payable-through drafts, will be treated as local or nonlocal based on the location of the bank by which they are payable (e.g., the credit union), and not on the basis of the location of the bank whose routing number appears on the check. A bank is not required to provide this disclosure, however, if it makes the proceeds of both local and nonlocal checks available for withdrawal within the time periods required for local checks in §§229.12 and 229.13.

6. The business day cut-off time used by the bank must be disclosed and if some locations have different cut-off times the bank must note this in the disclosure and state the earliest time that might apply. A bank need not list all of the different cut-off times that might apply. If a bank does not have a cut-off time prior to its closing time, the bank need not disclose a cut-off time.

7. A bank taking advantage of the extended time period for making deposits at nonproprietary ATMs available for withdrawal under §229.12(f) must explain this in the initial disclosure. In addition, the bank must provide a list (on or with the initial disclosure) of either the bank's proprietary ATMs or those ATMs that are nonproprietary at which customers may make deposits. As an alternative to providing such a list, the bank may label all of its proprietary ATMs with the bank's name and state in the initial disclosure that this has been done. Similarly, a bank taking advantage of the cash withdrawal limitations of §229.12(d), or the provision in §229.19(e) allowing holds to be placed on other deposits when a deposit is made or a check is cashed, must explain this in the initial disclosure.

8. A bank that provides availability based on when the bank generally receives credit for deposited checks need not disclose the time when a check drawn on a specific bank will be available for withdrawal. Instead, the bank may disclose the categories of deposits that must be available on the first business day after the day of deposit (deposits subject to §229.10) and state the other categories of deposits and the time periods that will be applicable to those deposits. For example, a bank might disclose the four-digit Federal Reserve routing symbol for local checks and indicate that such checks as well as certain nonlocal checks will be available for withdrawal on the first or second business day following the day of deposit, depending on the location of the particular bank on which the check is drawn, and disclose that funds from all other checks will be available on the second or third business day. The bank must also disclose that the customer may request a copy of the bank's detailed schedule that would enable the customer to determine the availability of any check and must provide such schedule upon request. A change in

the bank's detailed schedule would not trigger the change in policy disclosure requirement of § 229.18(e).

C. 229.16(c) Longer Delays on a Case-by-Case Basis

1. Notice in specific policy disclosure.

a. Banks that make deposited funds available for withdrawal sooner than required by the regulation—for example, providing their customers with immediate or next-day availability for deposited funds—and delay the time when funds are available for withdrawal only from time to time determined on a case-by-case basis, must provide notice of this in their specific availability policy disclosure. This paragraph outlines the requirements for that notice.

b. In addition to stating what their specific availability policy is in most cases, banks that may delay or extend the time when deposits are available on a case-by-case basis must: state that from time to time funds may be available for withdrawal later than the time periods in their specific policy disclosure, disclose the latest time that a customer may have to wait for deposited funds to be available for withdrawal when a case-by-case hold is placed, state that customers will be notified when availability of a deposit is delayed on a case-by-case basis, and advise customers to ask if they need to be sure of the availability of a particular deposit.

c. A bank that imposes delays on a case-by-case basis is still subject to the availability requirements of this regulation. If the bank imposes a delay on a particular deposit that is not longer than the availability required by § 229.12 for local and nonlocal checks, the reason for the delay need not be based on the exceptions provided in § 229.13. If the delay exceeds the time periods permitted under § 229.12, however, then it must be based on an exception provided in § 229.13, and the bank must comply with the § 229.13 notice requirements. A bank that imposes delays on a case-by-case basis may avail itself of the one-time notice provisions in § 229.13(g)(2) and (3) for deposits to which those provisions apply.

2. Notice at time of case-by-case delay.

a. In addition to including the disclosures required by paragraph (c)(1) of this section in their specific availability policy disclosure, banks that delay or extend the time period when funds are available for withdrawal on a case-by-case basis must give customers a notice when availability of funds from a particular deposit will be delayed or extended beyond the time when deposited funds are generally available for withdrawal. The notice must state that a delay is being imposed and indicate when the funds will be available. In addition, the notice must include the account number, the date of the deposit, and the amount of the deposit being delayed.

b. If notice of the delay was not given at the time the deposit was made and the bank assesses overdraft or returned check fees on accounts when a case-by-case hold has been placed, the case-by-case hold notice provided to the customer must include a notice concerning overdraft or returned check fees. The notice must state that the customer may be entitled to a refund of any overdraft or returned check fees that result from the deposited funds not being available if the check that was deposited was in fact paid by the payor bank, and explain how to request a refund of any fees. (See § 229.16(c)(3).)

c. The requirement that the case-by-case hold notice state the day that funds will be made available for withdrawal may be met by stating the date or the number of business days after deposit that the funds will be made available. This requirement is satisfied if the notice provides information sufficient to indicate when funds will be available and the amounts that will be available at those times. For example, for a deposit involving more than one check, the bank need not provide a notice that discloses when funds from each individual item in the deposit will be available for withdrawal. Instead, the bank may provide a total dollar amount for each of the time periods when funds will be available, or provide the customer with an explanation of how to determine the amount of the deposit that will be held and when the held funds will be available for withdrawal.

d. For deposits made in person to an employee of the depository bank, the notice generally must be given at the time of the deposit. The notice at the time of the deposit must be given to the person making the deposit, that is, the “depositor.” The depositor need not be the customer holding the account. For other deposits, such as deposits received at an ATM, lobby deposit box, night depository, through the mail, or by armored car, notice must be mailed to the customer not later than the close of the business day following the banking day on which the deposit was made. Notice to the customer also may be provided not later than the close of the business day following the banking day on which the deposit was made if the decision to delay availability is made after the time of the deposit.

3. Overdraft and returned check fees. If a depository bank delays or extends the time when funds from a deposited check are available for withdrawal on a case-by-case basis and does not provide a written notice to its depositor at the time of deposit, the depository bank may not assess any overdraft or returned check fees (such as an insufficient funds charge) or charge interest for use of an overdraft line of credit, if the deposited check is paid by the paying bank and these fees would not have occurred had the additional case-by-case delay not been imposed. A bank may assess an overdraft or returned

check fee under these circumstances, however, if it provides notice to the customer in the notice required by paragraph (c)(2) of this section that the fee may be subject to refund, and refunds the fee upon the request of the customer when required to do so. The notice must state that the customer may be entitled to a refund of any overdraft or returned check fees that are assessed if the deposited check is paid, and indicate where such requests for a refund of overdraft fees should be directed. Paragraph (c)(3) applies when a bank provides a case-by-case notice in accordance with paragraph (c)(2) and does not apply if the bank has provided an exception hold notice in accordance with § 229.13.

D. 229.16(d) Credit Union Notice of Interest Payment Policy

1. This paragraph sets forth the special disclosure requirement for credit unions that delay accrual of interest or dividends for all cash and check deposits beyond the date of receiving provisional credit for checks being deposited. (The interest payment requirement is set forth in § 229.14(a).) Such credit unions are required to describe their policy with respect to accrual of interest or dividends on deposits in their specific availability policy disclosure.

XI. Section 229.17 Initial Disclosures

A. This paragraph requires banks to provide a notice of their availability policy to all potential customers prior to opening an account. The requirement of a notice prior to opening an account requires banks to provide disclosures prior to accepting a deposit to open an account. Disclosures must be given at the time the bank accepts an initial deposit regardless of whether the bank has opened the account yet for the customer. If a bank, however, receives a written request by mail from a person asking that an account be opened and the request includes an initial deposit, the bank may open the account with the deposit, provided the bank mails the required disclosures to the customer not later than the business day following the banking day on which the bank receives the deposit. Similarly, if a bank receives a telephone request from a customer asking that an account be opened with a transfer from a separate account of the customer's at the bank, the disclosure may be mailed not later than the business day following the banking day of the request.

XII. Section 229.18 Additional Disclosure Requirements

A. 229.18(a) Deposit Slips

1. This paragraph requires banks to include a notice on all preprinted deposit slips. The deposit slip notice need only state, somewhere on the front of the deposit slip, that

deposits may not be available for immediate withdrawal. The notice is required only on preprinted deposit slips—those printed with the customer's account number and name and furnished by the bank in response to a customer's order to the bank. A bank need not include the notice on deposit slips that are not preprinted and supplied to the customer—such as counter deposit slips—or on those special deposit slips provided to the customer under § 229.10(c). A bank is not responsible for ensuring that the notice appear on deposit slips that the customer does not obtain from or through the bank. This paragraph applies to preprinted deposit slips furnished to customers on or after September 1, 1988.

B. 229.18(b) Locations Where Employees Accept Consumer Deposits

1. This paragraph describes the statutory requirement that a bank post in each location where its employees accept consumer deposits a notice of its availability policy pertaining to consumer accounts. The notice that is required must specifically state the availability periods for the various deposits that may be made to consumer accounts. The notice need not be posted at each teller window, but the notice must be posted in a place where consumers seeking to make deposits are likely to see it before making their deposits. For example, the notice might be posted at the point where the line forms for teller service in the lobby. The notice is not required at any drive-through teller windows nor is it required at night depository locations, or at locations where consumer deposits are not accepted. A bank that acts as a contractual branch at a particular location must include the availability policy that applies to its own customers but need not include the policy that applies to the customers of the bank for which it is acting as a contractual branch.

C. 229.18(c) Automated Teller Machines

1. This paragraph sets forth the required notices for ATMs. Paragraph (c)(1) provides that the depository bank is responsible for posting a notice on all ATMs at which deposits can be made to accounts at the depository bank. The depository bank may arrange for a third party, such as the owner or operator of the ATM, to post the notice and indemnify the depository bank from liability if the depository bank is liable under § 229.21 for the owner or operator failing to provide the required notice.

2. The notice may be posted on a sign, shown on the screen, or included on deposit envelopes provided at the ATM. This disclosure must be given before the customer has made the deposit. Therefore, a notice provided on the customer's deposit receipt or

appearing on the ATM's screen after the customer has made the deposit would not satisfy this requirement.

3. Paragraph (c)(2) requires a depository bank that operates an off-premise ATM from which deposits are removed not more than two times a week to make a disclosure of this fact on the off-premise ATM. The notice must disclose to the customer the days on which deposits made at the ATM will be considered received.

D. 229.18(d) Upon Request

1. This paragraph requires banks to provide written notice of their specific availability policy to any person upon that person's oral or written request. The notice must be sent within a reasonable period of time following receipt of the request.

E. 229.18(e) Changes in Policy

1. This paragraph requires banks to send notices to their customers when the banks change their availability policies with regard to consumer accounts. A notice may be given in any form as long as it is clear and conspicuous. If the bank gives notice of a change by sending the customer a complete new availability disclosure, the bank must direct the customer to the changed terms in the disclosure by use of a letter or insert, or by highlighting the changed terms in the disclosure.

2. Generally, a bank must send a notice at least 30 calendar days before implementing any change in its availability policy. If the change results in faster availability of deposits—for example, if the bank changes its availability for nonlocal checks from the fifth business day after deposit to the fourth business day after deposit—the bank need not send advance notice. The bank must, however, send notice of the change no later than 30 calendar days after the change is implemented. A bank is not required to give a notice when there is a change in appendix B (reduction of schedules for certain nonlocal checks).

3. A bank that has provided its customers with a list of ATMs under §229.16(b)(5) shall provide its customers with an updated list of ATMs once a year if there are changes in the list of ATMs previously disclosed to the customers.

XIII. Section 229.19 Miscellaneous

A. 229.19(a) When Funds Are Considered Deposited

1. The time funds must be made available for withdrawal under this subpart is determined by the day the deposit is made. This paragraph provides rules to determine the day funds are considered deposited in various circumstances.

2. Staffed facilities and ATMs. Funds received at a staffed teller station or ATM are considered deposited when received by the teller or placed in the ATM. Funds received at a contractual branch are considered deposited when received by a teller at the contractual branch or deposited into a proprietary ATM of the contractual branch. (See also, Commentary to §229.10(c) on deposits made to an employee of the depository bank.) Funds deposited to a deposit box in a bank lobby that is accessible to customers only during regular business hours generally are considered deposited when placed in the lobby box; a bank may, however, treat deposits to lobby boxes the same as deposits to night depositories (as provided in §229.19(a)(3)), provided a notice appears on the lobby box informing the customer when such funds will be considered deposited.

3. Mail. Funds mailed to the depository bank are considered deposited on the banking day they are received by the depository bank. The funds are received by the depository bank at the time the mail is delivered to the bank, even if it is initially delivered to a mail room, rather than the check processing area.

4. Other facilities.

a. In addition to deposits at staffed facilities, at ATMs, and by mail, funds may be deposited at a facility such as a night depository or a lock box. A night depository is a receptacle for receipt of deposits, typically used by corporate depositors when the branch is closed. Funds deposited at a night depository are considered deposited on the banking day the deposit is removed, and the contents of the deposit are accessible to the depository bank for processing. For example, some businesses deposit their funds in a locked bag at the night depository late in the evening, and return to the bank the following day to open the bag. Other depositors may have an agreement with their bank that the deposit bag must be opened under the dual control of the bank and the depositor. In these cases, the funds are considered deposited when the customer returns to the bank and opens the deposit bag.

b. A lock box is a post office box used by a corporation for the collection of bill payments or other check receipts. The depository bank generally assumes the responsibility for collecting the mail from the lock box, processing the checks, and crediting the corporation for the amount of the deposit. Funds deposited through a lock box arrangement are considered deposited on the day the deposit is removed from the lock box and are accessible to the depository bank for processing.

5. Certain off-premise ATMs. A special provision is made for certain off-premise ATMs that are not serviced daily. Funds deposited at such an ATM are considered deposited on the day they are removed from the ATM, if

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the ATM is not serviced more than two times each week. This provision is intended to address the practices of some banks of servicing certain remote ATMs infrequently. If a depository bank applies this provision with respect to an ATM, a notice must be posted at the ATM informing depositors that funds deposited at the ATM may not be considered deposited until a future day, in accordance with § 229.18.

6. Banking day of deposit.

a. This paragraph also provides that a deposit received on a day that the depository bank is closed, or after the bank's cut-off hour, may be considered made on the next banking day. Generally, for purposes of the availability schedules of this subpart, a bank may establish a cut-off hour of 2 p.m. or later for receipt of deposits at its head office or branch offices. For receipt of deposits at ATMs, contractual branches, or other off-premise facilities, such as night depositories or lock boxes, the depository bank may establish a cut-off hour of 12:00 noon or later (either local time of the branch or other location of the depository bank at which the account is maintained or local time of the ATM, contractual branch, or other off-premise facility). The depository bank must use the same timing method for establishing the cut-off hour for all ATMs, contractual branches, and other off-premise facilities used by its customers. The choice of cut-off hour must be reflected in the bank's internal procedures, and the bank must inform its customers of the cut-off hour upon request. This earlier cut-off for ATM, contractual branch, or other off-premise deposits is intended to provide greater flexibility in the servicing of these facilities.

b. Different cut-off hours may be established for different types of deposits. For example, a bank may establish a 2 p.m. cut-off for the receipt of check deposits, but a later cut-off for the receipt of wire transfers. Different cut-off hours also may be established for deposits received at different locations. For example, a different cut-off may be established for ATM deposits than for over-the-counter deposits, or for different teller stations at the same branch. With the exception of the 12 noon cut-off for deposits at ATMs and off-premise facilities, no cut-off hour for receipt of deposits for purposes of this subpart can be established earlier than 2 p.m.

c. A bank is not required to remain open until 2 p.m. If a bank closes before 2 p.m., deposits received after the closing may be considered deposited on the next banking day. Further, as § 229.2(f) defines the term banking day as the portion of a business day on which a bank is open to the public for substantially all of its banking functions, a day, or a portion of a day, is not necessarily a banking day merely because the bank is open for only limited functions, such as keeping

drive-in or walk-up teller windows open, when the rest of the bank is closed to the public. For example, a banking office that usually provides a full range of banking services may close at 12 noon but leave a drive-in teller window open for the limited purpose of receiving deposits and making cash withdrawals. Under those circumstances, the bank is considered closed and may consider deposits received after 12 noon as having been received on the next banking day. The fact that a bank may reopen for substantially all of its banking functions after 2 p.m., or that it continues its back office operations throughout the day, would not affect this result. A bank may not, however, close individual teller stations and reopen them for next-day's business before 2 p.m. during a banking day.

B. 229.19(b) Availability at Start of Business Day

1. If funds must be made available for withdrawal on a business day, the funds must be available for withdrawal by the later of 9 a.m. or the time the depository bank's teller facilities, including ATMs, are available for customer account withdrawals, except under the special rule for cash withdrawals set forth in § 229.12(d). Thus, if a bank has no ATMs and its branch facilities are available for customer transactions beginning at 10 a.m., funds must be available for customer withdrawal beginning at 10 a.m. If the bank has ATMs that are available 24 hours a day, rather than establishing 12:01 a.m. as the start of the business day, this paragraph sets 9 a.m. as the start of the day with respect to ATM withdrawals. The Board believes that this rule provides banks with sufficient time to update their accounting systems to reflect the available funds in customer accounts for that day.

2. The start of business is determined by the local time of the branch or other location of the depository bank at which the account is maintained. For example, if funds in a customer's account at a west coast bank are first made available for withdrawal at the start of business on a given day, and the customer attempts to withdraw the funds at an east coast ATM, the depository bank is not required to make the funds available until 9 a.m. west coast time (12 noon east coast time).

C. 229.19(c) Effect on Policies of Depository Bank

1. This subpart establishes the maximum hold that may be placed on customer deposits. A depository bank may provide availability to its customers in a shorter time than prescribed in this subpart. A depository bank also may adopt different funds availability policies for different segments of its customer base, as long as each policy meets

the schedules in the regulation. For example, a bank may differentiate between its corporate and consumer customers, or may adopt different policies for its consumer customers based on whether a customer has an overdraft line of credit associated with the account.

2. This regulation does not affect a depository bank's right to accept or reject a check for deposit, to charge back the customer's account based on a returned check or notice of nonpayment, or to claim a refund for any credit provided to the customer. For example, even if a check is returned or a notice of nonpayment is received after the time by which funds must be made available for withdrawal in accordance with this regulation, the depository bank may charge back the customer's account for the full amount of the check. (See §229.33(d) and Commentary.)

3. Nothing in the regulation requires a depository bank to have facilities open for customers to make withdrawals at specified times or on specified days. For example, even though the special cash withdrawal rule set forth in §229.12(d) states that a bank must make up to \$400 available for cash withdrawals no later than 5 p.m. on specific business days, if a bank does not participate in an ATM system and does not have any teller windows open at or after 5 p.m., the bank need not join an ATM system or keep offices open. In this case, the bank complies with this rule if the funds that are required to be available for cash withdrawal at 5 p.m. on a particular day are available for withdrawal at the start of business on the following day. Similarly, if a depository bank is closed for customer transactions, including ATMs, on a day funds must be made available for withdrawal, the regulation does not require the bank to open.

4. The special cash withdrawal rule in the EFA Act recognizes that the \$400 that must be made available for cash withdrawal by 5 p.m. on the day specified in the schedule may exceed a bank's daily ATM cash withdrawal limit and explicitly provides that the EFA Act does not supersede a bank's policy in this regard. As a result, if a bank has a policy of limiting cash withdrawals from automated teller machines to \$250 per day, the regulation would not require that the bank disburse \$400 of the proceeds of the customer's deposit that must be made available for cash withdrawal on that day.

5. Even though the EFA Act clearly provides that the bank's ATM withdrawal limit is not superseded by the federal availability rules on the day funds must first be made available, the EFA Act does not specifically permit banks to limit cash withdrawals at ATMs on subsequent days when the entire amount of the deposit must be made available for withdrawal. The Board believes that the rationale behind the EFA Act's provision

that a bank's ATM withdrawal limit is not superseded by the requirement that funds be made available for cash withdrawal applies on subsequent days. Nothing in the regulation prohibits a depository bank from establishing ATM cash withdrawal limits that vary among customers of the bank, as long as the limit is not dependent on the length of time funds have been in the customer's account (provided that the permissible hold has expired).

6. Some small banks, particularly credit unions, due to lack of secure facilities, keep no cash on their premises and hence offer no cash withdrawal capability to their customers. Other banks limit the amount of cash on their premises due to bonding requirements or cost factors, and consequently reserve the right to limit the amount of cash each customer can withdraw over-the-counter on a given day. For example, some banks require advance notice for large cash withdrawals in order to limit the amount of cash needed to be maintained on hand at any time.

7. Nothing in the regulation is intended to prohibit a bank from limiting the amount of cash that may be withdrawn at a staffed teller station if the bank has a policy limiting the amount of cash that may be withdrawn, and if that policy is applied equally to all customers of the bank, is based on security, operating, or bonding requirements, and is not dependent on the length of time the funds have been in the customer's account (as long as the permissible hold has expired). The regulation, however, does not authorize such policies if they are otherwise prohibited by statutory, regulatory, or common law.

D. 229.19(d) Use of Calculated Availability

1. A depository bank may provide availability to its nonconsumer accounts on a calculated availability basis. Under calculated availability, a specified percentage of funds from check deposits may be made available to the customer on the next business day, with the remaining percentage deferred until subsequent days. The determination of the percentage of deposited funds that will be made available each day is based on the customer's typical deposit mix as determined by a sample of the customer's deposits. Use of calculated availability is permitted only if, on average, the availability terms that result from the sample are equivalent to or more prompt than the requirements of this subpart.

E. 229.19(e) Holds on Other Funds

1. Section 607(d) of the EFA Act (12 U.S.C. 4006(d)) provides that once funds are available for withdrawal under the EFA Act, such funds shall not be frozen solely due to the subsequent deposit of additional checks that are not yet available for withdrawal. This

provision of the EFA Act is designed to prevent evasion of the EFA Act's availability requirements.

2. This paragraph clarifies that if a customer deposits a check in an account (as defined in §229.2(a)), the bank may not place a hold on any of the customer's funds so that the funds that are held exceed the amount of the check deposited or the total amount of funds held are not made available for withdrawal within the times required in this subpart. For example, if a bank places a hold on funds in a customer's non transaction account, rather than a transaction account, for deposits made to the customer's transaction account, the bank may place such a hold only to the extent that the funds held do not exceed the amount of the deposit and the length of the hold does not exceed the time periods permitted by this regulation.

3. These restrictions also apply to holds placed on funds in a customer's account (as defined in §229.2(a)) if a customer cashes a check at a bank (other than a check drawn on that bank) over the counter. The regulation does not prohibit holds that may be placed on other funds of the customer for checks cashed over the counter, to the extent that the transaction does not involve a deposit to an account. A bank may not, however, place a hold on any account when an "on us" check is cashed over the counter. "On us" checks are considered finally paid when cashed (see U.C.C. 4-215(a)(1)). When a customer cashes a check over the counter and the bank places a hold on an account of the customer, the bank must give whatever notice would have been required under §§229.13 or 229.16 had the check been deposited in the account.

F. 229.19(f) Employee Training and Compliance

1. The EFA Act requires banks to take such actions as may be necessary to inform fully each employee that performs duties subject to the EFA Act of the requirements of the EFA Act, and to establish and maintain procedures reasonably designed to assure and monitor employee compliance with such requirements.

2. This paragraph requires a bank to establish procedures to ensure compliance with these requirements and provide these procedures to the employees responsible for carrying them out.

G. 229.19(g) Effect of Merger Transaction

1. After banks merge, there is often a period of adjustment before their operations are consolidated. This paragraph accommodates this adjustment period by allowing merged banks to be treated as separate banks for purposes of this subpart for a period of up to one year after consummation of the merger transaction, except that a cus-

tomers of any bank that is a party to the transaction that has an established account with that bank may not be treated as a new account holder for any other party to the transaction for purposes of the new account exception of §229.13(a), and a deposit in any branch of the merged bank is considered deposited in the bank for purposes of the availability schedules in accordance with §229.19(a).

2. This rule affects the status of the combined entity in several areas. For example, this rule would affect when an ATM is a proprietary ATM (§229.2(aa) and §229.12(b)) and when a check is considered drawn on a branch of the depository bank (§229.10(c)(1)(vi)).

3. Merger transaction is defined in §229.2(t).

XIV. Section 229.20 Relation to State Law

A. 229.20(a) In General

1. Several states have enacted laws that govern when banks in those states must make funds available to their customers. The EFA Act provides that any state law in effect on September 1, 1989, that provides that funds be made available in a shorter period of time than provided in this regulation, will supersede the time periods in the EFA Act and the regulation. The Conference Report on the EFA Act clarifies this provision by stating that any state law enacted on or before September 1, 1989, may supersede federal law to the extent that the law relates to the time funds must be made available for withdrawal. H.R. Rep. No. 261, 100th Cong. 1st Sess. at 182 (1987).

2. Thus, if a state had wished to adopt a law governing funds availability, it had to have made that law effective on or before September 1, 1989. Laws adopted after that date do not supersede federal law, even if they provide for shorter availability periods than are provided under federal law. If a state that had a law governing funds availability in effect before September 1, 1989, amended its law after that date, the amendment would not supersede federal law, but an amendment deleting a state requirement would be effective.

3. If a state provides for a shorter hold for a certain category of checks than is provided for under federal law, that state requirement will supersede the federal provision. For example, most state laws base some hold periods on whether the check being deposited is drawn on an in-state or out-of-state bank. If a state contains more than one check processing region, the state's hold period for in-state checks may be shorter than the federal maximum hold period for nonlocal checks. Thus, the state schedule would supersede the federal schedule to the extent that it applies to in-state, nonlocal checks.

4. The EFA Act also provides that any state law that provides for availability in a shorter period of time than required by federal law is applicable to all federally insured institutions in that state, including federally chartered institutions. If a state law provides shorter availability only for deposits in accounts in certain categories of banks, such as commercial banks, the superseding state law continues to apply only to those categories of banks, rather than to all federally insured banks in the state.

B. 229.20(b) Preemption of Inconsistent Law

1. This paragraph reflects the statutory provision that other provisions of state law that are inconsistent with federal law are preempted. Preemption does not require a determination by the Board to be effective.

C. 229.20(c) Standards for Preemption

1. This section describes the standards the Board uses in making determinations on whether federal law will preempt state laws governing funds availability. A provision of state law is considered inconsistent with federal law if it permits a depository bank to make funds available to a customer in a longer period of time than the maximum period permitted by the EFA Act and this regulation. For example, a state law that permits a hold of four business days or longer for local checks permits a hold that is longer than that permitted under the EFA Act and this regulation, and therefore is inconsistent and preempted. State availability schedules that provide for availability in a shorter period of time than required under Regulation CC supersede the federal schedule.

2. Under a state law, some categories of deposits could be available for withdrawal sooner or later than the time required by this subpart, depending on the composition of the deposit. For example, the EFA Act and this regulation (§ 229.10(c)(1)(vii)) require next-day availability for the first \$100 of the aggregate deposit of local or nonlocal checks on any day, and a state law could require next-day availability for any check of \$100 or less that is deposited. Under the EFA Act and this regulation, if either one \$150 check or three \$50 checks are deposited on a given day, \$100 must be made available for withdrawal on the next business day, and \$50 must be made available in accordance with the local or nonlocal schedule. Under the state law, however, the two deposits would be subject to different availability rules. In the first case, none of the proceeds of the deposit would be subject to next-day availability; in the second case, the entire proceeds of the deposit would be subject to next-day availability. In this example, because the state law would, in some situations, permit a hold longer than the maximum permitted by the EFA Act, this provision of

state law is inconsistent and preempted in its entirety.

3. In addition to the differences between state and federal availability schedules, a number of state laws contain exceptions to the state availability schedules that are different from those provided under the EFA Act and this regulation. The state exceptions continue to apply only in those cases where the state schedule is shorter than or equal to the federal schedule, and then only up to the limit permitted by the Regulation CC schedule. Where a deposit is subject to a state exception under a state schedule that is not preempted by Regulation CC and is also subject to a federal exception, the hold on the deposit cannot exceed the hold permissible under the federal exception in accordance with Regulation CC. In such cases, only one exception notice is required, in accordance with § 229.13(g). This notice need only include the applicable federal exception as the reason the exception was invoked. For those categories of checks for which the state schedule is preempted by the federal schedule, only the federal exceptions may be used.

4. State laws that provide maximum availability periods for categories of deposits that are not covered by the EFA Act would not be preempted. Thus, state funds availability laws that apply to funds in time and savings deposits are not affected by the EFA Act or this regulation. In addition, the availability schedules of several states apply to “items” deposited to an account. The term items may encompass deposits, such as nonnegotiable instruments, that are not subject to the Regulation CC availability schedules. Deposits that are not covered by Regulation CC continue to be subject to the state availability schedules. State laws that provide maximum availability periods for categories of institutions that are not covered by the EFA Act also would not be preempted. For example, a state law that governs money market mutual funds would not be affected by the EFA Act or this regulation.

5. Generally, state rules governing the disclosure or notice of availability policies applicable to accounts also are preempted, if they are different from the federal rules. Nevertheless, a state law requiring disclosure of funds availability policies that apply to deposits other than “accounts,” such as savings or time deposits, are not inconsistent with the EFA Act and this subpart. Banks in these states would have to follow the state disclosure rules for these deposits.

D. 229.20(d) Preemption Determinations

1. The Board may issue preemption determinations upon the request of an interested party in a state. The determinations will relate only to the provisions of Subparts A and B; generally the Board will not issue individual preemption determinations regarding

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the relation of state U.C.C. provisions to the requirements of Subpart C.

E. 229.20(e) Procedures for Preemption Determinations

1. This provision sets forth the information that must be included in a request by an interested party for a preemption determination by the Board.

XV. Section 229.21 Civil Liability

A. 229.21(a) Civil Liability

1. This paragraph sets forth the statutory penalties for failure to comply with the requirements of this subpart. These penalties apply to provisions of state law that supersede provisions of this regulation, such as requirements that funds deposited in accounts at banks be made available more promptly than required by this regulation, but they do not apply to other provisions of state law. (See Commentary to § 229.20.)

B. 229.21(b) Class Action Awards

1. This paragraph sets forth the provision in the EFA Act concerning the factors that should be considered by the court in establishing the amount of a class action award.

C. 229.21(c) Bona Fide Errors

1. A bank is shielded from liability under this section for a violation of a requirement of this subpart if it can demonstrate, by a preponderance of the evidence, that the violation resulted from a bona fide error and that it maintains procedures designed to avoid such errors. For example, a bank may make a bona fide error if it fails to give next-day availability on a check drawn on the Treasury because the bank's computer system malfunctions in a way that prevents the bank from updating its customer's account; or if it fails to identify whether a payable-through check is a local or nonlocal check despite procedures designed to make this determination accurately.

D. 229.21(d) Jurisdiction

1. The EFA Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

E. 229.21(e) Reliance on Board Rulings

1. This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, model form, notice, or clause (if the disclosure actually corresponds to the bank's availability policy), or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on this Commentary, which is issued as an official Board interpretation, as well as on the regulation itself.

F. 229.21(f) Exclusions

1. This provision clarifies that liability under this section does not apply to violations of the requirements of Subpart C of this regulation, or to actions for wrongful dishonor of a check by a paying bank's customer.

G. 229.21(g) Record Retention

1. Banks must keep records to show compliance with the requirements of this subpart for at least two years. This record retention period is extended in the case of civil actions and enforcement proceedings. Generally, a bank is not required to retain records showing that it actually has given disclosures or notices required by this subpart to each customer, but it must retain evidence demonstrating that its procedures reasonably ensure the customers' receipt of the required disclosures and notices. A bank must, however, retain a copy of each notice provided pursuant to its use of the reasonable cause exception under § 229.13(g) as well as a brief description of the facts giving rise to the availability of that exception.

XVI. Section 229.30 Paying Bank's Responsibility for Return of Checks

A. 229.30(a) Return of Checks

1. This section requires a paying bank (which, for purposes of Subpart C, may include a payable-through and payable-at bank; see § 229.2(z)) that determines not to pay a check to return the check expeditiously. Generally, a check is returned expeditiously if the return process is as fast as the forward collection process. This paragraph provides two standards for expeditious return, the "two-day/four-day" test, and the "forward collection" test.

2. Under the "two-day/four-day" test, if a check is returned such that it would normally be received by the depository bank two business days after presentment where both the paying and depository banks are located in the same check processing region or four business days after presentment where the paying and depository banks are not located in the same check processing region, the check is considered returned expeditiously. In certain limited cases, however, these times are shorter than the time it would normally take a forward collection check deposited in the paying bank and payable by the depository bank to be collected. Therefore, the Board has included a "forward collection" test, whereby a check is nonetheless considered to be returned expeditiously if the paying bank uses transportation methods and banks for return comparable to those used for forward collection checks, even if the check is not received by the depository banks within the two-day or four-day period.

3. Two-day/four-day test.

a. Under the first test, a paying bank must return the check so that the check would normally be received by the depository bank within specified times, depending on whether or not the paying and depository banks are located in the same check processing region.

b. Where both banks are located in the same check processing region, a check is returned expeditiously if it is returned to the depository bank by 4:00 p.m. (local time of the depository bank) of the second business day after the banking day on which the check was presented to the paying bank. For example, a check presented on Monday to a paying bank must be returned to a depository bank located in the same check processing region by 4 p.m. on Wednesday. For a paying bank that is located in a different check processing region than the depository bank, the deadline to complete return is 4 p.m. (local time of the depository bank) of the fourth business day after the banking day on which the check was presented to the paying bank. For example, a check presented to such a paying bank on Monday must be returned to the depository bank by 4:00 p.m. on Friday.

c. This two-day/four-day test does not necessarily require actual receipt of the check by the depository bank within these times. Rather, the paying bank must send the check so that the check would normally be received by the depository bank within the specified time. Thus, the paying bank is not responsible for unforeseeable delays in the return of the check, such as transportation delays.

d. Often, returned checks will be delivered to the depository bank together with forward collection checks. Where the last day on which a check could be delivered to a depository bank under this two-day/four-day test is not a banking day for the depository bank, a returning bank might not schedule delivery of forward collection checks to the depository bank on that day. Further, the depository bank may not process checks on that day. Consequently, if the last day of the time limit is not a banking day for the depository bank, the check may be delivered to the depository bank before the close of the depository bank's next banking day and the return will still be considered expeditious. Ordinarily, this extension of time will allow the returned checks to be delivered with the next shipment of forward collection checks destined for the depository bank.

e. The times specified in this two-day/four-day test are based on estimated forward collection times, but take into account the particular difficulties that may be encountered in handling returned checks. It is anticipated that the normal process for forward collection of a check coupled with these return requirements will frequently result in the return of checks before the proceeds of

nonlocal checks, other than those covered by §229.10(c), must be made available for withdrawal.

f. Under this two-day/four-day test, no particular means of returning checks is required, thus providing flexibility to paying banks in selecting means of return. The Board anticipates that paying banks will often use returning banks (see §229.31) as their agents to return checks to depository banks. A paying bank may rely on the availability schedule of the returning bank it uses in determining whether the returned check would "normally" be returned within the required time under this two-day/four-day test, unless the paying bank has reason to believe that these schedules do not reflect the actual time for return of a check.

4. Forward collection test.

a. Under the second, "forward collection," test, a paying bank returns a check expeditiously if it returns a check by means as swift as the means similarly situated banks would use for the forward collection of a check drawn on the depository bank.

b. Generally, the paying bank would satisfy the "forward collection" test if it uses a transportation method and collection path for return comparable to that used for forward collection, provided that the returning bank selected to process the return agrees to handle the returned check under the standards for expeditious return for returning banks under §229.31(a). This test allows many paying banks a simple means of expeditious return of checks and takes into account the longer time for return that will be required by banks that do not have ready access to direct courier transportation.

c. The paying bank's normal method of sending a check for forward collection would not be expeditious, however, if it is materially slower than that of other banks of similar size and with similar check handling activity in its community.

d. Under the "forward collection" test, a paying bank must handle, route, and transport a returned check in a manner designed to be at least as fast as a similarly situated bank would collect a forward collection check (1) of similar amount, (2) drawn on the depository bank, and (3) received for deposit by a branch of the paying bank or a similarly situated bank by noon on the banking day following the banking day of presentation of the returned check.

e. This test refers to similarly situated banks to indicate a general community standard. In the case of a paying bank (other than a Federal Reserve Bank), a similarly situated bank is a bank of similar asset size, in the same community, and with similar check handling activity as the paying bank. (See §229.2(ee).) A paying bank has similar check handling activity to other banks that handle similar volumes of checks for collection.

f. Under the forward collection test, banks that use means of handling returned checks that are less efficient than the means used by similarly situated banks must improve their procedures. On the other hand, a bank with highly efficient means of collecting checks drawn on a particular bank, such as a direct presentment of checks to a bank in a remote community, is not required to use that means for returned checks, i.e. direct return, if similarly situated banks do not present checks directly to that depository bank.

5. Examples.

a. If a check is presented to a paying bank on Monday and the depository bank and the paying bank are participants in the same clearinghouse, the paying bank should arrange to have the returned check received by the depository bank by Wednesday. This would be the same day the paying bank would deliver a forward collection check to the depository bank if the paying bank received the deposit by noon on Tuesday.

b. i. If a check is presented to a paying bank on Monday and the paying bank would normally collect checks drawn on the depository bank by sending them to a correspondent or a Federal Reserve Bank by courier, the paying bank could send the returned check to its correspondent or Federal Reserve Bank, provided that the correspondent has agreed to handle returned checks expeditiously under §229.31(a). (All Federal Reserve Banks agree to handle returned checks expeditiously.)

ii. The paying bank must deliver the returned check to the correspondent or Federal Reserve Bank by the correspondent's or Federal Reserve Bank's appropriate cut-off hour. The appropriate cut-off hour is the cut-off hour for returned checks that corresponds to the cut-off hour for forward collection checks drawn on the depository bank that would normally be used by the paying bank or a similarly situated bank. A returned check cut-off hour corresponds to a forward collection cut-off hour if it provides for the same or faster availability for checks destined for the same depository banks.

iii. In this example, delivery to the correspondent or a Federal Reserve Bank by the appropriate cut-off hour satisfies the paying bank's duty, even if use of the correspondent or Federal Reserve Bank is not the most expeditious means of returning the check. Thus, a paying bank may send a local returned check to a correspondent instead of a Federal Reserve Bank, even if the correspondent then sends the returned check to a Federal Reserve Bank the following day as a qualified returned check. Where the paying bank delivers forward collection checks by courier to the correspondent or the Federal Reserve Bank, mailing returned checks to the correspondent or Federal Reserve Bank would not satisfy the forward collection test.

iv. If a paying bank ordinarily mails its forward collection checks to its correspondent or Federal Reserve Bank in order to avoid the costs of a courier delivery, but similarly situated banks use a courier to deliver forward collection checks to their correspondent or Federal Reserve Bank, the paying bank must send its returned checks by courier to meet the forward collection test.

c. If a paying bank normally sends its forward collection checks directly to the depository bank, which is located in another community, but similarly situated banks send forward collection checks drawn on the depository bank to a correspondent or a Federal Reserve Bank, the paying bank would not have to send returned checks directly to the depository bank, but could send them to a correspondent or a Federal Reserve Bank.

d. The dollar amount of the returned check has a bearing on how it must be returned. If the paying bank and similarly situated banks present large-dollar checks drawn on the depository bank directly to the depository bank, but use a Federal Reserve Bank or a correspondent to collect small-dollar checks, generally the paying bank would be required to send its large-dollar returns directly to the depository bank (or through a returning bank, if the checks are returned as quickly), but could use a Federal Reserve Bank or a correspondent for its small-dollar returns.

6. Choice of returning bank. In meeting the requirements of the forward collection test, the paying bank is responsible for its own actions, but not for those of the depository bank or returning banks. (This is analogous to the responsibility of collecting banks under U.C.C. 4-202(c).) For example, if the paying bank starts the return of the check in a timely manner but return is delayed by a returning bank (including delay to create a qualified returned check), generally the paying bank has met its requirements. (See §229.38.) If, however, the paying bank selects a returning bank that the paying bank should know is not capable of meeting its return requirements, the paying bank will not have met its obligation of exercising ordinary care in selecting intermediaries to return the check. The paying bank is free to use a method of return, other than its method of forward collection, as long as the alternate method results in delivery of the returned check to the depository bank as quickly as the forward collection of a check drawn on the depository bank or, where the returning bank takes a day to create a qualified returned check under §229.31(a), one day later than the forward collection time. If a paying bank returns a check on its banking day of receipt without settling for the check, as permitted under U.C.C. 4-302(a), and receives settlement for the returned check from a returning bank, it must promptly pay

the amount of the check to the collecting bank from which it received the check.

7. Qualified returned checks. Although paying banks may wish to prepare qualified returned checks because they will be handled at a lower cost by returning banks, the one business day extension provided to returning banks is not available to paying banks because of the longer time that a paying bank has to dispatch the check. Normally, paying banks will be able to convert a check to a qualified returned check at any time after the determination is made to return the check until late in the day following presentment, while a returning bank may receive returned checks late on one day and be expected to dispatch them early the next morning. A check that is converted to a qualified returned check must be encoded in accordance with ANS X9.13 for original checks or ANS X9.100-140 for substitute checks.

8. Routing of returned checks.

a. In effect, under either test, the paying bank acts as an agent or subagent of the depository bank in selecting a means of return. Under § 229.30(a), a paying bank is authorized to route the returned check in a variety of ways:

i. It may send the returned check directly to the depository bank by courier or other means of delivery, bypassing returning banks; or

ii. It may send the returned check to any returning bank agreeing to handle the returned check for expeditious return to the depository bank under § 229.31(a), regardless of whether or not the returning bank handled the check for forward collection.

b. If the paying bank elects to return the check directly to the depository bank, it is not necessarily required to return the check to the branch of first deposit. The check may be returned to the depository bank at any location permitted under § 229.32(a).

9. Midnight deadline.

a. Except for the extension permitted by § 229.30(c), discussed below, this section does not relieve a paying bank from the requirement for timely return (i.e., midnight deadline) under U.C.C. 4-301 and 4-302, which continue to apply. Under U.C.C. 4-302, a paying bank is "accountable" for the amount of a demand item, other than a documentary draft, if it does not pay or return the item or send notice of dishonor by its midnight deadline. Under U.C.C. 3-418(c) and 4-215(a), late return constitutes payment and would be final in favor of a holder in due course or a person who has in good faith changed his position in reliance on the payment. Thus, retaining this requirement gives the paying bank an additional incentive to make a prompt return.

b. The expeditious return requirement applies to a paying bank that determines not to pay a check. This requirement applies to

a payable-through or a payable-at bank that is defined as a paying bank (see § 229.2(z)) and that returns a check. This requirement begins when the payable-through or payable-at bank receives the check during forward collection, not when the payor returns the check to the payable-through or payable-at bank. Nevertheless, a check sent for payment or collection to a payable-through or payable-at bank is not considered to be drawn on that bank for purposes of the midnight deadline provision of U.C.C. 4-301. (See discussion of § 229.36(a).)

c. The liability section of this subpart (§ 229.38) provides that a paying bank is not subject to both "accountability" for missing the midnight deadline under the U.C.C. and liability for missing the timeliness requirements of this regulation. Also, a paying bank is not responsible for failure to make expeditious return to a party that has breached a presentment warranty under U.C.C. 4-208, notwithstanding that the paying bank has returned the check. (See Commentary to § 229.33(a).)

10. U.C.C. provisions affected. This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:

a. Section 4-301(d), in that instead of returning a check through a clearinghouse or to the presenting bank, a paying bank may send a returned check to the depository bank or to a returning bank.

b. Section 4-301(a), in that time limits specified in that section may be affected by the additional requirement to make an expeditious return and in that settlement for returned checks is made under § 229.31(c), not by revocation of settlement.

B. 229.30(b) Unidentifiable Depository Bank

1. In some cases, a paying bank will be unable to identify the depository bank through the use of ordinary care and good faith. The Board expects that these cases will be unusual as skilled return clerks will readily identify the depository bank from the depository bank indorsement required under § 229.35 and appendix D. In cases where the paying bank is unable to identify the depository bank, the paying bank may, in accordance with § 229.30(a), send the returned check to a returning bank that agrees to handle the returned check for expeditious return to the depository bank under § 229.31(a). The returning bank may be better able to identify the depository bank.

2. In the alternative, the paying bank may send the check back up the path used for forward collection of the check. The presenting bank and prior collecting banks normally will be able to trace the collection path of the check through the use of their internal records in conjunction with the indorsements on the returned check. In these limited cases, the paying bank may send

such a returned check to any bank that handled the check for forward collection, even if that bank does not agree to handle the returned check for expeditious return to the depository bank under §229.31(a). A paying bank returning a check under this paragraph to a bank that has not agreed to handle the check expeditiously must advise that bank that it is unable to identify the depository bank. This advice must be conspicuous, such as a stamp on each check for which the depository bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one notice on the cash letter. This information will warn the bank that this check will require special research and handling in accordance with §229.31(b). The returned check may not be prepared for automated return. The return of a check to a bank that handled the check for forward collection is consistent with §229.35(b), which requires a bank handling a check to take up the check if it has not been paid.

3. The sending of a check to a bank that handled the check for forward collection under this paragraph is not subject to the requirements for expeditious return by the paying bank. Often, the paying bank will not have courier or other expeditious means of transportation to the collecting or presenting bank. Although the lack of a requirement of expeditious return will create risks for the depository bank, in many cases the inability to identify the depository bank will be due to the depository bank's, or a collecting bank's, failure to use the indorsement required by §229.35(a) and appendix D. If the depository bank failed to use the proper indorsement, it should bear the risks of less than expeditious return. Similarly, where the inability to identify the depository bank is due to indorsements or other information placed on the back of the check by the depository bank's customer or other prior indorser, the depository bank should bear the risk that it cannot charge a returned check back to that customer. Where the inability to identify the depository bank is due to subsequent indorsements of collecting banks, these collecting banks may be liable for a loss incurred by the depository bank due to less than expeditious return of a check; those banks therefore have an incentive to return checks sent to them under this paragraph quickly.

4. This paragraph does not relieve a paying bank from the liability for the lack of expeditious return in cases where the paying bank is itself responsible for the inability to identify the depository bank, such as when the paying bank's customer has used a check with printing or other material on the back in the area reserved for the depository bank's indorsement, making the indorsement unreadable. (See §229.38(d).)

5. A paying bank's return under this paragraph is also subject to its midnight deadline under U.C.C. 4-301, Regulation J (if the check is returned through a Federal Reserve Bank), and the exception provided in §229.30(c). A paying bank also may send a check to a prior collecting bank to make a claim against that bank under §229.35(b) where the depository bank is insolvent or in other cases as provided in §229.35(b). Finally, a paying bank may make a claim against a prior collecting bank based on a breach of warranty under U.C.C. 4-208.

C. 229.30(c) Extension of Deadline

1. This paragraph permits extension of the deadlines for returning a check for which the paying bank previously has settled (generally midnight of the banking day following the banking day on which the check is received by the paying bank) and for returning a check without settling for it (generally midnight of the banking day on which the check is received by the paying bank, or such other time provided by §210.9 of Regulation J (12 CFR part 210) or §229.36(f)(2) of this part), but not of the duty of expeditious return, in two circumstances:

a. A paying bank may have a courier that leaves after midnight (or after any other applicable deadline) to deliver its forward-collection checks. This paragraph removes the constraint of the midnight deadline for returned checks if the returned check reaches the receiving bank on or before the receiving bank's next banking day following the otherwise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2 p.m. or later set by the receiving bank under U.C.C. 4-108. The extension also applies if the check reaches the bank to which it is sent later than the time described in the previous sentence if highly expeditious means of transportation are used. For example, a West Coast paying bank may use this further extension to ship a returned check by air courier directly to an East Coast returning bank even if the check arrives after the returning bank's cutoff hour. This paragraph applies to the extension of all midnight deadlines except Saturday midnight deadlines (see paragraph XVI.C.1.b of this appendix).

b. A paying bank may observe a banking day, as defined in the applicable U.C.C., on a Saturday, which is not a business day and therefore not a banking day under Regulation CC. In such a case, the U.C.C. deadline for returning checks received and settled for on Friday, or for returning checks received on Saturday without settling for them, might require the bank to return the checks by midnight Saturday. However, the bank may not have couriers leaving on Saturday to carry returned checks, and even if it did, the returning or depository bank to which

the returned checks were sent might not be open until Sunday night or Monday morning to receive and process the checks. This paragraph extends the midnight deadline if the returned checks reach the returning bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during its next processing cycle or reach the depository bank by the cut-off hour on its next banking day following the Saturday midnight deadline. This paragraph applies exclusively to the extension of Saturday midnight deadlines.

2. The time limits that are extended in each case are the paying bank's midnight deadline for returning a check for which it has already settled and the paying bank's deadline for returning a check without settling for it in U.C.C. 4-301 and 4-302, §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12), and § 229.36(f)(2) of this part. As these extensions are designed to speed (§ 229.30(c)(1)), or at least not slow (§ 229.30(c)(2)), the overall return of checks, no modification or extension of the expeditious return requirements in § 229.30(a) is required.

3. The paying bank satisfies its midnight or other return deadline by dispatching returned checks to another bank by courier, including a courier under contract with the paying bank, prior to expiration of the deadline.

4. This paragraph directly affects U.C.C. 4-301 and 4-302 and §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12) to the extent that this paragraph applies by its terms, and may affect other provisions.

D. 229.30(d) Identification of Returned Check

1. The reason for the return must be clearly indicated. A check is identified as a returned check if the front of that check indicates the reason for return, even though it does not specifically state that the check is a returned check. A reason such as "Refer to Maker" is permissible in appropriate cases. If the returned check is a substitute check, the reason for return must be placed within the image of the original check that appears on the front of the substitute check so that the information is retained on any subsequent substitute check. If the paying bank places the returned check in a carrier envelope, the carrier envelope should indicate that it is a returned check but need not repeat the reason for return stated on the check if it in fact appears on the check.

E. 229.30(e) Depository Bank Without Accounts

1. Subpart B of this regulation applies only to "checks" deposited in transaction-type "accounts." Thus, a depository bank with only time or savings accounts need not comply with the availability requirements of

Subpart B. Collecting banks will not have couriers delivering checks to these banks as paying banks, because no checks are drawn on them. Consequently, the costs of using a courier or other expedited means to deliver returned checks directly to such a depository bank may not be justified. Thus, the expedited return requirement of § 229.30(a) and the notice of nonpayment requirement of § 229.33 do not apply to checks being returned to banks that do not hold accounts. The paying bank's midnight deadline in U.C.C. 4-301 and 4-302 and § 210.12 of Regulation J (12 CFR 210.12) would continue to apply to these checks. Returning banks also would be required to act on such checks within their midnight deadline. Further, in order to avoid complicating the process of returning checks generally, banks without accounts are required to use the standard indorsement, and their checks are returned by returning banks and paid for by the depository bank under the same rules as checks deposited in other banks, with the exception of the expeditious return and notice of nonpayment requirements of §§ 229.30(a), 229.31(a), and 229.33.

2. The expeditious return requirements also apply to a check deposited in a bank that is not a depository institution. Federal Reserve Banks, Federal Home Loan Banks, private bankers, and possibly certain industrial banks are not depository institutions within the meaning of the EFA Act, and therefore are not subject to the expedited availability and disclosure requirements of Subpart B. These banks do, however, maintain accounts as defined in § 229.2(a), and a paying bank returning a check to one of these banks would be required to return the check to the depository bank, in accordance with the requirements of this section.

F. 229.30(f) Notice in Lieu of Return

1. A check that is lost or otherwise unavailable for return may be returned by sending a legible copy of both sides of the check or, if such a copy is not available to the paying bank, a written notice of nonpayment containing the information specified in § 229.33(b). The copy or written notice must clearly indicate it is a notice in lieu of return and must be handled in the same manner as other returned checks. Notice by telephone, telegraph, or other electronic transmission, other than a legible facsimile or similar image transmission of both sides of the check, does not satisfy the requirements for a notice in lieu of return. The requirement for a writing and the indication that the notice is a substitute for the returned check is necessary so that the returning and depository banks are informed that the notice carries value. Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check or must retain possession of the check

for protest. A check is not unavailable for return if it is merely difficult to retrieve from a filing system or from storage by a keeper of checks in a truncation system. A notice in lieu of return may be used by a bank handling a returned check that has been lost or destroyed, including when the original returned check has been charged back as lost or destroyed as provided in §229.35(b). A bank using a notice in lieu of return gives a warranty under §229.34(a)(4) that the original check has not been and will not be returned.

2. The requirement of this paragraph supersedes the requirement of U.C.C. 4-301(a) as to the form and information required of a notice of dishonor or nonpayment. Reference in the regulation and this commentary to a returned check includes a notice in lieu of return unless the context indicates otherwise.

3. The notice in lieu of return is subject to the provisions of §229.30 and is treated like a returned check for settlement purposes. If the original check is over \$2,500, the notice of nonpayment under §229.33 is still required, but may be satisfied by the notice in lieu of return if the notice in lieu meets the time and information requirements of §229.33.

4. If not all of the information required by §229.33(b) is available, the paying bank may make a claim against any prior bank handling the check as provided in §229.35(b).

G. 229.30(g) Reliance on Routing Number

1. Although §229.35 and appendix D require that the depository bank indorsement contain its nine-digit routing number, it is possible that a returned check will bear the routing number of the depository bank in fractional, nine-digit, or other form. This paragraph permits a paying bank to rely on the routing number of the depository bank as it appears on the check (in the depository bank's indorsement) when it is received by the paying bank.

2. If there are inconsistent routing numbers, the paying bank may rely on any routing number designating the depository bank. The paying bank is not required to resolve the inconsistency prior to processing the check. The paying bank remains subject to the requirement to act in good faith and use ordinary care under §229.38(a).

XVII. Section 229.31 Returning Bank's Responsibility for Return of Checks

A. 229.31(a) Return of Checks

1. The standards for return of checks established by this section are similar to those for paying banks in §229.30(a). This section requires a returning bank to return a returned check expeditiously if it agrees to handle the returned check for expeditious return under this paragraph. In effect, the returning bank is an agent or subagent of the paying bank and a subagent of the depository bank for the purposes of returning the check.

2. A returning bank agrees to handle a returned check for expeditious return to the depository bank if it:

a. Publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return;

b. Handles a returned check for return that it did not handle for forward collection; or

c. Otherwise agrees to handle a returned check for expeditious return.

3. Two-day/four-day test. As in the case of a paying bank, a returning bank's return of a returned check is expeditious if it meets either of two tests. Under the "two-day/four-day" test, the check must be returned so that it would normally be received by the depository bank by 4:00 p.m. either two or four business days after the check was presented to the paying bank, depending on whether or not the paying bank is located in the same check processing region as the depository bank. This is the same test as the two-day/four-day test applicable to paying banks. (See Commentary to §229.30(a).) While a returning bank will not have first hand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, allocate with paying banks liability for late return based on the delays caused by each. In effect, the two-day/four day test protects all paying and returning banks that return checks from claims that they failed to return a check expeditiously, where the check is returned within the specified time following presentment to the paying bank, or a later time as would result from unforeseen delays.

4. Forward collection test.

a. The "forward collection" test is similar to the forward collection test for paying banks. Under this test, a returning bank must handle a returned check in the same manner that a similarly situated collecting bank would handle a check of similar size drawn on the depository bank for forward collection. A similarly situated bank is a bank (other than a Federal Reserve Bank) that is of similar asset size and check handling activity in the same community. A bank has similar check handling activity if it handles a similar volume of checks for forward collection as the forward collection volume of the returning bank.

b. Under the forward collection test, a returning bank must accept returned checks, including both qualified and other returned checks ("raw returns"), at approximately the same times and process them according to the same general schedules as checks handled for forward collection. Thus, a returning bank generally must process even raw returns on an overnight basis, unless its time limit is extended by one day to convert a raw return to a qualified returned check.

5. Cut-off hours. A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward

collection checks, but the cut-off hour for returned checks may not be earlier than 2:00 p.m. The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returns than for forward collection checks. All returned checks received by a cut-off hour for returned checks must be processed and dispatched by the returning bank by the time that it would dispatch forward collection checks received at a corresponding forward collection cut-off hour that provides for the same or faster availability for checks destined for the same depository banks.

6. Examples.

a. If a returning bank receives a returned check by its cut-off hour for returned checks on Monday and the depository bank and the returning bank are participants in the same clearinghouse, the returning bank should arrange to have the returned check received by the depository bank by Tuesday. This would be the same day that it would deliver a forward collection check drawn on the depository bank and received by the returning bank at a corresponding forward collection cut-off hour on Monday.

b. i. If a returning bank receives a returned check, and the returning bank normally would collect a forward collection check drawn on the depository bank by sending the forward collection check to a correspondent or a Federal Reserve Bank by courier, the returning bank could send the returned check in the same manner if the correspondent has agreed to handle returned checks expeditiously under §229.31(a). The returning bank would have to deliver the check by the correspondent's or Federal Reserve Bank's cut-off hour for returned checks that corresponds to its cut-off hour for forward collection checks drawn on the depository bank. A returning bank may take a day to convert a check to a qualified returned check. Where the forward collection checks are delivered by courier, mailing the returned checks would not meet the duty established by this section for returning banks.

ii. A returning bank must return a check to the depository bank by courier or other means as fast as a courier, if similarly situated returning banks use couriers to deliver their forward collection checks to the depository bank.

iii. For some depository banks, no community practice exists as to delivery of checks. For example, a credit union whose customers use payable-through drafts normally does not have checks presented to it because the drafts are normally sent to the payable-through bank for collection. In these circumstances, the community standard is established by taking into account the dollar volume of the checks being sent to the de-

pository bank and the location of the depository bank, and determining whether similarly situated banks normally would deliver forward collection checks to the depository bank, taking into account the particular risks associated with returned checks. Where the community standard does not require courier delivery, other means of delivery, including mail, are acceptable.

7. Qualified returned checks.

a. The expeditious return requirement for a returning bank in this regulation is more stringent in many cases than the duty of a collecting bank to exercise ordinary care under U.C.C. 4-202 in returning a check. A returning bank is under a duty to act as expeditiously in returning a check as it would in the forward collection of a check. Notwithstanding its duty of expeditious return, its midnight deadline under U.C.C. 4-202 and §210.12(a) of Regulation J (12 CFR 210.12(a)), under the forward collection test, a returning bank may take an extra day to qualify a returned check. A qualified returned check will be handled by subsequent returning banks more efficiently than a raw return. This paragraph gives a returning bank an extra business day beyond the time that would otherwise be required to return the returned check to convert a returned check to a qualified returned check. The qualified returned check must include the routing number of the depository bank, the amount of the check, and a return identifier encoded on the check in magnetic ink. A check that is converted to a qualified returned check must be encoded in accordance with ANS X9.13 for original checks or ANS X9.100-140 for substitute checks.

b. If the returning bank is sending the returned check directly to the depository bank, this extra day is not available because preparing a qualified returned check will not expedite handling by other banks. If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under §229.38 for losses caused by any negligence or under §229.34(c)(3) for breach of an encoding warranty. The returning bank would not lose the one-day extension available to it for creating a qualified returned check because of an encoding error.

8. Routing of returned check.

a. Under §229.31(a), the returning bank is authorized to route the returned check in a variety of ways:

i. It may send the returned check directly to the depository bank by courier or other expeditious means of delivery; or

ii. It may send the returned check to any returning bank agreeing to handle the returned check for expeditious return to the depository bank under this section regardless of whether or not the returning bank handled the check for forward collection.

b. If the returning bank elects to send the returned check directly to the depository

bank, it is not required to send the check to the branch of the depository bank that first handled the check. The returned check may be sent to the depository bank at any location permitted under § 229.32(a).

9. Responsibilities of returning bank. In meeting the requirements of this section, the returning bank is responsible for its own actions, but not those of the paying bank, other returning banks, or the depository bank. (See U.C.C. 4-202(c) regarding the responsibility of collecting banks.) For example, if the paying bank has delayed the start of the return process, but the returning bank acts in a timely manner, the returning bank may satisfy the requirements of this section even if the delayed return results in a loss to the depository bank. (See § 229.38.) A returning bank must handle a notice in lieu of return as expeditiously as a returned check.

10. U.C.C. sections affected. This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:

a. Section 4-202(b), in that time limits required by that section may be affected by the additional requirement to make an expeditious return.

b. Section 4-214(a), in that settlement for returned checks is made under § 229.31(c) and not by charge-back of provisional credit, and in that the time limits may be affected by the additional requirement to make an expeditious return.

B. 229.31(b) Unidentifiable Depository Bank

1. This section is similar to § 229.30(b), but applies to returning banks instead of paying banks. In some cases a returning bank will be unable to identify the depository bank with respect to a check. Returning banks agreeing to handle checks for return to depository banks under § 229.31(a) are expected to be expert in identifying depository bank indorsements. In the limited cases where the returning bank cannot identify the depository bank, the returning bank may send the returned check to a returning bank that agrees to handle the returned check for expeditious return under § 229.31(a), or it may send the returned check to a bank that handled the check for forward collection, even if that bank does not agree to handle the returned check expeditiously under § 229.31(a).

2. If the returning bank itself handled the check for forward collection, it may send the returned check to a collecting bank that was prior to it in the forward collection process, which will be better able to identify the depository bank. If there are no prior collecting banks, the returning bank must research the collection of the check and identify the depository bank. As in the case of paying banks under § 229.30(b), a returning bank's sending of a check to a bank that handled the check for forward collection

under § 229.31(b) is not subject to the expeditious return requirements of § 229.31(a).

3. The returning bank's return of a check under this paragraph is subject to the midnight deadline under U.C.C. 4-202(b). (See definition of returning bank in § 229.2(cc).)

4. Where a returning bank receives a check that it does not agree to handle expeditiously under § 229.31(a), such as a check sent to it under § 229.30(b), but the returning bank is able to identify the depository bank, the returning bank must thereafter return the check expeditiously to the depository bank. The returning bank returns a check expeditiously under this paragraph if it returns the check by the same means it would use to return a check drawn on it to the depository bank or by other reasonably prompt means.

5. As in the case of a paying bank returning a check under § 229.30(b), a returning bank returning a check under this paragraph to a bank that has not agreed to handle the check expeditiously must advise that bank that it is unable to identify the depository bank. This advice must be conspicuous, such as a stamp on each check for which the depository bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one notice on the cash letter. The returned check may not be prepared for automated return.

C. 229.31(c) Settlement

1. Under the U.C.C., a collecting bank receives settlement for a check when it is presented to the paying bank. The paying bank may recover the settlement when the paying bank returns the check to the presenting bank. Under this regulation, however, the paying bank may return the check directly to the depository bank or through returning banks that did not handle the check for forward collection. On these more efficient return paths, the paying bank does not recover the settlement made to the presenting bank. Thus, this paragraph requires the returning bank to settle for a returned check (either with the paying bank or another returning bank) in the same way that it would settle for a similar check for forward collection. To achieve uniformity, this paragraph applies even if the returning bank handled the check for forward collection.

2. Any returning bank, including one that handled the check for forward collection, may provide availability for returned checks pursuant to an availability schedule as it does for forward collection checks. These settlements by returning banks, as well as settlements between banks made during the forward collection of a check, are considered final when made subject to any deferment of availability. (See § 229.36(d) and Commentary to § 229.35(b).)

3. A returning bank may vary the settlement method it uses by agreement with paying banks or other returning banks. Special rules apply in the case of insolvency of banks. (See §229.39.) If payment cannot be obtained from a depository or returning bank because of its insolvency or otherwise, recovery can be had by returning, paying, and collecting banks from prior banks on this basis of the liability of prior banks under §229.35(b).

4. This paragraph affects U.C.C. 4-214(a) in that a paying or collecting bank does not ordinarily have a right to charge back against the bank from which it received the returned check, although it is entitled to settlement if it returns the returned check to that bank, and may affect other sections or provisions. Under §229.36(d), a bank collecting a check remains liable to prior collecting banks and the depository bank's customer under the U.C.C.

D. 229.31(d) Charges

1. This paragraph permits any returning bank, even one that handled the check for forward collection, to impose a fee on the paying bank or other returning bank for its service in handling a returned check. Where a claim is made under §229.35(b), the bank on which the claim is made is not authorized by this paragraph to impose a charge for taking up a check. This paragraph preempts state laws to the extent that these laws prevent returning banks from charging fees for handling returned checks.

E. 229.31(e) Depository Bank Without Accounts

1. This paragraph is similar to §229.30(e) and relieves a returning bank of its obligation to make expeditious return to a depository bank that does not maintain any accounts. (See the Commentary to §229.30(e).)

F. 229.31(f) Notice in Lieu of Return

1. This paragraph is similar to §229.30(f) and authorizes a returning bank to originate a notice in lieu of return if the returned check is unavailable for return. Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check or must retain possession of the check for protest. A check is not unavailable for return if it is merely difficult to retrieve from a filing system or from storage by a keeper of checks in a truncation system. (See the Commentary to §229.30(f).)

G. 229.31(g) Reliance on Routing Number

1. This paragraph is similar to §229.30(g) and permits a returning bank to rely on routing numbers appearing on a returned check such as routing numbers in the depository bank's indorsement or on qualified re-

turned checks. (See the Commentary to §229.30(g).)

XVIII. Section 229.32 Depository Bank's Responsibility for Returned Checks

A. 229.32(a) Acceptance of Returned Checks

1. This regulation seeks to encourage direct returns by paying and returning banks and may result in a number of banks sending checks to depository banks with no pre-existing arrangements as to where the returned checks should be delivered. This paragraph states where the depository bank is required to accept returned checks and written notices of nonpayment under §229.33. (These locations differ from locations at which a depository bank must accept electronic notices.) It is derived from U.C.C. 3-111, which specifies that presentment for payment may be made at the place specified in the instrument or, if there is none, at the place of business of the party to pay. In the case of returned checks, the depository bank does not print the check and can only specify the place of "payment" of the returned check in its indorsement.

2. The paragraph specifies four locations at which the depository bank must accept returned checks:

a. The depository bank must accept returned checks at any location at which it requests presentment of forward collection checks such as a processing center. A depository bank does not request presentment of forward collection checks at a branch of the bank merely by paying checks presented over the counter.

b. i. If the depository bank indorsement states the name and address of the depository bank, it must accept returned checks at the branch, head office, or other location, such as a processing center, indicated by the address. If the address is too general to identify a particular location, then the depository bank must accept returned checks at any branch or head office consistent with the address. If, for example, the address is "New York, New York," each branch in New York City must accept returned checks.

ii. If no address appears in the depository bank's indorsement, the depository bank must accept returned checks at any branch or head office associated with the depository bank's routing number. The offices associated with the routing number of a bank are found in *American Bankers Association Key to Routing Numbers*, published by an agent of the American Bankers Association, which lists a city and state address for each routing number.

iii. The depository bank must accept returned checks at the address in its indorsement and at an address associated with its routing number in the indorsement if the written address in the indorsement and

the address associated with the routing number in the indorsement are not in the same check processing region. Under §§ 229.30(g) and 229.31(g), a paying or returning bank may rely on the depository bank's routing number in its indorsement in handling returned checks and is not required to send returned checks to an address in the depository bank's indorsement that is not in the same check processing region as the address associated with the routing number in the indorsement.

iv. If no routing number or address appears in its indorsement, the depository bank must accept a returned check at any branch or head office of the bank. The indorsement requirement of § 229.35 and appendix D requires that the indorsement contain a routing number, a name, and a location. Consequently, this provision, as well as paragraph (a)(2)(ii) of this section, only applies where the depository bank has failed to comply with the indorsement requirement.

3. For ease of processing, a depository bank may require that returning or paying banks returning checks to it separate returned checks from forward collection checks being presented.

4. Under § 229.33(d), a depository bank receiving a returned check or notice of non-payment must send notice to its customer by its midnight deadline or within a longer reasonable time.

B. 229.32(b) Payment

1. As discussed in the commentary to § 229.31(c), under this regulation a paying or returning bank does not obtain credit for a returned check by charge-back but by, in effect, presenting the returned check to the depository bank. This paragraph imposes an obligation to "pay" a returned check that is similar to the obligation to pay a forward collection check by a paying bank, except that the depository bank may not return a returned check for which it is the depository bank. Also, certain means of payment, such as remittance drafts, may be used only with the agreement of the returning bank.

2. The depository bank must pay for a returned check by the close of the banking day on which it received the returned check. The day on which a returned check is received is determined pursuant to U.C.C. 4-108, which permits the bank to establish a cut-off hour, generally not earlier than 2:00 p.m., and treat checks received after that hour as being received on the next banking day. If the depository bank is unable to make payment to a returning or paying bank on the banking day that it receives the returned check, because the returning or paying bank is closed for a holiday or because the time when the depository bank received the check is after the close of Fedwire, e.g., west coast banks with late cut-off hours, payment may

be made on the next banking day of the bank receiving payment.

3. Payment must be made so that the funds are available for use by the bank returning the check to the depository bank on the day the check is received by the depository bank. For example, a depository bank meets this requirement if it sends a wire transfer of funds to the returning or paying bank on the day it receives the returned check, even if the returning or paying bank has closed for the day. A wire transfer should indicate the purpose of the payment.

4. The depository bank may use a net settlement arrangement to settle for a returned check. Banks with net settlement agreements could net the appropriate credits and debits for returned checks with the accounting entries for forward collection checks if they so desired. If, for purposes of establishing additional controls or for other reasons, the banks involved desired a separate settlement for returned checks, a separate net settlement agreement could be established.

5. The bank sending the returned check to the depository bank may agree to accept payment at a later date if, for example, it does not believe that the amount of the returned check or checks warrants the costs of same-day payment. Thus, a returning or paying bank may agree to accept payment through an ACH credit or debit transfer that settles the day after the returned check is received instead of a wire transfer that settles on the same day.

6. This paragraph and this subpart do not affect the depository bank's right to recover a provisional settlement with its nonbank customer for a check that is returned. (See also §§ 229.19(c)(2)(ii), 229.33(d) and 229.35(b).)

C. 229.32(c) Misrouted Returned Checks

1. This paragraph permits a bank receiving a check on the basis that it is the depository bank to send the misrouted returned check to the correct depository bank, if it can identify the correct depository bank, either directly or through a returning bank agreeing to handle the check expeditiously under § 229.30(a). In these cases, the bank receiving the check is acting as a returning bank. Alternatively, the bank receiving the misrouted returned check must send the check back to the bank from which it was received. In either case the bank to which the returned check was misrouted could receive settlement for the check. The depository bank would be required to pay for the returned check under § 229.32(b), and any other bank to which the check is sent under this paragraph would be required to settle for the check as a returning bank under § 229.31(c). If the check was originally received "free," that is, without a charge for the check, the bank incorrectly receiving the check would have to return the check, without a charge,

to the bank from which it came. The bank to which the returned check was misrouted is required to act promptly but is not required to meet the expeditious return requirements of § 229.31(a); however, it must act within its midnight deadline. This paragraph does not affect a bank's duties under § 229.35(b).

D. 229.32(d) Charges

1. This paragraph prohibits a depository bank from charging the equivalent of a presentment fee for returned checks. A returning bank, however, may charge a fee for handling returned checks. If the returning bank receives a mixed cash letter of returned checks, which includes some checks for which the returning bank also is the depository bank, the fee may be applied to all the returned checks in the cash letter. In the case of a sorted cash letter containing only returned checks for which the returning bank is the depository bank, however, no fee may be charged.

XIX. Section 229.33 Notice of Nonpayment

A. 229.33(a) Requirement

1. Notice of nonpayment as required by this section and written notice in lieu of return as provided in §§ 229.30(f) and 229.31(f) serve different functions. The two kinds of notice, however, must meet the content requirements of this section. The paying bank must send a notice of nonpayment if it decides not to pay a check of \$2,500 or more. A paying bank may rely on an amount encoded on the check in magnetic ink to determine whether the check is in the amount of \$2,500 or more. The notice of nonpayment carries no value, and the check itself (or the notice in lieu of return) must be returned. The paying bank must ensure that the notice of nonpayment is received by the depository bank by 4:00 p.m. local time on the second business day following presentment. A bank identified by routing number as the paying bank is considered the paying bank under this regulation and would be required to create a notice of nonpayment even though that bank determined that the check was not drawn by a customer of that bank. (See Commentary to the definition of paying bank in § 229.2(z).)

2. The paying bank should not send a notice of nonpayment until it has finally determined not to pay the check. Under § 229.34(b), by sending the notice the paying bank warrants that it has returned or will return the check. If a paying bank sends a notice and subsequently decides to pay the check, the paying bank may mitigate its liability on this warranty by notifying the depository bank that the check has been paid.

3. Because the return of the check itself may serve as the required notice of nonpayment, in many cases no notice other than the return of the check will be necessary.

For example, in many cases the return of a check through a clearinghouse to another participant of the clearinghouse will be made in time to meet the time requirements of this section. If the check normally will not be received by the depository bank within the time limits for notice, the return of the check will not satisfy the notice requirement. In determining whether the returned check will satisfy the notice requirement, the paying bank may rely on the availability schedules of returning banks as the time that the returned check is expected to be delivered to the depository bank, unless the paying bank has reason to know the availability schedules are inaccurate.

4. Unless the returned check is used to satisfy the notice requirement, the requirement for notice is independent of and does not affect the requirements for timely and expeditious return of the check under § 229.30 and the U.C.C. (See § 229.30(a).) If a paying bank fails both to comply with this section and to comply with the requirements for timely and expeditious return under § 229.30 and the U.C.C. and Regulation J (12 CFR part 210), the paying bank shall be liable under either this section or such other requirements, but not both. (See § 229.33(b).) A paying bank is not responsible for failure to give notice of nonpayment to a party that has breached a presentment warranty under U.C.C. 4-208, notwithstanding that the paying bank may have returned the check. (See U.C.C. 4-208 and 4-302.)

B. 229.33(b) Content of Notices

1. This paragraph provides that the notice must at a minimum contain eight elements which are specifically enumerated. In the case of written notices, the name and routing number of the depository bank also are required.

2. If the paying bank cannot identify the depository bank from the check itself, it may wish to send the notice to the earliest collecting bank it can identify and indicate that the notice is not being sent to the depository bank. The collecting bank may be able to identify the depository bank and forward the notice, but is under no duty to do so. In addition, the collecting bank may actually be the depository bank.

3. A bank must identify an item of information if the bank is uncertain as to that item's accuracy. A bank may make this identification by setting the item off with question marks, asterisks, or other symbols designated for this purpose by generally applicable industry standards.

C. 229.33(c) Acceptance of Notice

1. In the case of a written notice, the depository bank is required to accept notices at the locations specified in § 229.32(a). In the case of telephone notices, the bank may not

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refuse to accept notices at the telephone numbers identified in this section, but may transfer calls or use a recording device. Banks may vary by agreement the location and manner in which notices are received.

D. 229.33(d) Notification to Customer

1. This paragraph requires a depository bank to notify its customer of nonpayment upon receipt of a returned check or notice of nonpayment, regardless of the amount of the check or notice. This requirement is similar to the requirement under the U.C.C. as interpreted in *Appliance Buyers Credit Corp. v. Prospect National Bank*, 708 F.2d 290 (7th Cir. 1983), that a depository bank may be liable for damages incurred by its customer for its failure to give its customer timely advice that it has received a notice of nonpayment. Notice also must be given if a depository bank receives a notice of recovery under §229.35(b). A bank that chooses to provide the notice required by §229.33(d) in writing may send the notice by e-mail or facsimile if the bank sends the notice to the e-mail address or facsimile number specified by the customer for that purpose. The notice to the customer required under this paragraph also may satisfy the notice requirement of §229.13(g) if the depository bank invokes the reasonable-cause exception of §229.13(e) due to the receipt of a notice of nonpayment, provided the notice meets all the requirements of §229.13(g).

XX. Section 229.34 Warranties

A. 229.34(a) Warranty of Returned Check

1. This paragraph includes warranties that a returned check, including a notice in lieu of return, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the U.C.C. (subject to any claims or defenses under the U.C.C., such as breach of a presentment warranty), Regulation J (12 CFR part 210), or §229.30(c); that the paying or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the original check has not been and will not be returned for payment. (See the Commentary to §229.30(f).) The warranty does not include a warranty that the bank complied with the expeditious return requirements of §§229.30(a) and 229.31(a). These warranties do not apply to checks drawn on the United States Treasury, to U.S. Postal Service money orders, or to checks drawn on a state or a unit of general local government that are not payable through or at a bank. (See §229.42.)

B. 229.34(b) Warranty of Notice of Nonpayment

1. This paragraph provides for warranties for notices of nonpayment. This warranty does not include a warranty that the notice is accurate and timely under §229.33. The requirements of §229.33 that are not covered by the warranty are subject to the liability provisions of §229.38. These warranties are designed to give the depository bank more confidence in relying on notices of nonpayment. This paragraph imposes liability on a paying bank that gives notice of nonpayment and then subsequently returns the check. (See Commentary on §229.33(a).)

C. 229.34(c) Warranty of Settlement Amount, Encoding, and Offset

1. Paragraph (c)(1) provides that a bank that presents and receives settlement for checks warrants to the paying bank that the settlement it demands (e.g., as noted on the cash letter) equals the total amount of the checks it presents. This paragraph gives the paying bank a warranty claim against the presenting bank for the amount of any excess settlement made on the basis of the amount demanded, plus expenses. If the amount demanded is understated, a paying bank discharges its settlement obligation under U.C.C. 4-301 by paying the amount demanded, but remains liable for the amount by which the demand is understated; the presenting bank is nevertheless liable for expenses in resolving the adjustment.

2. When checks or returned checks are transferred to a collecting, returning, or depository bank, the transferor bank is not required to demand settlement, as is required upon presentment to the paying bank. However, often the checks or returned checks will be accompanied by information (such as a cash letter listing) that will indicate the total of the checks or returned checks. Paragraph (c)(2) provides that if the transferor bank includes information indicating the total amount of checks or returned checks transferred, it warrants that the information is correct (i.e., equals the actual total of the items).

3. Paragraph (c)(3) provides that a bank that presents or transfers a check or returned check warrants the accuracy of the magnetic ink encoding that was placed on the item after issue, and that exists at the time of presentment or transfer, to any bank that subsequently handles the check or returned check. Under U.C.C. 4-209(a), only the encoder (or the encoder and the depository bank, if the encoder is a customer of the depository bank) warrants the encoding accuracy, thus any claims on the warranty must be directed to the encoder. Paragraph (c)(3) expands on the U.C.C. by providing that all banks that transfer or present a check or returned check make the encoding warranty.

In addition, under the U.C.C., the encoder makes the warranty to subsequent collecting banks and the paying bank, while paragraph (c)(3) provides that the warranty is made to banks in the return chain as well. Paragraph (c)(3) applies to all MICR-line encoding on a substitute check.

4. A paying bank that settles for an overstated cash letter because of a misencoded check may make a warranty claim against the presenting bank under paragraph (c)(1) (which would require the paying bank to show that the check was part of the overstated cash letter) or an encoding warranty claim under paragraph (c)(3) against the presenting bank or any preceding bank that handled the misencoded check.

5. Paragraph (c)(4) provides that a paying bank or a depository bank may set off excess settlement paid to another bank against settlement owed to that bank for checks presented or returned checks received (for which it is the depository bank) subsequent to the excess settlement.

D. 229.34(d) Transfer and Presentment Warranties

1. A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants that the person on whose account the check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. The warranties are given only by banks and only to subsequent banks in the collection chain. The warranties ultimately shift liability for the loss created by an unauthorized remotely created check to the depository bank. The depository bank cannot assert the transfer and presentment warranties against a depositor. However, a depository bank may, by agreement, allocate liability for such an item to the depositor and also may have a claim under other laws against that person.

2. The transfer and presentment warranties for remotely created checks supplement the Federal Trade Commission's Telemarketing Sales Rule, which requires telemarketers that submit checks for payment to obtain the customer's "express verifiable authorization" (the authorization may be either in writing or tape recorded and must be made available upon request to the customer's bank). 16 CFR 310.3(a)(3). The transfer and presentment warranties shift liability to the depository bank only when the remotely created check is unauthorized, and would not apply when the customer initially authorizes a check but then experiences "buyer's remorse" and subsequently tries to revoke the authorization by asserting a claim against the paying bank under U.C.C. 4-401. If the depository bank suspects "buyer's remorse," it may obtain from its customer the express verifiable authorization of the check by the paying bank's customer, required under the

Federal Trade Commission's Telemarketing Sales Rule, and use that authorization as a defense to the warranty claim.

3. The scope of the transfer and presentment warranties for remotely created checks differs from that of the corresponding U.C.C. warranty provisions in two respects. The U.C.C. warranties differ from the §229.34(d) warranties in that they are given by any person, including a nonbank depositor, that transfers a remotely created check and not just to a bank, as is the case under §229.34(d). In addition, the U.C.C. warranties state that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn. The §229.34(d) warranties specifically cover the amount as well as the payee stated on the check. Neither the U.C.C. warranties, nor the §229.34(d) warranties apply to the date stated on the remotely created check.

4. A bank making the §229.34(d) warranties may defend a claim asserting violation of the warranties by proving that the customer of the paying bank is precluded by U.C.C. 4-406 from making a claim against the paying bank. This may be the case, for example, if the customer failed to discover the unauthorized remotely created check in a timely manner.

5. The transfer and presentment warranties for a remotely created check apply to a remotely created check that has been reconvered to a substitute check.

E. 229.34(d) Damages

1. This paragraph adopts for the warranties in §229.34 (a), (b), and (c) the damages provided in U.C.C. 4-207(c) and 4A-506(b). (See definition of interest compensation in §229.2(o).)

F. 229.34(e) Tender of Defense

1. This paragraph adopts for this regulation the vouching-in provisions of U.C.C. 3-119.

G. 229.34(f) Notice of Claim

1. This paragraph adopts the notice provisions of U.C.C. sections 4-207(d) and 4-208(e). The time limit set forth in this paragraph applies to notices of claims for warranty breaches only. As provided in §229.38(g), all actions under this section must be brought within one year after the date of the occurrence of the violation involved.

XXI. Section 229.35 Indorsements

A. 229.35(a) Indorsement Standards

1. This section and appendix D require banks to use a standard form of indorsement when indorsing checks during the forward collection and return process. The standard provides for indorsements by all collecting and returning banks, plus a unique standard

for depositary bank indorsements. It is designed to facilitate the identification of the depositary bank and the prompt return of checks. The regulation places a duty on banks to ensure that their indorsements can be interpreted by any person. The indorsement standard specifies the information each indorsement must contain and its location and ink color.

2. Banks generally apply indorsements to a paper check in one of two ways: (1) banks print or "spray" indorsements onto a check when the check is processed through the banks' automated check sorters (regardless of whether the checks are original checks or substitute checks), and (2) reconvert banks print or "overlay" previously applied electronic indorsements and their own indorsements and identifications onto a substitute check at the time that the substitute check is created. If a subsequent substitute check is created in the course of collection or return, that substitute check will contain, in its image of the back of the previous substitute check, reproductions of indorsements that were sprayed or overlaid onto the previous item. For purposes of the indorsement standard set forth in appendix D, a reproduction of a previously applied sprayed or overlaid indorsement contained within an image of a check does not constitute "an indorsement that previously was applied electronically." To accommodate these two indorsement scenarios, the appendix includes two indorsement location specifications: one standard applies to banks spraying indorsements onto existing paper original checks and substitute checks, and another applies to reconvert banks overlaying indorsements that previously were applied electronically and their own indorsements onto substitute checks at the time the substitute checks are created.

3. A bank might use check processing equipment that captures an image of a check prior to spraying an indorsement onto that item. If the bank truncates that item, it should ensure that it also applies an indorsement to the item electronically. A reconvert bank satisfies its obligation to preserve all previously applied indorsements by overlaying a bank's indorsement that previously was applied electronically onto a substitute check that the reconvert bank creates.

4. The location of an indorsement applied to an original paper check in accordance with appendix D may shift if that check is truncated and later reconverted to a substitute check. If an indorsement applied to the original check in accordance with appendix D is overwritten by a subsequent indorsement applied to the substitute check in accordance with appendix D, then one or both of those indorsements could be rendered illegible. As explained in §229.38(d) and the commentary thereto, a reconvert bank is

liable for losses associated with indorsements that are rendered illegible as a result of check substitution.

5. To ensure that indorsements can be easily read and would remain legible after an image of a check is captured, the standard requires all indorsements applied to original checks and substitute checks to be printed in black ink as of January 1, 2006.

6. The standard requires the depositary bank's indorsement to include (1) its nine-digit routing number set off by an arrow at each end of the routing number and, if the depositary bank is a reconvert bank with respect to the check, an asterisk outside the arrow at each end of the routing number to identify the bank as a reconvert bank; (2) the indorsement date; and (3) if the indorsement is applied physically, name or location information. The standard also permits but does not require the indorsement to include other identifying information. The standard requires a collecting bank's or returning bank's indorsement to include only (1) the bank's nine digit routing number (without arrows) and, if the collecting bank or returning bank is a reconvert bank with respect to the check, an asterisk at each end of the number to identify the bank as a reconvert bank, (2) the indorsement date, and (3) an optional trace or sequence number.

7. Depositary banks should not include information that can be confused with required information. For example, a nine-digit zip code could be confused with the nine-digit routing number.

8. A depositary bank may want to include an address in its indorsement in order to limit the number of locations at which it must receive returned checks. In instances where this address is not consistent with the routing number in the indorsement, the depositary bank is required to receive returned checks at a branch or head office consistent with the routing number. Banks should note, however, that §229.32 requires a depositary bank to receive returned checks at the location(s) at which it receives forward-collection checks.

9. In addition to indorsing a substitute check in accordance with appendix D, a reconvert bank must identify itself and the truncating bank by applying its routing number and the routing number of the truncating bank to the front of the check in accordance with appendix D and ANS X9.100-140. Further, if the reconvert bank is the paying bank, it also must identify itself by applying its routing number to the back of the check in accordance with appendix D. In these instances, the reconvert bank and truncating bank routing numbers are for identification purposes only and are not indorsements or acceptances.

10. Under the U.C.C., a specific guarantee of prior indorsement is not necessary. (See

U.C.C. 4-207(a) and 4-208(a.) Use of guarantee language in indorsements, such as “P.E.G.” (“prior endorsements guaranteed”), may result in reducing the type size used in bank indorsements, thereby making them more difficult to read. Use of this language may make it more difficult for other banks to identify the depository bank. Subsequent collecting bank indorsements may not include this language.

11. If the bank maintaining the account into which a check is deposited agrees with another bank (a correspondent, ATM operator, or lock box operator) to have the other bank accept returns and notices of non-payment for the bank of account, the indorsement placed on the check as the depository bank indorsement may be the indorsement of the bank that acts as correspondent, ATM operator, or lock box operator as provided in paragraph (d) of this section.

12. The backs of many checks bear pre-printed information or blacked out areas for various reasons. For example, some checks are printed with a carbon band across the back that allows the transfer of information from the check to a ledger with one writing. Also, contracts or loan agreements are printed on certain checks. Other checks that are mailed to recipients may contain areas on the back that are blacked out so that they may not be read through the mailer. On the deposit side, the payee of the check may place its indorsement or information identifying the drawer of the check in the area specified for the depository bank indorsement, thus making the depository bank indorsement unreadable.

13. The indorsement standard does not prohibit the use of a carbon band or other printed or written matter on the backs of checks and does not require banks to avoid placing their indorsements in these areas. Nevertheless, checks will be handled more efficiently if depository banks design indorsement stamps so that the nine-digit routing number avoids the carbon band area. Indorsing parties other than banks, e.g., corporations, will benefit from the faster return of checks if they protect the identifiability and legibility of the depository bank indorsement by staying clear of the area reserved for the depository bank indorsement.

14. Section 229.38(d) allocates responsibility for loss resulting from a delay in return of a check due to indorsements that are unreadable because of material on the back of the check. The depository bank is responsible for a loss resulting from a delay in return caused by the condition of the check arising after its issuance until its acceptance by the depository bank that made the depository bank's indorsement illegible. The paying bank is responsible for loss resulting from a delay in return caused by indorsements that are not readable because

of other material on the back of the check at the time that it was issued. Depository and paying banks may shift these risks to their customers by agreement.

15. The standard does not require the paying bank to indorse the check; however, if a paying bank does indorse a check that is returned, it should follow the indorsement standard for collecting banks and returning banks. The standard requires collecting and returning banks to indorse the check for tracing purposes. With respect to the identification of a paying bank that is also a re-converting bank, see the commentary to §229.51(b)(2).

B. 229.35(b) Liability of Bank Handling Check

1. When a check is sent for forward collection, the collection process results in a chain of indorsements extending from the depository bank through any subsequent collecting banks to the paying bank. This section extends the indorsement chain through the paying bank to the returning banks, and would permit each bank to recover from any prior indorser if the claimant bank does not receive payment for the check from a subsequent bank in the collection or return chain. For example, if a returning bank returned a check to an insolvent depository bank, and did not receive the full amount of the check from the failed bank, the returning bank could obtain the unrecovered amount of the check from any bank prior to it in the collection and return chain including the paying bank. Because each bank in the collection and return chain could recover from a prior bank, any loss would fall on the first collecting bank that received the check from the depository bank. To avoid circuity of actions, the returning bank could recover directly from the first collecting bank. Under the U.C.C., the first collecting bank might ultimately recover from the depository bank's customer or from the other parties on the check.

2. Where a check is returned through the same banks used for the forward collection of the check, priority during the forward collection process controls over priority in the return process for the purpose of determining prior and subsequent banks under this regulation.

3. Where a returning bank is insolvent and fails to pay the paying bank or a prior returning bank for a returned check, §229.39(a) requires the receiver of the failed bank to return the check to the bank that transferred the check to the failed bank. That bank then either could continue the return to the depository bank or recover based on this paragraph. Where the paying bank is insolvent, and fails to pay the collecting bank, the collecting bank also could recover from a prior collecting bank under this paragraph, and the bank from which it recovered could in turn recover from its prior collecting bank

until the loss settled on the depository bank (which could recover from its customer).

4. A bank is not required to make a claim against an insolvent bank before exercising its right to recovery under this paragraph. Recovery may be made by charge-back or by other means. This right of recovery also is permitted even where nonpayment of the check is the result of the claiming bank's negligence such as failure to make expeditious return, but the claiming bank remains liable for its negligence under § 229.38.

5. This liability is imposed on a bank handling a check for collection or return regardless of whether the bank's indorsement appears on the check. Notice must be sent under this paragraph to a prior bank from which recovery is sought reasonably promptly after a bank learns that it did not receive payment from another bank, and learns the identity of the prior bank. Written notice reasonably identifying the check and the basis for recovery is sufficient if the check is not available. Receipt of notice by the bank against which the claim is made is not a precondition to recovery by charge-back or other means; however, a bank may be liable for negligence for failure to provide timely notice. A paying or returning bank also may recover from a prior collecting bank as provided in §§ 229.30(b) and 229.31(b). This provision is not a substitute for a paying or returning bank making expeditious return under §§ 229.30(a) or 229.31(b). This paragraph does not affect a paying bank's accountability for a check under U.C.C. 4-215(a) and 4-302. Nor does this paragraph affect a collecting bank's accountability under U.C.C. 4-213 and 4-215(d). A collecting bank becomes accountable upon receipt of final settlement as provided in the foregoing U.C.C. sections. The term final settlement in §§ 229.31 (c), 229.32 (b), and 229.36(d) is intended to be consistent with the use of the term final settlement in the U.C.C. (e.g., U.C.C. 4-213, 4-214, and 4-215). (See also § 229.2(cc) and Commentary.)

6. This paragraph also provides that a bank may have the rights of a holder based on the handling of the check for collection or return. A bank may become a holder or a holder in due course regardless of whether prior banks have complied with the indorsement standard in § 229.35(a) and appendix D.

7. This paragraph affects the following provisions of the U.C.C., and may affect other provisions:

a. Section 4-214(a), in that the right to recovery is not based on provisional settlement, and recovery may be had from any prior bank. Section 4-214(a) would continue to permit a depository bank to recover a provisional settlement from its customer. (See § 229.33(d).)

b. Section 3-415 and related provisions (such as section 3-503), in that such provisions would not apply as between banks, or

as between the depository bank and its customer.

C. 229.35(c) Indorsement by Bank

1. This section protects the rights of a customer depositing a check in a bank without requiring the words "pay any bank," as required by the U.C.C. (See U.C.C. 4-201(b).) Use of this language in a depository bank's indorsement will make it more difficult for other banks to identify the depository bank. The indorsement standard in appendix D prohibits such material in subsequent collecting bank indorsements. The existence of a bank indorsement provides notice of the restrictive indorsement without any additional words.

D. 229.35(d) Indorsement for Depository Bank

1. This section permits a depository bank to arrange with another bank to indorse checks. This practice may occur when a correspondent indorses for a respondent, or when the bank servicing an ATM or lock box indorses for the bank maintaining the account in which the check is deposited—i.e., the depository bank. If the indorsing bank applies the depository bank's indorsement, checks will be returned to the depository bank. If the indorsing bank does not apply the depository bank's indorsement, by agreement with the depository bank it may apply its own indorsement as the depository bank indorsement. In that case, the depository bank's own indorsement on the check (if any) should avoid the location reserved for the depository bank. The actual depository bank remains responsible for the availability and other requirements of Subpart B, but the bank indorsing as depository bank is considered the depository bank for purposes of Subpart C. The check will be returned, and notice of nonpayment will be given, to the bank indorsing as depository bank.

2. Because the depository bank for Subpart B purposes will desire prompt notice of nonpayment, its arrangement with the indorsing bank should provide for prompt notice of nonpayment. The bank indorsing as depository bank may require the depository bank to agree to take up the check if the check is not paid even if the depository bank's indorsement does not appear on the check and it did not handle the check. The arrangement between the banks may constitute an agreement varying the effect of provisions of Subpart C under § 229.37.

XXII. Section 229.36 Presentment and Issuance of Checks

A. 229.36(a) Payable Through and Payable at Checks

1. For purposes of Subpart C, the regulation defines a payable-through or payable-at

bank (which could be designated the collectible-through or collectible-at bank) as a paying bank. The requirements of § 229.30(a) and the notice of nonpayment requirements of § 229.33 are imposed on a payable-through or payable-at bank and are based on the time of receipt of the forward collection check by the payable-through or payable-at bank. This provision is intended to speed the return of checks that are payable through or at a bank to the depository bank.

B. 229.36(b) Receipt at Bank Office or Processing Center

1. This paragraph seeks to facilitate efficient presentment of checks to promote early return or notice of nonpayment to the depository bank and clarifies the law as to the effect of presentment by routing number. This paragraph differs from § 229.32(a) because presentment of checks differs from delivery of returned checks.

2. The paragraph specifies four locations at which the paying bank must accept presentment of checks. Where the check is payable through a bank and the check is sent to that bank, the payable-through bank is the paying bank for purposes of this subpart, regardless of whether the paying bank must present the check to another bank or to a nonbank payor for payment.

a. Delivery of checks may be made, and presentment is considered to occur, at a location (including a processing center) requested by the paying bank. This is the way most checks are presented by banks today. This provision adopts the common law rule of a number of legal decisions that the processing center acts as the agent of the paying bank to accept presentment and to begin the time for processing of the check. (See also U.C.C. 4-204(c).) If a bank designates different locations for the presentment of forward collection checks bearing different routing numbers, for purposes of this paragraph it requests presentment of checks bearing a particular routing number only at the location designated for receipt of forward collection checks bearing that routing number.

b. i. Delivery may be made at an office of the bank associated with the routing number on the check. The office associated with the routing number of a bank is found in *American Bankers Association Key to Routing Numbers*, published by an agent of the American Bankers Association, which lists a city and state address for each routing number. Checks generally are handled by collecting banks on the basis of the nine-digit routing number encoded in magnetic ink (or on the basis of the fractional form routing number if the magnetic ink characters are obliterated) on the check, rather than the printed name or address. The definition of a paying bank in § 229.2(z) includes a bank designated by routing number, whether or not there is a

name on the check, and whether or not any name is consistent with the routing number. Where a check is payable by one bank, but payable through another, the routing number is that of the payable-through bank, not that of the payor bank. As the payor bank has selected the payable-through bank as the point through which presentment is to be made, it is proper to treat the payable-through bank as the paying bank for purposes of this section.

ii. There is no requirement in the regulation that the name and address on the check agree with the address associated with the routing number on the check. A bank generally may control the use of its routing number, just as it does the use of its name. The address associated with the routing number may be a processing center.

iii. In some cases, a paying bank may have several offices in the city associated with the routing number. In such case, it would not be reasonable or efficient to require the presenting bank to sort the checks by more specific branch addresses that might be printed on the checks, and to deliver the checks to each branch. A collecting bank normally would deliver all checks to one location. In cases where checks are delivered to a branch other than the branch on which they may be drawn, computer and courier communication among branches should permit the paying bank to determine quickly whether to pay the check.

c. If the check specifies the name of the paying bank but no address, the bank must accept delivery at any office. Where delivery is made by a person other than a bank, or where the routing number is not readable, delivery will be made based on the name and address of the paying bank on the check. If there is no address, delivery may be made at any office of the paying bank. This provision is consistent with U.C.C. 3-111, which states that presentment for payment may be made at the place specified in the instrument, or, if there is none, at the place of business of the party to pay. Thus, there is a trade-off for a paying bank between specifying a particular address on a check to limit locations of delivery, and simply stating the name of the bank to encourage wider currency for the check.

d. If the check specifies the name and address of a branch or head office, or other location (such as a processing center), the check may be delivered by delivery to that office or other location. If the address is too general to identify a particular office, delivery may be made at any office consistent with the address. For example, if the address is "San Francisco, California," each office in San Francisco must accept presentment. The designation of an address on the check generally is in the control of the paying bank.

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3. This paragraph may affect U.C.C. 3-111 to the extent that the U.C.C. requires presentment to occur at a place specified in the instrument.

C. [Reserved]

D. 229.36(d) Liability of Bank During Forward Collection

1. This paragraph makes settlement between banks during forward collection final when made, subject to any deferment of credit, just as settlements between banks during the return of checks are final. In addition, this paragraph clarifies that this change does not affect the liability scheme under U.C.C. 4-201 during forward collection of a check. That U.C.C. section provides that, unless a contrary intent clearly appears, a bank is an agent or subagent of the owner of a check, but that Article 4 of the U.C.C. applies even though a bank may have purchased an item and is the owner of it. This paragraph preserves the liability of a collecting bank to prior collecting banks and the depository bank's customer for negligence during the forward collection of a check under the U.C.C., even though this paragraph provides that settlement between banks during forward collection is final rather than provisional. Settlement by a paying bank is not considered to be final payment for the purposes of U.C.C. 4-215(a)(2) or (3), because a paying bank has the right to recover settlement from a returning or depository bank to which it returns a check under this subpart. Other provisions of the U.C.C. not superseded by this subpart, such as section 4-202, also continue to apply to the forward collection of a check and may apply to the return of a check. (See definition of returning bank in §229.2(cc).)

E. 229.36(e) Issuance of Payable Through Checks

1. If a bank arranges for checks payable by it to be payable through another bank, it must require its customers to use checks that contain conspicuously on their face the name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable and the legend "payable through" followed by the name of the payable-through bank. The first four digits of the nine-digit routing number and the location of the bank by which the check is payable must be associated with the same check processing region. (This section does not affect §229.36(b).) The required information is deemed conspicuous if it is printed in a type size not smaller than six-point type and if it is contained in the title plate, which is located in the lower left quadrant of the check. The required information may be conspicuous if it is located elsewhere on the check.

2. If a payable-through check does not meet the requirements of this paragraph, the bank by which the check is payable may be liable to the depository bank or others as provided in §229.38. For example, a bank by which a payable-through check is payable could be liable to a depository bank that suffers a loss, such as lost interest or liability under Subpart B, that would not have occurred had the check met the requirements of this paragraph. Similarly, a bank may be liable under §229.38 if a check payable by it that is not payable through another bank is labeled as provided in this section. For example, a bank that holds checking accounts and processes checks at a central location but has widely-dispersed branches may be liable under this section if it labels all of its checks as "payable through" a single branch and includes the name, address, and four-digit routing symbol of another branch. These checks would not be payable through another bank and should not be labeled as payable-through checks. (All of a bank's offices within the United States are considered part of the same bank; see §229.2(e).) In this example, the bank by which the checks are payable could be liable to a depository bank that suffers a loss, such as lost interest or liability under Subpart B, due to the mis-labeled check. The bank by which the check is payable may be liable for additional damages if it fails to act in good faith.

F. 229.36(f) Same-Day Settlement

1. This paragraph provides that, under certain conditions, a paying bank must settle with a presenting bank for a check on the same day the check is presented in order to avail itself of the ability to return the check on its next banking day under U.C.C. 4-301 and 4-302. This paragraph does not apply to checks presented for immediate payment over the counter. Settling for a check under this paragraph does not constitute final payment of the check under the U.C.C. This paragraph does not supersede or limit the rules governing collection and return of checks through Federal Reserve Banks that are contained in Subpart A of Regulation J (12 CFR part 210).

2. Presentment requirements.

a. Location and time.

i. For presented checks to qualify for mandatory same-day settlement, information accompanying the checks must indicate that presentment is being made under this paragraph—e.g. "these checks are being presented for same-day settlement"—and must include a demand for payment of the total amount of the checks together with appropriate payment instructions in order to enable the paying bank to discharge its settlement responsibilities under this paragraph. In addition, the check or checks must be presented at a location designated by the paying bank for receipt of checks for same-day

settlement by 8:00 a.m. local time of that location. The designated presentment location must be a location at which the paying bank would be considered to have received a check under §229.36(b). The paying bank may not designate a location solely for presentment of checks subject to settlement under this paragraph; by designating a location for the purposes of §229.36(f), the paying bank agrees to accept checks at that location for the purposes of §229.36(b).

ii. The designated presentment location also must be within the check processing region consistent with the nine-digit routing number encoded in magnetic ink on the check. A paying bank that uses more than one routing number associated with a single check processing region may designate, for purposes of this paragraph, one or more locations in that check processing region at which checks will be accepted, but the paying bank must accept any checks with a routing number associated with that check processing region at each designated location. A paying bank may designate a presentment location for traveler's checks with an 8000-series routing number anywhere in the country because these traveler's checks are not associated with any check processing region. The paying bank, however, must accept at that presentment location any other checks for which it is paying bank that have a routing number consistent with the check processing region of that location.

iii. If the paying bank does not designate a presentment location, it must accept presentment for same-day settlement at any location identified in §229.36(b), i.e., at an address of the bank associated with the routing number on the check, at any branch or head office if the bank is identified on the check by name without address, or at a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address. A paying bank and a presenting bank may agree that checks will be accepted for same-day settlement at an alternative location (e.g., at an intercept processor located in a different check processing region) or that the cut-off time for same-day settlement be earlier or later than 8:00 a.m. local time.

iv. In the case of a check payable through a bank but payable by another bank, this paragraph does not authorize direct presentment to the bank by which the check is payable. The requirements of same-day settlement under this paragraph would apply to a payable-through or payable-at bank to which the check is sent for payment or collection.

b. Reasonable delivery requirements. A check is considered presented when it is delivered to and payment is demanded at a location specified in paragraph (f)(1). Ordinarily, a presenting bank will find it necessary to contact the paying bank to deter-

mine the appropriate presentment location and any delivery instructions. Further, because presentment might not take place during the paying bank's banking day, a paying bank may establish reasonable delivery requirements to safeguard the checks presented, such as use of a night depository. If a presenting bank fails to follow reasonable delivery requirements established by the paying bank, it runs the risk that it will not have presented the checks. However, if no reasonable delivery requirements are established or if the paying bank does not make provisions for accepting delivery of checks during its non-business hours, leaving the checks at the presentment location constitutes effective presentment.

c. Sorting of checks. A paying bank may require that checks presented to it for same-day settlement be sorted separately from other forward collection checks it receives as a collecting bank or returned checks it receives as a returning or depository bank. For example, if a bank provides correspondent check collection services and receives unsorted checks from a respondent bank that include checks for which it is the paying bank and that would otherwise meet the requirements for same-day settlement under this section, the collecting bank need not make settlement in accordance with paragraph (f)(2). If the collecting bank receives sorted checks from its respondent bank, consisting only of checks for which the collecting bank is the paying bank and that meet the requirements for same-day settlement under this paragraph, the collecting bank may not charge a fee for handling those checks and must make settlement in accordance with this paragraph.

3. Settlement

a. If a bank presents a check in accordance with the time and location requirements for presentment under paragraph (f)(1), the paying bank either must settle for the check on the business day it receives the check without charging a presentment fee or return the check prior to the time for settlement. (This return deadline is subject to extension under §229.30(c).) The settlement must be in the form of a credit to an account designated by the presenting bank at a Federal Reserve Bank (e.g., a Fedwire transfer). The presenting bank may agree with the paying bank to accept settlement in another form (e.g., credit to an account of the presenting bank at the paying bank or debit to an account of the paying bank at the presenting bank). The settlement must occur by the close of Fedwire on the business day the check is received by the paying bank. Under the provisions of §229.34(c), a settlement owed to a presenting bank may be set off by adjustments for previous settlements with the presenting bank. (See also §229.39(d).)

b. Checks that are presented after the 8 a.m. (local time) presentment deadline for

same-day settlement and before the paying bank's cut-off hour are treated as if they were presented under other applicable law and settled for or returned accordingly. However, for purposes of settlement only, the presenting bank may require the paying bank to treat such checks as presented for same-day settlement on the next business day in lieu of accepting settlement by cash or other means on the business day the checks are presented to the paying bank. Checks presented after the paying bank's cut-off hour or on non-business days, but otherwise in accordance with this paragraph, are considered presented for same-day settlement on the next business day.

4. Closed Paying Bank

a. There may be certain business days that are not banking days for the paying bank. Some paying banks may continue to settle for checks presented on these days (e.g., by opening their back office operations or by using an intercept processor). In other cases, a paying bank may be unable to settle for checks presented on a day it is closed.

If the paying bank closes on a business day and checks are presented to the paying bank in accordance with paragraph (f)(1), the paying bank is accountable for the checks unless it settles for or returns the checks by the close of Fedwire on its next banking day. In addition, checks presented on a business day on which the paying bank is closed are considered received on the paying bank's next banking day for purposes of the U.C.C. midnight deadline (U.C.C. 4-301 and 4-302) and this regulation's expeditious return and notice of nonpayment provisions.

b. If the paying bank is closed on a business day voluntarily, the paying bank must pay interest compensation, as defined in §229.2(oo), to the presenting bank for the value of the float associated with the check from the day of the voluntary closing until the day of settlement. Interest compensation is not required in the case of an involuntary closing on a business day, such as a closing required by state law. In addition, if the paying bank is closed on a business day due to emergency conditions, settlement delays and interest compensation may be excused under §229.38(e) or U.C.C. 4-109(b).

5. Good faith. Under §229.38(a), both presenting banks and paying banks are held to a standard of good faith, defined in §229.2(nn) to mean honesty in fact and the observance of reasonable commercial standards of fair dealing. For example, designating a presentment location or changing presentment locations for the primary purpose of discouraging banks from presenting checks for same-day settlement might not be considered good faith on the part of the paying bank. Similarly, presenting a large volume of checks without prior notice could be viewed as not meeting reasonable commercial standards of fair dealing and therefore

may not constitute presentment in good faith. In addition, if banks, in the general course of business, regularly agree to certain practices related to same-day settlement, it might not be considered consistent with reasonable commercial standards of fair dealing, and therefore might not be considered good faith, for a bank to refuse to agree to those practices if agreeing would not cause it harm.

6. U.C.C. sections affected. This paragraph directly affects the following provisions of the U.C.C. and may affect other sections or provisions:

a. Section 4-204(b)(1), in that a presenting bank may not send a check for same-day settlement directly to the paying bank, if the paying bank designates a different location in accordance with paragraph (f)(1).

b. Section 4-213(a), in that the medium of settlement for checks presented under this paragraph is limited to a credit to an account at a Federal Reserve Bank and that, for checks presented after the deadline for same-day settlement and before the paying bank's cut-off hour, the presenting bank may require settlement on the next business day in accordance with this paragraph rather than accept settlement on the business day of presentment by cash.

c. Section 4-301(a), in that, to preserve the ability to exercise deferred posting, the time limit specified in that section for settlement or return by a paying bank on the banking day a check is received is superseded by the requirement to settle for checks presented under this paragraph by the close of Fedwire.

d. Section 4-302(a), in that, to avoid accountability, the time limit specified in that section for settlement or return by a paying bank on the banking day a check is received is superseded by the requirement to settle for checks presented under this paragraph by the close of Fedwire.

XXIII. Section 229.37 Variations by Agreement

A. This section is similar to U.C.C. 4-103, and permits consistent treatment of agreements varying Article 4 or Subpart C, given the substantial interrelationship of the two documents. To achieve consistency, the official comment to U.C.C. 4-103(a) (which in turn follows U.C.C. 1-201(3)) should be followed in construing this section. For example, as stated in Official Comment 2 to section 4-103, owners of items and other interested parties are not affected by agreements under this section unless they are parties to the agreement or are bound by adoption, ratification, estoppel, or the like. In particular, agreements varying this subpart that delay the return of a check beyond the times required by this subpart may result in liability under §229.38 to entities not party to the agreement.

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B. The Board has not followed U.C.C. 4–103(b), which permits Federal Reserve regulations and operating letters, clearinghouse rules, and the like to apply to parties that have not specifically assented. Nevertheless, this section does not affect the status of such agreements under the U.C.C.

C. The following are examples of situations where variation by agreement is permissible, subject to the limitations of this section:

1. A depository bank may authorize another bank to apply the other bank's indorsement to a check as the depository bank. (See § 229.35(d).)

2. A depository bank may authorize returning banks to commingle qualified returned checks with forward collection checks. (See § 229.32(a).)

3. A depository bank may limit its liability to its customer in connection with the late return of a deposited check where the lateness is caused by markings on the check by the depository bank's customer or prior indorser in the area of the depository bank indorsement. (See § 229.38(d).)

4. A paying bank may require its customer to assume the paying bank's liability for delayed or missent checks where the delay or missending is caused by markings placed on the check by the paying bank's customer that obscured a properly placed indorsement of the depository bank. (See § 229.38(d).)

5. A collecting or paying bank may agree to accept forward collection checks without the indorsement of a prior collecting bank. (See § 229.35(a).)

6. A bank may agree to accept returned checks without the indorsement of a prior bank. (See § 229.35(a).)

7. A presenting bank may agree with a paying bank to present checks for same-day settlement at a location that is not in the check processing region consistent with the routing number on the checks. (See § 229.36(f)(1)(i).)

8. A presenting bank may agree with a paying bank to present checks for same-day settlement by a deadline earlier or later than 8:00 a.m. (See § 229.36(f)(1)(ii).)

9. A presenting bank and a paying bank may agree that presentment takes place when the paying bank receives an electronic transmission of information describing the check rather than upon delivery of the physical check. (See § 229.36(b).)

10. A depository bank may agree with a paying or returning bank to accept an image or other notice in lieu of a returned check even when the check is available for return under this part. Except to the extent that other parties interested in the check assent to or are bound by the variation of the notice-in-lieu provisions of this part, banks entering into such an agreement may be responsible under this part or other applicable law to other interested parties for any losses caused by the handling of a returned check

under the agreement. (See §§ 229.30(f), 229.31(f), 229.38(a).)

D. The Board expects to review the types of variation by agreement that develop under this section and will consider whether it is necessary to limit certain variations.

XXIV. Section 229.38 Liability

A. 229.38(a) Standard of care; liability; measure of damages

1. The standard of care established by this section applies to any bank covered by the requirements of Subpart C of the regulation. Thus, the standard of care applies to a paying bank under §§ 229.30 and 229.33, to a returning bank under § 229.31, to a depository bank under §§ 229.32 and 229.33, to a bank erroneously receiving a returned check or written notice of nonpayment as depository bank under § 229.32(d), and to a bank indorsing a check under § 229.35. The standard of care is similar to the standard imposed by U.C.C. 1–203 and 4–103(a) and includes a duty to act in good faith, as defined in § 229.2(nn) of this regulation.

2. A bank not meeting this standard of care is liable to the depository bank, the depository bank's customer, the owner of the check, or another party to the check. The depository bank's customer is usually a depositor of a check in the depository bank (but see § 229.35(d)). The measure of damages provided in this section (loss incurred up to amount of check, less amount of loss party would have incurred even if bank had exercised ordinary care) is based on U.C.C. 4–103(e) (amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care), as limited by 4–202(c) (bank is liable only for its own negligence and not for actions of subsequent banks in chain of collection). This subpart does not absolve a collecting bank of liability to prior collecting banks under U.C.C. 4–201.

3. Under this measure of damages, a depository bank or other person must show that the damage incurred results from the negligence proved. For example, the depository bank may not simply claim that its customer will not accept a charge-back of a returned check, but must prove that it could not charge back when it received the returned check and could have charged back if no negligence had occurred, and must first attempt to collect from its customer. (See *Marcoux v. Van Wyk*, 572 F.2d 651 (8th Cir. 1978); *Appliance Buyers Credit Corp. v. Prospect Nat'l Bank*, 708 F.2d 290 (7th Cir. 1983).) Generally, a paying or returning bank's liability would not be reduced because the depository bank did not place a hold on its customer's deposit before it learned of nonpayment of the check.

4. This paragraph also states that it does not affect a paying bank's liability to its

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customer. Under U.C.C. 4-402, for example, a paying bank is liable to its customer for wrongful dishonor, which is different from failure to exercise ordinary care and has a different measure of damages.

B. 229.38(b) Paying Bank's Failure To Make Timely Return

1. Section 229.30(a) imposes requirements on the paying bank for expeditious return of a check and leaves in place the U.C.C. deadlines (as they may be modified by §229.30(c)), which may allow return at a different time. This paragraph clarifies that the paying bank could be liable for failure to meet either standard, but not for failure to meet both. The regulation intends to preserve the paying bank's accountability for missing its midnight or other deadline under the U.C.C., (e.g., sections 4-215 and 4-302), provisions that are not incorporated in this regulation, but may be useful in establishing the time of final payment by the paying bank.

C. 229.38(c) Comparative negligence

1. This paragraph establishes a "pure" comparative negligence standard for liability under Subpart C of this regulation. This comparative negligence rule may have particular application where a paying or returning bank delays in returning a check because of difficulty in identifying the depository bank. Some examples will illustrate liability in such cases. In each example, it is assumed that the returned check is received by the depository bank after it has made funds available to its customer, that it may no longer recover the funds from its customer, and that the inability to recover the funds from the customer is due to a delay in returning the check contrary to the standards established by §§ 229.30(a) or 229.31(a).

2. Examples.

a. If a depository bank fails to use the indorsement required by this regulation, and this failure is caused by a failure to exercise ordinary care, and if a paying or returning bank is delayed in returning the check because additional time is required to identify the depository bank or find its routing number, the paying or returning bank's liability to the depository bank would be reduced or eliminated.

b. If the depository bank uses the standard indorsement, but that indorsement is obscured by a subsequent collecting bank's indorsement, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depository bank or find its routing number, the paying or returning bank may not be liable to the depository bank because the delay was not due to its negligence. Nonetheless, the collecting bank may be liable to the depository bank to the extent that its negligence

in indorsing the check caused the paying or returning bank's delay.

c. If a depository bank accepts a check that has printing, a carbon band, or other material on the back of the check that existed at the time the check was issued, and the depository bank's indorsement is obscured by the printing, carbon band, or other material, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depository bank, the returning bank may not be liable to the depository bank because the delay was not due to its negligence. Nonetheless, the paying bank may be liable to the depository bank to the extent that the printing, carbon band, or other material caused the delay.

D. 229.38(d) Responsibility for Certain Aspects of Checks

1. Responsibility for back of check. The indorsement standard in §229.35 is most effective if the back of the check remains clear of other matter that may obscure bank indorsements. Because bank indorsements are usually applied by automated equipment, it is not possible to avoid pre-existing matter on the back of the check. For example, bank indorsements are not required to avoid a carbon band or printed, stamped, or written terms or notations on the back of the check. Accordingly, this provision places responsibility on the paying bank, depository bank, or reconverting bank, as appropriate, for keeping the back of the check clear for bank indorsements during forward collection and return.

2. ANS X9.100-140 provides that an image of an original check must be reduced in size when placed on the first substitute check associated with that original check. (The image thereafter would be constant in size on any subsequent substitute check that might be created.) Because of this size reduction, the location of an indorsement, particularly a depository bank indorsement, applied to an original paper check likely will change when the first reconverting bank creates a substitute check that contains that indorsement within the image of the original paper check. If the indorsement was applied to the original paper check in accordance with appendix D's location requirements for indorsements applied to existing paper checks, and if the size reduction of the image causes the placement of the indorsement to no longer be consistent with the appendix's requirements, then the reconverting bank bears the liability for any loss that results from the shift in the placement of the indorsement. Such a loss could result either because the original indorsement applied in accordance with appendix D is rendered illegible by a subsequent indorsement that

later is applied to the substitute check in accordance with appendix D, or because the subsequent bank cannot apply its indorsement to the substitute check legibly in accordance with appendix D as a result of the shift in the previous indorsement.

Example.

In accordance with appendix D's specifications, a depository bank sprays its indorsement onto a business-sized original check between 3.0 inches from the leading edge of the check and 1.5 inches from the trailing edge of the check. The check's conversion to electronic form and subsequent reconversion to paper form causes the location of the depository bank indorsement, now contained within the image of the original check, to change such that it is less than 3.0 inches from the leading edge of the substitute check. In accordance with appendix D's specifications, a subsequent collecting bank sprays its indorsement onto the substitute check between the leading edge of the check and 3.0 inches from the leading edge of the check and the indorsement happens to be on top of the shifted depository bank indorsement. If the check is returned unpaid and the return is not expeditious because of the illegibility of the depository bank indorsement, and the depository bank incurs a loss that it would not have incurred had the return been expeditious, the reconverting bank bears the liability for that loss.

3. Responsibility for payable-through checks.

a. This paragraph provides that the bank by which a payable-through check is payable is liable for damages under paragraph (a) of this section to the extent that the check is not returned through the payable-through bank as quickly as would have been necessary to meet the requirements of § 229.30(a)(1) (the 2-day/4-day test) had the bank by which it is payable received the check as paying bank on the day the payable-through bank received it. The location of the bank by which a check is payable for purposes of the 2-day/4-day test may be determined from the location or the first four digits of the routing number of the bank by which the check is payable. This information should be stated on the check. (See § 229.36(e) and accompanying Commentary.) Responsibility under paragraph (d)(2) does not include responsibility for the time required for the forward collection of a check to the payable-through bank.

b. Generally, liability under paragraph (d)(2) will be limited in amount. Under § 229.33(a), a paying bank that returns a check in the amount of \$2,500 or more must provide notice of nonpayment to the depository bank by 4:00 p.m. on the second business day following the banking day on which the check is presented to the paying bank. Even if a payable-through check in the amount of

\$2,500 or more is not returned through the payable-through bank as quickly as would have been required had the check been received by the bank by which it is payable, the depository bank should not suffer damages unless it has not received timely notice of nonpayment. Thus, ordinarily the bank by which a payable-through check is payable would be liable under paragraph (a) only for checks in amounts up to \$2,500, and the paying bank would be responsible for notice of nonpayment for checks in the amount of \$2,500 or more.

4. Responsibility under paragraphs (d)(1) and (d)(2) is treated as negligence for comparative negligence purposes, and the contribution to damages under paragraphs (d)(1) and (d)(2) is treated in the same way as the degree of negligence under paragraph (c) of this section.

E. 229.38(e) Timeliness of Action

1. This paragraph excuses certain delays. It adopts the standard of U.C.C. 4-109(b).

F. 229.38(f) Exclusion

1. This paragraph provides that the civil liability and class action provisions, particularly the punitive damage provisions of sections 611(a) and (b), and the bona fide error provision of 611(c) of the EFA Act (12 U.S.C. 4010(a), (b), and (c)) do not apply to regulatory provisions adopted to improve the efficiency of the payments mechanism. Allowing punitive damages for delays in the return of checks where no actual damages are incurred would only encourage litigation and provide little or no benefit to the check collection system. In view of the provisions of paragraph (a), which incorporate traditional bank collection standards based on negligence, the provision on bona fide error is not included in Subpart C.

G. 229.38(g) Jurisdiction

1. The EFA Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

H. 229.38(h) Reliance on Board Rulings

1. This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on the Commentary to this regulation, which is issued as an official Board interpretation, as well as on the regulation itself.

XXV. Section 229.39 Insolvency of Bank

A. Introduction

1. These provisions cover situations where a bank becomes insolvent during collection

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or return and are derived from U.C.C. 4-216. They are intended to apply to all banks.

B. 229.39(a) Duty of Receiver

1. This paragraph requires a receiver of a closed bank to return a check to the prior bank if it does not pay for the check. This permits the prior bank, as holder, to pursue its claims against the closed bank or prior indorsers on the check.

C. 229.39(b) Preference Against Paying or Depository Bank

1. This paragraph gives a bank a preferred claim against a closed paying bank that finally pays a check without settling for it or a closed depository bank that becomes obligated to pay a returned check without settling for it. If the bank with a preferred claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

D. 229.39(c) Preference Against Paying, Collecting, or Depository Bank

1. This paragraph gives a bank a preferred claim against a closed collecting, paying, or returning bank that receives settlement but does not settle for a check. (See Commentary to §229.35(b) for discussion of prior and subsequent banks.) As in the case of §229.39(b), if the bank with a preferred claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

E. 229.39(d) Preference Against Presenting Bank

1. This paragraph gives a paying bank a preferred claim against a closed presenting bank in the event that the presenting bank breaches an amount or encoding warranty as provided in §229.34(c)(1) or (3) and does not reimburse the paying bank for adjustments for a settlement made by the paying bank in excess of the value of the checks presented. This preference is intended to have the effect of a perfected security interest and is intended to put the paying bank in the position of a secured creditor for purposes of the receivership provisions of the Federal Deposit Insurance Act and similar provisions of state law.

F. 229.39(e) Finality of Settlement

1. This paragraph provides that insolvency does not interfere with the finality of a settlement, such as a settlement by a paying bank that becomes final by expiration of the midnight deadline.

XXVI. Section 229.40 Effect on Merger Transaction

A. When banks merge, there is normally a period of adjustment required before their operations are consolidated. To allow for this adjustment period, the regulation provides that the merged banks may be treated as separate banks for a period of up to one year after the consummation of the transaction. The term merger transaction is defined in §229.2(t). This rule affects the status of the combined entity in a number of areas in this subpart. For example:

1. The paying bank's responsibility for expeditious return (§229.30).

2. The returning bank's responsibility for expeditious return (§229.31).

3. Whether a returning bank is entitled to an extra day to qualify a return that will be delivered directly to a depository bank that has merged with the returning bank (§229.31(a)).

4. Where the depository bank must accept returned checks (§229.32(a)).

5. Where the depository bank must accept notice of nonpayment (§229.33(c)).

6. Where a paying bank must accept presentment of checks (§229.36(b)).

XXVII. Section 229.41 Relation to State Law

A. This section specifies that state law relating to the collection of checks is preempted only to the extent that it is inconsistent with this regulation. Thus, this regulation is not a complete replacement for state laws relating to the collection or return of checks.

XXVIII. Section 229.42 Exclusions

A. Checks drawn on the United States Treasury, U.S. Postal Service money orders, and checks drawn on states and units of general local government that are presented directly to the state or unit of general local government and that are not payable through or at a bank are excluded from the coverage of the expeditious-return, notice-of-nonpayment, and same-day settlement requirements of subpart C of this part. Other provisions of this subpart continue to apply to the checks. This exclusion does not apply to checks drawn by the U.S. government on banks.

XXIX. Section 229.43 Checks Payable in Guam, American Samoa, and the Northern Mariana Islands

A. 229.43(a) Definitions

1. Bank offices in Guam, American Samoa, and the Northern Mariana Islands (which Regulation CC defines as Pacific island banks) do not meet the definition of bank in §229.2(e) because they are not located in the United States. Some checks drawn on Pacific island banks (defined as Pacific island

checks) bear U.S. routing numbers and are collected and returned by banks in the same manner as checks payable in the U.S.

B. 229.43(b) Rules Applicable to Pacific Island Checks

1. When a bank handles a Pacific island check as if it were a check as defined in § 229.2(k), the bank is subject to certain provisions of Regulation CC, as provided in this section. Because the Pacific island bank is not a bank as defined in § 229.2(e), it is not a paying bank as defined in § 229.2(z) (unless otherwise noted in this section). Pacific island banks are not subject to the provisions of Regulation CC.

2. A bank may agree to handle a Pacific island check as a returned check under § 229.31 and may convert the returned Pacific island check to a qualified returned check. The returning bank is not, however, subject to the expeditious-return requirements of § 229.31. The returning bank may receive the Pacific island check directly from a Pacific island bank or from another returning bank. As a Pacific island bank is not a paying bank under Regulation CC, § 229.31(c) does not apply to a returning bank settling with the Pacific island bank.

3. A depository bank that handles a Pacific island check is not subject to the provisions of subpart B of Regulation CC, including the availability, notice, and interest accrual requirements, with respect to that check. If, however, a bank accepts a Pacific island check for deposit (or otherwise accepts the check as transferee) and collects the Pacific island check in the same manner as other checks, the bank is subject to the provisions of § 229.32, including the provisions regarding time and manner of settlement for returned checks in § 229.32(b), in the event the Pacific island check is returned by a returning bank. If the depository bank receives the returned Pacific island check directly from the Pacific island bank, however, the provisions of § 229.32(b) do not apply, because the Pacific island bank is not a paying bank under Regulation CC. The depository bank is not subject to the notice of nonpayment provisions in § 229.33 for Pacific island checks.

4. Banks that handle Pacific island checks in the same manner as other checks are subject to the indorsement provisions of § 229.35. Section 229.35(c) eliminates the need for the restrictive indorsement “pay any bank.” For purposes of § 229.35(c), the Pacific island bank is deemed to be a bank.

5. Pacific island checks will often be intermingled with other checks in a single cash letter. Therefore, a bank that handles Pacific island checks in the same manner as other checks is subject to the transfer warranty provision in § 229.34(c)(2) regarding accurate cash letter totals and the encoding warranty in § 229.34(c)(3). A bank that acts as a returning bank for a Pacific island check is

not subject to the warranties in § 229.34(a). Similarly, because the Pacific island bank is not a “bank” or a “paying bank” under Regulation CC, § 229.34(b), (c)(1), and (c)(4) do not apply. For the same reason, the provisions of § 229.36 governing paying bank responsibilities such as place of receipt and same-day settlement do not apply to checks presented to a Pacific island bank, and the liability provisions applicable to paying banks in § 229.38 do not apply to Pacific island banks. Section 229.36(d), regarding finality of settlement between banks during forward collection, applies to banks that handle Pacific island checks in the same manner as other checks, as do the liability provisions of § 229.38, to the extent the banks are subject to the requirements of Regulation CC as provided in this section, and §§ 229.37 and 229.39 through 229.42.

XXX. § 229.51 General provisions governing substitute checks

A. § 229.51(a) Legal Equivalence

1. Section 229.51(a) states that a substitute check for which a bank has provided the substitute check warranties is the legal equivalent of the original check for all purposes and all persons if it meets the accuracy and legend requirements. Where the law (or a contract) requires production of the original check, production of a legally equivalent substitute check would satisfy that requirement. A person that receives a substitute check cannot be assessed costs associated with the creation of the substitute check, absent agreement to the contrary.

Examples.

a. A presenting bank presents a substitute check that meets the legal equivalence requirements to a paying bank. The paying bank cannot refuse presentment of the substitute check on the basis that it is a substitute check, because the substitute check is the legal equivalent of the original check.

b. A depositor’s account agreement with a bank provides that the depositor is entitled to receive original cancelled checks back with his or her periodic account statement. The bank may honor that agreement by providing original checks, substitute checks, or a combination thereof. However, a bank may not honor such an agreement by providing something other than an original check or a substitute check.

c. A mortgage company argues that a consumer missed a monthly mortgage payment that the consumer believes she made. A legally equivalent substitute check concerning that mortgage payment could be used in the same manner as the original check to prove the payment.

2. A person other than a bank that creates a substitute check could transfer, present, or return that check only by agreement unless

and until a bank provided the substitute check warranties.

3. To be the legal equivalent of the original check, a substitute check must accurately represent all the information on the front and back of the check as of the time the original check was truncated. An accurate representation of information that was illegible on the original check would satisfy this requirement. The payment instructions placed on the check by, or as authorized by, the drawer, such as the amount of the check, the payee, and the drawer's signature, must be accurately represented, because that information is an essential element of a negotiable instrument. Other information that must be accurately represented includes (1) the information identifying the drawer and the paying bank that is preprinted on the check, including the MICR line; and (2) other information placed on the check prior to the time an image of the check is captured, such as any required identification written on the front of the check and any indorsements applied to the back of the check. A substitute check need not capture other characteristics of the check, such as watermarks, micro-printing, or other physical security features that cannot survive the imaging process or decorative images, in order to meet the accuracy requirement. Conversely, some security features that are latent on the original check might become visible as a result of the check imaging process. For example, the original check might have a faint representation of the word "void" that will appear more clearly on a photocopied or electronic image of the check. Provided the inclusion of the clearer version of the word on the image used to create a substitute check did not obscure the required information listed above, a substitute check that contained such information could be the legal equivalent of an original check under §229.51(a). However, if a person suffered a loss due to receipt of such a substitute check instead of the original check, that person could have an indemnity claim under §229.53 and, in the case of a consumer, an expedited recredit claim under §229.54.

4. To be the legal equivalent of the original check, a substitute check must bear the legal equivalence legend described in §229.51(a)(2). A bank may not vary the language of the legal equivalence legend and must place the legend on the substitute check as specified by generally applicable industry standards for substitute checks contained in ANS X9.100-140.

5. In some cases, the original check used to create a substitute check could be forged or otherwise fraudulent. A substitute check created from a fraudulent original check would have the same status under Regulation CC and the U.C.C. as the original fraudulent check. For example, a substitute check of a fraudulent original check would not be

properly payable under U.C.C. 4-401 and would be subject to the transfer and presentment warranties in U.C.C. 4-207 and 4-208.

B. 229.51(b) Reconverting Bank Duties

1. As discussed in more detail in appendix D and the commentary to §229.35, a reconverting bank must indorse (or, if it is a paying bank with respect to the check, identify itself on) the back of a substitute check in a manner that preserves all indorsements applied, whether physically or electronically, by persons that previously handled the check in any form for forward collection or return. Indorsements applied physically to the original check before an image of the check was captured would be preserved through the image of the back of the original check that a substitute check must contain. Indorsements applied physically to the original check after an image of the original check was captured would be conveyed as electronic indorsements (see paragraph 3 of the commentary to §229.35(a)). If indorsements were applied electronically after an image of the original check was captured or were applied electronically after a previous substitute check was converted to electronic form, the reconverting bank must apply those indorsements physically to the substitute check. A reconverting bank is not responsible for obtaining indorsements that persons that previously handled the check should have applied but did not apply.

2. A reconverting bank also must identify itself as such on the front and back of the substitute check and must preserve on the back of the substitute check the identifications of any previous reconverting banks in accordance with appendix D. The presence on the back of a substitute check of indorsements that were applied by previous reconverting banks and identified with asterisks in accordance with appendix D would satisfy the requirement that the reconverting bank preserve the identification of previous reconverting banks. As discussed in more detail in the commentary to §229.35, the reconverting bank and truncating bank routing numbers on the front of a substitute check and, if the reconverting bank is the paying bank, the reconverting bank's routing number on the back of a substitute check are for identification only and are not indorsements or acceptances.

3. The reconverting bank must place the routing number of the truncating bank surrounded by brackets on the front of the substitute check in accordance with appendix D and ANS X9.100-140.

Example.

A bank's customer, which is a nonbank business, receives checks for payment and by

agreement deposits substitute checks instead of the original checks with its depository bank. The depository bank is the reconverting bank with respect to the substitute checks and the truncating bank with respect to the original checks. In accordance with appendix D and with ANS X9.100-140, the bank must therefore be identified on the front of the substitute checks as a reconverting bank and as the truncating bank, and on the back of the substitute checks as the depository bank and a reconverting bank.

C. 229.51(c) Applicable Law

1. A substitute check that meets the requirements for legal equivalence set forth in this section is subject to any provision of federal or state law that applies to original checks, except to the extent such provision is inconsistent with the Check 21 Act or subpart D. A legally equivalent substitute check is subject to all laws that are not preempted by the Check 21 Act in the same manner and to the same extent as is an original check. Thus, any person could satisfy a law that requires production of an original check by producing a substitute check that is derived from the relevant original check and that meets the legal equivalence requirements of § 229.51(a).

2. A law is not inconsistent with the Check 21 Act or subpart D merely because it allows for the recovery of a greater amount of damages.

Example.

A drawer that suffers a loss with respect to a substitute check that was improperly charged to its account and for which the drawer has an indemnity claim but not a warranty claim would be limited under the Check 21 Act to recovery of the amount of the substitute check plus interest and expenses. However, if the drawer also suffered damages that were proximately caused because the bank wrongfully dishonored subsequently presented checks as a result of the improper substitute check charge, the drawer could recover those losses under U.C.C. 4-402.

XXXI. § 229.52 Substitute Check Warranties

A. 229.52(a) Warranty Content and Provision

1. The responsibility for providing the substitute check warranties begins with the reconverting bank. In the case of a substitute check created by a bank, the reconverting bank starts the flow of warranties when it transfers, presents, or returns a substitute check for which it receives consideration. A bank that receives a substitute check created by a nonbank starts the flow of warranties when it transfers, presents, or returns for consideration either the substitute check

it received or an electronic or paper representation of that substitute check. To ensure that warranty protections flow all the way through to the ultimate recipient of a substitute check or paper or electronic representation thereof, any subsequent bank that transfers, presents, or returns for consideration either the substitute check or a paper or electronic representation of the substitute check is responsible to subsequent transferees for the warranties. Any warranty recipient could bring a claim for a breach of a substitute check warranty if it received either the actual substitute check or a paper or electronic representation of a substitute check.

2. The substitute check warranties and indemnity are not given under §§ 229.52 and 229.53 by a bank that truncates the original check and by agreement transfers the original check electronically to a subsequent bank for consideration. However, parties may, by agreement, allocate liabilities associated with the exchange of electronic check information.

Example.

A bank that receives check information electronically and uses it to create substitute checks is the reconverting bank and, when it transfers, presents, or returns that substitute check, becomes the first warrantor. However, that bank may protect itself by including in its agreement with the sending bank provisions that specify the sending bank's warranties and responsibilities to the receiving bank, particularly with respect to the accuracy of the check image and check data transmitted under the agreement.

3. A bank need not affirmatively make the warranties because they attach automatically when a bank transfers, presents, or returns the substitute check (or a representation thereof) for which it receives consideration. Because a substitute check transferred, presented, or returned for consideration is warranted to be the legal equivalent of the original check and thereby subject to existing laws as if it were the original check, all U.C.C. and other Regulation CC warranties that apply to the original check also apply to the substitute check.

4. The legal equivalence warranty by definition must be linked to a particular substitute check. When an original check is truncated, the check may move from electronic form to substitute check form and then back again, such that there would be multiple substitute checks associated with one original check. When a check changes form multiple times in the collection or return process, the first reconverting bank and subsequent banks that transfer, present, or return the first substitute check (or a paper or electronic representation of the first substitute check) warrant the legal equivalence

of only the first substitute check. If a bank receives an electronic representation of a substitute check and uses that representation to create a second substitute check, the second reconverting bank and subsequent transferees of the second substitute check (or a representation thereof) warrant the legal equivalence of both the first and second substitute checks. A reconverting bank would not be liable for a warranty breach under §229.52 if the legal equivalence defect is the fault of a subsequent bank that handled the substitute check, either as a substitute check or in other paper or electronic form.

5. The warranty in §229.52(a)(2), which addresses multiple payment requests for the same check, is not linked to a particular substitute check but rather is given by each bank handling the substitute check, an electronic representation of a substitute check, or a subsequent substitute check created from an electronic representation of a substitute check. All banks that transfer, present, or return a substitute check (or a paper or electronic representation thereof) therefore provide the warranty regardless of whether the ultimate demand for double payment is based on the original check, the substitute check, or some other electronic or paper representation of the substitute or original check, and regardless of the order in which the duplicative payment requests occur. This warranty is given by the banks that transfer, present, or return a substitute check even if the demand for duplicative payment results from a fraudulent substitute check about which the warranting bank had no knowledge.

Example.

A nonbank depositor truncates a check and in lieu thereof sends an electronic version of that check to both Bank A and Bank B. Bank A and Bank B each uses the check information that it received electronically to create a substitute check, which it presents to Bank C for payment. Bank A and Bank B each is a reconverting bank that made the substitute check warranties when it presented a substitute check to and received payment from Bank C. Bank C could pursue a warranty claim for the loss it suffered as a result of the duplicative payment against either Bank A or Bank B.

B. 229.52(b) Warranty Recipients

1. A reconverting bank makes the warranties to the person to which it transfers, presents, or returns the substitute check for consideration and to any subsequent recipient that receives either the substitute check or a paper or electronic representation derived from the substitute check. These subsequent recipients could include a subsequent collecting or returning bank, the de-

positary bank, the drawer, the drawee, the payee, the depositor, and any indorser. The paying bank would be included as a warranty recipient, for example because it would be the drawee of a check or a transferee of a check that is payable through it.

2. The warranties flow with the substitute check to persons that receive a substitute check or a paper or electronic representation of a substitute check. The warranties do not flow to a person that receives only the original check or a representation of an original check that was not derived from a substitute check. However, a person that initially handled only the original check could become a warranty recipient if that person later receives a returned substitute check or a paper or electronic representation of a substitute check that was derived from that original check.

XXXII. §229.53 Substitute Check Indemnity

A. 229.53(a) Scope of Indemnity

1. Each bank that for consideration transfers, presents, or returns a substitute check or a paper or electronic representation of a substitute check is responsible for providing the substitute check indemnity. The indemnity covers losses due to any subsequent recipient's receipt of the substitute check instead of the original check. The indemnity therefore covers the loss caused by receipt of the substitute check as well as the loss that a bank incurs because it pays an indemnity to another person. A bank that pays an indemnity would in turn have an indemnity claim regardless of whether it received the substitute check or a paper or electronic representation of the substitute check. The indemnity would not apply to a person that handled only the original check or a paper or electronic version of the original check that was not derived from a substitute check.

Examples.

a. A paying bank makes payment based on a substitute check that was derived from a fraudulent original cashier's check. The amount and other characteristics of the original cashier's check are such that, had the original check been presented instead, the paying bank would have inspected the original check for security features. The paying bank's fraud detection procedures were designed to detect the fraud in question and allow the bank to return the fraudulent check in a timely manner. However, the security features that the bank would have inspected were security features that did not survive the imaging process (see the commentary to §229.51(a)). Under these circumstances, the paying bank could assert an indemnity claim against the bank that presented the substitute check.

b. By contrast with the previous examples, the indemnity would not apply if the characteristics of the presented substitute check were such that the bank's security policies and procedures would not have detected the fraud even if the original had been presented. For example, if the check was under the threshold amount at which the bank subjects an item to its fraud detection procedures, the bank would not have inspected the item for security features regardless of the form of the item and accordingly would have suffered a loss even if it had received the original check.

c. A paying bank makes an erroneous payment based on an electronic representation of a substitute check because the electronic cash letter accompanying the electronic item included the wrong amount to be charged. The paying bank would not have an indemnity claim associated with that payment because its loss did not result from receipt of an actual substitute check instead of the original check. However, the paying bank could protect itself from such losses through its agreement with the bank that sent the check to it electronically and may have rights under other law.

d. A drawer has agreed with its bank that the drawer will not receive paid checks with periodic account statements. The drawer requested a copy of a paid check in order to prove payment and received a photocopy of a substitute check. The photocopy that the bank provided in response to this request was illegible, such that the drawer could not prove payment. Any loss that the drawer suffered as a result of receiving the blurry check image would not trigger an indemnity claim because the loss was not caused by the receipt of a substitute check. The drawer may, however, still have a warranty claim if he received a copy of a substitute check, and may also have rights under the U.C.C.

B. 229.53(b) Indemnity Amount

1. If a recipient of a substitute check is making an indemnity claim because a bank has breached one of the substitute check warranties, the recipient can recover any losses proximately caused by that warranty breach.

Examples.

a. A drawer discovers that its account has been charged for two different substitute checks that were provided to the drawer and that were associated with the same original check. As a result of this duplicative charge, the paying bank dishonored several subsequently-presented checks that it otherwise would have paid and charged the drawer returned check fees. The payees of the returned checks also charged the drawer returned check fees. The drawer would have a warranty claim against any of the war-

ranted banks, including its bank, for breach of the warranty described in §229.52(a)(2). The drawer also could assert an indemnity claim. Because there is only one original check for any payment transaction, if the collecting and presenting bank had collected the original check instead of using a substitute check the bank would have been asked to make only one payment. The drawer could assert its warranty and indemnity claims against the paying bank, because that is the bank with which the drawer has a customer relationship and the drawer has received an indemnity from that bank. The drawer could recover from the indemnifying bank the amount of the erroneous charge, as well as the amount of the returned check fees charged by both the paying bank and the payees of the returned checks. If the drawer's account were an interest-bearing account, the drawer also could recover any interest lost on the erroneously debited amount and the erroneous returned check fees. The drawer also could recover its expenditures for representation in connection with the claim. Finally, the drawer could recover any other losses that were proximately caused by the warranty breach.

b. In the example above, the paying bank that received the duplicate substitute checks also would have a warranty claim against the previous transferor(s) of those substitute checks and could seek an indemnity from that bank (or either of those banks). The indemnifying bank would be responsible for compensating the paying bank for all the losses proximately caused by the warranty breach, including representation expenses and other costs incurred by the paying bank in settling the drawer's claim.

2. If the recipient of the substitute check does not have a substitute check warranty claim with respect to the substitute check, the amount of the loss the recipient may recover under §229.53 is limited to the amount of the substitute check, plus interest and expenses. However, the indemnified person might be entitled to additional damages under some other provision of law.

Examples.

a. A drawer received a substitute check that met all the legal equivalence requirements and for which the drawer was only charged once, but the drawer believed that the underlying original check was a forgery. If the drawer suffered a loss because it could not prove the forgery based on the substitute check, for example because proving the forgery required analysis of pen pressure that could be determined only from the original check, the drawer would have an indemnity claim. However, the drawer would not have a substitute check warranty claim because the substitute check was the legal equivalent of the original check and no person was asked

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to pay the substitute check more than once. In that case, the amount of the drawer's indemnity under §229.53 would be limited to the amount of the substitute check, plus interest and expenses. However, the drawer could attempt to recover additional losses, if any, under other law.

b. As described more fully in the commentary to §229.53(a) regarding the scope of the indemnity, a paying bank could have an indemnity claim if it paid a legally equivalent substitute check that was created from a fraudulent cashier's check that the paying bank's fraud detection procedures would have caught and that the bank would have returned by its midnight deadline had it received the original check. However, if the substitute check was not subject to a warranty claim (because it met the legal equivalence requirements and there was only one payment request) the paying bank's indemnity would be limited to the amount of the substitute check plus interest and expenses.

3. The amount of an indemnity would be reduced in proportion to the amount of any amount loss attributable to the indemnified person's negligence or bad faith. This comparative negligence standard is intended to allocate liability in the same manner as the comparative negligence provision of §229.38(c).

4. An indemnifying bank may limit the losses for which it is responsible under §229.53 by producing the original check or a sufficient copy. However, production of the original check or a sufficient copy does not absolve the indemnifying bank from liability claims relating to a warranty the bank has provided under §229.52 or any other law, including but not limited to subpart C of this part or the U.C.C.

C. 229.53(c) Subrogation of Rights

1. A bank that pays an indemnity claim is subrogated to the rights of the person it indemnified, to the extent of the indemnity it provided, so that it may attempt to recover that amount from another person based on an indemnity, warranty, or other claim. The person that the bank indemnified must comply with reasonable requests from the indemnifying bank for assistance with respect to the subrogated claim.

Example.

A paying bank indemnifies a drawer for a substitute check that the drawer alleged was a forgery that would have been detected had the original check instead been presented. The bank that provided the indemnity could pursue its own indemnity claim against the bank that presented the substitute check, could attempt to recover from the forger, or could pursue any claim that it might have under other law. The bank also could request from the drawer any information that the

drawer might possess regarding the possible identity of the forger.

XXXIII. § 229.54 Expedited Recredit for Consumers

A. 229.54(a) Circumstances Giving Rise to a Claim

1. A consumer may make a claim for expedited recredit under this section only for a substitute check that he or she has received and for which the bank charged his or her deposit account. As a result, checks used to access loans, such as credit card checks or home equity line of credit checks, that are reconverted to substitute checks would not give rise to an expedited recredit claim, unless such a check was returned unpaid and the bank charged the consumer's deposit account for the amount of the returned check. In addition, a consumer who received only a statement that contained images of multiple substitute checks per page would not be entitled to make an expedited recredit claim, although he or she could seek redress under other provisions of law, such as §229.52 or U.C.C. 4-401. However, a consumer who originally received only a statement containing images of multiple substitute checks per page but later received a substitute check, such as in response to a request for a copy of a check shown in the statement, could bring a claim if the other expedited recredit criteria were met. Although a consumer must at some point have received a substitute check to make an expedited recredit claim, the consumer need not be in possession of the substitute check at the time he or she submits the claim.

2. A consumer must in good faith assert that the bank improperly charged the consumer's account for the substitute check or that the consumer has a warranty claim for the substitute check (or both). The warranty in question could be a substitute check warranty described in §229.52 or any other warranty that a bank provides with respect to a check under other law. A consumer could, for example, have a warranty claim under §229.34(b), which contains returned check warranties that are made to the owner of the check.

3. A consumer's recovery under the expedited recredit section is limited to the amount of his or her loss, up to the amount of the substitute check subject to the claim, plus interest if the consumer's account is an interest-bearing account. The consumer's loss could include fees that resulted from the allegedly incorrect charge, such as bounced check fees that were imposed because the improper charge caused the bank to dishonor subsequently presented checks that it otherwise would have honored. A consumer who suffers a total loss greater than the amount of the substitute check plus interest could attempt to recover the remainder of that

loss by bringing warranty, indemnity, or other claim under this subpart or other applicable law.

Examples.

a. A consumer who received a substitute check believed that he or she wrote the check for \$150, but the bank charged his or her account for \$1,500. The amount on the substitute check the consumer received is illegible. If the substitute check contained a blurry image of what was a legible original check, the consumer could have a claim for a breach of the legal equivalence warranty in addition to an improper charge claim. Because the amount of the check cannot be determined from the substitute check provided to the consumer, the consumer, if acting in good faith, could assert that the production of the original check or a better copy of the original check is necessary to determine the validity of the claim. The consumer in this case could attempt to recover his or her losses by using the expedited recredit procedure. The consumer's losses recoverable under §229.54 could include the \$1,350 he or she believed was incorrectly charged plus any improperly charged fees associated with that charge, up to \$150 (plus foregone interest on the amount of the consumer's loss if the account was an interest-bearing account). The consumer could recover any additional losses, if any, under other law, such as U.C.C. 4-401 and 4-402.

b. A consumer received a substitute check for which his or her account was charged and believed that the original check from which the substitute was derived was a forgery. The forgery was good enough that analysis of the original check was necessary to verify whether the signature is that of the consumer. Under those circumstances, the consumer, if acting in good faith, could assert that the charge was improper, that he or she therefore had incurred a loss in the amount of the check (plus foregone interest if the account was an interest-bearing account), and that he or she needed the original check to determine the validity of the forgery claim. By contrast, if the signature on the substitute check obviously was forged (for example, if the forger signed a name other than that of the account holder) and there was no other defect with the substitute check, the consumer would not need the original check or a sufficient copy to determine the fact of the forgery and thus would not be able to make an expedited recredit claim under this section. However, the consumer would have a claim under U.C.C. 4-401 if the item was not properly payable.

B. 229.54(b) Procedures for Making Claims

1. The consumer must submit his or her expedited recredit claim to the bank within 40 calendar days of the later of the day on

which the bank mailed or delivered, by a means agreed to by the consumer, (1) the periodic account statement containing information concerning the transaction giving rise to the claim, or (2) the substitute check giving rise to the claim. The mailing or delivery of a substitute check could be in connection with a regular account statement, in response to a consumer's specific request for a copy of a check, or in connection with the return of a substitute check to the payee.

2. Section 229.54(b) contemplates more than one possible means of delivering an account statement or a substitute check to the consumer. The time period for making a claim thus could be triggered by the mailed, in-person, or electronic delivery of an account statement or by the mailed or in-person delivery of a substitute check. In-person delivery would include, for example, making an account statement or substitute check available at the bank for the consumer's retrieval under an arrangement agreed to by the consumer. In the case of a mailed statement or substitute check, the 40-day period should be calculated from the postmark on the envelope. In the case of in-person delivery, the 40-day period should be calculated from the earlier of the calendar day on which delivery occurred or the bank first made the statement or substitute check available for the consumer's retrieval.

3. A bank must extend the consumer's time for submitting a claim for a reasonable period if the consumer is prevented from submitting his or her claim within 40 days because of extenuating circumstances. Extenuating circumstances could include, for example, the extended travel or illness of the consumer.

4. For purposes of determining the timeliness of a consumer's actions, a consumer's claim is considered received on the banking day on which the consumer's bank receives a complete claim in person or by telephone or on the banking day on which the consumer's bank receives a letter or e-mail containing a complete claim. (But see paragraphs 9–11 of this section for a discussion of time periods related to oral claims that the bank requires to be put in writing.)

5. A consumer who makes an untimely claim would not be entitled to recover his or her losses using the expedited recredit procedure. However, he or she still could have rights under other law, such as a warranty or indemnity claim under subpart D, a claim for an improper charge to his or her account under U.C.C. 4-401, or a claim for wrongful dishonor under U.C.C. 4-402.

6. A consumer's claim must include the reason why the consumer believes that his or her account was charged improperly or why he or she has a warranty claim. A charge could be improper, for example, if the bank charged the consumer's account for an amount different than the consumer believes

he or she authorized or charged the consumer more than once for the same check, or if the check in question was a forgery or otherwise fraudulent.

7. A consumer also must provide a reason why production of the original check or a sufficient copy is necessary to determine the validity of the claim identified by the consumer. For example, if the consumer believed that the bank charged his or her account for the wrong amount, the original check might be necessary to prove this claim if the amount of the substitute check were illegible. Similarly, if the consumer believed that his or her signature had been forged, the original check might be necessary to confirm the forgery if, for example, pen pressure or similar analysis were necessary to determine the genuineness of the signature.

8. The information that the consumer is required to provide under § 229.54(b)(2)(iv) to facilitate the bank's investigation of the claim could include, for example, a copy of the allegedly defective substitute check or information related to that check, such as the number, amount, and payee.

9. A bank may accept an expedited recredit claim in any form but could in its discretion require the consumer to submit the claim in writing. A bank that requires a recredit claim to be in writing must inform the consumer of that requirement and provide a location to which such a written claim should be sent. If the consumer attempts to make a claim orally, the bank must inform the consumer at that time of the written notice requirement. A bank that receives a timely oral claim and then requires the consumer to submit the claim in writing may require the consumer to submit the written claim within 10 business days of the bank's receipt of the timely oral claim. If the consumer's oral claim was timely and the consumer's written claim was received within the 10-day period for submitting the claim in writing, the consumer would satisfy the requirement of § 229.54(b)(1) to submit his or her claim within 40 days, even if the bank received the written claim after that 40-day period.

10. A bank may permit but may not require a consumer to submit a written claim electronically.

11. If a bank requires a consumer to submit a claim in writing, the bank may compute time periods for the bank's action on the claim from the date that the bank received the written claim. Thus, if a consumer called the bank to make an expedited recredit claim and the bank required the consumer to submit the claim in writing, the time at which the bank must take action on the claim would be determined based on the date on which the bank received the written claim, not the date on which the consumer made the oral claim.

12. Regardless of whether the consumer's communication with the bank is oral or

written, a consumer complaint that does not contain all the elements described in § 229.54(b) is not a claim for purposes of § 229.54. If the consumer attempts to submit a claim but does not provide all the required information, then the bank has a duty to inform the consumer that the complaint does not constitute a claim under § 229.54 and identify what information is missing.

C. 229.54(c) Action on Claims

1. If the bank has not determined whether or not the consumer's claim is valid by the end of the 10th business day after the banking day on which the consumer submitted the claim, the bank must by that time recredit the consumer's account for the amount of the consumer's loss, up to the lesser of the amount of the substitute check or \$2,500, plus interest if the account is an interest-bearing account. A bank must provide the recredit pending investigation for each substitute check for which the consumer submitted a claim, even if the consumer submitted multiple substitute check claims in the same communication.

2. A bank that provides a recredit to the consumer, either provisionally or after determining that the consumer's claim is valid, may reverse the amount of the recredit if the bank later determines that the claim in fact was not valid. A bank that reverses a recredit also may reverse the amount of any interest that it has paid on the previously recredited amount. A bank's time for reversing a recredit may be limited by a statute of limitations.

D. 229.54(d) Availability of Recredit

1. The availability of a recredit provided by a bank under § 229.54(c) is governed solely by § 229.54(d) and therefore is not subject to the availability provisions of subpart B. A bank generally must make a recredit available for withdrawal no later than the start of the business day after the banking day on which the bank provided the recredit. However, a bank may delay the availability of up to the first \$2,500 that it provisionally recredits to a consumer account under § 229.54(c)(3)(i) if (1) the account is a new account, (2) without regard to the substitute check giving rise to the recredit claim, the account has been repeatedly overdrawn during the six month period ending on the date the bank received the claim, or (3) the bank has reasonable cause to believe that the claim is fraudulent. These first two exceptions are meant to operate in the same manner as the corresponding new account and repeated overdraft exceptions in subpart B, as described in § 229.13(a) and (d) and the commentary thereto regarding application of the exceptions. When a recredit amount for which a bank delays availability contains an interest component, that component also is subject to

the delay because it is part of the amount re-credited under § 229.54(c)(3)(i). However, interest continues to accrue during the hold period.

2. Section 229.54(d)(2) describes the maximum period of time that a bank may delay availability of a recredit provided under § 229.54(c). The bank may delay availability under one of the three listed exceptions until the business day after the banking day on which the bank determines that the consumer's claim is valid or the 45th calendar day after the banking day on which the bank received the consumer's claim, whichever is earlier. The only portion of the recredit that is subject to delay under § 229.54(d)(2) is the amount that the bank recredits under § 229.54(c)(3)(i) (including the interest component, if any) pending its investigation of a claim.

E. 229.54(e) Notices Relating to Consumer Expedited Recredit Claims

1. A bank must notify a consumer of its action regarding a recredit claim no later than the business day after the banking day that the bank makes a recredit, determines a claim is not valid, or reverses a recredit, as appropriate. As provided in § 229.58, a bank may provide any notice required by this section by U.S. mail or by any other means through which the consumer has agreed to receive account information.

2. A bank that denies the consumer's recredit claim must demonstrate to the consumer that the substitute check was properly charged or that the warranty claim was not valid, such as by explaining the reason that the substitute check charge was proper or the consumer's warranty claim was not valid. For example, if a consumer has claimed that the bank charged its account for an improper amount, the bank denying that claim must explain why it determined that the charged amount was proper.

3. A bank denying a recredit claim also must provide the original check or a sufficient copy, unless the bank is providing the claim denial notice electronically and the consumer has agreed to receive that type of information electronically. In that case, § 229.58 allows the bank instead to provide an image of the original check or an image of the sufficient copy that the bank would have sent to the consumer had the bank provided the notice by mail.

4. A bank that relies on information or documents in addition to the original check or sufficient copy when denying a consumer expedited recredit claim also must either provide such information or documents to the consumer or inform the consumer that he or she may request copies of such information or documents. This requirement does not apply to a bank that relies only on the original check or a sufficient copy to make its determination.

5. Models C–22 through C–25 in appendix C contain model language for each of three notices described in § 229.54(e). A bank may, but is not required to, use the language listed in the appendix. The Check 21 Act does not provide banks that use these models with a safe harbor. However, the Board has published these models to aid banks' efforts to comply with § 229.54(e).

F. 229.54(f) Recredit Does Not Abrogate Other Liabilities

1. The amount that a consumer may recover under § 229.54 is limited to the lesser of the amount of his or her loss or the amount of the substitute check, plus interest on that amount if his or her account earns interest. However, a consumer's total loss associated with the substitute check could exceed that amount, and the consumer could be entitled to additional damages under other law. For example, if a consumer's loss exceeded the amount of the substitute check plus interest and he or she had both a warranty and an indemnity claim with respect to the substitute check, he or she would be entitled to additional damages under § 229.53 of this subpart. Similarly, if a consumer was charged bounced check fees as a result of an improperly charged substitute check and could not recover all of those fees because of the § 229.54's limitation on recovery, he or she could attempt to recover additional amounts under U.C.C. 4–402.

XXXIV. § 229.55 Expedited Recredit Procedures for Banks

A. 229.55(a) Circumstances Giving Rise to a Claim

1. This section allows a bank to make an expedited recredit claim under two sets of circumstances: first, because it is obligated to provide a recredit, either to the consumer or to another bank that is obligated to provide a recredit in connection with the consumer's claim; and second, because the bank detected a problem with the substitute check that, if uncaught, could have given rise to a consumer claim.

2. The loss giving rise to an interbank recredit claim could be the recredit that the claimant bank provided directly to its consumer customer under § 229.54 or a loss incurred because the claimant bank was required to indemnify another bank that provided an expedited recredit to either a consumer or a bank.

Examples.

a. A paying bank charged a consumer's account based on a substitute check that contained a blurry image of a legible original check, and the consumer whose account was charged made an expedited recredit claim

against the paying bank because the consumer suffered a loss and needed the original check or a sufficient copy to determine the validity of his or her claim. The paying bank would have a warranty claim against the presenting bank that transferred the defective substitute check to it and against any previous transferring bank(s) that handled that substitute check or another paper or electronic representation of the check. The paying bank therefore would meet each of the requirements necessary to bring an interbank expedited recredit claim.

b. Continuing with the example in paragraph a, if the presenting bank determined that the paying bank's claim was valid and provided a recredit, the presenting bank would have suffered a loss in the amount of the recredit it provided and could, in turn, make an expedited recredit claim against the bank that transferred the defective substitute check to it.

B. 229.55(b) Procedures for Making Claims

1. An interbank recredit claim under this section must be brought within 120 calendar days of the transaction giving rise to the claim. For purposes of computing this period, the transaction giving rise to the claim is the claimant bank's settlement for the substitute check in question.

2. When estimating the amount of its loss, § 229.55(b)(2)(ii) states that the claimant bank should include "interest if applicable." The quoted phrase refers to any interest that the claimant bank or a bank that the claimant bank indemnified paid to a consumer who has an interest-bearing account in connection with an expedited recredit under § 229.54.

3. The information that the claimant bank is required to provide under § 229.55(b)(2)(iv) to facilitate investigation of the claim could include, for example, a copy of any written claim that a consumer submitted under § 229.54 or any written record the bank may have of a claim the consumer submitted orally. The information also could include a copy of the defective substitute check or information relating to that check, such as the number, amount, and payee of the check. However, a claimant bank that provides a copy of the substitute check must take reasonable steps to ensure that the copy is not mistaken for a legal equivalent of the original check or handled for forward collection or return.

4. The indemnifying bank's right to require a claimant bank to submit a claim in writing and the computation of time from the date of the written submission parallel the corresponding provision in the consumer recredit section (§ 229.54(b)(3)). However, the indemnifying bank also may require the claimant bank to submit a copy of the written or electronic claim submitted by the consumer under that section, if any.

C. 229.55(c) Action on Claims

1. An indemnifying bank that responds to an interbank expedited recredit claim by providing the original check or a sufficient copy of the original check need not demonstrate why that claim or the underlying consumer expedited recredit claim is or is not valid.

XXXV. § 229.56 Liability

A. 229.56(a) Measure of Damages

1. In general, a person's recovery under this section is limited to the amount of the loss up to the amount of the substitute check that is the subject of the claim, plus interest and expenses (including costs and reasonable attorney's fees and other expenses of representation) related to that substitute check. However, a person that is entitled to an indemnity under § 229.53 because of a breach of a substitute check warranty also may recover under § 229.53 any losses proximately caused by the warranty breach, including interest, costs, wrongfully-charged fees imposed as a result of the warranty breach, reasonable attorney's fees, and other expenses of representation.

2. A reconverting bank also may be liable under § 229.38 for damages associated with the illegibility of indorsements applied to substitute checks if that illegibility results because the reduction of the original check image and its placement on the substitute check shifted a previously-applied indorsement that, when applied, complied with appendix D. For more detailed discussion of this topic, see § 229.38 and the accompanying commentary.

B. 229.56(b) Timeliness of Action

1. A bank's delay beyond the time limits prescribed or permitted by any provision of subpart D is excused if the delay is caused by certain circumstances beyond the bank's control. This parallels the standard of U.C.C. 4-109(b).

C. 229.56(c) Jurisdiction

1. The Check 21 Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of subpart D.

D. 229.56(d) Notice of Claims

1. This paragraph is designed to adopt the notice of claim provisions of U.C.C. 4-207(d) and 4-208(e), with an added provision that a timely § 229.54 expedited recredit claim satisfies the generally-applicable notice requirement. The time limit described in this paragraph applies only to notices of warranty and indemnity claims. As provided in § 229.56(c), all actions under § 229.56 must be brought within one year of the date that the cause of action accrues.

XXXVI. *Consumer Awareness*

A. 229.57(a) General Disclosure Requirement and Content

1. A bank must provide the disclosure required by §229.57 under two circumstances. First, each bank must provide the disclosure to each of its consumer customers who receives paid checks with his or her account statement. This requirement does not apply if the bank provides with the account statement something other than paid original checks, paid substitute checks, or a combination thereof. For example, this requirement would not apply if a bank provided with the account statement only a document that contained multiple check images per page. Second, a bank also must provide the disclosure when it (a) provides a substitute check to a consumer in response to that consumer's request for a check or check copy or (b) returns a substitute check to a consumer depositor. A bank must provide the disclosure each time it provides a substitute check to a consumer on an occasional basis, regardless of whether the bank previously provided the disclosure to that consumer.

2. A bank may, but is not required to, use the model disclosure in appendix C-5A to satisfy the disclosure content requirements of this section. A bank that uses the model language is deemed to comply with the disclosure content requirement(s) for which it uses the model language, provided the information in the disclosure accurately describes the bank's policies and practices. A bank also may include in its disclosure additional information relating to substitute checks that is not required by this section.

3. A bank may, by agreement or at the consumer's request, provide the disclosure required by this section in a language other than English, provided that the bank makes a complete English notice available at the consumer's request.

B. 229.57(b) Distribution

1. A consumer may request a check or a copy of a check on an occasional basis, such as to prove that he or she made a particular payment. A bank that responds to the consumer's request by providing a substitute check must provide the required disclosure at the time of the consumer's request if feasible. Otherwise, the bank must provide the disclosure no later than the time at which the bank provides a substitute check in response to the consumer's request. It would not be feasible for a bank to provide notice to the consumer at the time of the request if, for example, the bank did not know at the time of the request whether it would provide a substitute check in response to that request, regardless of the form of the consumer's request. It also would not be feasible for a bank to provide notice at the time of

the request if the consumer's request was mailed to the bank or made by telephone, even if the bank knew when it received the request that it would provide a substitute check in response. A bank's provision to the consumer of something other than a substitute check, such as a photocopy of a check or a statement containing images of multiple substitute checks per page, does not trigger the notice requirement.

2. A consumer who does not routinely receive paid checks might receive a returned substitute check. For example, a consumer deposits an original check that is payable to him or her into his or her deposit account. The paying bank returns the check unpaid and the depository bank returns the check to the depositor in the form of a substitute check. A depository bank that provides a returned substitute check to a consumer depositor must provide the substitute check disclosure at that time.

XXXVII. *Variation by Agreement*

Section 229.60 provides that banks involved in an interbank expedited recredit claim under §229.55 may vary the terms of that section by agreement, but otherwise no person may vary the terms of subpart D by agreement. A bank's decision to provide more generous protections for consumers than this subpart requires, such as by providing consumers additional time to submit expedited claims under §229.54 under non-exigent circumstances, would not be a variation prohibited by §229.60.

XXXVIII. *Appendix C—Model Availability Policy Disclosures, Clauses, and Notices; and Model Substitute Check Policy Disclosure and Notices*

A. Introduction

1. Appendix C contains model disclosure, clauses, and notices that may be used by banks to meet their disclosure and notice responsibilities under the regulation. Banks using the models (except models C-22 through C-25) properly will be deemed in compliance with the regulation's disclosure requirements.

2. Information that must be inserted by a bank using the models is italicized within parentheses in the text of the models. Optional information is enclosed in brackets.

3. Banks may make certain changes to the format or content of the models, including deleting material that is inapplicable, without losing the EFA Act's protection from liability for banks that use the models properly. For example, if a bank does not have a cut-off hour prior to its closing time, or if a bank does not take advantage of the §229.13 exceptions, it may delete the references to those provisions. Changes to the models may not be so extensive as to affect the substance, clarity, or meaningful sequence of

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the models. Acceptable changes include, for example:

a. Using “customer” and “bank” instead of pronouns.

b. Changing the typeface or size.

c. Incorporating certain state law “plain English” requirements.

4. Shorter time periods for availability may always be substituted for time periods used in the models.

5. Banks may also add related information. For example, a bank may indicate that although funds have been made available to a customer and the customer has withdrawn them, the customer is still responsible for problems with the deposit, such as checks that were deposited being returned unpaid. Or a bank could include a telephone number to be used if a customer has an inquiry regarding a deposit.

6. Banks are cautioned against using the models without reviewing their own policies and practices, as well as state and federal laws regarding the time periods for availability of specific types of checks. A bank using the models will be in compliance with the EFA Act and the regulation only if the bank’s disclosures correspond to its availability policy.

7. Banks that have used earlier versions of the models (such as those models that gave Social Security benefits and payroll payments as examples of preauthorized credits available the day after deposit, or that did not address the cash withdrawal limitation) are protected from civil liability under § 229.21(e). Banks are encouraged, however, to use current versions of the models when re-ordering or reprinting supplies.

B. Model Availability Policy and Substitute Check Policy Disclosures, Models C-1 through C-5A

1. Models C-1 through C-5 generally.

a. Models C-1 through C-5A are models for the availability policy disclosures described in § 229.16 and substitute check policy disclosure described in § 229.57. The models accommodate a variety of availability policies, ranging from next-day availability to holds to statutory limits on all deposits. Model C-3 reflects the additional disclosures discussed in §§ 229.16 (b) and (c) for banks that have a policy of extending availability times on a case-by-case basis.

b. As already noted, there are several places in the models where information must be inserted. This information includes the bank’s cut-off times, limitations relating to next-day availability, and the first four digits of routing numbers for local banks. In disclosing when funds will be available for withdrawal, the bank must insert the ordinal number (such as first, second, etc.) of the business day after deposit that the funds will become available.

c. Models C-1 through C-5A generally do not reflect any optional provisions of the regulation, or those that apply only to certain banks. Instead, disclosures for these provisions are included in Models C-6 through C-11A. A bank using one of the model availability policy disclosures should also consider whether it must incorporate one or more of Models C-6 through C-11A.

d. While § 229.10(b) requires next-day availability for electronic payments, Treasury regulations (31 CFR part 210) and ACH association rules require that preauthorized credits (“direct deposits”) be made available on the day the bank receives the funds. Models C-1 through C-5 reflect these rules. Wire transfers, however, are not governed by Treasury or ACH rules, but banks generally make funds from wire transfers available on the day received or on the business day following receipt. Banks should ensure that their disclosures reflect the availability given in most cases for wire transfers.

2. *Model C-1 Next-day availability.* A bank may use this model when its policy is to make funds from all deposits available on the first business day after a deposit is made. This model may also be used by banks that provide immediate availability by substituting the word “immediately” in place of “on the first business day after the day we receive your deposit.”

3. *Model C-2 Next-day availability and § 229.13 exceptions.* A bank may use this model when its policy is to make funds from all deposits available to its customers on the first business day after the deposit is made, and to reserve the right to invoke the new account and other exceptions in § 229.13. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check.

4. *Model C-3 Next-day availability, case-by-case holds to statutory limits, and § 229.13 exceptions.* A bank may use this model when its policy, in most cases, is to make funds from all types of deposits available the day after the deposit is made, but to delay availability on some deposits on a case-by-case basis up to the maximum time periods allowed under the regulation. A bank using this model also reserves the right to invoke the exceptions listed in § 229.13. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check.

5. *Model C-4 Holds to statutory limits on all deposits.* A bank may use this model when its policy is to impose delays to the full extent allowed under § 229.12 and to reserve the right to invoke the § 229.13 exceptions. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would

be available if the deposit were of a nonlocal check. Model C-4 uses a chart to show the bank's availability policy for local and nonlocal checks and Model C-5 uses a narrative description.

6. *Model C-5 Holds to statutory limits on all deposits.* A bank may use this model when its policy is to impose delays to the full extent allowed under §229.12 and to reserve the right to invoke the §229.13 exceptions. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check.

7. *Model C-5A* A bank may use this form when it is providing the disclosure to its consumers required by §229.57 explaining that a substitute check is the legal equivalent of an original check and the circumstances under which the consumer may make a claim for expedited recredit.

C. Model Clauses, Models C-6 Through C-11A

1. *Models C-6 through C-11A generally.* Certain clauses like those in the models must be incorporated into a bank's availability policy disclosure under certain circumstances. The commentary to each clause indicates when a clause similar to the model clause is required.

2. *Model C-6 Holds on other funds (check cashing).* A bank that reserves the right to place a hold on funds already on deposit when it cashes a check for a customer, as addressed in §229.19(e), must incorporate this type of clause in its availability policy disclosure.

3. *Model C-7 Holds on other funds (other account).* A bank that reserves the right to place a hold on funds in an account of the customer other than the account into which the deposit is made, as addressed in §229.19(e), must incorporate this type of clause in its availability policy disclosure.

4. *Model C-8 Appendix B availability (nonlocal checks).* A bank in a check processing region where the availability schedules for certain nonlocal checks have been reduced, as described in appendix B of Regulation CC, must incorporate this type of clause in its availability policy disclosure. Banks using Model C-5 may insert this clause at the conclusion of the discussion titled "Nonlocal checks."

5. *Model C-9 Automated teller machine deposits (extended holds).* A bank that reserves the right to delay availability of deposits at nonproprietary ATMs until the fifth business day following the date of deposit, as permitted by §229.12(f), must incorporate this type of clause in its availability policy disclosure. A bank must choose among the alternative language based on how it chooses to differentiate between proprietary and nonproprietary ATMs, as required under §229.16(b)(5).

6. *Model C-10 Cash withdrawal limitation.* A bank that imposes cash withdrawal limitations under §229.12 must incorporate this type of clause in its availability policy disclosure. Banks reserving the right to impose the cash withdrawal limitation and using Model C-3 should disclose that funds may not be available until the sixth (rather than fifth) business day in the first paragraph under the heading "Longer Delays May Apply."

7. *Model C-11 Credit union interest payment policy.* A credit union subject to the notice requirement of §229.14(b)(2) must incorporate this type of clause in its availability policy disclosure. This model clause is only an example of a hypothetical policy. Credit unions may follow any policy for accrual provided the method of accruing interest is the same for cash and check deposits.

8. *Model C-11A Availability of funds deposited at other locations.* A clause similar to Model C-11A should be used if a bank bases the availability of funds on the location where the funds are deposited (for example, at a contractual or other branch located in a different check processing region). Similarly, a clause similar to Model C-11A should be used if a bank distinguishes between local and non-local checks (for example, a bank using model availability policy disclosure C-4 or C-5), and accepts deposits in more than one check processing region.

D. Model Notices, Models C-12 through C-25

1. *Models C-12 through C-25 generally.* Models C-12 through C-25 provide models of the various notices required by the regulation. A bank that cashes a check and places a hold on funds in an account of the customer (see §229.19(e)) should modify the model hold notice accordingly. For example, the bank could replace the word "deposit" with the word "transaction" and could add the phrase "or cashed" after the word "deposited."

2. *Model C-12 Exception hold notice.* This model satisfies the written notice required under §229.13(g) when a bank places a hold based on a §229.13 exception. If a hold is being placed on more than one check in a deposit, each check need not be described, but if different reasons apply, each reason must be indicated. A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft or returned check fees after invoking the reasonable cause exception under §229.13(e).

3. *Model C-13 Reasonable cause hold notice.* This notice satisfies the written notice required under §229.13(g) when a bank invokes the reasonable cause exception under §229.13(e). The notice provides the bank with a list of specific reasons that may be given for invoking the exception. If a hold is being

placed on more than one check in a deposit, each check must be described separately, and if different reasons apply, each reason must be indicated. A bank may disclose its reason for doubting collectibility by checking the appropriate reason on the model. If the “Other” category is checked, the reason must be given. A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft or returned check fees after invoking the reasonable cause exception under § 229.13(e).

4. *Model C-14 One-time notice for large deposit and redeposited check exception holds.* This model satisfies the notice requirements of § 229.13(g)(2) concerning nonconsumer accounts.

5. *Model C-15 One-time notice for repeated overdraft exception hold.* This model satisfies the notice requirements of § 229.13(g)(3).

6. *Model C-16 Case-by-case hold notice.* This model satisfies the notice required under § 229.16(c)(2) when a bank with a case-by-case hold policy imposes a hold on a deposit. This notice does not require a statement of the specific reason for the hold, as is the case when a § 229.13 exception hold is placed. A bank may specify the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit when funds will be available. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a case-by-case hold.

7. *Model C-17 Notice at locations where employees accept consumer deposits and Model C-18 Notice at locations where employees accept consumer deposits (case-by-case holds).* These models satisfy the notice requirement of § 229.18(b). Model C-17 reflects an availability policy of holds to statutory limits on all deposits, and Model C-18 reflects a case-by-case availability policy.

8. *Model C-19 Notice at automated teller machines.* This model satisfies the ATM notice requirement of § 229.18(c)(1).

9. *Model C-20 Notice at automated teller machines (delayed receipt).* This model satisfies the ATM notice requirement of § 229.18(c)(2) when receipt of deposits at off-premises ATMs is delayed under § 229.19(a)(4). It is based on collection of deposits once a week. If collections occur more or less frequently, the description of when deposits are received must be adjusted accordingly.

10. *Model C-21 Deposit slip notice.* This model satisfies the notice requirements of § 229.18(a) for deposit slips.

11. *Models C-22 through C-25 generally.* Models C-22 through C-25 provide models for the various notices required when a consumer who receives substitute checks makes an expedited recredit claim under § 229.54 for a loss

related to a substitute check. The Check 21 Act does not provide banks that use these models with a safe harbor. However, the Board has published these models to aid banks' efforts to comply with § 229.54(e).

12. *Model C-22 Valid Claim Refund Notice.* A bank may use this model when crediting the entire amount or the remaining amount of a consumer's expedited recredit claim after determining that the consumer's claim is valid. This notice could be used when the bank provides the consumer a full recredit based on a valid claim determination within ten days of the receipt of the consumer's claim or when the bank recredits the remaining amount of a consumer's expedited recredit claim by the 45th calendar day after receiving the consumer's claim, as required under § 229.54(e)(1).

13. *Model C-23 Provisional Refund Notice.* A bank may use this model when providing a full or partial expedited recredit to a consumer pending further investigation of the consumer's claim, as required under § 229.54(e)(1).

14. *Model C-24 Denial Notice.* A bank may use this model when denying a claim for an expedited recredit under § 229.54(e)(2).

15. *Model C-25 Reversal Notice.* A bank may use this model when reversing an expedited recredit that was credited to a consumer's account under § 229.54(e)(3).

[Reg. CC, 60 FR 51672, Oct. 3, 1995, as amended by Reg. CC, 62 FR 13816, Mar. 24, 1997; 64 FR 59613, Nov. 3, 1999; 68 FR 52078, Sept. 2, 2003; 68 FR 53672, Sept. 12, 2003; 69 FR 47317, Aug. 4, 2004; 70 FR 71225, Nov. 28, 2005]

EFFECTIVE DATE NOTE: At 82 FR 27585, June 15, 2017, effective July 1, 2018, appendix E to part 229 was amended as follows:

- A. Under “II. Section 229.2 Definitions”:
- i. By revising paragraph 2 under “Z. 229.2(z) Paying Bank”;
 - ii. By revising DD. 229(dd);
 - iii. By revising VV. 229.2(vv);
 - iv. By revising BBB. 229.2(bbb);
 - v. By adding GGG. 229.2(ggg); and
 - vi. By adding HHH. 229.2(hhh).
- B. By revising XVI through XXVI and XXIX;
- C. In “XXX. § 229.51 General provisions governing substitute checks,” by revising paragraph B;
- D. By revising XXXI;
- E. In “XXXII. § 229.53 Substitute Check Indemnity,” by revising paragraphs A, B.1., B.1. Examples, and B.3.
- F. In “XXXIII. Section 229.54 Expedited Recredit for Consumers,” by revising paragraph A.2.

For the convenience of the user, the added and revised text is set forth as follows:

APPENDIX E TO PART 229—COMMENTARY

indorsements. (See § 229.35 and commentary thereto).

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II. SECTION 229.2 DEFINITIONS

VV. 229.2(vv) MICR Line

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1. Information in the MICR line of a check must be printed in accordance with ANS X9.13 for original checks and in accordance with ANS X9.100-140 for substitute checks, and must be contained in electronic checks in accordance with ANS X9.100-187. These standards could vary the requirements for printing the MICR line, such as by indicating circumstances under which the use of magnetic ink is not required. Banks that exchange checks electronically may agree to other standards for including MICR line information in the checks that they exchange electronically.

Z. 229.2(z) Paying Bank

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2. Under § 229.31, a bank designated as a payable-through bank or payable-at bank and to which the check is sent for payment or collection is responsible for the expedited return of checks and notice of nonpayment requirements of Subpart C. The payable-through or payable-at bank may contract with the payor with respect to its liability in discharging these responsibilities. The Board believes that the EFA Act makes a clear connection between availability and the time it takes for checks to be cleared and returned. Allowing the payable-through bank additional time to forward checks to the payor and await return or pay instructions from the payor may delay the return of these checks, increasing the risks to depository banks. Subpart C of this part requires payable-through and payable-at banks to return a check expeditiously based on the time the payable-through or payable-at bank received the check for forward collection.

BBB. 229.2(bbb) Sufficient Copy and Copy

1. A “copy” or a “sufficient copy” as defined in 229.2(bbb) must be a paper reproduction of a check, unless the parties sending and receiving the copy otherwise agree. Therefore, an electronic image of a check is not a “copy” or a “sufficient copy” absent an agreement to that effect. If a customer has agreed to receive such information electronically, however, a bank that is required to provide a copy or sufficient copy may satisfy that requirement by providing an electronic image. (See § 229.58).

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2. A sufficient copy, which is used to resolve claims related to the receipt of a substitute check, must be a copy of the original check.

DD. 229.2(dd) Routing Number

3. A bank under § 229.53(b)(3) may limit its liability for an indemnity claim and under §§ 229.54(e)(2) and 229.55(c)(2) may respond to an expedited recredit claim by providing the claimant with a copy of a check that accurately represents all of the information on the front and back of the original check as of the time the original check was truncated or that otherwise is sufficient to determine the validity of the claim against the bank.

1. Each bank is assigned a routing number by an agent of the American Bankers Association. The routing number takes two forms—a fractional form and a nine-digit form. A paying bank is identified by both the fractional form routing number (which normally appears in the upper right hand corner of the check) and the nine-digit form. The nine-digit form of the routing number of the paying bank generally is printed in magnetic ink near the bottom of the check (the MICR line; see ANS X9.13). In the case of an electronic check, the routing number of the paying bank is contained in the electronic image of the check (in nine-digit form and fractional form) and in the electronic information related to the check (in nine-digit form). When a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable-through bank, not the payor bank. Industry standards require depository banks, subsequent collecting banks, and returning banks to place their routing numbers in nine-digit form in their

Examples

a. A copy of an original check that accurately represents all the information on the front and back of the original check as of the time of truncation would constitute a sufficient copy if that copy resolved the claim. For example, if resolution of the claim required accurate payment and indorsement information, an accurate copy of the front and back of a legible original check (including but not limited to a substitute check) would be a sufficient copy.

b. A copy of the original check that does not accurately represent all the information

on both the front and back of the original check also could be a sufficient copy if such copy contained all the information necessary to determine the validity of the relevant claim. For instance, if a consumer received a substitute check that contained a blurry image of a legible original check, the consumer might seek an expedited recredit because his or her account was charged for \$1,000, but he or she believed that the check was written for only \$100. If the amount that appeared on the front of the original check was legible, an accurate copy of only the front of the original check that showed the amount of the check would be sufficient to determine whether or not the consumer's claim regarding the amount of the check was valid.

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GGG. 229.2(ggg) Electronic Check and Electronic Returned Check

1. Banks often enter into agreements under which a check may be transferred, returned, or presented electronically instead of transferring, returning, or presenting the paper check. For example, an agreement may provide that either an electronic image of the check or electronic information related to the check may be sent instead of the paper check. In order to satisfy Regulation CC's definition of "electronic check" (or "electronic returned check"), however, both the electronic image of the check and electronic information derived from the check must be sent. A sending bank and receiving bank may also agree, for example, that instead of sending the electronic check or electronic returned check directly to the receiving bank, the electronic check or electronic returned check may be sent to an intermediary that stores the electronic check or electronic returned check on the receiving bank's behalf and makes the electronic check or electronic returned check available for the receiving bank to retrieve.

2. A sending bank must have an agreement with the receiving bank in order to send an electronic check instead of a paper check. The agreement to receive an electronic check or electronic returned check may be either bilateral or through a Federal Reserve Bank operating circular, clearinghouse rule, or other interbank agreement. (See UCC 4-110).

3. ANS X9.100-187 is the most prevalent industry standard for electronic checks and electronic returned checks that will enable banks to create substitute checks. Multiple standards, however, exist that would enable a bank to create a substitute check from an electronic check. Therefore, the banks exchanging electronic checks may agree that a different standard applies to electronic checks exchanged between the two banks.

Additionally, banks that exchange checks electronically may agree to transfer, present, or return only electronic images of checks or only electronic information related to checks. In these situations, the sending bank and receiving bank will have agreed to a different standard as ANS X9.100-187 requires both an electronic image and electronic information.

4. Electronic checks and electronic returned checks as defined in Regulation CC are subject to subpart C, except as otherwise provided in that subpart. (See §229.30 and commentary thereto).

HHH. 229.2(hhh) Electronically-Created Item

1. Electronically-created items are also sometimes referred to in the industry as "electronic payment orders" or "EPOs."

2. Because an electronically-created item as defined in Regulation CC never existed in paper form, it does not meet the definition of "electronic check" in 229.2(ggg) and therefore an electronically-created item cannot be used to create a substitute check that is the legal equivalent of the original paper check.

3. An electronically-created item can resemble an electronic image of a paper check or an electronic image of a remotely created check. (See 229.2(fff) (definition of remotely created check)).

Examples

a. A corporate customer of a bank, rather than printing and mailing a paper check to a payee, electronically creates an image that looks like an image of the corporate customer's paper checks and emails the image to the payee.

b. A consumer uses a smart-phone application through which the consumer provides the payee name, amount, and the consumer's signature. The application electronically sends this information, appearing formatted as a check, to the payee.

c. A consumer calls his utility company to make an emergency bill payment, and provides his bank account information. The utility company uses this information to create an electronically-created item and deposits the electronically-created item with its bank to obtain payment from the consumer.

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XVI. SECTION 229.30 ELECTRONIC CHECKS AND ELECTRONIC INFORMATION

A. 229.30(a) Checks Under This Subpart

1. A bank may agree to receive an electronic check or electronic returned check from another bank instead of a paper check or returned check. (See §229.2(bbb) and commentary thereto). Section 229.30(a) does not give a bank the right to send an electronic

check or electronic returned check absent an agreement to do so with the receiving bank.

2. Electronic checks and electronic returned checks are subject to subpart C of this part as if they were checks or returned checks, unless otherwise provided in subpart C. For example, § 229.31(c), which requires a paying bank to provide a notice of nonpayment if the paying bank determines not to pay a check in the amount of \$5,000 or more, also applies when a paying bank determines not to pay an electronic check in the amount of \$5,000 or more. A depository bank's obligation to pay for a returned check (§ 229.33(e)) also applies with respect to an electronic returned check.

Additionally, §§ 229.33(b) and 229.36(a) specify that the parties' agreements govern the receipt of electronic returned checks and electronic written notices of nonpayment, and electronic checks, respectively. Section 229.34(a) sets forth warranties that are given only with respect to electronic checks and electronic returned checks and section 229.34(f) sets forth an indemnity given only with respect to remote deposit capture. Warranties that apply to paper checks or paper returned checks also apply to electronic checks and electronic returned checks, including § 229.34(b) (transfer and presentment warranties with respect to remotely created checks), § 229.34(c) (settlement amount, encoding, and offset warranties), § 229.34(d) (returned check warranties), and § 229.34(e) (notice of nonpayment warranties). The parties may, by agreement, vary the effect of the provisions in subpart C of this part as they apply to electronic checks and electronic returned checks, except that as set forth in § 229.37, no agreement can disclaim the responsibility of a bank for its own lack of good faith or failure to exercise ordinary care. (See § 229.37 and commentary thereto).

3. Certain provisions of subpart C relate solely to paper checks or paper returned checks, as specified, such as § 229.33(c) (acceptance of paper returned checks) and § 229.36(d) (same-day settlement).

B. 229.30(b) Writings

1. Provisions in subpart C of this part require that a paying bank or returning bank send information in writing. For example, § 229.31(f) requires that a notice in lieu be either a copy of the check or a written notice of nonpayment. A bank may send information required to be in writing in electronic form if the bank sending the information has an agreement with the bank receiving the information to do so.

XVII. SECTION 229.31 PAYING BANK'S RESPONSIBILITY FOR RETURN OF CHECKS AND NOTICES OF NONPAYMENT

A. 229.31(a) Return of Checks

1. Routing of returned checks.

a. This subsection is subject to the requirements of expeditious return provided in § 229.31(b).

b. The paying bank acts, in effect, as an agent or subagent of the depository bank in selecting a means of return. Under § 229.31(a), a paying bank is authorized to route the returned check in a variety of ways:

i. It may send the returned check directly to the depository bank by sending an electronic returned check directly to the depository bank if the paying bank has an agreement with the depository bank to do so, or by using a courier or other means of delivery, bypassing returning banks; or

ii. It may send the returned check or electronic returned check to any returning bank agreeing to handle the returned check or electronic returned check, regardless of whether or not the returning bank handled the check for forward collection.

c. If the paying bank elects to return the check directly to the depository bank, it is not necessarily required to return the check to the branch of first deposit. A paper check may be returned to the depository bank at any physical location permitted under § 229.33(c).

2. a. In some cases, a paying bank will be unable to identify the depository bank through the use of ordinary care and good faith. These cases are now rare as depository banks generally apply their indorsements electronically. A paying bank, for example, would be unable to identify the depository bank if the depository bank's indorsement is neither in an addenda record nor within the image of the check that was presented electronically. A paying bank, however, would not be "unable" to identify the depository bank merely because the depository bank's indorsement is available within the image rather than attached as an addenda record.

b. In cases where the paying bank is unable to identify the depository bank, the paying bank may send the returned check to a returning bank that agrees to handle the returned check. The returning bank may be better able to identify the depository bank.

c. In the alternative, the paying bank may send the check back up the path used for forward collection of the check. The presenting bank and prior collecting banks normally will be able to trace the collection path of the check through the use of their internal records in conjunction with the indorsements on the returned check. In these limited cases, the presenting bank or a prior collecting bank is required to accept the returned check and send it to another prior collecting bank in the path used for forward collection or to the depository bank. If the paying bank has an agreement to send electronic returned checks to a bank that handled the check for forward collection, the paying bank may send the electronic returned check to that bank.

d. A paying bank returning a check to a prior collecting bank because it is unable to identify the depository bank must advise that bank that it is unable to identify the depository bank. This advice must be conspicuous, such as a stamp on each check for which the depository bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one notice on the cash letter. In the case of an electronic returned check, the advice requirement may be satisfied as agreed to by the parties. The advice will warn the bank that this check will require special research and handling in accordance with §229.32(a)(2). The returned check may not be prepared as a qualified return.

e. A paying bank also may send a check to a prior collecting bank to make a claim against that bank under §229.35(b) where the depository bank is insolvent or in other cases as provided in §229.35(b). Finally, a paying bank may make a claim against a prior collecting bank based on a breach of warranty under UCC 4-208.

3. Midnight deadline. Except for the extension permitted by §229.31(g), discussed below, this section does not relieve a paying bank from the requirement for timely return (*i.e.*, midnight deadline) under UCC 4-301 and 4-302, which continue to apply. Under UCC 4-302, a paying bank is “accountable” for the amount of a demand item, other than a documentary draft, if it does not pay or return the item or send notice of dishonor by its midnight deadline. Under UCC 3-418(c) and 4-215(a), late return constitutes payment and would be final in favor of a holder in due course or a person who has in good faith changed his position in reliance on the payment. Thus, the UCC midnight deadline gives the paying bank an incentive to make a prompt return.

4. UCC provisions affected. This paragraph directly affects the following provisions of the UCC, and may affect other sections or provisions:

a. Section 4-301(d), in that instead of returning a check through a clearinghouse or to the presenting bank, a paying bank may send a returned check to the depository bank or to a returning bank.

b. Section 4-301(a), in that settlement for returned checks is made under §229.32(e), not by revocation of settlement.

B. 229.31(b) Expeditious Return of Checks

1. This section requires a paying bank (which, for purposes of subpart C, may include a payable-through and payable-at bank (see §229.2(z)) that determines not to pay a check to return the check expeditiously. Section 229.31(d) sets forth exceptions to this general rule. If a paying bank is not subject to the requirement for expeditious return under §229.31(b), the paying bank, nonethe-

less, must return the check within its deadlines under the UCC, Regulation J (12 CFR part 210) or §§229.36(d)(3) and (f)(4), as extended by §229.31(g), for returning the item or sending notice.

2. Two-Day Test

a. A returned check, including the original check, substitute check, or electronic returned check, is returned expeditiously if a paying bank sends the returned check in a manner such that the returned check would normally be received by the depository bank not later than 2 p.m. (local time of the depository bank) on the second business day following the banking day on which the check was presented to the paying bank.

b. A paying bank may satisfy its expeditious return requirement by returning either an electronic returned check or a paper check. For example, a paying bank could meet the expeditious return test by sending an electronic returned check directly to the depository bank, if the paying bank has an agreement with the depository bank to do so, such that it normally would reach the depository bank by the specified deadline, or sending an electronic returned check to a returning bank, if the paying bank has an agreement with the returning bank to do so, within the returning bank’s timeframe for delivering electronic returned checks to the depository bank within the return deadline. A paying bank that sends a returned check in paper form would typically need a highly expeditious means of delivery to meet the expeditious return test.

c. This test does not require actual receipt of the returned check by the depository bank within the specified deadline. In determining whether an electronic returned check would normally reach a depository bank within the specified deadline, a paying bank may rely on a returning bank’s return deadlines and availability schedules for electronic returned checks and returned checks destined for the depository bank. A paying bank may not rely on the availability schedules if the paying bank has reason to believe that these schedules do not reflect the actual time for return of an electronic returned check to the depository bank to which the paying bank is returning the check. The paying bank is not responsible for unforeseeable delays in the return of the check, such as communication failures or transportation delays.

d. Where the second business day following presentment of the check to the paying bank is not a banking day for the depository bank, the depository bank might not process checks on that day. Consequently, if the last day of the time limit is not a banking day for the depository bank, the check may be delivered to the depository bank not later than 2 p.m. (local time of the depository bank) on the depository bank’s next banking

day and the return will still be considered expeditious.

e. Paying banks and returning banks are subject to the expeditious return rule, however, under section 229.33(a) a paying or returning bank may be liable to a depository bank for failing to return a check in an expeditious manner only if the depository bank has arrangements in place such that the paying or returning bank could return a returned check to the depository bank electronically by commercially reasonable means. The depository bank has the burden of proof for demonstrating that its arrangements are commercially reasonable.

3. Examples

a. The paying bank and depository bank have a bilateral agreement under which the depository bank agrees to receive electronic returned checks directly from the paying bank. If a check is presented to a paying bank on Monday, the paying bank should send the returned check such that an electronic returned check normally would be received by the depository bank by 2 p.m. (local time of the depository bank) on Wednesday. This result is the same if, instead of a bilateral agreement, the paying bank and depository bank are members of the same clearinghouse and agree to exchange electronic returned checks under clearinghouse rules.

b. The depository bank has an agreement to receive electronic returned checks from Returning Bank A but not from the paying bank. The paying bank, however, has an agreement with Returning Bank A to send electronic returned checks to Returning Bank A. If a check is presented to the paying bank on Monday, the paying bank should send the returned check such that the depository bank normally would receive the returned check by 2 p.m. (local time of the depository bank) on Wednesday. A paying bank may satisfy this requirement by sending either an electronic returned check or a paper returned check to Returning Bank A in a manner that permits Returning Bank A to send an electronic returned check to the depository bank by 2 p.m. on Wednesday. The paying bank may also send a paper returned check to the depository bank if a paper returned check would normally be received by the depository bank by 2 p.m. on Wednesday.

c. The paying bank has an agreement to send electronic returned checks to Returning Bank A. The depository bank has an agreement to receive electronic returned checks from Returning Bank B. The paying bank does not have an agreement to send electronic returned checks to Returning Bank B. Returning Bank A, however, has an agreement to send electronic returned checks to Returning Bank B. If a check is presented to the paying bank on Monday, the paying bank should send the returned check such that the

depository bank normally would receive the returned check by 2 p.m. (local time of the depository bank) on Wednesday.

C. 229.31(c) Notice of Nonpayment

1. Requirement

a. The paying bank must send a notice of nonpayment if it decides not to pay a check in the amount of \$5,000 or more. Except in the case where the returned check or a notice in lieu of return serves as the notice of nonpayment, the notice of nonpayment carries no value, and the check or substitute check must be returned in addition to the notice of nonpayment. The paying bank must send the notice of nonpayment such that it would normally be received by the depository bank not later than 2 p.m. (local time of the depository bank) on the second business day following presentment. In determining whether the notice requirement is satisfied, the paying bank may rely on the availability schedules of a third party that provides the notice on behalf of the paying bank as the time that the notice is expected to be delivered to the depository bank, unless the paying bank has reason to know the availability schedules are inaccurate.

b. A bank identified by routing number as the paying bank is considered the paying bank under this subpart and would be required to provide a notice of nonpayment even though that bank determined that the check was not drawn by a customer of that bank. (See commentary to the definition of paying bank in §229.2(z)). A bank designated as a payable-through or payable-at bank and to which the check is sent for payment or collection is responsible for the notice of nonpayment requirement. The payable-through or payable-at bank may contract with the payor with respect to its liability in discharging these responsibilities.

c. The paying bank should not send a notice of nonpayment until it has finally determined not to pay the check. Under §229.34(e), by sending the notice the paying bank warrants that it has returned or will return the check. If a paying bank sends a notice and subsequently decides to pay the check, the paying bank may mitigate its liability on this warranty by notifying the depository bank that the check has been paid.

d. The return of the check itself may serve as the required notice of nonpayment. In some cases, the returned check may be received by the depository bank within the time requirements of §229.31(c)(1) and no notice other than the return of the check will be necessary. If the check is not received by the depository bank within the time limits for notice, the return of the check may not satisfy the notice requirement. In determining whether the returned check will satisfy the notice requirement, the paying bank

may rely on the availability schedules of returning banks as the time that the returned check is expected to be delivered to the depository bank, unless the paying bank has reason to know the availability schedules are inaccurate.

e. The requirement for notice does not affect the requirements for return of the check under the UCC (or § 229.31(b)). A paying bank is not responsible for failure to give notice of nonpayment to a party that has breached a presentment warranty under UCC 4-208, notwithstanding that the paying bank may have returned the check. (See UCC 4-208 and 4-302).

2. Content of Notices

a. This paragraph provides that, to the extent the information is available to the paying bank, the notice must at a minimum contain the information contained in the check's MICR line when the check was received by the paying bank. The MICR line information includes the paying bank's routing number, the account number of the paying bank's customer, the check number, and auxiliary on-us fields for corporate checks, and may include the amount of the check.

b. Although it has no duty to do so, a paying bank that cannot identify the depository bank from the check itself may wish to send the notice to the earliest collecting bank it can identify and indicate that the notice is not being sent to the depository bank. The collecting bank may be able to identify the depository bank and forward the notice, but is under no duty to do so. In addition, the collecting bank may actually be the depository bank.

c. A bank must identify an item of information if the bank is uncertain as to that item's accuracy. A bank may make this identification in accordance with general industry practices, or by other reasonable means. For example, where the paying bank receives a handwritten check with a payee name that the paying bank cannot decipher using a good faith effort, the paying bank could include a "?" symbol in the payee's name field of the notice to indicate its uncertainty as to that particular element.

D. 229.31(d) Exceptions to the Expeditious Return of Checks and Notice of Nonpayment

1. Depository Banks Not Subject to Subpart B of This Part

a. Subpart B of this part applies only to "checks" deposited in transaction "accounts." A depository bank with only time or savings accounts or credit card accounts need not comply with the availability requirements of subpart B of Regulation CC. Thus, the expeditious return requirement of § 229.31(b) and the notice of nonpayment requirement of § 229.31(c) do not apply to checks being returned to banks that do not

hold accounts. The paying bank's midnight deadline in UCC 4-301 and 4-302 and § 210.12 of Regulation J (12 CFR 210.12), and the extension in § 229.31(g), would continue to apply to these checks.

b. The expeditious return requirement and the notice of nonpayment requirement apply only to "checks" deposited in a bank that is a "depository institution" under the EFA Act. Federal Reserve Banks, Federal Home Loan Banks, private bankers, and possibly certain industrial banks are not "depository institutions" within the meaning of the EFA Act and therefore are not subject to the expedited-availability requirements of subpart B of this regulation. Thus, the expeditious return and notice of nonpayment requirements of this section would not apply to a paying bank returning a check that was deposited in one of these banks.

2. Unidentifiable Depository Banks

a. A paying bank that sends a check to a bank that handled the check for forward collection because the paying bank is unable to identify the depository bank is not subject to the requirement for expeditious return by the paying bank or to the requirement for notice of nonpayment. Although the lack of requirement for notice of nonpayment under this paragraph will create risks for the depository bank, the inability to identify the depository bank will generally be due to the depository bank's, or a collecting bank's, failure to indorse as required by § 229.35(a). If the depository bank failed to use the proper indorsement, it should bear the risks of less-than-expeditious return or not receiving notice of nonpayment in a timely manner. Similarly, where the inability to identify the depository bank is due to indorsements or other information placed on the back of the check by the depository bank's customer or other prior indorser, the depository bank should bear the risk that it cannot charge a returned check back to that customer.

b. This paragraph does not relieve a paying bank from the liability for the lack of expeditious return or not providing notice of nonpayment in cases where the paying bank is itself responsible for the inability to identify the depository bank, such as when the paying bank's customer has used a check with printing or other material on the back in the area reserved for the depository bank's indorsement, and the depository bank placed its indorsement on the original check making the indorsement unreadable. (See § 229.38(c)).

c. A paying bank's return of a check to an unidentifiable depository bank is subject to its midnight deadline under UCC 4-301, Regulation J (if the check is returned through a Federal Reserve Bank), and the extension provided in § 229.31(g).

E. 229.31(e) Identification of Returned Check

1. The reason for the return must be clearly indicated. A check is identified as a returned check if the front of that check indicates the reason for return, even though it does not specifically state that the check is a returned check. A reason such as “Refer to Maker” may be appropriate in certain cases, such as when a drawer with a positive pay arrangement instructs the bank to return the check. By contrast, a reason such as “Refer to Maker” would be inappropriate in cases where a check is being returned due to the paying bank having already paid the item, where a check has been altered, or where a check is unauthorized. In such cases, the payee and not the drawer would generally have more information as to why the check is being returned.

2. If the returned check is a substitute check or electronic returned check, the reason for return information must be included such that it is retained on any subsequent substitute check. For substitute checks, this requirement could be met by placing the information (1) in the location on the front of the substitute check that is specified by ANS X9.100-140 or (2) within the image of the original check that appears on the front of the substitute check so that the information is retained on any subsequent substitute check. For electronic returned checks, this requirement could be met by including the reason for return in accordance with ANS X9.100-187. If the paying bank places the returned check in a carrier envelope, the carrier envelope should indicate that it is a returned check but need not repeat the reason for return stated on the check if it in fact appears on the check.

F. 229.31(f) Notice in Lieu of Return

1. A notice in lieu of return may be used by a bank handling a returned check that has been lost or destroyed, including when the original returned check has been charged back as lost or destroyed as provided in § 229.35(b). Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check (or must retain possession of the check for protest) and does not have sufficient information to create a substitute check. For example, a bank that does not have the original check may have an image of both sides of the check, but the image may be insufficient or may not be in the proper format such that the bank cannot create a substitute check or provide required substitute check warranties. In that case, the check would be unavailable for return. A bank using a notice in lieu of return gives a warranty under § 229.34(d)(1)(iv) that the check, in any form, has not been and will not be returned.

2. A notice in lieu of return must be in writing (either in paper form, or if agreed to

by the parties electronic form), but not provided by telephone or other oral transmission. The requirement for a writing and the indication that the notice is a substitute for the returned check is necessary so that any returning bank and the depository bank are informed that the notice carries value. A check that is lost or otherwise unavailable for return may be returned by sending a legible copy of both sides of the check or, if such a copy is not available to the paying bank, a written notice of nonpayment containing the information specified in § 229.31(c)(2). The copy or written notice must clearly indicate it is a notice in lieu of return. Notice by a legible facsimile of both sides of the check may satisfy the requirements for a notice in lieu of return.

The paying bank may send an electronic image of both sides of the check as a notice in lieu of return only if it has an agreement to do so with the receiving bank. (See § 229.30(b)).

3. The requirement of this paragraph supersedes the requirement of UCC 4–301(a) as to the form and information required of a notice of dishonor or nonpayment.

4. The notice in lieu of return is subject to the provisions of this subpart relating to returned checks and is treated like a returned check for purposes of this subpart. Reference in the regulation and this commentary to a returned check includes a notice in lieu of return unless the context indicates otherwise.

5. If not all of the information required by § 229.31(c)(2) is available, the paying bank may make a claim against any prior bank handling the check as provided in § 229.35(b).

G. 229.31(g) Extension of Deadline

1. This paragraph permits extension of the deadlines in the UCC, Regulation J (12 CFR part 210), and § 229.36(d)(3) and (4) for returning a check for which the paying bank previously has settled (generally midnight of the banking day following the banking day on which the check is received by the paying bank) and for returning a check without settling for it (generally midnight of the banking day on which the check is received by the paying bank, or such other time provided by § 210.9 of Regulation J (12 CFR part 210), or § 229.36(d)(3) or (4)), in two circumstances:

a. A paying bank may, by agreement, send an electronic returned check instead of a paper returned check or may have a courier that leaves after midnight (or after any other applicable deadline) to deliver its forward-collection checks. This paragraph removes the constraint of the midnight deadline for returned checks if the returned check reaches the depository bank (or receiving bank, if the depository bank is unidentifiable) on or before the depository bank’s (or receiving bank’s) next banking

day following the otherwise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2 p.m. (local time of the depository bank or receiving bank) or later set by the depository bank (or receiving bank) under UCC 4-108. This paragraph applies to the extension of all midnight deadlines except Saturday midnight deadlines (see the following paragraph).

b. A paying bank may observe a banking day, as defined in the applicable UCC, on a Saturday, which is not a business day and therefore not a banking day under Regulation CC. In such a case, the UCC deadline for returning checks received and settled for on Friday, or for returning checks received on Saturday without settling for them, might require the bank to return the checks by midnight Saturday. However, the bank may not have its back-office operations staff available on Saturday to prepare and send the electronic returned checks, and the returning bank or depository bank that would be receiving this electronic information may not have staff available to process it until Sunday night or Monday morning. This paragraph extends the midnight deadline if the returned checks reach the returning bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during its next processing cycle or reach the depository bank (or receiving bank) by the cut-off hour on its next banking day following the Saturday midnight deadline. This paragraph applies exclusively to the extension of Saturday midnight deadlines.

2. The time limits that are extended in each case are the paying bank's midnight deadline for returning a check for which it has already settled and the paying bank's deadline for returning a check without settling for it in UCC 4-301 and 4-302, §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12), and § 229.36(d)(3) and (4).

3. If the paying bank has an agreement to do so with the receiving bank (such as through bilateral agreements, clearinghouse rules, or operating circular), the paying bank may satisfy its midnight or other return deadline by sending an electronic returned check prior to the expiration of the deadline. The time when the electronic returned check is considered to be received by the depository bank is determined by the agreement. The paying bank satisfies its midnight or other return deadline by dispatching paper returned checks to another bank by courier, including a courier under contract with the paying bank, prior to expiration of the deadline.

4. This paragraph directly affects UCC 4-301 and 4-302 and §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12) to the extent that this paragraph applies by its terms, and may affect other provisions.

H. 229.31(h) Payable Through and Payable at Checks

1. For purposes of subpart C of this part, the regulation defines a payable-through or payable-at bank (which could be designated the collectible-through or collectible-at bank) as a paying bank. The requirements of subpart C are imposed on a payable-through or payable-at bank and are based on the time of receipt of the forward collection check by the payable-through or payable-at bank. This provision is intended to speed the return of checks and receipt of notices of non-payment for checks that are payable through or at a bank to the depository bank.

2. A check sent for payment or collection to a payable-through or payable-at bank is not considered to be drawn on that bank for purposes of the midnight deadline provision of UCC 4-301.

I. 229.31(i) Reliance on Routing Number

1. Although § 229.35 requires that the depository bank indorsement contain its nine-digit routing number, it is possible that a returned check will bear the routing number of the depository bank in fractional, nine-digit, or other form. This paragraph permits a paying bank to rely on the routing number of the depository bank as it appears on the check (in the depository bank's indorsement) or in the electronic check sent pursuant to an agreement when the check, or electronic check, is received by the paying bank.

2. If there are inconsistent routing numbers, the paying bank may rely on any routing number designating the depository bank. The paying bank is not required to resolve the inconsistency prior to processing the check. The paying bank remains subject to the requirement to act in good faith and use ordinary care under § 229.38(a).

XVIII. SECTION 229.32 RETURNING BANK'S RESPONSIBILITY FOR RETURNED CHECKS

A. 229.32(a) Return of Checks

1. Routing of Returned Check

a. Under § 229.32(a), the returning bank is authorized to route the returned check in a variety of ways:

i. It may send the returned check directly to the depository bank by sending an electronic returned check directly to the depository bank if the returning bank has an agreement with the depository bank to do so, or by using a courier or other means of delivery; or

ii. It may send the returned check or electronic returned check to any returning bank agreeing to handle the returned check regardless of whether or not the returning bank handled the check for forward collection.

b. If the returning bank elects to send the returned check directly to the depository bank, it is not required to send the check to the branch of the depository bank that first handled the check. A paper returned check may be sent to the depository bank at any physical location permitted under § 229.33(b).

2. Unidentifiable Depository Bank

a. Returning banks agreeing to handle checks for return to depository banks under § 229.32(a) are expected to be expert in identifying depository bank indorsements. In the limited cases where the returning bank cannot identify the depository bank, if the returning bank did not handle the check for forward collection, it may send the returned check to any collecting bank that handled the check for forward collection.

b. If, on the other hand, the returning bank itself handled the check for forward collection, it may send the returned check to a collecting bank that was prior to it in the forward-collection process, which will be better able to identify the depository bank. If there are no prior collecting banks, the returning bank must research the collection of the check and identify the depository bank.

c. The returning bank's return of a check under this paragraph is subject to the requirement to use ordinary care under UCC 4-202(b). (See definition of returning bank in § 229.2(cc)).

d. As in the case of a paying bank returning a check under § 229.31(a)(2), a returning bank returning a check under § 229.32(a)(2) must advise the bank to which it sends the returned check that it is unable to identify the depository bank. This advice must be conspicuous, such as a stamp on the check or a notice on the cash letter. The returned check may not be prepared as a qualified return. In the case of an electronic returned check, the advice requirement may be satisfied as agreed to by the parties.

3. A returning bank agrees to handle a returned check if it—

a. Publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return;

b. Handles a returned check for return that it did not handle for forward collection;

c. Agrees with the paying bank or returning bank to handle electronic returned checks sent by that bank; or

d. Otherwise agrees to handle a returned check.

4. *Cut-off hours.* A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward collection checks, but, unless the sending bank and returning bank agree otherwise, the cut-off hour for returned checks may not be earlier than 2 p.m. (local time of the returning bank). The returning bank also may set different sorting requirements for returned checks than those applicable to other

checks. Thus, a returning bank may allow itself more processing time for returns than for forward collection checks.

5. *Qualified returned checks.* A qualified returned check will be handled by subsequent returning banks more efficiently than a raw return. The qualified returned check must include the routing number of the depository bank, the amount of the check, and a return identifier encoded on the check in magnetic ink. A check that is converted to a qualified returned check must be encoded in accordance with ANS X9.13 for original checks or ANS X9.100–140 for substitute checks. If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under § 229.38 for losses caused by any negligence or under § 229.34(c)(3) for breach of an encoding warranty.

6. *Responsibilities of returning bank.* In meeting the requirements of this section, the returning bank is responsible for its own actions, but not those of the paying bank, other returning banks, or the depository bank. (See UCC 4-202(c) regarding the responsibility of collecting banks).

7. *UCC sections affected.* Section 229.32 directly affects UCC Section 4-214(a) and may affect other sections or provisions. (See UCC 4-202(b)). Section 4-214(a) is affected in that settlement for returned checks is made under § 229.32(e) and not by charge-back of provisional credit.

B. 229.32(b) *Expeditious Return of Checks*

1. The standards for return of checks established by this section are similar to those for paying banks in § 229.31(b). This section requires a returning bank to return a returned check expeditiously, subject to the exceptions set forth in § 229.32(c). In effect, the returning bank is an agent or subagent of the paying bank and a subagent of the depository bank for the purposes of returning the check.

2. A returning bank that agrees to handle a returned check (see commentary to § 229.32(a)) is subject to the expeditious return requirement with respect to the returned check except as provided in § 229.32(c)).

3. *Two-day test.* As in the case of a paying bank, a returning bank's return of a returned check is expeditious if it is sent in a manner such that the depository bank would normally receive the returned check by 2 p.m. (local time of the depository bank) of the second business day after the banking day on which the check was presented to the paying bank. Although a returning bank will not have firsthand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, allocate with paying banks liability for late return based on the delays caused by each. Paying banks and returning banks are subject to the expeditious return rule, however,

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under section 229.33(a) a paying or returning bank may be liable to a depository bank for failing to return a check in an expeditious manner only if the depository bank has arrangements in place such that the paying bank or returning bank could return a returned check to the depository bank electronically by commercially reasonable means. The depository bank has the burden of proof for demonstrating that its arrangements are commercially reasonable.

4. *Example.* Returning Bank A does not have an agreement to send electronic returned checks to the depository bank but has an agreement to send electronic returned checks to Returning Bank B, which, in turn, has an agreement to send electronic returned checks to the depository bank. If a check is presented to the paying bank on Monday, each returning bank would need to send the returned check in a manner such that the depository bank normally would receive the returned check by 2 p.m. (local time of the depository bank) on Wednesday.

C. 229.32(c) *Exceptions to the Expeditious Return of Checks*

1. This paragraph sets forth the circumstances under which a returning bank is not required to return the check to the depository bank in accordance with §229.32(b).

2. Depository bank not subject to subpart B. This paragraph is similar to §229.31(d)(1) and relieves a returning bank of its obligation to make expeditious return to a depository bank that does not hold “accounts” under subpart B of this regulation or is not a “depository institution” within the meaning of the EFA Act. (See commentary to §229.31(d)).

3. Unidentifiable depository bank. A returning bank is not subject to the expeditious return requirements of §229.32(b) in handling a returned check for which the paying bank cannot identify the depository bank.

4. Misrouted returned check. A returning bank is not subject to the expeditious return requirements of §229.32(b) in handling a misrouted returned check pursuant to §229.33(f). A bank acting as a returning bank because it received a returned check on the basis that it was the depository bank and sends the misrouted returned check to the correct depository bank, directly or through subsequent returning banks, is similarly not subject to the expeditious return requirements of §229.32(b). (See commentary to §229.33(f)).

D. 229.32(d) *Notice in Lieu of Return*

1. This paragraph is similar to §229.31(f) and authorizes a returning bank to originate a notice in lieu of return if the returned check is unavailable for return. Notice in lieu of return is permitted only when a bank

does not have and cannot obtain possession of the check (or when the bank must retain possession of the check for protest) and does not have sufficient information to create a substitute check. (See commentary to §229.31(f)).

E. 229.32(e) *Settlement*

1. Under the UCC, a paying bank settles with a presenting bank after the check is presented to the paying bank. The paying bank may recover the settlement when the paying bank returns the check to the presenting bank. Under this regulation, however, the paying bank may return the check directly to the depository bank or through returning banks that did not handle the check for forward collection. On these more efficient return paths, the paying bank does not recover the settlement made to the presenting bank. Thus, this paragraph requires the returning bank to settle for a returned check (either with the paying bank or another returning bank) in the same way that it would settle for a similar check for forward collection. To achieve uniformity, this paragraph applies even if the returning bank handled the check for forward collection.

2. Any returning bank, including one that handled the check for forward collection, may provide availability for returned checks pursuant to an availability schedule as it does for forward collection checks. These settlements by returning banks, as well as settlements between banks made during the forward collection of a check, are considered final when made subject to any deferment of availability. (See §229.36(c) and commentary to §229.35(b)).

3. A returning bank may vary the settlement method it uses by agreement with paying banks or other returning banks. Special rules apply in the case of insolvency of banks. (See §229.39). If payment cannot be obtained from a depository bank or returning bank because of its insolvency or otherwise, recovery can be had by returning banks, paying banks, and collecting banks from prior banks on this basis of the liability of prior banks under §229.35(b).

4. This paragraph affects UCC 4-214(a) in that a paying bank or collecting bank does not ordinarily have a right to charge back against the bank from which it received the returned check, although it is entitled to settlement if it returns the returned check to that bank, and may affect other sections or provisions. Under §229.36(c), a bank collecting a check remains liable to prior collecting banks and the depository bank’s customer under the UCC.

F. 229.32(f) *Charges*

1. This paragraph permits any returning bank, even one that handled the check for forward collection, to impose a fee on the

paying bank or other returning bank for its service in handling a returned check. Where a claim is made under § 229.35(b), the bank on which the claim is made is not authorized by this paragraph to impose a charge for taking up a check. This paragraph preempts state laws to the extent that these laws prevent returning banks from charging fees for handling returned checks.

G. 229.32(g) Reliance on Routing Number

1. This paragraph is similar to § 229.31(i) and permits a returning bank to rely on routing numbers appearing on a returned check such as routing numbers in the depository bank's indorsement, or in the electronic returned check received by the returning bank pursuant to an agreement, or on qualified returned checks. (See commentary to § 229.31(i)).

XIX. SECTION 229.33 DEPOSITORY BANK'S RESPONSIBILITY FOR RETURNED CHECKS AND NOTICES OF NONPAYMENT

A. 229.33(a) Right To Assert Claim

1. This paragraph sets forth the circumstances under which a paying bank or returning bank may be liable to a depository bank for failing to return a check in an expeditious manner in accordance with §§ 229.31(b) and 229.32(b) respectively.

2. This paragraph does not require a depository bank to establish arrangements to accept returned checks electronically, either directly from the paying bank or indirectly from a returning bank. Most depository banks, however, have arrangements in place to accept returned checks electronically. (See commentary to §§ 229.31(b) and 229.32(b) for examples of direct and indirect arrangements).

3. The depository bank has the burden of proof for demonstrating that its arrangements for accepting returned checks electronically are commercially reasonable. The standard allows for case-by-case flexibility and can change over time to reflect market practices. The standard is intended to prevent a depository bank from establishing electronic return arrangements that are very limited in scope or that provide unreasonable barriers to return such that, in practice, the depository bank would accept only a small proportion of its returns electronically.

B. 229.33(b) Acceptance of Electronic Returned Checks and Electronic Notices of Nonpayment

1. A depository bank may agree directly with a returning bank or a paying bank (or through clearinghouse rules) to accept electronic returned checks. Likewise, a depository bank may agree directly with a paying bank (or through clearinghouse rules) to accept electronic written notices of non-

payment. (See §§ 229.2(ggg), 229.30(b), and 229.31(c) and commentary thereto). The depository bank's acceptance of electronic returned checks and electronic written notices of nonpayment is governed by the depository bank's agreement with the banks sending the electronic returned check or electronic written notice of nonpayment to the depository bank (or through the applicable clearinghouse rules). The agreement normally would specify the electronic address or receipt point at which the depository bank accepts returned checks and written notices of nonpayment electronically, as well as what constitutes receipt of the returned checks and written notices of nonpayment. The agreement also may specify whether electronic returned checks must be separated from electronic checks sent for forward collection.

C. 229.33(c) Acceptance of Paper Returned Checks and Paper Notices of Nonpayment

1. This paragraph states where the depository bank is required to accept paper returned checks and paper notices of nonpayment during its banking day. (These locations differ from locations at which a depository bank must accept oral notices or electronic notices. (See § 229.33(b) and (d) and commentary thereto). This paragraph is derived from UCC 3-111, which specifies that presentment for payment may be made at the place specified in the instrument or, if there is none, at the place of business of the party to pay. In the case of returned checks, the depository bank does not print the check and can only specify the place of "payment" of the returned check in its indorsement.

2. The paragraph specifies four locations at which the depository bank must accept paper returned checks and paper notices of nonpayment:

a. The depository bank must accept paper returned checks and paper notices of nonpayment at any location at which it requests presentment of forward collection paper checks, such as a processing center. A depository bank does not request presentment of forward collection checks at a branch of the bank merely by paying checks presented over the counter.

b. i. If the depository bank indorsement states the name and address of the depository bank, it must accept paper returned checks and paper notices of nonpayment at the branch, head office, or other location, such as a processing center, indicated by the address. If the address is too general to identify a particular location, then the depository bank must accept paper returned checks and paper notices of nonpayment at any branch or head office consistent with the address. If, for example, the address is "New York, New York," each branch in New York City must accept paper returned checks and paper notices of nonpayment. Accordingly, a

depository bank may limit the locations at which it must accept paper returned checks and paper notices of nonpayment by specifying a branch or head office in its indorsement.

ii. If no address appears in the depository bank's indorsement, the depository bank must accept paper returned checks and paper notices of nonpayment at any branch or head office associated with the depository bank's routing number. The offices associated with the routing number of a bank are found in *American Bankers Association Key to Routing Numbers*, published by an agent of the American Bankers Association, which lists a city and state address for each routing number.

iii. If no routing number or address appears in its indorsement, the depository bank must accept a paper returned check at any branch or head office of the bank. Section 229.35 and applicable industry standards require that the indorsement contain a routing number, a name, and a location. Consequently paragraphs (c)(1)(ii)(B) and (C) of this section apply only where the depository bank has failed to comply with the indorsement requirement.

3. For ease of processing, a depository bank may require that returning banks or paying banks returning checks to it separate returned checks from forward collection checks being presented.

D. 229.33(d) Acceptance Oral Notices of Nonpayment

In the case of telephone notices, the depository bank may not refuse to accept notices at the telephone numbers identified in this section, but may transfer calls or use a recording device.

E. 229.33(e) Payment

1. As discussed in the commentary to § 229.32(e), under this regulation a paying bank or returning bank does not obtain credit for a returned check by charge-back but by, in effect, "presenting" the returned check to the depository bank. This paragraph imposes an obligation to "pay" a returned check that is similar to the obligation to pay a forward collection check by a paying bank, except that the depository bank may not return a returned check for which it is the depository bank. Also, certain means of payment, such as remittance drafts, may be used only by agreement.

2. The depository bank must pay for a returned check by the close of the banking day on which it received the returned check. The day on which a returned check is received is determined pursuant to UCC 4-108, which permits the bank to establish a cut-off hour, generally not earlier than 2 p.m. (local time of the depository bank), and treat checks received after that hour as being received on the next banking day. If the depository bank

is unable to make payment to a returning bank or paying bank on the banking day that it receives the returned check, because the returning bank or paying bank is closed for a holiday or because the time when the depository bank received the check is after the close of Fedwire, e.g., west coast banks with late cut-off hours, payment may be made on the next banking day of the bank receiving payment.

3. Payment must be made so that the funds are available for use by the bank returning the check to the depository bank on the day the check is received by the depository bank. For example, a depository bank meets this requirement if it sends a wire transfer to the returning bank or paying bank on the day it receives the returned check, even if the returning bank or paying bank has closed for the day. A wire transfer should indicate the purpose of the payment.

4. The depository bank may use a net settlement arrangement to settle for a returned check. Banks with net settlement agreements could net the appropriate credits and debits for returned checks with the accounting entries for forward collection checks if they so desired. If, for purposes of establishing additional controls or for other reasons, the banks involved desired a separate settlement for returned checks, a separate net settlement agreement could be established.

5. The bank sending the returned check to the depository bank may agree to accept payment at a later date if, for example, it does not believe that the amount of the returned check or checks warrants the costs of same-day payment. Thus, a returning bank or paying bank may agree to accept payment through an ACH credit or debit transfer that settles the day after the returned check is received instead of a wire transfer that settles on the same day.

6. This paragraph and this subpart do not affect the depository bank's right to recover a provisional settlement with its nonbank customer for a check that is returned. (See also §§ 229.19(c)(2)(ii), 229.33(h), and 229.35(b)).

F. 229.33(f) Misrouted Returned Checks and Written Notices of Nonpayment

1. This paragraph permits a bank receiving a check or written notice of nonpayment (either in paper form or electronic form) on the basis that it is the depository bank to send the misrouted returned check or written notice of nonpayment to the correct depository bank, if it can identify the correct depository bank, either directly or through a returning bank agreeing to handle the check or written notice of nonpayment. When sending a returned check under this paragraph, the bank receiving the misrouted check is acting as a returning bank. Alternatively, the bank receiving the misrouted returned check or written notice of nonpayment must

send the check or notice back to the bank from which it was received.

2. In sending a misrouted returned check, the bank to which the returned check was misrouted (the incorrect depository bank) could receive settlement from the bank to which it sends the misrouted check under § 229.33(f) (the correct depository bank, a returning bank that agrees to handle it, or the bank from which the misrouted check was received). The correct depository bank would be required to pay for the returned check under § 229.33(e), and any other bank to which the check is sent under this paragraph would be required to settle for the check as a returning bank under § 229.32(e). The bank to which the returned check was misrouted is required to act promptly, *i.e.*, within its midnight deadline. This paragraph does not affect a bank's duties under § 229.35(b).

G. 229.33(g) Charges

1. This paragraph prohibits a depository bank from charging the equivalent of a presentment fee for returned checks. A returning bank, however, may charge a fee for handling returned checks. If the returning bank receives a mixed cash letter of returned checks, which includes some checks for which the returning bank also is the depository bank, the fee may be applied to all the returned checks in the cash letter. In the case of a sorted cash letter containing only returned checks for which the returning bank is the depository bank, however, no fee may be charged.

H. 229.33(h) Notification to Customer

1. This paragraph requires a depository bank to notify its customer of nonpayment upon receipt of a returned check or notice of nonpayment. Notice also must be given if a depository bank receives a notice of recovery under § 229.35(b). A bank that chooses to provide the notice required by § 229.33(h) in writing may send the notice by email or facsimile if the bank sends the notice to the email address or facsimile number specified by the customer for that purpose. The notice to the customer required under this paragraph also may satisfy the notice requirement of § 229.13(g) if the depository bank invokes the reasonable-cause exception of § 229.13(e) due to the receipt of a notice of nonpayment, provided the notice meets all the requirements of § 229.13(g).

XX. SECTION 229.34 WARRANTIES AND INDEMNITIES

A. Introduction

1. Unless otherwise specified, warranties that apply to checks or returned checks also apply to electronic checks and electronic returned checks, including under paragraphs (b) (transfer and presentment warranties

with respect to remotely created checks), (c) (settlement amount, encoding, and offset warranties), (d) (returned check warranties), and (e) (notice of nonpayment warranties). (See § 229.30(a) and commentary thereto). Paragraph (f), however, sets forth remote deposit capture indemnities provided to banks that accept an original check for deposit for losses incurred by that depository bank if the loss is due to the check having already been paid. Paragraph (a) sets forth warranties that are given only with respect to electronic checks and electronic returned checks. Paragraph (g) sets forth indemnities with respect to electronically created items.

B. 229.34(a) Warranties With Respect to Electronic Checks and Electronic Returned Checks

1. Paragraph (a) of § 229.34 sets forth the warranties that a bank makes when transferring or presenting an electronic check or electronic returned check and receiving settlement or other consideration for it. Electronic checks and electronic returned checks sent pursuant to an agreement with the receiving bank are treated as checks subject to subpart C. Therefore, the warranties in § 229.34(a) are in addition to any warranties a bank makes under paragraphs (b), (c), (d), and (e) with respect to an electronic check or electronic returned check. For example, a bank that transfers and receives consideration for an electronic check that is derived from a remotely created check warrants that the remotely created check, from which the electronic check is derived, is authorized by the person on whose account the check is drawn.

2. The warranties in § 229.34(a)(1) relate to a subsequent bank's ability to create a substitute check. This paragraph provides a bank that creates a substitute check from an electronic check or electronic returned check with a warranty claim against any prior bank that transferred the electronic check or electronic returned check. The warranties in this paragraph correspond to the warranties made by a bank that transfers, presents, or returns a substitute check (a paper or electronic representation of a substitute check) for which it receives consideration. (See § 229.52 and commentary thereto). A bank that transfers an electronic check or electronic returned check that is an electronic representation of a substitute check also makes the warranties and indemnities in §§ 229.52 and 229.53.

3. By agreement, a sending and receiving bank may vary the warranties the sending bank makes to the receiving bank for electronic images of or electronic information related to checks, for example, to provide that the bank transferring the check does

not warrant that the electronic image or information is sufficient for creating a substitute check. (See §229.37(a)). The variation by agreement, however, would not affect the rights of banks and persons that are not bound by the agreement.

C. 229.34(b) Transfer and Presentment Warranties With Respect to a Remotely Created Check

1. A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants that the person on whose account the check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. The warranties are given only by banks and only to subsequent banks in the collection chain. The warranties ultimately shift liability for the loss created by an unauthorized remotely created check to the depository bank. The depository bank cannot assert the transfer and presentment warranties against a depositor. However, a depository bank may, by agreement, allocate liability for such an item to the depositor and also may have a claim under other laws against that person. The Federal Trade Commission's Tele-marketing Sales Rule (16 CFR part 310) contains further regulatory provisions regarding remotely created checks.

2. The scope of the transfer and presentment warranties for remotely created checks differs from that of the corresponding UCC warranty provisions in two respects. The UCC warranties are given by any person, including a nonbank depositor, that transfers a remotely created check and not just to a bank, as is the case under §229.34(b). In addition, the UCC warranties state that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn. The §229.34(b) warranties specifically cover the amount as well as the payee stated on the check. Neither the UCC warranties, nor the §229.34(b) warranties, apply to the date stated on the remotely created check.

3. A bank making the §229.34(b) warranties may defend a claim asserting violation of the warranties by proving that the customer of the paying bank is precluded by UCC 4-406 from making a claim against the paying bank. This may be the case, for example, if the customer failed to discover the unauthorized remotely created check in a timely manner.

4. The transfer and presentment warranties for a remotely created check apply to a remotely created check that has been converted to an electronic check or reconverted to a substitute check.

D. 229.34(c) Settlement Amount, Encoding, and Offset Warranties

1. Paragraph (c)(1) provides that a bank that presents and receives settlement for checks warrants to the paying bank that the settlement it demands (e.g., as noted on the cash letter or in the electronic cash letter file) equals the total amount of the checks it presents. This paragraph gives the paying bank a warranty claim against the presenting bank for the amount of any excess settlement made on the basis of the amount demanded, plus expenses. If the amount demanded is understated, a paying bank discharges its settlement obligation under UCC 4-301 by paying the amount demanded, but remains liable for the amount by which the demand is understated; the presenting bank is nevertheless liable for expenses in resolving the adjustment.

2. When checks or returned checks are transferred to a collecting bank, returning bank, or depository bank, the transferor bank is not required to demand settlement, as is required upon presentation to the paying bank. However, often the checks or returned checks will be accompanied by information (such as a cash letter listing or cash letter control record) that will indicate the total of the checks or returned checks. Paragraph (c)(2) provides that if the transferor bank includes information indicating the total amount of checks or returned checks transferred, it warrants that the information is correct (*i.e.*, equals the actual total of the items).

3. Paragraph (c)(3) provides that a bank that presents or transfers a check or returned check warrants the accuracy of information encoded regarding the check after issue, and that exists at the time of presentation or transfer, to any bank that subsequently handles the check or returned check. Paragraph (c)(3) applies to all MICR-line encoding on a paper check, substitute check, or contained in an electronic check or electronic returned check. Under UCC 4-209(a), only the encoder (or the encoder and the depository bank, if the encoder is a customer of the depository bank) warrants the encoding accuracy, thus any claims on the warranty must be directed to the encoder. Paragraph (c)(3) expands on the UCC by providing that all banks that transfer or present a check or returned check make the encoding warranty. In addition, under the UCC, the encoder makes the warranty to subsequent collecting banks and the paying bank, while paragraph (c)(3) provides that the warranty is made to banks in the return chain as well.

4. A paying bank that settles for an overstated cash letter because of a misencoded check may make a warranty claim against the presenting bank under paragraph (c)(1) (which would require the paying bank to

show that the check was part of the overstated cash letter) or an encoding warranty claim under paragraph (c)(3) against the presenting bank or any preceding bank that handled the misencoded check.

5. Paragraph (c)(4) provides that a paying bank or a depository bank may set off excess settlement paid to another bank against settlement owed to that bank for checks presented or returned checks received (for which it is the depository bank) subsequent to the excess settlement.

E. 229.34(d) Returned Check Warranties

1. This paragraph includes warranties that a returned check, including a notice in lieu of return or an electronic returned check, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the UCC (subject to any claims or defenses under the UCC, such as breach of a presentment warranty) or § 229.31(g); that the paying bank or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the check has not been and will not be returned for payment. (See commentary to § 229.31(f)). The warranty does not include a warranty that the bank complied with the expeditious return requirements of §§ 229.31(b) and 229.32(b). These warranties do not apply to checks drawn on the United States Treasury, to U.S. Postal Service money orders, or to checks drawn on a state or a unit of general local government that are not payable through or at a bank. (See § 229.42).

F. 229.34(e) Notice of Nonpayment Warranties

1. This paragraph sets forth warranties for notices of nonpayment. This warranty does not include a warranty that the notice is accurate and timely under § 229.31(c). The requirements of § 229.31(c) that are not covered by the warranty are subject to the liability provisions of § 229.38. These warranties are designed to protect depository banks that rely on notices of nonpayment. This paragraph imposes liability on a paying bank that gives notice of nonpayment and then subsequently does not return the check. (See commentary to § 229.31(c)).

G. 229.34(f) Remote Deposit Capture Indemnity

1. This indemnity provides for a depository bank's potential liability when it permits a customer to deposit checks by remote deposit capture (*i.e.*, to truncate checks and deposit an electronic image of the original check instead of the original check). Because the depository bank's customer retains the original check, that customer might, intentionally or mistakenly, deposit the original check in another depository bank. The de-

pository bank that accepts the original check, in turn, may make funds available to the customer before it learns that the check is being returned unpaid and, in some cases, may be unable to recover the funds from its customer. Section 229.34(f) provides the depository bank that accepts the original check for deposit with a claim against the depository bank that did not receive the original check because it permitted its customer to truncate it, received settlement or other consideration for the check, and did not receive a return of the check unpaid. This claim exists only if the check is returned to the depository bank that accepted the original check due to the fact that the check had already been paid.

2. Examples

a. Depository Bank A offers its customers a remote deposit capture service that permits customers to take pictures of the front and back of their checks and send the image to the bank for deposit. Depository Bank A accepts an image of the check from its customer and sends an electronic check for collection to Paying Bank. Paying Bank, in turn, pays the check. Depository Bank A receives settlement for the check. The same customer who sent Depository Bank A the electronic image of the check then deposits the original check in Depository Bank B. There is no restrictive indorsement on the check. Depository Bank B sends the original check (or a substitute check or electronic check) for collection and makes funds from the deposited check available to its customer. The customer withdraws the funds. Paying Bank returns the check to Depository Bank B indicating that the check already had been paid. Depository Bank B may be unable to charge back funds from its customer's account. Depository Bank B may make an indemnity claim against Depository Bank A for the amount of the funds Depository Bank B is unable to recover from its customer.

b. The facts are the same as above with respect to Depository Bank A and B; however, the original check deposited in Depository Bank B bears a restrictive indorsement "for mobile deposit at Depository Bank A only" and the customer's account number at Depository Bank A. Depository Bank B may not make an indemnity claim against Depository Bank A because Depository Bank B accepted the original check bearing a restrictive indorsement inconsistent with the means of deposit.

c. The facts are the same as above with respect to Depository Bank A; however, Depository Bank B also offers a remote deposit capture service to its customer. The customer uses Depository Bank B's remote deposit capture service to send an electronic image of the front and back of the check,

after sending the same image to Depository Bank A. The customer deposits the original check into Depository Bank C without a restrictive indorsement. Paying Bank pays the check based on the image presented by Depository Bank A, and Depository Bank A receives settlement for the check without the check being returned unpaid to it. Paying Bank returns the checks presented by Depository Bank B and Depository Bank C. Neither Depository Bank B nor Depository Bank C can recover the funds from the deposited check from the customer. Depository Bank B does not have an indemnity claim against Depository Bank A because Depository Bank B did not receive the original check for deposit. Depository Bank C, however, would be able to bring an indemnity claim against Depository Bank A.

3. A depository bank may, by agreement, allocate liability for loss incurred from subsequent deposit of the original check to its customer that sent the electronic check related to the original check to the depository bank.

H. 229.34(g) Indemnities With Respect to Electronically-Created Items

1. As a practical matter a bank receiving an electronic image generally cannot distinguish an image that is derived from a paper check from an electronically-created item. Nonetheless, the bank receiving the electronically-created item often handles the electronically-created image as if it were derived from a paper check.

2. Paragraph (g) of § 229.34 sets forth the indemnities that a bank provides when transferring or presenting an electronically-created item and receiving settlement or other consideration for it. The indemnities set forth in § 229.34(g) are provided only by banks and only to subsequent banks in the collection chain. The indemnities ultimately shift liability for losses to the depository bank due to the fact the electronically created item is not derived from a paper check, was unauthorized, or was transferred or presented for payment more than once. (See § 229.34(i) and commentary thereto). The depository bank cannot assert the indemnities set forth in § 229.34(g) against a depositor. However, a depository bank may, by agreement, allocate liability for such an item to the depositor and also may have a claim under other laws against that person.

2. The paying bank's losses in paragraph (g)(1) of this section include losses arising from Regulation E non-compliance caused by the receipt of an electronically-created item.

3. Under paragraphs (g)(2) and (3), indemnified banks have a claim for damages pursuant to § 229.34(i) regardless of whether the damages would have occurred if the item transferred had been derived from a paper check.

3. Examples

a. A paying bank pays an electronically-created item, which the paying bank's customer subsequently claims is unauthorized. The paying bank may incur liability on the item due to the fact the item is electronically created and not derived from a paper check. For example, the paying bank may have no means of disputing the customer's claim without examining the physical check, which does not exist. The indemnity in § 229.34(g) enables the paying bank to recover from the presenting bank or any prior transferor bank for the amount of its loss, as permitted under § 229.34(i), due to receiving the electronically-created item.

b. A bank receives an electronic image of and electronic information related to an electronically-created item and, in turn, produces a paper item that is indistinguishable from a substitute check. The paper item is not a substitute check because the item is not derived from an original, paper check. That bank may incur a loss because it cannot produce the legal equivalent of a check (See § 229.53 and commentary thereto). The indemnity in § 229.34(g) enables a bank that received the electronically-created item to recover from the bank sending the check for the amount of the loss permitted under § 229.34(i).

c. A paying bank is not required by § 229.31(b) to return an electronically-created item expeditiously. The depository bank incurs a loss because it receives the return of the electronically-created item unexpeditiously and is unable to recover funds previously made available to its customer. The depository bank is not an indemnified party under § 229.34(g) and therefore cannot recover its loss pursuant to that indemnity.

I. 229.34(h) Damages

1. This paragraph adopts for the warranties in § 229.34(a), (b), (c), (d), and (e) the damages provided in UCC 4-207(c) and 4A-506(b). (See definition of interest compensation in § 229.2(oo)).

J. 229.34(i) Indemnity Amounts

1. This paragraph adopts for the amount of the indemnities provided for in § 229.34(f)(2) and (g) an amount comparable to the damages provided in § 229.53(b)(1)(ii) of subpart D of this regulation.

2. The amount of an indemnity would be reduced in proportion to the amount of any loss attributable to the indemnified person's negligence or bad faith. This comparative-negligence standard is intended to allocate liability in the same manner as the comparative negligence provision of § 229.38(c).

3. An indemnified bank may be able to make an indemnity claim against more than one indemnifying depository bank. However,

an indemnified bank may not recover in the aggregate across all indemnifying banks more than the amount described in this paragraph. Therefore, an indemnified bank that recovers the amount of its loss from one indemnifying depository bank under this paragraph no longer has a loss that it can collect from a different indemnifying depository bank.

K. 229.34(j) Tender of Defense

1. This paragraph adopts for this regulation the vouching-in provisions of UCC 3–119.

L. 229.34(k) Notice of Claim

1. This paragraph adopts the notice provisions of UCC sections 4–207(d) and 4–208(e) and applies them to this section's indemnities and warranties. The time limit set forth in this paragraph applies to notices of claims for warranty breaches and for indemnities. As provided in §229.38(g), all actions under this section must be brought within one year after the date of the occurrence of the violation involved.

XXI. SECTION 229.35 INDORSEMENTS

A. 229.35(a) Indorsement Standards

1. This section requires banks to use a standard form of indorsement when indorsing checks during the forward collection and return process. It is designed to facilitate the identification of the depository bank and the prompt return of checks. The indorsement standard a bank must use depends on the type of check being indorsed. Paper checks must be indorsed in accordance with ANS X9.100–111. Substitute checks must be indorsed in accordance with ANS X9.100–140. Electronic checks must be indorsed in accordance ANS X9.100–187. The Board, however, may by rule or order determine that different standards apply.

2. The parties sending and receiving a check may agree that different indorsement standards will apply to such checks. For example, although ANS X9.100–187 is an industry standard for banks' exchange of electronic checks, the parties may agree to send and receive electronic checks that conform to a different standard.

3. Banks generally apply indorsements to a paper check in one of two ways: (1) In accordance with ANS X9.100–111, banks print or "spray" indorsements onto a paper check when the check is processed through the banks' automated check sorters (regardless of whether the checks are original checks or substitute checks), and (2) in accordance with ANS X9.100–140, reconvert banks print or "overlay" previously applied electronic indorsements and their own indorsements and identifications onto a substitute check at the time that the substitute check is created. If a subsequent substitute

check is created in the course of collection or return, that substitute check will contain, in its image of the back of the previous substitute check, reproductions of indorsements that were sprayed or overlaid onto the previous item.

4. A bank might use check-processing equipment that captures an image of a check prior to spraying an indorsement onto that item. If the bank truncates that item, it should ensure that it also applies an indorsement to the item electronically. A re-converting bank satisfies its obligation to preserve all previously applied indorsements by overlaying a bank's indorsement that previously was applied electronically onto a substitute check that the re-converting bank creates. (See commentary to §229.51(b)).

5. A depository bank may want to include an address in its indorsement in order to limit the number of locations at which it must receive paper returned checks and paper notices of nonpayment. Banks should note, however, that §229.33(c) requires a depository bank to receive paper returned checks at the location(s) at which it receives paper forward-collection checks, as well as the other locations enumerated in §229.33(c). (See §229.33(c) and commentary thereto).

6. Under the UCC, a specific guarantee of prior indorsement is not necessary. (See UCC 4–207(a) and 4–208(a)). Use of guarantee language in indorsements of paper checks, such as "P.E.G." ("prior indorsements guaranteed"), may result in reducing the type size used in bank indorsements, thereby making them more difficult to read. Use of this language may make it more difficult for other banks to identify the depository bank.

7. If the bank maintaining the account into which a check is deposited agrees with another bank (a correspondent, ATM operator, or lock box operator) to have the other bank accept returns and notices of nonpayment for the bank of account, the indorsement placed on the check as the depository bank indorsement may be the indorsement of the bank that acts as correspondent, ATM operator, or lock box operator as provided in paragraph (d) of §229.35.

8. In general, paper checks will be handled more efficiently if depository banks place their indorsement so that the nine-digit routing number is not obscured by pre-existing matter on the back of the check. Indorsing parties other than banks, e.g., corporations, will benefit from the faster return of checks if they protect the identifiability and legibility of the depository bank indorsement by staying clear of the area on the back of the paper check reserved for the depository bank indorsement.

9. A paying bank is not required to indorse the check; however, if a paying bank does indorse a check that is returned, it should follow the indorsement standards for collecting banks and returning banks. Collecting banks

and returning banks are required to indorse the check for tracing purposes. With respect to the identification of a paying bank that is also a reconverting bank, see commentary to § 229.51(b)(2).

B. 229.35(b) Liability of Bank Handling Check

1. When a check is sent for forward collection, the collection process results in a chain of indorsements extending from the depository bank through any subsequent collecting banks to the paying bank. This paragraph extends the indorsement chain through the paying bank to the returning banks, and would permit each bank to recover from any prior indorser if the claimant bank does not receive payment for the check from a subsequent bank in the collection or return chain. For example, if a returning bank returned a check to an insolvent depository bank, and did not receive the full amount of the check from the failed bank, the returning bank could obtain the unrecovered amount of the check from any bank prior to it in the collection and return chain including the paying bank. Because each bank in the collection and return chain could recover from a prior bank, any loss would fall on the first intermediary collecting bank that received the check from the depository bank. To avoid circuitry of actions, the returning bank could recover directly from the first collecting bank. Under the UCC, the first collecting bank might ultimately recover from the depository bank's customer or from the other parties on the check.

2. Where a check is returned through the same banks used for the forward collection of the check, priority during the forward collection process controls over priority in the return process for the purpose of determining prior and subsequent banks under this regulation.

3. Where a returning bank is insolvent and fails to pay the paying bank or a prior returning bank for a returned check, § 229.39(a) requires the receiver of the failed bank to return the check to the bank that transferred the check to the failed bank. That bank then either could continue the return to the depository bank or recover based on this paragraph. Where the paying bank is insolvent, and fails to pay the collecting bank, the collecting bank also could recover from a prior collecting bank under this paragraph, and the bank from which it recovered could in turn recover from its prior collecting bank until the loss settled on the depository bank (which could recover from its customer).

4. A bank is not required to make a claim against an insolvent bank before exercising its right to recovery under this paragraph. Recovery may be made by charge-back or by other means. This right of recovery also is permitted even where nonpayment of the check is the result of the claiming bank's negligence such as failure to make expedi-

tious return, but the claiming bank remains liable for its negligence under § 229.38.

5. This liability to a bank that subsequently handles the check and does not receive payment for the check is imposed on a bank handling a check for collection or return regardless of whether the bank's indorsement appears on the check. Notice must be sent under this paragraph to a prior bank from which recovery is sought reasonably promptly after a bank learns that it did not receive payment from another bank, and learns the identity of the prior bank. Written notice reasonably identifying the check and the basis for recovery is sufficient if the check is not available. Receipt of notice by the bank against which the claim is made is not a precondition to recovery by charge-back or other means; however, a bank may be liable for negligence for failure to provide timely notice. A paying bank or returning bank also may recover from a prior collecting bank as provided in §§ 229.31(a) and 229.32(b) (in those cases where the paying bank is unable to identify the depository bank). This paragraph does not affect a paying bank's accountability for a check under UCC 4-215(a) and 4-302. Nor does this paragraph affect a collecting bank's accountability under UCC 4-214 and 4-215(d). A collecting bank becomes accountable upon receipt of final settlement as provided in the foregoing UCC sections. Final settlement in §§ 229.32(e), 229.33(e), and 229.36(c) is intended to be consistent with final settlement in the UCC (e.g., UCC 4-213, 4-214, and 4-215). (See also § 229.2(cc) (definition of returning bank) and commentary thereto).

6. This paragraph also provides that a bank may have the rights of a holder based on the handling of a check for collection or return. A bank may become a holder or a holder in due course regardless of whether prior banks have complied with the indorsement standard in § 229.35(a).

7. This paragraph affects the following provisions of the UCC, and may affect other provisions depending on circumstance:

a. Section 4-214(a), in that the right to recovery is not based on provisional settlement, and recovery may be had from any prior bank. Section 4-214(a) would continue to permit a depository bank to recover a provisional settlement from its customer. (See § 229.33(h)).

b. Section 3-415 and related provisions (such as section 3-503), in that such provisions would not apply as between banks, or as between the depository bank and its customer.

C. 229.35(c) Indorsement by Bank

1. This section protects the rights of a customer depositing a check in a bank without requiring the words "pay any bank," as required by the UCC (See UCC 4-201(b)). Use of this language in a depository bank's

indorsement will make it more difficult for other banks to identify the depository bank. The applicable industry standard prohibits such material in subsequent collecting bank indorsements. The existence of a bank indorsement provides notice of the restrictive indorsement without any additional words.

D. 229.35(d) Indorsement for Depository Bank

1. This section permits a depository bank to arrange with another bank to indorse checks. This practice may occur when a correspondent indorses for a respondent, or when the bank servicing an ATM or lock box indorses for the bank maintaining the account in which the check is deposited—*i.e.*, the depository bank. If the indorsing bank applies the depository bank's indorsement, checks will be returned to the depository bank. An indorsing bank may by agreement with the depository bank apply its own indorsement as the depository bank indorsement. In that case, the actual depository bank's own indorsement on the check (if any) should avoid the location reserved for the depository bank. The actual depository bank remains responsible for the availability and other requirements of subpart B, but the bank indorsing as depository bank is considered the depository bank for purposes of subpart C (e.g., for purposes of determining the right to assert a claim under §229.33(a) for failure to return a check expeditiously and accepting paper checks under §229.33(c)). The check will be returned, and notice of nonpayment will be given, to the bank indorsing as depository bank.

2. Because the depository bank for subpart B purposes will desire prompt notice of nonpayment, its arrangement with the indorsing bank should provide for prompt notice of nonpayment. The bank indorsing as depository bank may require the depository bank to agree to take up the check if the check is not paid even if the depository bank's indorsement does not appear on the check and it did not handle the check. The arrangement between the banks may constitute an agreement varying the effect of provisions of subpart C under §229.37.

XXII. SECTION 229.36 PRESENTMENT AND
ISSUANCE OF CHECKS

A. 229.36(a) Receipt of Electronic Checks

1. A paying bank may agree to accept presentment of electronic checks. (See §229.2(ggg) and commentary thereto). The paying bank's acceptance of such electronic checks is governed by the paying bank's agreement with the bank sending the electronic check to the paying bank. The terms of these agreements are determined by the parties and may include, for example, the electronic address or electronic receipt point

at which the paying bank agrees to accept electronic checks, as well as when presentment occurs. The agreement also may specify whether electronic checks sent for forward collection must be separated from electronic returned checks.

B. 229.36(b) Receipt of Paper Checks

1. The paragraph specifies four locations at which the paying bank must accept presentment of paper checks. Where the check is payable through a bank and the check is sent to that bank, the payable-through bank is the paying bank for purposes of this subpart, regardless of whether the paying bank must present the check to another bank or to a nonbank payor for payment.

a. Delivery of paper checks may be made, and presentment is considered to occur, at a location (including a processing center) requested by the paying bank. This provision adopts the common law rule that the processing center acts as the agent of the paying bank to accept presentment and to begin the time for processing of the check. (See also UCC 4-204(c)). If a bank designates different locations for the presentment of forward collection paper checks bearing different routing numbers, for purposes of this paragraph it requests presentment of paper checks bearing a particular routing number only at the location designated for receipt of forward collection paper checks bearing that routing number.

b. If the check specifies the name and address of a branch or head office, or other location (such as a processing center), the paper check may be delivered to that office or other location. If the address is too general to identify a particular office, delivery may be made at any office consistent with the address. For example, if the address is "San Francisco, California," each office in San Francisco must accept presentment of paper checks. The designation of an address on the check generally is in the control of the paying bank.

c. i. Delivery of a paper check may be made at an office of the bank associated with the routing number on the check. In the case of a substitute check, delivery may be made at an office of the bank associated with the routing number in the electronic check from which it was derived. The office associated with the routing number of a bank is found in *American Bankers Association Key to Routing Numbers*, published by an agent of the American Bankers Association, which lists a city and state address for each routing number. Paper checks generally are handled by collecting banks on the basis of the nine-digit routing number contained in the MICR line (or on the basis of the fractional form routing number if the MICR line is obliterated) on the check, rather than the printed name or address. The definition of a paying bank in §229.2(z) includes a bank designated

by routing number, whether or not there is a name on the check, and whether or not any name is consistent with the routing number. Where a check is payable by one bank, but payable through another, the routing number is that of the payable-through bank, not that of the payor bank. In these cases, the payor bank has selected the payable-through bank as the point through which presentment of paper checks is to be made.

ii. There is no requirement in the regulation that the name and address on the check agree with the address associated with the routing number on the check. A bank generally may control the use of its routing number, just as it does the use of its name. The address associated with the routing number may be a processing center.

iii. In some cases, a paying bank may have several offices in the city associated with the routing number. In such case, it would not be reasonable or efficient to require the presenting bank to sort paper checks by more specific branch addresses that might be printed on the checks, and to deliver paper checks to each branch. A collecting bank normally would deliver all paper checks to one location. In cases where paper checks are delivered to a branch other than the branch on which they may be drawn, computer and courier communication among branches should permit the paying bank to determine quickly whether to pay the check.

d. If the paper check specifies the name of the paying bank but no address, the bank must accept delivery at any office. Where delivery is made by a person other than a bank, or where the routing number is not readable, delivery will be made based on the name and address of the paying bank on the check. If there is no address, delivery may be made at any office of the paying bank. This provision is consistent with UCC 3-111, which states that presentment for payment may be made at the place specified in the instrument, or, if there is none, at the place of business of the party to pay.

2. This paragraph may affect UCC 3-111 to the extent that the UCC requires presentment to occur at a place specified in the instrument.

C. 229.36(c) Liability of Bank During Forward Collection

1. This paragraph makes settlement between banks during forward collection final when made, subject to any deferment of credit, just as settlements between banks during the return of checks are final. In addition, this paragraph clarifies that this change does not affect the liability scheme under UCC 4-201 during forward collection of a check. That UCC section provides that, unless a contrary intent clearly appears, a bank is an agent or subagent of the owner of a check, but that Article 4 of the UCC applies even though a bank may have pur-

chased an item and is the owner of it. This paragraph preserves the liability of a collecting bank to prior collecting banks and the depository bank's customer for negligence during the forward collection of a check under the UCC, even though this paragraph provides that settlement between banks during forward collection is final rather than provisional. Settlement by a paying bank is not considered to be final payment for the purposes of UCC 4-215(a)(2) or (3), because a paying bank has the right to recover settlement from a returning bank or depository bank to which it returns a check under this subpart. Other provisions of the UCC not superseded by this subpart, such as section 4-202, also continue to apply to the forward collection of a check and may apply to the return of a check. (See definition of returning bank in §229.2(cc)).

D. 229.36(d) Same-Day Settlement

1. This paragraph governs settlement for presentment of paper checks. Settlement for presentment of electronic checks is governed by the agreement of the parties. (See §229.36(a) and commentary thereto). This paragraph provides that, under certain conditions, a paying bank must settle with a presenting bank for a paper check on the same day the paper check is presented in order to avail itself of the ability to return the paper check on its next banking day under UCC 4-301 and 4-302. This paragraph does not apply to paper checks presented for immediate payment over the counter. Settling for a paper check under this paragraph does not constitute final payment of the paper check under the UCC. This paragraph does not supersede or limit the rules governing collection and return of paper checks through Federal Reserve Banks that are contained in subpart A of Regulation J (12 CFR part 210).

2. Presentment Requirements

a. Location and Time

i. For presented paper checks to qualify for mandatory same-day settlement, information accompanying the paper checks must indicate that presentment is being made under this paragraph—e.g., “these checks are being presented for same-day settlement”—and must include a demand for payment of the total amount of the checks together with appropriate payment instructions in order to enable the paying bank to discharge its settlement responsibilities under this paragraph. In addition, the paper check or checks must be presented at a location designated by the paying bank for receipt of paper checks for same-day settlement by 8 a.m. local time of that location. The designated presentment location must be a location at which the paying bank would be considered

to have received a paper check under § 229.36(b). The paying bank may not designate a location solely for presentment of paper checks subject to settlement under this paragraph; by designating a location for the purposes of § 229.36(d), the paying bank agrees to accept paper checks at that location for the purposes of § 229.36(b).

ii. If the paying bank does not designate a presentment location, it must accept presentment of paper check for same-day settlement at any location identified in § 229.36(b), *i.e.*, at an address of the bank associated with the routing number on the check, at any branch or head office if the bank is identified on the check by name without address, or at a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address. A paying bank and a presenting bank may agree that paper checks will be accepted for same-day settlement at an alternative location or that the cut-off time for same-day settlement be earlier or later than 8 a.m. local time of the presentment location.

iii. In the case of a paper check payable through a bank but payable by another bank, this paragraph does not authorize direct presentment to the bank by which the paper check is payable. The requirements of same-day settlement under this paragraph would apply to a payable-through or payable-at bank to which the paper check is sent for payment or collection.

b. Reasonable delivery requirements. A paper check is considered presented when it is delivered to and payment is demanded at a location specified in paragraph (d)(1). Ordinarily, a presenting bank will find it necessary to contact the paying bank to determine the appropriate presentment location and any delivery instructions. Further, because presentment might not take place during the paying bank's banking day, a paying bank may establish reasonable delivery requirements to safeguard the paper checks presented, such as use of a night depository. If a presenting bank fails to follow reasonable delivery requirements established by the paying bank, it runs the risk that it will not have presented the paper checks. However, if no reasonable delivery requirements are established or if the paying bank does not make provisions for accepting delivery of checks during its non-business hours, leaving the paper checks at the presentment location constitutes effective presentment.

c. Sorting of checks. A paying bank may require that paper checks presented to it for same-day settlement be sorted separately from other forward collection paper checks it receives as a collecting bank or paper returned checks it receives as a returning bank or depository bank. For example, if a bank provides correspondent check collection services and receives unsorted paper checks

from a respondent bank that include paper checks for which it is the paying bank and that would otherwise meet the requirements for same-day settlement under this section, the collecting bank need not make settlement in accordance with paragraph (d)(3). If the collecting bank receives sorted paper checks from its respondent bank, consisting only of paper checks for which the collecting bank is the paying bank and that meet the requirements for same-day settlement under this paragraph, the collecting bank may not charge a fee for handling those paper checks and must make settlement in accordance with this paragraph.

3. Settlement

a. If a bank presents a paper check in accordance with the time and location requirements for presentment under paragraph (d)(1), the paying bank either must settle for the paper check on the business day it receives the paper check without charging a presentment fee or return the paper check prior to the time for settlement. (This return deadline is subject to extension under § 229.31(g).) The settlement must be in the form of a credit to an account designated by the presenting bank at a Federal Reserve Bank (e.g., a Fedwire transfer), unless the presenting bank agrees with the paying bank to accept settlement in another form (e.g., credit to an account of the presenting bank at the paying bank or debit to an account of the paying bank at the presenting bank). The settlement must occur by the close of Fedwire on the business day the paper check is received by the paying bank. Under the provisions of § 229.34(c), a settlement owed to a presenting bank may be set off by adjustments for previous settlements with the presenting bank. (See also § 229.39(d).)

b. Paper checks that are presented after the 8 a.m. (local time of the location at which the paper checks are presented) presentment deadline for same-day settlement and before the paying bank's cut-off hour are treated as if they were presented under other applicable law and settled for or returned accordingly. However, for purposes of settlement only, the presenting bank may require the paying bank to treat such paper checks as presented for same-day settlement on the next business day in lieu of accepting settlement by cash or other means on the business day the paper checks are presented to the paying bank. Paper checks presented after the paying bank's cut-off hour or on non-business days, but otherwise in accordance with this paragraph, are considered presented for same-day settlement on the next business day.

4. Closed Paying Bank

a. There may be certain business days that are not banking days for the paying bank.

Some paying banks may continue to settle for paper checks presented on these days (e.g., by opening their back office operations). In other cases, a paying bank may be unable to settle for paper checks presented on a day it is closed. If the paying bank closes on a business day and paper checks are presented to the paying bank in accordance with paragraph (d)(1), the paying bank is accountable for the paper checks unless it settles for or returns the paper checks by the close of Fedwire on its next banking day. In addition, paper checks presented on a business day on which the paying bank is closed are considered received on the paying bank's next banking day for purposes of the UCC midnight deadline (UCC 4-301 and 4-302) and this regulation's expeditious return and notice of nonpayment provisions.

b. If the paying bank is closed on a business day voluntarily, the paying bank must pay interest compensation, as defined in §229.2(oo), to the presenting bank for the value of the float associated with the paper check from the day of the voluntary closing until the day of settlement. Interest compensation is not required in the case of an involuntary closing on a business day, such as a closing required by state law. In addition, if the paying bank is closed on a business day due to emergency conditions, settlement delays and interest compensation may be excused under §229.38(e) or UCC 4-109(b).

5. Good faith. Under §229.38(a), both the presenting bank and paying bank are held to a standard of good faith, defined in §229.2(nn) to mean honesty in fact and the observance of reasonable commercial standards of fair dealing. For example, designating a presentment location or changing presentment locations for the primary purpose of discouraging banks from presenting paper checks for same-day settlement might not be considered good faith on the part of the paying bank. Similarly, presenting a large volume of paper checks without prior notice could be viewed as not meeting reasonable commercial standards of fair dealing and therefore may not constitute presentment in good faith. In addition, if banks, in the general course of business, regularly agree to certain practices related to same-day settlement, it might not be considered consistent with reasonable commercial standards of fair dealing, and therefore might not be considered good faith, for a bank to refuse to agree to those practices if agreeing would not cause it harm.

6. UCC sections affected. This paragraph directly affects the following provisions of the UCC and may affect other sections or provisions:

a. Section 4-204(b)(1), in that a presenting bank may not send a paper check for same-day settlement directly to the paying bank, if the paying bank designates a different location in accordance with paragraph (d)(1).

b. Section 4-213(a), in that the medium of settlement for paper checks presented under this paragraph is limited to a credit to an account at a Federal Reserve Bank and that, for paper checks presented after the deadline for same-day settlement and before the paying bank's cut-off hour, the presenting bank may require settlement on the next business day in accordance with this paragraph rather than accept settlement on the business day of presentment by cash.

c. Section 4-301(a), in that, to preserve the ability to exercise deferred posting, the time limit specified in that section for settlement or return by a paying bank on the banking day a paper check is received is superseded by the requirement to settle for paper checks presented under this paragraph by the close of Fedwire.

d. Section 4-302(a), in that, to avoid accountability, the time limit specified in that section for settlement or return by a paying bank on the banking day a paper check is received is superseded by the requirement to settle for paper checks presented under this paragraph by the close of Fedwire.

XXIII. SECTION 229.37 VARIATIONS BY AGREEMENT

A. This section is similar to UCC 4-103, and permits consistent treatment of agreements varying Article 4 or Subpart C, given the substantial interrelationship of the two documents. To achieve consistency, the official comment to UCC 4-103(a) (which in turn follows UCC 1-201(3)) should be followed in construing this section. For example, as stated in Official Comment 2 to UCC 4-103, owners of items and other interested parties are not affected by agreements under this section unless they are parties to the agreement or are bound by adoption, ratification, estoppel, or the like. In particular, agreements varying this subpart that delay the return of a check beyond the times required by this subpart may result in liability under §229.38 to entities not party to the agreement.

B. The Board has not followed UCC 4-103(b), which permits Federal Reserve regulations and operating letters, clearinghouse rules, and the like to apply to parties that have not specifically assented. Nevertheless, this section does not affect the status of such agreements under the UCC.

C. The following are examples of situations where variation by agreement is permissible, subject to the limitations of this section:

1. A depository bank may authorize another bank to apply the other bank's indorsement to a check as the depository bank. (See §229.35(d)).

2. A depository bank may authorize returning banks to commingle paper qualified returned checks with paper forward collection checks. (See §229.33(c)).

3. A depository bank may limit its liability to its customer in connection with the late

return of a deposited check where the lateness is caused by markings on the check by the depository bank's customer or prior indorser in the area of the depository bank indorsement. (See §229.38(d)).

4. A paying bank may require its customer to assume the paying bank's liability for delayed or missent checks where the delay or missending is caused by markings placed on the check by the paying bank's customer that obscured a properly placed indorsement of the depository bank. (See §229.38(d)).

5. A collecting bank or paying bank may agree to accept forward collection checks without the indorsement of a prior intermediary collecting bank. (See §229.35(a)).

6. A bank may agree to accept returned checks without the indorsement of a prior bank. (See §229.35(a)).

7. A presenting bank may agree with a paying bank to present paper checks for same-day settlement by a deadline earlier or later than 8 a.m. (See §229.36(d)(1)(ii)).

8. A presenting bank and a paying bank may agree that presentment takes place when the paying bank receives an electronic transmission of information describing the check rather than upon delivery of the physical check. (See §229.36(b)).

9. A depository bank may agree with a paying bank or returning bank to accept an image or other notice in lieu of a returned check even when the check is available for return under this part. Except to the extent that other parties interested in the check assent to or are bound by the variation of the notice-in-lieu provisions of this part, a depository bank entering into such an agreement may be responsible under this part or other applicable law to other interested parties for any losses caused by the acceptance of an image or notice in lieu of a returned check. (See §§229.31(f) and 229.38(a)).

D. The Board expects to review the types of variation by agreement that develop under this section and will consider whether it is necessary to limit certain variations.

XXIV. SECTION 229.38 LIABILITY

A. 229.38(a) Standard of Care; Liability; Measure of Damages

1. The standard of care established by this section applies to any bank covered by the requirements of subpart C of the regulation. Thus, the standard of care applies to a paying bank under §§229.31, to a returning bank under §229.32, to a depository bank under §229.33, to a bank erroneously receiving a returned check or written notice of nonpayment as depository bank under §229.33(f), and to a bank indorsing a check under §229.35. The standard of care is similar to the standard imposed by UCC 1–203 and 4–103(a) and includes a duty to act in good faith, as defined in §229.2(nn) of this regulation.

2. A bank not meeting this standard of care is liable to the depository bank, the depository bank's customer, the owner of the check, or another party to the check. The depository bank's customer is usually a depositor of a check in the depository bank (but see §229.35(d)). The measure of damages provided in this section (loss incurred up to amount of check, less amount of loss party would have incurred even if bank had exercised ordinary care) is based on UCC 4–103(e) (amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care), as limited by 4–202(c) (bank is liable only for its own negligence and not for actions of subsequent banks in chain of collection). This subpart does not absolve a collecting bank of liability to prior collecting banks under UCC 4–201.

3. Under this measure of damages, a depository bank or other person must show that the damage incurred results from the negligence proved. For example, the depository bank may not simply claim that its customer will not accept a charge-back of a returned check, but must prove that it could not charge back when it received the returned check and could have charged back if no negligence had occurred, and must first attempt to collect from its customer. (See *Marcoux v. Van Wyk*, 572 F.2d 651 (8th Cir. 1978); *Appliance Buyers Credit Corp. v. Prospect Nat'l Bank*, 708 F.2d 290 (7th Cir. 1983)). Generally, a paying or returning bank's liability would not be reduced because the depository bank did not place a hold on its customer's deposit before it learned of nonpayment of the check.

4. This paragraph also states that it does not affect a paying bank's liability to its customer. Under UCC 4–402, for example, a paying bank is liable to its customer for wrongful dishonor, which is different from failure to exercise ordinary care and has a different measure of damages.

B. 229.38(b) Paying Bank's Failure To Make Timely Return

1. Section 229.31(b) imposes requirements on the paying bank for expeditious return of a check and leaves in place the UCC deadlines (as they may be modified by §229.31(g)), which may allow return at a different time. This paragraph clarifies that the paying bank could be liable for failure to meet either standard, but not for failure to meet both. The regulation intends to preserve the paying bank's accountability for missing its midnight or other deadline under the UCC (e.g., sections 4–215 and 4–302), provisions that are not incorporated in this regulation, but may be useful in establishing the time of final payment by the paying bank.

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C. 229.38(c) Comparative Negligence

1. This paragraph establishes a “pure” comparative negligence standard for liability under subpart C of this regulation. This comparative negligence rule may have particular application where a paying bank or returning bank delays in returning a check because of difficulty in identifying the depository bank, where the depository bank has failed to exercise ordinary care in applying its indorsement.

D. 229.38(d) Responsibility for Certain Aspects of Checks

1. ANS X9.100-140 provides that an image of an original check must be reduced in size when placed on the first substitute check associated with that original check. (The image thereafter would be constant in size on any subsequent substitute check that might be created.) Because of this size reduction, the location of an indorsement, particularly a depository bank indorsement, applied to an original paper check likely will change when the first reconvertng bank creates a substitute check that contains that indorsement within the image of the original paper check. If the indorsement was applied to the original paper check in accordance with ANS X9.100-111’s location requirements for indorsements applied to existing paper checks, and if the size reduction of the image causes the placement of the indorsement to no longer be consistent with ANS X9.100-111’s requirements, then the reconvertng bank bears the liability for any loss that results from the shift in the placement of the indorsement. Such a loss could result either because the original indorsement applied in accordance with ANS X9.100-111 is rendered illegible by a subsequent indorsement that a reconvertng bank later applies to the substitute check in accordance with ANS X9.100-140, or because a subsequent bank receiving a substitute check cannot apply its indorsement to the substitute check legibly in accordance with ANS X9.100-111 as a result of the shift in the previous indorsement.

2. Responsibility under paragraph (d)(1) is treated as negligence for comparative negligence purposes, and the contribution to damages under paragraph (d)(1) is treated in the same way as the degree of negligence under paragraph (c) of this section.

* * * * *

XXV. SECTION 229.39 INSOLVENCY OF BANK

A. Introduction

1. These provisions cover situations where a bank becomes insolvent during collection or return of a check. Paragraphs (a), (b), and (d) of §229.39 are derived from UCC 4-216. They are intended to apply to all banks.

Like UCC 4-216, paragraphs (a), (b), and (d) of §229.39 are intended to establish the point in the collection process at which collection or return of a check should be either stopped or continued when a particular bank suspends payments. Section 229.39(a) sets forth the circumstances under which the receiver must stop collection or return and, instead, send the check back to the bank or customer that transferred the check. Section 229.39(b) sets forth the circumstances under which the collection or return of the check should continue. Paragraphs (a) and (b) of §229.39 are not intended to confer upon banks preferential positions in the event of bank failures over general depositors or any other creditor of the failed bank. (See UCC 4-216, cmt. 1).

B. 229.39(a) Duty of Receiver To Return Unpaid Checks

1. This paragraph requires a receiver of a closed bank to return a check to the prior bank if the paying bank or the receiver did not pay for the check. This permits the prior bank, as holder, to pursue its claims against the closed bank or prior indorsers on the check.

C. 229.39(b) Claims Against Banks for Checks Not Returned by the Receiver

1. This section sets forth the claims available to banks in situations in which a receiver does not return a check under §229.39(a). In those situations, the prior bank would not be a holder of the check and would be unable to pursue claims as a holder.

2. Paragraph (b)(1) of §229.39 gives a bank a claim against a closed paying bank that finally pays a check without settling for it or a closed depository bank that becomes obligated to pay a returned check without settling for it. If the bank with a claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the claim.

3. Paragraph (b)(2) of §229.39 gives a bank a claim against a closed collecting bank, paying bank, or returning bank that receives settlement for but does not make settlement for a check. (See commentary to §229.35(b) for discussion of prior and subsequent banks). As in the case of §229.39(b)(1), if the bank with a claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the claim.

D. 229.39(c) Preferred Claim Against Presenting Bank for Breach of Warranty

1. This paragraph gives a paying bank a preferred claim against a closed presenting bank in the event that the presenting bank breaches an amount or encoding warranty as provided in §229.34(c)(1) or (3) and does not

reimburse the paying bank for adjustments for a settlement made by the paying bank in excess of the value of the checks presented. This preferred claim is intended to have the effect of a perfected security interest and is intended to put the paying bank in the position of a secured creditor for purposes of the receivership provisions of the Federal Deposit Insurance Act and similar provisions of state law.

E. 229.39(d) Finality of Settlement

1. This paragraph provides that insolvency does not interfere with the finality of a settlement, such as a settlement by a paying bank that becomes final by expiration of the midnight deadline.

XXVI. SECTION 229.40 EFFECT ON MERGER TRANSACTION

A. When banks merge, there is normally a period of adjustment before their operations are consolidated. To allow for this adjustment period, the regulation provides that the merged banks may be treated as separate banks for a period of up to one year after the consummation of the transaction. The term merger transaction is defined in §229.2(t). This rule affects the status of the combined entity in a number of areas in this subpart, such as the following:

1. The paying bank’s responsibility for notice of nonpayment (§229.31(c)).
2. Where the depository bank must accept returned checks (§229.33(b) and (c)).
3. Where the depository bank must accept notice of nonpayment (§229.33(b) and (c)).
4. Where a paying bank must accept presentment of paper checks (§229.36(b)).

* * * * *

XXIX. SECTION 229.43 CHECKS PAYABLE IN GUAM, AMERICAN SAMOA, AND THE NORTHERN MARIANA ISLANDS

A. 229.43(a) Definitions

1. For purposes of subparts B and C of this part, bank offices in Guam, American Samoa, and the Northern Mariana Islands (which Regulation CC defines as Pacific island banks) do not meet the definition of bank in §229.2(e) because they are not located in the United States. Some checks drawn on Pacific island banks (defined as Pacific island checks) bear U.S. routing numbers and are collected and returned by banks in the same manner as checks payable in the U.S.

B. 229.43(b) Rules Applicable to Pacific Island Checks

1. When a bank handles a Pacific island check as if it were a check as defined in §229.2(k), or an electronic image and electronic information derived from a demand

draft as defined in §229.43(a)(2), the bank is subject to certain provisions of subpart C of this part, as provided in this section. Because a Pacific island bank is not a bank as defined in §229.2(e) for purposes of subpart C, it is not a paying bank as defined in §229.2(z) for purposes of subpart C (unless otherwise noted in this section). Pacific island banks are not subject to the provisions of subparts B and C, but may be subject to the provisions of subpart D of this part to the extent they create substitute checks. (See §229.2(ff) defining “State”).

2. A bank may agree to handle a Pacific island check as a returned check under §229.32 and may convert the returned Pacific island check to a qualified returned check. The returning bank may receive the Pacific island check directly from a Pacific island bank or from another returning bank. As a Pacific island bank is not a paying bank for purposes of subpart C of this part, §229.32(e) does not apply to a returning bank settling with the Pacific island bank.

3. A depository bank that handles a Pacific island check is not subject to the provisions of subpart B of Regulation CC, including the availability, notice, and interest accrual requirements, with respect to that check. If, however, a bank accepts a Pacific island check for deposit (or otherwise accepts the check as transferee) and collects the Pacific island check in the same manner as other checks, the bank generally is subject to the provisions of §229.33, except for §229.33(c) with respect to its application to paper notices of nonpayment, §229.33(d) (acceptance of oral notices of nonpayment), and §229.33(h) (notification to customer of returned check). If the depository bank receives the returned Pacific island check directly from the Pacific island bank, the provisions of §229.33(e) (regarding time and manner of settlement for returned checks) do not apply, because the Pacific island bank is not a paying bank for purposes of subpart C of this part. In the event the Pacific island check is returned by a returning bank, however, the provisions of §229.33(e) apply. The depository bank is not subject to the provisions in §229.33(c) with respect to paper notices of nonpayment for Pacific island checks, but is subject to §229.33(c) with respect to paper returned checks that are Pacific island checks.

4. Banks that handle Pacific island checks in the same manner as other checks are subject to the indorsement provisions of §229.35. Section 229.35(c) eliminates the need for the restrictive indorsement “pay any bank.” For purposes of §229.35(c), the Pacific island bank is deemed to be a bank.

5. Pacific island checks will often be intermingled with other checks in a single cash letter. Therefore, a bank that handles Pacific island checks in the same manner as

other checks is subject to the transfer warranty provision in §229.34(c)(2) regarding accurate cash letter totals and the encoding warranty in §229.34(c)(3). A bank that acts as a returning bank for a Pacific island check is not subject to the returned check warranties in §229.34(d). Similarly, because the Pacific island bank is not a “bank” or a “paying bank” for purposes of subpart C of this part, the notice of nonpayment warranties in §229.34(e), and the presentment warranties in §229.34(c)(1) and (c)(4) do not apply. For the same reason, the provisions of §229.36 governing paying bank responsibilities such as place of receipt and same-day settlement do not apply to checks presented to a Pacific island bank, and the liability provisions applicable to paying banks in §229.38 do not apply to Pacific island banks. Section 229.36(c), regarding finality of settlement between banks during forward collection, applies to banks that handle Pacific island checks in the same manner as other checks, as do the liability provisions of §229.38, to the extent the banks are subject to the requirements of Regulation CC as provided in this section, and §§ 229.37 and 229.39 through 229.42.

XXX. SECTION 229.51 GENERAL PROVISIONS GOVERNING SUBSTITUTE CHECKS

* * * * *

B. 229.51(b) Reverting Bank Duties

1. In accordance with ANS X9.100-140, a re-converting bank must indorse (or, if it is a paying bank with respect to the check or a bank that rejected a check submitted for deposit, identify itself on) the back of a substitute check in a manner that preserves all indorsements applied, whether physically or electronically, by persons that previously handled the check in any form for forward collection or return. Indorsements applied physically to the original check before an image of the check was captured would be preserved through the image of the back of the original check that a substitute check must contain. If a bank sprays an indorsement onto a paper check *after* it captures an image of the check, it should ensure that it applies an indorsement to the item electronically, if it transfers the check as an electronic check or electronic returned check. (See paragraph 4 of commentary to section 229.35(a)). A re-converting bank satisfies its obligation to preserve all previously applied indorsements by physically applying (overlying) electronic indorsements onto a substitute check that the re-converting bank creates. A re-converting bank is not responsible for obtaining indorsements that persons that previously handled the check in any form should have applied but did not apply.

2. A re-converting bank must identify itself and the truncating bank by applying its routing number and the routing number of the truncating bank to the front of a substitute check in accordance with ANS X9.100-140.

3. If the re-converting bank is the paying bank or a bank that rejected a check submitted for deposit, it also must identify itself by applying its routing number to the back of the check. A re-converting bank also must preserve on the back of the substitute check, in accordance with ANS X9.100-140, the identifications of any previous re-converting banks. The re-converting-bank and truncating-bank routing numbers on the front of a substitute check and, if the re-converting bank is the paying bank or a bank that rejected a check submitted for deposit, the re-converting bank’s routing number on the back of a substitute check are for identification only and are not indorsements or acceptances.

Example. A bank’s customer, which is a nonbank business, receives checks for payment and by agreement deposits substitute checks instead of the original checks with its depository bank. The depository bank is the re-converting bank with respect to the substitute checks and the truncating bank with respect to the original checks. In accordance with ANS X9.100-140, the bank must therefore be identified on the front of the substitute checks as a re-converting bank and as the truncating bank, and on the back of the substitute checks as the depository bank and a re-converting bank.

4. The location of an indorsement applied to a paper check in accordance with ANS X9.100-111 may shift if that check is truncated and later reconverted to a substitute check. If an indorsement applied to an original check in accordance with ANS X9.100-111 is overwritten by a subsequent indorsement applied to a substitute check in accordance with industry standards, then one or both of those indorsements could be rendered illegible. As explained in §229.38(c) and the commentary thereto, a re-converting bank is liable for losses associated with indorsements that are rendered illegible as a result of check substitution.

* * * * *

XXXI. SECTION 229.52 SUBSTITUTE CHECK WARRANTIES

A. 229.52(a) Warranty Content and Provision

1. The responsibility for providing the substitute-check warranties begins with the re-converting bank. In the case of a substitute check created by a bank, the re-converting bank starts the flow of warranties when it transfers, presents, or returns a substitute check for which it receives consideration or

when it rejects a check submitted for deposit and returns to its customer a substitute check. A bank that receives a substitute check created by a nonbank starts the flow of warranties when it transfers, presents, or returns for consideration either the substitute check it received or an electronic or paper representation of that substitute check.

2. To ensure that warranty protections flow all the way through to the ultimate recipient of a substitute check or paper or electronic representation thereof, any subsequent bank that transfers, presents, or returns for consideration either the substitute check or a paper or electronic representation of the substitute check is responsible to subsequent transferees for the warranties. Any warranty recipient could bring a claim for a breach of a substitute-check warranty if it received either the actual substitute check or a paper or electronic representation of a substitute check.

3. The substitute-check warranties and indemnity are not given under sections 229.52 and 229.53 by a bank that truncates the original check and by agreement transfers an electronic check to a subsequent bank for consideration. However, the warranties in § 229.34(a) would apply to the transfer of an electronic check, and those warranties may be varied by agreement between the parties. A bank that is a truncating bank under § 229.2(eee)(2) because it accepts a deposit of a check electronically might be subject to a claim by another depository bank that accepts the original check for deposit. (See § 229.34(f) and commentary thereto).

Example. A bank that receives an electronic check and uses it to create substitute checks is the reconverting bank and, when it transfers, presents, or returns that substitute check, becomes the first warrantor with respect to the substitute check warranties. That bank, however, may have similar warranty claims with respect to the electronic check under § 229.34(a) against the bank that transferred the electronic check.

4. A bank need not affirmatively make the warranties because they attach automatically when a bank transfers, presents, or returns the substitute check (or a representation thereof) for which it receives consideration. Because a substitute check transferred, presented, or returned for consideration is warranted to be the legal equivalent of the original check and thereby subject to existing laws as if it were the original check, all UCC and other Regulation CC warranties that apply to the original check also apply to the substitute check.

5. The legal-equivalence warranty by definition must be linked to a particular substitute check. When an original check is truncated, the check may move from electronic form to substitute-check form and then back again, such that there would be

multiple substitute checks associated with one original check. When a check changes form multiple times in the collection or return process, the first reconverting bank and subsequent banks that transfer, present, or return the first substitute check (or a paper or electronic representation of the first substitute check) warrant the legal equivalence of only the first substitute check. If a bank receives an electronic representation of a substitute check and uses that representation to create a second substitute check, the second reconverting bank and subsequent transferees of the second substitute check (or a representation thereof) warrant the legal equivalence of both the first and second substitute checks. A reconverting bank would not be liable for a warranty breach under section 229.52 if the legal-equivalence defect is the fault of a subsequent bank that handled the substitute check, either as a substitute check or in other paper or electronic form.

6. The warranty in § 229.52(a)(1)(ii), which addresses multiple payment requests for the same check, is not linked to a particular substitute check but rather is given by each bank handling the substitute check, an electronic representation of a substitute check, or a subsequent substitute check created from an electronic representation of a substitute check. All banks that transfer, present, or return a substitute check (or a paper or electronic representation thereof) therefore provide the warranty regardless of whether the ultimate demand for double payment is based on the original check, the substitute check, or some other electronic or paper representation of the substitute or original check, and regardless of the order in which the duplicative payment requests occur. This warranty is given by the banks that transfer, present, or return a substitute check even if the demand for duplicative payment results from a fraudulent substitute check about which the warranting bank had no knowledge. (See also § 229.34(a)(1)(ii)).

Example. A nonbank depositor truncates a check and in lieu of the check sends an electronic check to both Bank A and Bank B. Bank A and Bank B each use the check information that it received electronically to create a substitute check, which it presents to Bank C for payment. Bank A and Bank B are both reconverting banks and each made the substitute-check warranties when it presented a substitute check to and received payment from Bank C. Bank C could pursue a warranty claim for the loss it suffered as a result of the duplicative payment against either Bank A or Bank B.

7. A bank that rejects a check submitted for deposit and, instead of the original check, provides its customer with a substitute check makes the warranties in § 229.52(a)(1). As noted in the commentary to

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§229.2(ccc), the Check 21 Act contemplates that nonbank persons that receive substitute checks (or representations thereof) from a bank will receive warranties and indemnities with respect to the checks. A reconverting bank that provides a substitute check to its depositor after it has rejected the check submitted for deposit may not have received consideration for the substitute check. In order to prevent banks from being able to transfer a check the bank truncated and then reconverted without providing substitute check warranties, the regulation provides that a bank that rejects a check submitted for deposit but provides its customer with a substitute check (or a paper or electronic representation of a substitute check) makes the warranties set forth in §229.52(a)(1) regardless of whether the bank received consideration.

Example. A bank's customer submits a check for deposit at an ATM that captures an image of the check and sends the image electronically to the bank. After reviewing the item, the bank rejects the item submitted for deposit. Instead of providing the original check to its customer, the bank provides a substitute check to its customer. This bank is the reconverting bank with respect to the substitute check and makes the warranties described in §229.52(a)(1) regardless of whether the bank previously extended credit to its customer. (See commentary to §229.2(ccc)).

B. 229.52(b) Warranty Recipients

1. A reconverting bank makes the warranties to the person to which it transfers, presents, or returns the substitute check for consideration and to any subsequent recipient that receives either the substitute check or a paper or electronic representation derived from the substitute check. These subsequent recipients could include a subsequent collecting or returning bank, the depository bank, the drawer, the drawee, the payee, the depositor, and any indorser. The paying bank would be included as a warranty recipient, for example because it would be the drawee of a check or a transferee of a check that is payable through it.

2. The warranties flow with the substitute check to persons that receive a substitute check or a paper or electronic representation of a substitute check. The warranties do not flow to a person that receives only the original check or a representation of an original check that was not derived from a substitute check. However, a person that initially handled only the original check could become a warranty recipient if that person later receives a returned substitute check or a paper or electronic representation of a substitute check that was derived from that original check. (See §229.34(f) regarding claims by a

depository bank that accepts deposit of an original check).

3. A reconverting bank also makes the warranties to a person to whom the bank transfers a substitute check that the bank has rejected for deposit regardless of whether the bank received consideration.

XXXII. SECTION 229.53 SUBSTITUTE CHECK INDEMNITY

A. 229.53(a) Scope of Indemnity

1. Each bank that for consideration transfers, presents, or returns a substitute check or a paper or electronic representation of a substitute check is responsible for providing the substitute-check indemnity.

2. The indemnity covers losses due to any subsequent recipient's receipt of the substitute check instead of the original check. The indemnity therefore covers the loss caused by receipt of the substitute check as well as the loss that a bank incurs because it pays an indemnity to another person. A bank that pays an indemnity would in turn have an indemnity claim regardless of whether it received the substitute check or a paper or electronic representation of the substitute check. The indemnity would not apply to a person that handled only the original check or a paper or electronic image of the original check that was not derived from a substitute check.

3. A reconverting bank also provides the substitute check indemnity to a person to whom the bank transfers a substitute check (or a paper or electronic representation of a substitute check) derived from a check that the bank has rejected for deposit regardless of whether the bank providing the indemnity has received consideration.

* * * * *

B. 229.53(b) Indemnity Amount

1. If a recipient of a substitute check is making an indemnity claim because a bank has breached one of the substitute-check warranties, the recipient can recover any losses proximately caused by that warranty breach.

Examples

a. A drawer discovers that its account has been charged for two different substitute checks that were provided to the drawer and that were associated with the same original check. As a result of this duplicative charge, the paying bank dishonored several subsequently presented checks that it otherwise would have paid and charged the drawer returned-check fees. The payees of the returned checks also charged the drawer returned-check fees. The drawer would have a warranty claim against any of the warranting banks, including its bank, for breach

of the warranty described in §229.52(a)(1)(ii). The drawer also could assert an indemnity claim. Because there is only one original check for any payment transaction, if the collecting bank and presenting bank had collected the original check instead of using a substitute check the bank would have been asked to make only one payment. The drawer could assert its warranty and indemnity claims against the paying bank, because that is the bank with which the drawer has a customer relationship and the drawer has received an indemnity from that bank. The drawer could recover from the indemnifying bank the amount of the erroneous charge, as well as the amount of the returned-check fees charged by both the paying bank and the payees of the returned checks. If the drawer's account were an interest-bearing account, the drawer also could recover any interest lost on the erroneously debited amount and the erroneous returned-check fees. The drawer also could recover its expenditures for representation in connection with the claim. Finally, the drawer could recover any other losses that were proximately caused by the warranty breach.

b. In the example above, the paying bank that received the duplicate substitute checks also would have a warranty claim against the previous transferor(s) of those substitute checks and could seek an indemnity from that bank (or either of those banks). The indemnifying bank would be responsible for compensating the paying bank for all the losses proximately caused by the warranty breach, including representation expenses and other costs incurred by the paying bank in settling the drawer's claim.

* * * * *

3. The amount of an indemnity would be reduced in proportion to the amount of any loss attributable to the indemnified person's negligence or bad faith. This comparative-negligence standard is intended to allocate liability in the same manner as the comparative-negligence provision of section 229.38(c).

* * * * *

XXXIII. 229.54 EXPEDITED RECREDIT FOR CONSUMERS

A. * * *

2. A consumer must in good faith assert that the bank improperly charged the consumer's account for the substitute check or that the consumer has a warranty claim for the substitute check (or both). The warranty in question could be a substitute-check warranty described in section 229.52 or any other warranty that a bank provides with respect to a check under other law. A consumer could, for example, have a warranty claim under section 229.34(a) or (d), which contain

returned-check warranties that are made to the owner of the check.

* * * * *

APPENDIX F TO PART 229—OFFICIAL BOARD INTERPRETATIONS; PREEMPTION DETERMINATIONS

Uniform Commercial Code, Section 4-213(5)

Section 4-213(5) of the Uniform Commercial Code ("U.C.C.") provides that money deposited in a bank is available for withdrawal as of right at the opening of business of the banking day after deposit. Although the language "deposited in a bank" is unclear, arguably it is broader than the language "made in person to an employee of the depository bank", which conditions the next-day availability of cash under Regulation CC (§229.10(a)(1)). Under Regulation CC, deposits of cash that are not made in person to an employee of the depository bank must be made available by the second business day after the banking day of deposit (§229.10(a)(2)). Therefore, this provision of the U.C.C. may call for the availability of certain cash deposits in a shorter time than provided in Regulation CC.

This provision of the U.C.C., however, is subject to Section 4-103(1), which provides, in part, that "the effect of the provisions of this Article may be varied by agreement * * *." (The Regulation CC funds availability requirements may not be varied by agreement.) U.C.C. Section 4-213(5) supersedes the Regulation CC provision in §229.10(a)(2), but a depository bank may not agree with its customer under section 4-103(1) of the Code to extend availability beyond the time periods provided in §229.10(a) of Regulation CC.

California

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the "Act") and subpart B (and in connection therewith, subpart A) of Regulation CC preempt the provisions of California law concerning availability of funds. This preemption determination specifies those provisions of the California funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

California has four separate sets of regulations establishing maximum availability schedules. The regulations applicable to commercial banks and branches of foreign banks located in California (Cal. Admin.

Code tit. 10, §§10.190401–10.190402) were promulgated by the Superintendent of Banks. The regulations applicable to savings banks and savings and loan associations (Cal. Admin. Code tit. 10, §§106.200–106.202) were adopted by the Savings and Loan Commissioner. The regulations applicable to credit unions (Cal. Admin. Code tit. 10, section 901) and to industrial loan companies (Cal. Admin. Code tit. 10, section 1101) were adopted by the Commissioner of Corporations.

All the regulations were adopted pursuant to California Financial Code section 866.5 and California Commercial Code section 4213(4)(a), under which the appropriate state regulatory agency for each depository institution must issue administrative regulations to define a reasonable time for permitting customers to draw on items received for deposit in the customer's account. California Financial Code section 867 also establishes availability periods for funds deposited by cashier's check, certified check, teller's check, or depository check under certain circumstances. Finally, California Financial Code section 866.2 establishes disclosure requirements.

The Board's determination with respect to these California laws and regulations governing the funds availability requirements applicable to depository institutions in California are as follows.

Commercial Banks and Branches of Foreign Banks

Coverage

The California State Banking Department regulations, which apply to California state commercial banks, California national banks, and California branch offices of foreign banks, provide that a depository bank shall make funds deposited into a deposit account available for withdrawal as provided in Regulation CC with certain exceptions. The funds availability schedules in Regulation CC apply only to *accounts* as defined in Regulation CC, which generally consist of transaction accounts. The California funds availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts (other than time accounts), as defined in the Board's Regulation D (12 CFR 204.2(d)). (Note, however, that under §229.19(e) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC in certain circumstances.)

Availability Schedules

Temporary schedule. Regulation CC provides that, until September 1, 1990, nonlocal checks must be made available for withdrawal by the seventh business day after the banking day of deposit, except for certain nonlocal checks listed in appendix B-1,

which must be made available within a shorter time (by the fifth business day following deposit for those California checks listed). Under the temporary schedule in the California regulations, a depository bank with a four-digit routing symbol of 1210 ("1210 bank") or of 1220 ("1220 bank") that receives for deposit a check drawn on a nonlocal, in-state commercial bank or foreign bank branch¹ must make the funds available for withdrawal by the fourth business day after the day of deposit. The California regulations provide that 1210 and 1220 banks must make deposited checks drawn on nonlocal in-state thrifts (defined as savings and loan associations, savings banks, and credit unions) available by the fifth business day after deposit. In addition, California law provides that all other depository banks must make deposited checks drawn on a nonlocal in-state commercial bank or foreign bank branch available by the fifth business day after deposit and checks drawn on nonlocal in-state thrifts available by the sixth business day after deposit. To the extent that these schedules provide for shorter holds than Regulation CC and its appendix B-1, the state schedules supersede the federal schedules.² For example, the California four-day schedule that applies to checks drawn on in-state nonlocal commercial banks or foreign bank branches and deposited in a 1210 or 1220 bank would be shorter than and would supersede the federal schedules.

The California regulations do not specify whether the state schedules apply to deposits of checks at nonproprietary ATMs. Under the temporary schedules in Regulation CC, deposits at nonproprietary ATMs must be

¹The California regulation uses the term *paying bank* when describing the institution on which these checks are drawn, but does not define *paying bank* or *bank*. Regulation CC's definitions of *paying bank* and *bank* include savings institutions and credit unions as well as commercial banks and branches of foreign banks. However, because the California regulation makes separate provisions for checks drawn on savings institutions and credit unions, the Board concludes that the term *paying bank*, as used in the California regulation, includes only commercial banks and foreign bank branches.

²Appendix B-1 of Regulation CC provides that the federal schedules will be the same as the California schedules (5 days) in the following cases: A depository bank bearing a 1210 routing number receiving for deposit checks bearing a 3220 or a 3223 routing number, and a depository bank bearing a 1220 routing number receiving for deposit checks bearing a 3210 routing number. In the cases where federal and state law are the same, the state law is not preempted by, nor does it supersede, the federal law.

made available for withdrawal by the seventh business day following deposit. To the extent that the California schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in § 229.11(d).

Permanent schedule. Regulation CC provides that, as of September 1, 1990, nonlocal checks must be made available for withdrawal by the fifth business day after the banking day of deposit. Under the permanent schedule in the California regulations, a depository bank with a four-digit routing symbol of 1210 or of 1220 that receives for deposit a check drawn on a nonlocal, in-state commercial bank or foreign bank branch must make the funds available for withdrawal by the fourth business day after the day of deposit. These state schedules provide for shorter hold periods than and thus supersede the federal schedules.

Second-day availability. Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

Availability at start of day. The California regulations do not specify when during the day funds must be made available for withdrawal. Section 229.19(b) of Regulation CC provides that funds must be made available at the start of the business day. In those cases where federal and state law provide for holds for the same number of days, to the extent that the California regulations allow funds to be made available later in the day than does Regulation CC, the federal law would preempt state law.

Exceptions to the availability schedules. Under the state preemption standards of Regulation CC (see § 229.20(c) and accompanying Commentary), for deposits subject to the state availability schedules, a state exception may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability schedule limit under a state exception, the depository bank may further extend the hold under any federal exception that can be applied to the deposit. If no state exceptions exist, then no exceptions holds may be placed on deposits

covered by state schedules. Thus, to the extent that California law provides for exceptions to the California schedules that supersede Regulation CC, those exceptions may be applied in order to extend the state availability schedules up to the federal availability schedules or such later time as is permitted by a federal exception.

Disclosures

California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal.

Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. California Financial Code § 866.2 requires disclosures that differ from those required by Regulation CC and, therefore, is preempted to the extent that it applies to *accounts* as defined in Regulation CC. The state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

Savings Institutions

Coverage

The California Department of Savings and Loan regulations, which apply to California savings and loan associations and California savings banks, provide that a depository bank shall make funds deposited into a transaction or non-transaction account available for withdrawal as provided in Regulation CC. The funds availability schedules in Regulation CC apply only to *accounts* as defined in Regulation CC, which generally consist of transaction accounts. The California funds availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts as defined in the Board's Regulation D (12 CFR 204.2(d)). (Note, however, that under § 229.19(e) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC in certain circumstances.)

Availability Schedules

Second-day availability. Section 867 of the California Financial Code requires depository institutions to make funds deposited by

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cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

Temporary and permanent schedules. Other than the provisions of Section 867 discussed above, California law incorporates the Regulation CC availability requirements with respect to deposits to accounts covered by Regulation CC. Because the state requirements are consistent with the federal requirements, the California regulation is not preempted by, nor does it supersede, the federal law.

Disclosures

California law (Cal. Fin. Code §866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal. Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. To the extent that California Financial Code §866.2 requires disclosures that differ from those required by Regulation CC and apply to *accounts* as defined in Regulation CC (generally, transaction accounts), the California law is preempted by Regulation CC.

The Department of Savings and Loan regulations provide that for those non-transaction accounts covered by state law but not by federal law, disclosures in accordance with Regulation CC will be deemed to comply with the state law disclosure requirements. To the extent that the Department of Savings and Loan regulations permit reliance on Regulation CC disclosures for transaction accounts and to the extent the state regulations survive the preemption of California Financial Code §866.2, they are not preempted by, nor do they supersede, the federal law. The state law continues to apply to savings accounts and other non-transaction

accounts not governed by Regulation CC disclosure requirements.

Credit Unions and Industrial Loan Companies

Each credit union and federally-insured industrial loan company that maintains an office in California for the acceptance of deposits must make funds deposited by check available for withdrawal in accordance with the following table:

| | Availability | |
|---|----------------|-------------------------|
| | Credit Union | Industrial Loan Company |
| \$100 or less checks; U.S. Treasury checks; state/local gov't checks. | 1st day | 1st day |
| On us checks; cashier's/certifies/teller's/depository checks. | 2nd day | 2nd day |
| In-state checks | 6th day | 6th day |
| out-of-state checks | 10th day | 12th day |

NOTE: These time periods are stated in terms of availability for withdrawal not later than the Xth business day following the banking day of deposit to facilitate comparison with Regulation CC. State regulations are stated in terms of availability at the start of the business day subsequent to the number of days specified in the regulation.

Coverage

The California law and regulations govern the availability of funds to "demand deposits, negotiable order of withdrawal draft accounts, savings deposits subject to automatic transfers, share draft accounts, and all savings deposits and share accounts, other than time deposits." (California Financial Code section 866(b)) The federal preemption of state funds availability laws only applies to *accounts* subject to Regulation CC, which generally includes transaction accounts. Thus, the California funds availability regulations continue to apply to deposits in savings and other accounts (such as accounts in which the account-holder is another bank) that are no *accounts* under Regulation CC. (Note, however, that under §229.19(e) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC in certain circumstances.)

The California law applies to any *Item* (California Financial Code section 866.5 and California Commercial Code section 4213(4)(a)). The California Commercial Code defines *item* to mean *any instrument for the payment of money even though it is not negotiable * * ** (Cal. Com. Code section 4104(g)). This term is broader in scope than the definition of *check* in the Act and Regulation CC. The Commissioner's regulations, however, define the term *item* to include checks, negotiable orders of withdrawal, share drafts, warrants, and money orders. As limited by

the state regulations, the state law applies only to instruments that are also *checks* as defined in § 229.2(k) of Regulation CC.

Availability Schedules

Temporary schedule. The California regulations provide that in-state nonlocal checks must be made available for withdrawal not later than the sixth business day following deposit. This time period is shorter than the seventh business day availability required for nonlocal checks under § 229.11(c) of Regulation CC, although it is not shorter than the schedules for nonlocal checks set forth in § 229.11(c)(2) and appendix B-1 of Regulation CC. Thus, the state schedule for in-state nonlocal checks supersedes the federal schedule to the extent that they apply to an item payable by a California institution that is defined as a nonlocal check under Regulation CC, and is not subject to reduced schedules under § 229.11(c)(2) and appendix B-1.

Under the California regulations, credit unions and industrial loan companies must provide next-day availability to first-indorsed items issued by any federally-insured institution. This regulatory requirement, however, has been superseded by section 867 of the California Financial Code, which requires depository institutions to make funds deposited by cashier's check, teller's check, certified checks, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. This requirement became effective January 1, 1988.

The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued for remittance purposes. To the extent that the state second business day availability requirement applies to cashier's and teller's checks issued for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

The California regulations do not specify whether they apply to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the start of the seventh business day after deposit. To the extent that the California schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in § 229.11(d).

Permanent schedule. Under the California regulations, credit unions and industrial loan companies must provide next-day availability to first-indorsed items issued by any federally-insured institution. This regulatory requirement, however, has been superseded by section 867 of the California Financial Code, which requires depository institu-

tions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. This requirement became effective January 1, 1988.

The Regulation CC next-day availability requirement for cashier's and teller's checks applies only to those checks issued for remittance purposes. To the extent that the state second business day availability requirement applies to cashier's and teller's checks issued for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

Next-day availability. Credit unions and industrial loan companies in California are required to give next-day availability to items drawn by the State of California or any of its departments, agencies, or political subdivisions. California law supersedes the federal law in that the state law does not condition next-day availability on receipt at a staffed teller station or use of a special deposit slip.

California credit unions and industrial loan companies must provide second business day availability to checks drawn on the depository bank. Regulation CC requires next-day availability for checks deposited in a branch of the depository bank and drawn on the same or another branch of the same bank if both branches are located in the same state or the same check processing region. Thus, generally, the Regulation CC rule for availability of on us checks preempts the California regulations. To the extent, however, that an on us check is (1) drawn on an out-of-state branch of the depository bank that is not in the same check processing region as the branch in which it was deposited, or (2) deposited at an off-premises ATM or another facility of the depository bank that is not considered a branch under federal law, the state regulation supersedes the Regulation CC availability requirements.

Exceptions to the availability schedules. California law provides exceptions to the state availability schedules for large deposits, new accounts, repeated overdrafts, doubtful collectibility, foreign items, and emergency conditions. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state availability schedule (e.g., in-state nonlocal checks under the temporary schedule; cashier's or teller's checks that are not deposited with a special deposit slip or at a staff teller station), the state exceptions may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability limit under a state exception, the depository bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depository bank invokes an exception to extend a hold

beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with §229.13(g) of Regulation CC.

Business day/banking day. The definitions of *business day* and *banking day* in the California regulations are preempted by the Regulation CC definition of those terms. Thus, for determining the permissible hold under the California schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of *business days* following the *banking day* of deposit.

Disclosures

California law (Cal. Fin. Code section 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires a depository institution to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal.

Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. California Financial Code section 866.2 requires disclosures that differ from those required by Regulation CC, and therefore is preempted to the extent that it applies to *accounts* as defined in Regulation CC. The state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

Connecticut

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the "Act") and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt provisions of Connecticut law relating to the availability of funds. This preemption determination specifies those provisions of the Connecticut funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

In 1987, Connecticut amended its statute governing funds availability (Conn. Gen. Stat. section 36-9v), which requires Connecticut depository institutions to make funds deposited in a checking, time, interest,

or savings account available for withdrawal with specified periods.

Generally, the Connecticut statute, as amended, provides that items deposited in a checking, time, interest, or savings account at a depository institution must be available for withdrawal in accordance with the following table:

| | <i>Availability</i> |
|---------------------------|---------------------|
| On us checks | 2nd day |
| In-state checks | 4th day |
| Out-of-state checks | 6th day |

Exceptions to the schedules are provided for items received for deposit for the purpose of opening an account and for items that the depository bank has reason to believe will not clear. The Connecticut statute also requires availability policy disclosures to depositors in the form of written notices and notices posted conspicuously at each branch.

Coverage

The Connecticut statute governs the availability of funds deposited in savings and time accounts, as well as *accounts* as defined in §229.2(a) of Regulation CC. The federal preemption of state funds availability requirements only applies to *accounts* subject to Regulation CC, which generally consist of transaction accounts. Regulation CC does not affect the Connecticut statute to the extent that the state law applies to deposits in savings and other accounts (including transaction accounts where the account holder is a bank, foreign bank or the U.S. Treasury) that are not *accounts* under Regulation CC. (Note, however, that under §229.19(e) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC, in certain circumstances.)

The Connecticut statute applies to *items* deposited in accounts. This term encompasses instruments that are not defined as *checks* in Regulation CC (§229.2(k)), such as nonnegotiable instruments, and are therefore not subject to Regulation CC's provisions governing funds availability. Those items that are subject to Connecticut law but are not subject to Regulation CC will continue to be covered by the state availability schedules and exceptions.

Availability Schedules

Temporary schedule. Connecticut law provides that certain checks that are nonlocal under Regulation CC must be available in a shorter time (sixth business day after deposit for checks payable by depository institutions not located in Connecticut) than under the federal regulation (seventh business day after deposit under the temporary schedule for nonlocal checks). Accordingly,

the Connecticut law supersedes Regulation CC with respect to nonlocal checks (other than checks covered by appendix B-1) deposited in *accounts* until the federal permanent availability schedules take effect on September 1, 1990.

The Connecticut statute does not specify whether it applies to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the start of the seventh business day after deposit. To the extent that the Connecticut schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in § 229.11(d).

Exceptions to the availability schedule. The Connecticut law provides exceptions for items received for deposit for the purpose of opening new accounts and for items that the depository bank has reason to believe will not clear. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state availability schedule (e.g., nonlocal out-of-state checks under the temporary schedule), the state exceptions may be used to extend the state availability schedule (of six business days) to meet the federal availability schedule (of seven business days). Once the deposit is held up to the federal availability schedule limit under a state exception, the depository bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depository bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer, in accordance with § 229.13(g) of Regulation CC.

Disclosures

The Connecticut statute (Conn. Gen. Stat. Section 36-9v(b)) requires written notice to depositors of an institution's check hold policy and requires a notice of the policy to be posted in each branch.

Regulation CC preempts state disclosure requirements concerning funds availability that relate to *accounts* that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal disclosure rules. (§ 229.20(c)(2)). Thus, the Connecticut statute is preempted by Regulation CC to the extent that these disclosure provisions apply to *accounts* as defined by Regulation CC. The Connecticut disclosure rules would continue to apply to accounts, such as savings and time accounts, not governed by the Regulation CC disclosure requirements.

Illinois

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act and subpart B, and, in connection therewith, subpart A, of Regulation CC, preempt provisions of Illinois law relating to the availability of funds. Section 4-213(5) of the Uniform Commercial Code as adopted in Illinois (Illinois Revised Statutes Chapter 26, paragraph 4-213(5), enacted July 26, 1988) provides that:

Time periods after which deposits must be available for withdrawal shall be determined by the provisions of the federal Expedited Funds Availability Act (Title VI of the Competitive Equality Banking Act of 1987) and the regulations promulgated by the Federal Reserve Board for the implementation of that Act.

Section 4-213(5) of the Illinois law does not supersede Regulation CC; and, because this provision of Illinois law does not permit funds to be made available for withdrawal in a longer period of time than required under the Act and Regulation, it is not preempted by Regulation CC.

Maine

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the "Act") and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt the provisions of Maine law concerning the availability of funds. This preemption determination addresses the relation of the Act and Regulation CC to the Maine funds availability law. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

In 1985, Maine adopted a statute governing funds availability (Title 9-B MRSA section 241(5)), which requires Maine financial institutions to make funds deposited in a transaction account, savings account, or time account available for withdrawal within a reasonable period. The Maine statute gives the Superintendent of Banking for the State of Maine the authority to promulgate rules setting forth time limitations and disclosure requirements governing funds availability.

The Superintendent of Banking issued regulations implementing the Maine funds availability statute, effective July 1, 1987 (Regulation 18(IV)), and adopted amendments to this regulation, effective September 1, 1988. Under the revised regulation, funds deposited to any deposit account in a Maine financial institution must be made available for withdrawal in accordance with the Act and Regulation CC (Regulation 18-

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IV(A)(1)). The state regulation provides that an institution's funds availability policies for accounts subject to Regulation CC be disclosed in a manner consistent with the Regulation CC requirements. Funds availability policies for accounts not subject to Regulation CC must be disclosed in accordance with the state regulation (Regulation 18-IV(A)(2)).

Coverage

The Maine law and regulation govern the availability of funds to any deposit account, as defined in the Board's Regulation D (12 CFR 204.2(a)). This coverage is broader than the *accounts* covered in Regulation CC. The Maine law continues to apply to all deposit accounts, including those that are not *accounts* under Regulation CC. (Note, however, that under §229.19(e) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC, in certain circumstances.)

Availability Schedules and Disclosures

The Maine regulation incorporates the Regulation CC availability and disclosure requirements with respect to deposits to accounts covered by Regulation CC. Because the state requirements are consistent with the federal requirements, the Maine regulation is not preempted by, nor does it supersede, the federal law.

Massachusetts

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the "Act") and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt provisions of Massachusetts law relating to the availability of funds. This preemption determination addresses the relationship of the Act and Regulation CC to the Massachusetts funds availability law. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

In 1988, Massachusetts amended its statute governing funds availability (Mass. Gen. L. ch. 167D, section 35), to require Massachusetts banking institutions to make funds available for withdrawal and disclose their availability policies in accordance with the Act and Regulation CC. The Massachusetts law, however, provides that "local originating depository institution" is to be defined as any originating depository institution located in the Commonwealth.

Coverage

The Massachusetts statute governs the availability of funds deposited in "any de-

mand deposit, negotiable order of withdrawal account, savings deposit, share account or other asset account." Regulation CC applies only to *accounts* as defined in §229.2(a). Regulation CC does not affect the Massachusetts statute to the extent that the state law applies to deposits in savings and other accounts (including transaction accounts where the account holder is a bank, foreign bank, or the U.S. Treasury) that are not *accounts* under Regulation CC. (Note, however, that under §229.19(e) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC, in certain circumstances.)

Availability Schedules

The Massachusetts definition of *local originating depository institution* (local paying bank in Regulation CC terminology) requires that in-state checks that are nonlocal checks under Regulation CC be made available in accordance with the Regulation CC local schedule. The Massachusetts law supersedes Regulation CC under the temporary and permanent schedule with respect to nonlocal checks payable by banks located in Massachusetts and deposited into *accounts*. Regulation CC preempts the Massachusetts law, however, to the extent the state law does not define banks located outside of Massachusetts, but in the same check processing region as the paying bank, as *local originating depository institutions*.

Disclosures

The Massachusetts regulation incorporates the Regulation CC disclosure requirements with respect to both accounts covered by Regulation CC and savings and other accounts not governed by the federal regulation. Because the state requirements are consistent with the federal requirements, the Massachusetts regulation is not preempted by, nor does it supersede, the federal law. The Massachusetts disclosure rules would continue to apply to accounts not governed by the Regulation CC disclosure requirements.

New Jersey

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the "Act") and subpart B (and in connection therewith, subpart A) of Regulation CC preempt the provisions of New Jersey law concerning disclosure of a bank's funds availability policy. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

New Jersey does not have a law or regulation establishing the maximum time periods within which funds deposited by check or electronic payment must be made available for withdrawal. New Jersey does, however, have regulations concerning the disclosure of a banking institution's availability policy (N.J.A.C. 3:1-15.1 *et seq.*).

Disclosures

New Jersey law requires every banking institution (defined as any state or federally chartered commercial bank, savings bank, or savings and loan association) to provide written disclosure to all holders of and applicants for deposit accounts which describes the institution's funds availability policy. Institutions must also disclose to their customers any significant changes to their availability policy.

Regulation CC preempts state disclosure requirements concerning funds availability that relates to *accounts* that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal disclosure rules. (§229.20(c)(2)). Thus, the New Jersey statute (N.J.A.C. sections 3:1-15.1 *et seq.*) is preempted by Regulation CC to the extent that these disclosure provisions apply to *accounts* as defined by Regulation CC. The New Jersey disclosure rules would continue to apply to other *deposit accounts*, as defined by New Jersey law, including money market accounts and savings accounts established by a natural person for personal or family purposes, which are not governed by the Regulation CC disclosure requirements.

New York

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the "Act") and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt the provisions of New York law concerning the availability of funds. This preemption determination addresses the relation of the Act and Regulation CC to the New York funds availability law. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

In 1983, the New York State Banking Department, pursuant to section 14-d of the New York Banking law, issued regulations requiring that funds deposited in an account be made available for withdrawal within specified time periods, and provided certain exceptions to those availability schedules. Part 34 of the New York State Banking Department's General Regulations established time frames within which commercial banks, trust companies, and branches of foreign

banks (*banks*); and savings banks, savings and loan associations, and credit unions (*savings institutions*) must make funds deposited in customer accounts available for withdrawal.

The Banking Department amended part 34, effective September 1, 1988, generally to exclude accounts covered by Regulation CC from the scope of the state regulation. Part 34.4 (a)(2) and (b)(2) of the revised New York rules, however, continue to apply to checks deposited to accounts, as defined in Regulation CC. These provisions require that the proceeds of nonlocal checks payable by a New York institution be made available for withdrawal not later than the start of the fourth business day following deposit, if deposited in a bank, or the fifth business day following deposit, if deposited in a savings institution. The revised regulation also provides that, with respect to savings accounts and time deposits, New York institutions could elect to comply with either the state or federal availability and disclosure requirements.

This preemption determination supersedes the determination issued by the Board on August 18, 1988 (53 FR 32357 (August 24, 1988)).

Coverage

The New York law and regulation govern the availability of funds in savings accounts and time deposits, as well as *accounts* as defined in §229.2(a) of Regulation CC. The New York law continues to apply to deposits to savings accounts and time deposits that are not accounts under Regulation CC. (Note, however, that under §229.19(e) of Regulation CC, *Hold on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC, in certain circumstances.)

The New York law and regulation apply to *items* deposited to accounts. Part 34.3(e) defines *item* as a *check*, *negotiable order of withdrawal* or *money order deposited into an account*. The Board interprets the definition of *item* in New York law to be consistent with the definition of *check* in Regulation CC (§229.2(k)).

Availability Schedules

The provisions of New York law governing the availability of in-state nonlocal items provide for shorter hold than is provided under Regulation CC, and supersede that federal availability requirements. With the exception of these provisions, the New York regulation does not apply to deposits to accounts covered by Regulation CC.

Temporary schedule. The time periods for the availability of in-state nonlocal checks, contained in part 34.4 (a)(2) and (b)(2), are shorter than the seventh business day availability required for nonlocal checks under

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§229.11(c) of Regulation CC, although they are not necessarily shorter than the schedules for nonlocal checks set forth in §229.11(c)(2) and appendix B-1 of Regulation CC. Thus, these state schedules supersede the federal schedule to the extent that they apply to an item payable by a New York bank or savings institution that is defined as a nonlocal checks under Regulation CC and the applicable state schedule is less than the applicable schedule specified in §229.11(c) and appendix B-1.

Permanent schedule. The New York schedule for banks supersedes the Regulation CC requirement in the permanent schedule, effective September 1, 1990, that nonlocal checks be made available for withdrawal by the start of the fifth business day following deposit, to the extent that the in-state checks are defined as nonlocal under Regulation CC, and the Regulation CC schedule for nonlocal checks is not shortened under §229.12(c)(2) and appendix B-2 of Regulation CC. In addition, the New York schedule for savings institutions supersedes the Regulation CC time period adjustment for withdrawal by cash or similar means in the permanent schedule, to the extent that the in-state checks are defined as nonlocal under Regulation CC, and the Regulation CC schedule for nonlocal checks is not shortened under §229.12(c)(2) and appendix B-2.

Exceptions to the availability schedules. New York law provides exceptions to the state availability schedules for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions (part 34.4). The state exceptions apply only with respect to deposits of in-state nonlocal checks that are subject to the state availability schedule. For these deposits, the depository bank may invoke a state exception and place a hold on the deposit up to the federal availability schedule limit for that type of deposit. Once the federal availability schedule limit is reached, the depository bank may further extend the hold under any of the federal exceptions that apply to that deposit. Any time a depository bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with §229.12(g) of Regulation CC.

Disclosures

The revised New York regulation does not contain funds availability disclosure requirements applicable to accounts subject to Regulation CC.

Rhode Island

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Ex-

pedited Funds Availability Act (the "Act") and subpart B (and in connection therewith, subpart A) of Regulation CC, supersede provisions of Rhode Island law relating to the availability of funds. This preemption determination specifies those provisions in the Rhode Island funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

In 1986, Rhode Island adopted a statute governing funds availability (R.I. Gen. Laws tit. 6A, sections 4-601 through 4-608), which requires Rhode Island depository institutions to make checks deposited in a personal transaction account available for withdrawal within certain specific periods. Commercial banks and thrift institutions (mutual savings banks, savings banks, savings and loan institutions and credit unions) must make funds available for withdrawal in accordance with the following table:

| | Commer- cial banks | Thrift insti- tutions |
|--|-----------------------|--------------------------|
| Treasury checks, Rhode Island Government checks, first-indorsed. | 2nd | 2nd |
| In-state cashier's checks less than \$2,500. | 2nd | 2nd |
| On-us checks | 2nd | 3rd |
| In-state clearinghouse checks | 3rd | 4th |
| In-state nonclearinghouse checks ... | 5th | 6th |
| 1st or 2nd Federal Reserve District checks (out-of-state). | 7th | 7th |
| Other checks | 9th | 10th |

NOTE: These time periods are stated in terms of availability for withdrawal not later than the Xth business day following the banking day of deposit to facilitate comparison with Regulation CC. State regulations are stated in terms of availability at the start of the business day subsequent to the number of days specified in the regulation.

The Rhode Island statute also provides restrictions and exceptions to the schedules and requires institutions to make certain disclosures to their customers.

Coverage

The Rhode Island statute governing the availability of funds deposited in *personal transaction accounts*, a term not defined in the statute. The federal law would continue to apply to *accounts*, as defined in §229.2(a), that are not *personal transaction accounts*.

The Rhode Island statute applies to *items*, defined as checks, negotiable orders of withdrawal, or money orders. The Board interprets the definition of item to be consistent with the definition of *check* in Regulation CC (§299.2(k)).

Availability Schedules

Temporary schedule. Rhode Island law requires availability for certain checks in the same time as does Regulation CC. Thus, in

these instances, the federal law does not preempt the state law. Rhode Island law requires commercial banks (but not thrift institutions) to make checks payable by a depository institution that uses the same in-state clearing facility as the depository bank available for withdrawal on the third business day following the day of the deposit. This is the same time period contained in Regulation CC for local checks payable by a bank that is a member of the same local clearinghouse as the depository bank. (The Board views the definition of *the same in-state clearing facility* as having the same meaning as the term *the same check clearinghouse association* in the federal law's provision that allows banks to limit the customer's ability to withdraw cash on the third business day if the local check being deposited is payable by a bank that is not a member of the same local clearinghouse as the depository bank.) Since the Rhode Island law and the federal law both require the funds to be made available no later than the third business day, the state law is not preempted by the federal law.

The Rhode Island law also requires commercial banks and savings institutions to make checks payable by a depository institution located in the First or Second Federal Reserve District (outside of Rhode Island) available on the seventh business day following deposit. To the extent that this provision applies to checks payable by institutions located outside the Boston check processing region, it provides for availability in the same time as required for nonlocal checks under the temporary federal schedule, and thus is not preempted by the federal law.

The Rhode Island statute does not specify whether it applies to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the opening of the seventh business day after deposit. To the extent that the Rhode Island schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule.

Exceptions to the availability schedules. The Rhode Island law contains exceptions for reason to doubt collectibility or ability of the depositor to reimburse the depository bank, for new accounts, for large checks, and for foreign checks. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state availability schedule, the state exceptions may be used to extend the state availability schedule to meet the federal availability schedule. Once the deposit is held up to the federal availability schedule limit under a state exception, the depository bank may further extend the hold under any fed-

eral exception that can be applied to the deposit. Thus, if the state and federal availability schedules are the same for a particular deposit, both a state and a federal exception must be applicable to that deposit in order to extend the hold beyond the schedule. Any time a depository bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer, in accordance with §229.13(g) of Regulation CC.

Business day/banking day. The Rhode Island statute defines *business day* as excluding Saturday, Sunday and legal holidays. This definition is preempted by the Regulation CC definitions of *business day* and *banking day*. Thus, for determining the permissible hold under the Rhode Island schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of *business days* following the *banking day* of deposit.

Disclosures

The Rhode Island statute requires written notice to depositors of an institution's check hold policy and requires a notice on deposit slips. Regulation CC preempts state disclosure requirements concerning funds availability that relate to accounts that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal rules. (§229.20(c)(2)) Thus, Regulation CC preempts the Rhode Island disclosure requirements concerning funds availability.

Wisconsin

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the Act) and subpart B (and in connection therewith, subpart A) of Regulation CC preempt the provisions of Wisconsin law concerning availability of funds. This preemption determination specifies those provisions of the Wisconsin funds availability law that are not preempted by the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

Wisconsin Statutes sections 404.213(4m), 215.136, and 186.117 require Wisconsin banks, savings and loan associations, and credit unions, respectively, to make funds deposited in accounts available for withdrawal within specified time frames. Generally, checks drawn on the U.S. Treasury, the State of Wisconsin, or on a local government located in Wisconsin must be made available for withdrawal by the second day following deposit. (The law governing commercial

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banks determines availability based on banking day; the laws governing savings and loan associations and credit unions determine availability based on business days.) In-state and out-of-state checks must be made available for withdrawal within five days and eight days following deposit, respectively. Exceptions are provided for new accounts and reason to doubt collectibility. In addition, Wisconsin Statutes section 404.103 permits commercial banks to vary these availability requirements by agreement.

Coverage

Wisconsin law defines *account*, with respect to the rules governing commercial banks, as *any account with a bank and includes a checking, time, interest or savings account* (Wisconsin Statutes section 404.104(1)(a)). The statutes relating to the funds availability requirements applicable to savings and loan associations and credit unions do not define the term *account*. The Federal preemption of state funds availability requirements applies only to *accounts* subject to Regulation CC, which generally consist of transaction accounts. Regulation CC does not affect the Wisconsin law to the extent that the state law applies to deposits in savings, time, and other accounts (including transaction accounts where the account holder is a bank, foreign bank, or the U.S. Treasury) that are not *accounts* under Regulation CC. (Note, however, that under §229.19(e) of Regulation CC, *Holds on Other Funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC in certain circumstances.)

The Wisconsin statute applies to *items* deposited in accounts. This term encompasses instruments that are not defined as *checks* in Regulation CC (§229.2(k)), such as nonnegotiable instruments, and are therefore not subject to Regulation CC's provisions governing funds availability. Those items that are subject to Wisconsin law but are not subject to Regulation CC will continue to be covered by the state availability schedules and exceptions.

Availability Schedules

Temporary schedule. The Wisconsin statute requires that in-state nonlocal checks be made available for withdrawal not later than the fifth day following deposit (Wisconsin Statutes sections 404.213(4m)(b)(2); 215.136(2)(b); 186.117(2)(b)). This time period is shorter than the seventh business day availability required for nonlocal checks under §229.11(c) of Regulation CC, although it is not shorter than the schedules for nonlocal checks set forth in §229.11(c)(2) and appendix B-1 of Regulation CC. Thus, the state schedule for in-state nonlocal checks supersedes

the Federal schedule to the extent that it applies to an item payable by a Wisconsin bank that is defined as a nonlocal check under Regulation CC and is not subject to reduced schedules under §229.11(c)(2) and appendix B-1.

Permanent Schedule. Under the Federal permanent availability schedule, nonlocal checks must be made available for withdrawal not later than the fifth business day following deposit. The fifth day availability requirement for in-state items in the Wisconsin statute supersedes the Regulation CC time period adjustment for withdrawal by cash or similar means in the permanent schedule, to the extent that the in-state checks are defined as nonlocal under Regulation CC.

Next-day availability. Under the Wisconsin statute, the proceeds of state and local government checks must be made available for withdrawal by the second day following deposit, if the check is endorsed only by the person to whom it was issued (Wisconsin Statutes sections 404.213(4m)(b)(1); 215.136(2)(b); and 186.117(2)(a)). Regulation CC requires next-day availability for these checks if they are (1) deposited in an account of a payee of the check, (2) deposited in a depository bank located in the same state as the state or local government that issued the check, (3) deposited in person to an employee of the depository bank, and (4) deposited with a special deposit slip, if the depository bank informed its customers that use of such a slip is a condition to next-day availability. Under the Federal law, if a state or local government check is not deposited in person to an employee of the depository bank, but meets the other conditions set forth in §229.10(c)(1)(iv), the funds must be made available for withdrawal not later than the second business day following deposit. The Wisconsin statute supersedes Regulation CC to the extent that the state law does not permit the use of a special deposit slip as a condition to receipt of second-day availability.

Exceptions to the schedules. Wisconsin law provides exceptions to the state availability schedules for new accounts (those opened less than 90 days) and reason to doubt collectibility (Wisconsin Statutes sections 404.213(4m)(b); 215.136(2); and 186.117(2)). The state availability law also permits commercial banks to vary the funds availability requirements by agreement (Wisconsin Statute section 404.103(1)). In all cases where the Federal schedule preempts the state schedule, only the Federal exceptions apply. For deposits that are covered by the state availability schedule (e.g., in-state nonlocal checks), a state exception must apply in order to extend the state availability schedule up to the Federal availability schedule. Once the deposit is held up to the Federal availability limit under a state exception, the depository bank may further extend the

hold only if a Federal exception can be applied to the deposit. Any time a depository bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with § 229.13(g) of Regulation CC.

Business day/banking day. The definitions of *business day* and *banking day* in the Wisconsin statutes are preempted by the Regulation CC definition of those terms. For determining the permissible hold under the Wisconsin schedules that supersede the Regulation CC schedule, deposits are considered available for withdrawal on the specified number of *business days* following the *banking day* of deposit.

Wisconsin law considers funds to be deposited, for the purpose of determining when they must be made available for withdrawal, when an item is “received at the proof and transit facility of the depository.” For the purposes of this preemption determination, funds are considered deposited under Wisconsin law in accordance with the rules set forth in § 229.19(a) of Regulation CC.

Disclosures

The Wisconsin statute does not require disclosure of a bank’s funds availability policy.

The state law does require, however, that a bank give notice to its customer if it extends the time within which funds will be available for withdrawal due to the bank’s doubt as to the collectibility of the item (Wisconsin Statutes sections 404.213(4m)(b); 215.136(2); and 186.117(2)).

Regulation CC preempts state disclosure requirements concerning funds availability that relate to *accounts* that are inconsistent with the Federal requirements. The state requirement is different from, and therefore inconsistent with, the Federal disclosure rules (§ 229.20(c)(2)). Thus, the Wisconsin statute is preempted by Regulation CC to the extent that the state notice requirement applies to *accounts* as defined by Regulation CC. The Wisconsin requirement would continue to apply to accounts, such as savings and time accounts, not governed by the Regulation CC disclosure requirements.

[53 FR 32356, Aug. 24, 1988, as amended at 53 FR 44328, Nov. 2, 1988; 53 FR 47524, Nov. 22, 1988; 53 FR 51748, Dec. 23, 1988; Reg. CC, 54 FR 13838, Apr. 6, 1989; 55 FR 11358, Mar. 28, 1990; 60 FR 51703, Oct. 3, 1995]