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12 CFR Part 229

Availability of Funds and Collection of Checks; Proposed Rule

**FEDERAL RESERVE SYSTEM****12 CFR Part 229****[Regulation CC; Docket No. R-1409]****RIN No. 7100-AD68****Availability of Funds and Collection of Checks****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Proposed rule, request for comment.

**SUMMARY:** The Board of Governors (Board) is proposing amendments to facilitate the banking industry's ongoing transition to fully-electronic interbank check collection and return, including proposed amendments to condition a depository bank's right of expeditious return on the depository bank agreeing to accept returned checks electronically either directly or indirectly from the paying bank. The Board also is proposing amendments to the funds availability schedule provisions to reflect the fact that there are no longer any nonlocal checks. The Board proposes to revise the model forms that banks may use in disclosing their funds-availability policies to their customers and to update the preemption determinations. Finally, the Board is requesting comment on whether it should consider future changes to the regulation to improve the check collection system, such as decreasing the time afforded to a paying bank to decide whether to pay a check in order to reduce the risk to a depository bank of having to make funds available for withdrawal before learning whether a deposited check has been returned unpaid.

**DATES:** Comments on the proposed rule must be received not later than June 3, 2011.

**ADDRESSES:** You may submit comments, identified by Docket No. R-1409 and RIN No. 7100-AD68, by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.

- *FAX:* 202/452-3819 or 202/452-3102.

- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal

Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Dena L. Milligan, Attorney, (202/452-3900), Legal Division; or Joseph P. Baressi, Financial Services Project Leader (202/452-3959), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263-4869.

**SUPPLEMENTARY INFORMATION:****Background**

Regulation CC (12 CFR part 229) implements the Expedited Funds Availability Act (EFA Act) and the Check Clearing for the 21st Century Act (Check 21 Act).<sup>1</sup> The Board implemented the EFA Act in subparts A, B, and C of Regulation CC. The EFA Act was enacted to provide depositors of checks with prompt funds availability and to foster improvements in the check collection and return processes. Subpart A of Regulation CC contains general information, such as definitions of terms. Subpart B of Regulation CC specifies availability schedules within which banks must make funds available for withdrawal. Subpart B also includes rules regarding exceptions to the schedules, disclosure of funds availability policies, and payment of interest. These provisions implement specific requirements set forth in the EFA Act. The provisions of subpart C were adopted by the Board pursuant to the authority granted to it in §§ 609(b) and (c) of the EFA Act.<sup>2</sup> Section 609(b) directs the Board to consider requiring that depository institutions and Federal Reserve Banks take certain steps to improve the check-processing system, such by taking steps necessary to automate the check-return process (§ 609(b)(4)).<sup>3</sup> Section 609(c) grants the

<sup>1</sup> Expedited Funds Availability Act, 12 U.S.C. 4001 *et seq.*; Check Clearing for the 21st Century Act, 12 U.S.C. 5001 *et seq.*

<sup>2</sup> 12 U.S.C. 4008 (b) and (c).

<sup>3</sup> Section 609(b)(4) states that "[i]n order to improve the check processing system, the Board shall consider (among other proposals) requiring, by

Board authority to regulate any aspect of the payment system and any related function of the payment system with respect to checks.<sup>4</sup> Subpart C includes rules to speed the collection and return of checks, such as rules covering the expeditious return responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment of large-dollar returns, check indorsement standards, and same-day settlement of checks presented to the paying bank.

Subpart C's provisions presume that banks generally handle checks in paper form. Since the provisions were adopted in 1988, however, banks have largely migrated to an electronic interbank check collection and return system.<sup>5</sup> This migration was facilitated by the Check 21 Act,<sup>6</sup> which became effective in October 2004 and is implemented in subparts A and D of Regulation CC. The Check 21 Act permits banks to use a properly prepared substitute check in place of the original check, which enables banks to take the original check out of the collection and return process and to handle check images for much of the check collection and return process without having to retain the original check. The Check 21 Act has been a catalyst for rapid growth in banks' electronic handling of checks over the last 5 years. For example, at year-end 2005, the Reserve Banks received about 4 percent of checks deposited with them for collection in electronic form and presented approximately 28 percent of their checks in electronic form.<sup>7</sup> In December 2010, the Reserve Banks received about 99.7 percent of checks deposited for forward collection electronically, and presented about 98.4 percent of checks electronically. In addition, at the end of 2005 virtually all returned checks handled by the Reserve Banks were sent to and from the Reserve Banks in paper form. By December 2010, the Reserve Banks received 97.1 percent of returned checks

regulation, that \* \* \* the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks." 12 U.S.C. 4008(b)(4).

<sup>4</sup> Section 609(c)(1) states that "[i]n order to carry out the provisions of this title, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks." 12 U.S.C. 4008(c)(1).

<sup>5</sup> Certain provisions, such as the same-day settlement provisions in § 229.36(f), were adopted at later times.

<sup>6</sup> Public Law 108-100, 117 Stat. 1177 (codified at 12 U.S.C. 5001-5018) (2003).

<sup>7</sup> Prior to the Check 21 Act, the Reserve Banks presented about 20 to 25 percent of their check volume electronically, primarily under MICR-presentation programs.

electronically, and delivered about 76.7 percent of returned checks to depository banks electronically.<sup>8</sup> Based on information from banking industry sources, the Board believes that these trends with respect to checks handled by the Reserve Banks are representative of trends nationwide.<sup>9</sup>

## Overview of the Proposal

### I. Amendments To Encourage Electronic Check Clearing and Check Return

As a general matter, the Board believes that electronic check-clearing and check-return methods improve the efficiency of the check system. Electronic methods are faster and more resilient, and, at the same time, they are less costly and less error prone. Despite the increasing number of checks presented and returned electronically, some banks continue to demand paper returned checks or present paper checks for same-day settlement under § 229.36(f) of Regulation CC. The full benefits and cost savings of the electronic methods, however, cannot be realized so long as some banks continue to employ paper-processing methods. Accordingly, under its authority provided in § 609(c) of the EFA Act, the Board is proposing amendments to subpart C of Regulation CC to provide incentives for depository banks to receive, and paying banks to send, returned checks electronically. The Board also is proposing amendments to the same-day settlement provisions to promote electronic presentment of checks. Further, based on experience since the Check 21 Act became effective, the Board is proposing minor amendments to subpart D of Regulation CC with respect to substitute checks.

#### A. *Expeditious-Return Rule*

##### 1. Current Rule

Regulation CC currently provides that if a paying bank determines not to pay a check, it must return the check in an expeditious manner, as provided under either the “two-day/four-day test” (§ 229.30(a)(1)), or the “forward-

collection test” (§ 229.30(a)(2)).<sup>10</sup> To meet the two-day/four-day test, a paying bank must send a returned local check in a manner such that the check would normally be received by the depository bank not later than 4 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. For nonlocal checks, a paying bank must send a returned check in a manner such that the check would normally be received by the depository bank not later than 4 p.m. local time of the depository bank on the fourth business day following the banking day on which the check was presented to the paying bank. Because there now is only one Federal Reserve Bank check-processing region, there are no longer any nonlocal checks, and the four-day test applies to a null set of checks.<sup>11</sup>

The forward-collection test is satisfied if a paying bank sends the returned check in a manner that a similarly situated bank would send a check (i) of similar amount as the returned check, (ii) drawn on the depository bank, and (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.<sup>12</sup>

When these tests were adopted in the late 1980s, the expeditious-return standard presumed that banks could use the same modes of transportation for returned checks that they used for forward-collection checks. Delivering returned checks in the same time and manner as forward checks would satisfy the regulation’s expeditious-return requirements. Today, by contrast, forward-check collection is almost entirely electronic, and the dedicated air and ground transportation for paper checks has largely been discontinued. Some depository banks, however, continue to require that returned checks be delivered to them in paper form, making it difficult for paying banks and returning banks to meet the expeditious-return requirement. Accordingly, the full benefits and cost savings of electronic check-return methods cannot be realized if paying banks and returning banks must incur substantial

expense to deliver returned checks to the banks that continue to require that paper checks be returned. Moreover, as technology has improved, the Board understands that the initial implementation and ongoing costs incurred by a depository bank to receive returned items electronically have decreased substantially. For example, the Reserve Banks now provide electronic copies of returned checks in .pdf files to small depository banks, which can use the .pdf file to print substitute checks on their own premises if necessary. Compared to alternative means of receiving electronic returns, this approach involves only minimal upfront costs to a depository bank, such as the purchase of a printer capable of double-sided printing and magnetic-ink toner cartridges.<sup>13</sup> After printing the electronic copies, the depository bank can process them in the same way it processes paper checks that are physically delivered to it.

##### 2. Proposed Expeditious Return Requirement

The Board believes that a fully-electronic check-return system benefits the nation’s payment system, as well as consumers and businesses. Additionally, the Board believes that electronic check return substantially reduces risks to the check system and that the costs to a bank to receive returned checks electronically have markedly declined. Therefore, the Board believes that it is appropriate for the risk of non-expeditious return to rest with a depository bank that chooses not to accept electronic returns. Accordingly, to encourage depository banks to agree to receive returned checks electronically, and to avoid imposing increased cost on paying banks to return checks expeditiously to depository banks that do not accept electronic returns, the Board proposes to amend Regulation CC to provide that a depository bank would not be entitled to expeditious return unless it agrees to receive electronic returns directly or indirectly from the paying bank returning the check.<sup>14</sup> The Board proposes to define a new term,

<sup>8</sup> The proportion of returned checks the Reserve Banks delivered electronically to the depository bank increased from 28 percent in June 2009 to 76.7 percent in December 2010. The proportion of depository banks to which the Reserve Banks deliver returns electronically, while lower, has also increased, from 8 percent in June 2009 to 52 percent in December 2010.

<sup>9</sup> The Electronic Check Clearing House Organization (ECCHO) collects data from various check-clearing intermediaries, including the Reserve Banks, to estimate the percent of interbank checks that are presented electronically. See [http://www.eccho.org/check\\_ps.php](http://www.eccho.org/check_ps.php).

<sup>10</sup> Section 229.31(a) sets forth similar tests for returning banks.

<sup>11</sup> A local check is a check drawn on a paying bank located in the same check-processing region as the depository bank. 12 CFR 229.2(r). A nonlocal check is a check drawn on a paying bank located in a different check-processing region as the depository bank. 12 CFR 229.2(v).

<sup>12</sup> The forward-collection test is satisfied if the paying bank “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.” See commentary to § 229.30(a)(2).

<sup>13</sup> Prior to developing the capability of providing the electronic .pdf copies, it may have been necessary for a depository bank, or its processor, to develop systems capable of automated processing of incoming electronic data files (e.g., X9.100–187 files) representing returned checks and to integrate these systems with the bank’s other existing systems, such as the bank’s demand-deposit-account systems that maintain the bank’s customer balances.

<sup>14</sup> The paying bank initiating the return would still be subject to the midnight deadline for all returned checks. See Uniform Commercial Code (UCC) § 4–302.

“electronic return,” and to establish requirements for an item to qualify as an electronic return.<sup>15</sup> Under the proposal, an electronic return would be treated as if it were a check for purposes of subpart C of the regulation (*See* § 229.33 in the section-by-section analysis).<sup>16</sup>

Sections 229.30(a) and 229.31(a), respectively, would continue to set forth the general expeditious return rule for paying banks and returning banks. Proposed §§ 229.30(b) and 229.31(b) would set forth the exceptions to the expeditious return requirements, one of which would be a new exception: There is no expeditious return requirement if the depository bank has not agreed to accept the returned check electronically as described in proposed § 229.32(a). Under proposed § 229.32(a), a depository bank may agree to receive an “electronic return” from the paying bank so as to be entitled to expeditious return: (1) Directly from the paying bank; (2) directly from a returning bank that holds itself out as willing to accept electronic returns directly or indirectly from the paying bank and has agreed to return checks expeditiously under § 229.31(a); or (3) as otherwise agreed with the paying bank, such as through a network provided by a clearing house or other third party.

The Board proposes to delete the forward-collection test for expeditious return from §§ 229.30(a) and 229.31(a). This test was originally included because paying banks and returning banks were in some cases (such as that of a remote depository bank) not able to meet the two-day/four-day test, and the forward-collection test provided that in these cases paying banks and returning banks nonetheless satisfied the expeditious return requirement so long as the returned check was delivered to the depository bank in the same time and manner that a forward-collection check would be delivered to the bank (in its role as paying bank). Given that under the Board’s proposal, however, a paying bank or returning bank must satisfy the expeditious return requirement only if the depository bank agrees to receive electronic returns, a paying bank or returning bank should always be able to satisfy the two-day test with respect to a depository bank to which the test applies. Specifically, geographic remoteness of a depository bank from the paying bank should not preclude an electronic return from reaching the depository bank within two

business days of a check’s presentment to the paying bank. Accordingly, the Board believes that the forward-collection test is not necessary in light of the Board’s proposal.

Additionally, because there are no longer nonlocal checks (*see* the discussion below in section III), the four-day test for expeditious return of a nonlocal check no longer applies to any checks, and the Board proposes to eliminate that test as well. Under the Board’s proposed rule, the two-day test for expeditious return will be the only test in §§ 229.30(a) and 229.31(a). Therefore, a paying bank or returning bank would have to send the returned check expeditiously such that the depository bank would normally receive the check no later than 4 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.

### 3. Alternate Approaches Considered

The Board requests comment on alternate approaches to revising the expeditious return rule to encourage electronic returns. One possible alternate approach would require a bank that holds itself out as a returning bank to accept an electronic return from any other bank that similarly holds itself out as a returning bank. This approach would ensure that even if the paying bank and depository bank had electronic return agreements with different returning banks, the electronic return could reach the depository bank. This approach, however, may be costly for returning banks to implement, because they would have to establish electronic return connections and agreements with every other returning bank. A second alternative would require an electronic return to be returned through the forward-collection chain (essentially reverting to the pre-Regulation CC rule). Some depository banks, however, have arrangements under which returned checks are delivered to a different location than that from which the depository bank sends its checks for forward collection.<sup>17</sup> The second alternative might impose barriers to these arrangements. Both of these alternatives therefore appeared to be more operationally complex and costly than the proposed approach.

<sup>17</sup> For example, a depository bank may collect checks through a correspondent bank or processor, but have returned checks delivered directly to the depository bank itself. Conversely, a depository bank may arrange with another bank to apply the other bank’s indorsement as the depository-bank indorsement, such that depository bank’s returned checks are handled by the other bank. *See* § 229.35(d).

Nonetheless, the Board requests comment on the desirability of these and other alternatives to the Board’s proposal.

### B. Notice of Nonpayment Requirement

Under current § 229.33(a), if a paying bank determines not to pay a check in the amount of \$2,500 or more, it must provide notice of nonpayment such that the notice is received by the depository bank by 4 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. Return of the check itself satisfies the notice of nonpayment requirement if the return meets the timeframe requirement for a notice of nonpayment. The current two-day timeframe for notice of nonpayment is the same as the two-day timeframe for expeditious return set forth in proposed §§ 229.30(a) and 229.31(a). Accordingly, because a depository bank should receive the returned check within the current notice-of-nonpayment timeframe, the Board proposes to delete the notice of nonpayment provision as unnecessary.

Under the Board’s proposal, a depository bank that does not agree to receive electronic returns from the paying bank, as specified in § 229.32(a), will not receive expeditious return or a notice of nonpayment. The Board, however, believes that the proposed changes give depository banks a strong incentive to make arrangements to receive returns electronically. The Board requests comment on whether the notice-of-nonpayment requirement should be retained for banks that do not agree to accept electronic returns in a nearly all-electronic environment.

### C. Same-Day Settlement Rule

Section 229.36(f) requires a paying bank to provide same-day settlement for checks presented in accordance with reasonable delivery requirements established by the paying bank and presented at a location designated by the paying bank and by 8 a.m. (local time of the paying bank) on a business day. Prior to the Regulation CC same-day settlement rule, which became effective in 1994, private-sector collecting banks sometimes (1) did not obtain settlement from the paying bank until the day after presentment or (2) were charged “presentment fees” by the paying bank, which the paying bank would deduct from the amount it paid in settlement of the checks presented to it.<sup>18</sup> By contrast, under §§ 13(1) and 16(13) of the Federal Reserve Act and § 210.9(b)(1) of Regulation J (12 CFR

<sup>15</sup> *See* proposed § 229.2(v) (definition of “electronic return”) in the section-by-section analysis.

<sup>16</sup> *See* proposed § 229.34 in the section-by-section analysis for warranties made with respect to electronic returns.

<sup>18</sup> 57 FR 46956 (Oct. 14, 1992).

part 210), the Reserve Banks obtain same-day settlement at par for checks presented to a paying bank before its cut-off hour, which is generally 2:00 p.m. or later.<sup>19</sup> To reduce the competitive disparity between the Reserve Banks and other collecting banks, and to more equitably balance the bargaining power between collecting and paying banks, the same-day settlement rule (1) required a paying bank to provide same-day settlement to a private-sector collecting bank, provided that presentment was made by 8 a.m. in accordance with reasonable delivery requirements established by the paying bank and (2) prohibited the paying bank from deducting fees from the amount of its settlement for checks presented in accordance with the terms of the rule.<sup>20</sup>

As noted above, the Check 21 Act facilitated substantial changes in the manner in which checks are collected in the United States. In December 2010, the Reserve Banks received about 99.7 percent of check-collection volume electronically, and presented about 98.4 percent of their volume electronically. Many paying banks that receive check presentments electronically have indicated that they prefer to receive all of their interbank check presentments electronically, so that they can streamline their back-office operations and eliminate the costs associated with processing paper-check presentments. Some collecting banks, however, continue to present paper checks to these paying banks under the Regulation CC same-day settlement rule.

<sup>19</sup> Times are stated as local time of the paying bank.

<sup>20</sup> In April 1988 the Board requested comment on a proposal requiring paying banks to settle on the day of presentment for checks presented by any bank prior to 2 p.m., *i.e.*, the same timeframe as is applicable to the Reserve Banks. (53 FR 11911 (Apr. 11, 1988)) The overwhelming majority of commenters, however, objected to the proposed 2 p.m. deadline because they believed that it would severely disrupt corporate cash management and controlled disbursement services, as well as paying banks' operations. *See* 57 FR 46956, 46957 (Oct. 14, 1992).

Further, in March 1998, the Board requested comment on the effect of the same-day settlement rule, and on whether remaining legal discrepancies between the Reserve Banks and private-sector collecting banks, such as the 8 a.m. versus 2 p.m. presentment time for same-day settlement, should be further reduced (63 FR 12700, Mar. 16, 1998). Most commenters did not believe that the six-hour difference in presentment deadlines or other remaining legal disparities were a significant impediment to the ability of private-sector collecting banks to compete with the Reserve Banks. *See* 63 FR 68701, 68703 (Dec. 14, 1998). The Board concluded that the costs associated with reducing the remaining legal disparities would outweigh any payments system efficiency gains, and therefore decided not to propose any specific regulatory changes.

To encourage the banking industry's ongoing transition to fully-electronic interbank check clearing, the Board proposes to allow a paying bank to require checks presented for same-day settlement to be presented electronically as "electronic collection items." A paying bank, however, must have agreed to receive electronic collection items from the presenting bank under proposed § 229.36(a). Similar to electronic returns, the Board proposes to define a new term, "electronic collection item," and to establish substantive requirements for an item to qualify as an electronic collection item. Under the proposal, the timeframes, deadlines, and settlement methods for same-day settlement presentments of electronic collection items would be the same as those currently in effect for same-day settlement presentments of paper checks. The proposed definition of an electronic collection item and the ways by which a paying bank agrees to accept electronic presentment items from a presenting bank are discussed more below in the section-by-section analysis of proposed §§ 229.2(s) and 229.36(a), respectively.

The proposed rule would not preclude interbank presentment of checks in paper form; settlement for such presentments would be subject to the UCC, § 229.36(d) if the paying bank has not specified that checks presented for same-day settlement be presented as electronic collection items, or Regulation J.<sup>21</sup> The Board requests comment on the proposed modification to the same-day settlement rule.

## II. Electronic Items Not Derived From Checks

The Board is aware of industry practices in which an electronic image of a "check" is created, but a check never existed in paper ("electronically-created items"). For example, payees collect payment by means of electronically-created items (*i.e.*, items that never existed in paper form) that resemble images of remotely created checks. Similarly, the drawer's bank (the paying bank) might supply a smart-phone application through which the drawer is able to execute a "handwritten" signature on the phone's screen, and through which the signature is attached to an electronic "check" that the drawer sends via the Internet to the payee, for the payee's subsequent electronic deposit with its bank.

An electronically-created item is not derived from an original paper check, and therefore it cannot be used to create a substitute check that meets the

requirements of the Check 21 Act and Regulation CC.<sup>22</sup> As a practical matter, a bank (including perhaps the depository bank) receiving an electronically-created item cannot distinguish the item from any other image of a check that it receives electronically. The bank, nonetheless, may transfer the image as if it were an electronic collection item or electronic return, or produce a paper item that is indistinguishable from a substitute check (although not a valid substitute check because the item never existed in paper). A bank that transfers an image as if it were an electronic collection item or electronic return may be liable under the proposed new warranties (*see* proposed § 229.34) related to electronic collection items and electronic returns, or may be liable for breach of the Check 21 Act's warranty that a substitute check accurately represents all of the information from the original check as of the time the original check was truncated. In order to protect a bank that receives an electronically-created item from another bank from potential liability, the Board proposes that any bank transferring an electronically-created image and related information as either an electronic collection item or an electronic return would make any warranty the bank would make if the electronically-created item were in fact an electronic collection item or an electronic return (in other words, as if the item were derived from a paper check). As discussed in the section-by-section analysis of proposed § 229.34, the proposal would apply the same warranties to electronic collection items and electronic returns that would apply had those items been handled as paper checks (including remotely created checks) or substitute checks.

As a result of these proposed new warranties, a bank receiving a warranty claim related to an electronic collection item, electronic return, or a nonconforming substitute check could pass back its liability for the item to the bank from which it had received the electronically-created image and information. Although in some instances the first bank to make the warranty also may not know whether an image and information came from a paper instrument, the Board believes that that bank is in the best position to

<sup>22</sup> Under the terms of the Check 21 Act, a substitute check is a paper reproduction of an original check that contains an image of the front and back of the original check. Regulation CC defines *original check* as "the first paper check issued with respect to a particular payment transaction." In the case of an electronically created item, there is no original check of which a substitute check can be a reproduction.

<sup>21</sup> *See* UCC 4-213 and 4-301.

know and to protect itself contractually against the risk that it did not.

As noted above, a bank often cannot distinguish between electronic items derived from paper checks and electronically-created items. Therefore, under the proposal, banks might treat electronically-created items as if they were electronic collection items or electronic returns. The Board requests comment on whether, in addition to the proposed warranties discussed above, it should in the future consider making an electronically-created item subject to subpart C of Regulation CC as if it were a check. Such a change would result, for example, in the paying bank to which the item is presented being subject to the regulation's expeditious-return requirement. The Board emphasizes that the proposed warranties, as well as making electronically-created items subject to subpart C as if they were checks, would not necessarily affect any future determinations by the Board or the Bureau of Consumer Financial Protection as to whether such electronically-created items are electronic fund transfers subject to Regulation E (12 CFR part 205).

The Board proposes that the existing warranties related to remotely created checks be extended to electronically-created items that resemble images of remotely created checks. As a general matter, the Board is not aware of reliable data regarding the prevalence of remotely created checks and similar electronically-created items.<sup>23</sup> The Board requests comment on the frequency of use of these types of checks and items, the rate at which they are returned unpaid, and the extent to which payees have valid reasons to obtain payment by means of these items, as opposed to using an ACH debit transaction or other means.

### III. Amendments Related to the Elimination of Nonlocal Checks

In response to the continued nationwide decline in check usage and banks' rapidly increasing use of electronic check-clearing methods since the Check 21 Act, as well as to meet the cost recovery requirements of the

<sup>23</sup> Banks cannot readily differentiate remotely created checks and electronically-created items that resemble remotely created checks from regular checks, which makes data regarding these items difficult to obtain.

In March 2008, the Reserve Banks published an estimate, based on visual inspection of a sample of about 35,000 checks, that about one percent of all checks in 2007 were remotely created. See page 33 of the Reserve Banks' 2007 *Check Sample Study*: [http://www.frbservices.org/files/communications/pdf/research/2007\\_check\\_sample\\_study.pdf](http://www.frbservices.org/files/communications/pdf/research/2007_check_sample_study.pdf). The study's definition of the item in question was somewhat different than Regulation CC's definition of a remotely created check.

Monetary Control Act of 1980, the Federal Reserve Banks have ceased check-processing operations at all of their check-processing offices except one.<sup>24</sup>

The EFA Act's and Regulation CC's funds-availability schedule differentiates between "local checks" and "nonlocal checks," which are defined in terms of which "check-processing region" the paying bank is located in relative to the depository bank.<sup>25</sup> The EFA Act and Regulation CC define a "check-processing region" in terms of the geographical area served by a Federal Reserve Bank check-processing center.<sup>26</sup> The Reserve Banks' office closures have had the effect of reducing to one the number of check-processing regions. Accordingly, there are no more "nonlocal checks," because all paying banks and depository banks are located in the same check-processing region.<sup>27</sup>

Because there are no more nonlocal checks, certain provisions in the regulation can be substantially simplified. Specifically, the Board proposes to delete the definitions in subpart A that relate to distinguishing local from nonlocal checks (specifically, the definitions of "check-processing region," "local check," "local paying bank," "nonlocal check," and "nonlocal paying bank"), as well as the related portions of appendix A to the regulation. The Board also proposes to streamline the funds-availability and

<sup>24</sup> In 2003, the Reserve Banks had 45 check-processing offices. Cleveland became the sole remaining Reserve Bank check-processing office on February 27, 2010. Historically, appendix A to Regulation CC identified each Federal Reserve Bank check-processing office and listed under each office the first four digits of the routing numbers of the depository institutions served by that office. Appendix A thereby helped depository banks determine whether a deposited check's paying bank was local or nonlocal. In conjunction with the Reserve Banks' cessation of check-processing activities at each office, the Board published conforming amendments to appendix A so that the appendix accurately reflected which institutions were served by each remaining office. With Cleveland now the sole office, all paying banks' routing symbols are listed under it.

<sup>25</sup> 12 CFR 229.2(r) and 229.2(v). A "local check" is one that is payable by a bank located in the same check-processing region as the depository bank. By contrast, a "nonlocal check" is one that is payable by a bank located in a different check-processing region than the depository bank.

<sup>26</sup> Section 602(9) of EFA Act defines check processing region as "the geographical area served by a Federal Reserve Bank check processing center or such larger area as the Board may prescribe by regulations." Section 229.2(m) defines check processing region as "the geographical area served by an office of a Federal Reserve Bank for purposes of its check-processing activities."

<sup>27</sup> A deposit of a "local check" receives two-day funds availability under the regulation, whereas nonlocal checks received five-day availability. The elimination of nonlocal checks therefore has improved funds availability for banks' customers.

disclosure provisions in subpart B and to update the model funds-availability forms set forth in appendix C to the regulation.<sup>28</sup> The Board proposes that a bank basing its disclosures on the models currently in the appendix would continue to receive a safe harbor for doing so up to 12 months after a final rule becomes effective, provided that the disclosures accurately reflect the bank's policies and practices. Finally, the Board proposes to update the preemption determinations, with respect to states' funds-availability laws, that are set forth in appendix F to the regulation.<sup>29</sup>

### IV. Dodd-Frank Act Amendments

#### A. EFA Act Dollar Amounts

Section 1086 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amends the EFA Act by increasing from \$100 to \$200 the amount of deposited funds that banks must make available for withdrawal by opening of business on the next day.<sup>30</sup> The effective date of this provision of the act is the "designated transfer date," which the Secretary of the Treasury has determined to be July 21, 2011.<sup>31</sup> This provision of the EFA Act is implemented in § 229.10(c)(1)(vii). Additionally, the model disclosure forms set forth in current appendix C reflect the requirement that a bank must make \$100 of the deposit available on the next business day. When the Dodd-Frank Act's increase to \$200 becomes effective, banks should ensure that their disclosures reflect the new funds-availability schedule and that customers are notified of the changes in policy in accordance with § 229.18(e). Specifically, effective July 21, 2011, a bank basing its funds-availability disclosure on current model C-3, C-4, or C-5 must ensure that its disclosure indicates that the first \$200 (rather than \$100) of a check deposit will be

<sup>28</sup> The proposed updates to the model forms in appendix C are based on consumer testing of the forms, and are discussed in more detail in the section-by-section analysis below. A detailed report regarding the consumer testing is available on the Board's public Web site, <http://www.federalreserve.gov>, along with this proposed rule.

<sup>29</sup> See Regulation CC § 229.20 and EFA Act § 608. A state's funds-availability law must have been in effect on or before September 1, 1989, to not be preempted by the regulation.

<sup>30</sup> See § 1086(e) of the Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376 (2010).

<sup>31</sup> See § 1062 of the Dodd-Frank Act. The designated transfer date is subject to an extension to up to 18 months after the Dodd-Frank Act's date of enactment.

available on the next business day after the day of deposit.<sup>32</sup>

Section 1086 amends the EFA Act to require the Board, jointly with the Bureau of Consumer Financial Protection (Bureau), to update the dollar amounts to reflect inflation every five years after December 31, 2011.<sup>33</sup> These amounts include the amount of funds a depository bank must make available from a deposit of a check not subject to next-day availability (§ 229.10(c)(1)(vii)), by cash or similar means (§ 229.12(b)), and under the new-account and large-deposit exceptions (§§ 229.13(a) and (b)). These amounts also include the EFA Act's damage limitations (§ 229.21(a)). To facilitate future amendments to the regulation in this regard, the proposed amendments minimize the number of references to specific dollar amounts. For example, in the future, the \$100 (which increases to \$200 as of the transfer date) mentioned above would be considered "the minimum amount of a deposit that must be made available on the next day." The Board plans to seek comment on proposed methods of indexing the amounts to inflation jointly with the Bureau at a later date.

#### B. Rule-Writing Authority

Section 1086 also amends the Board's rule-writing authority under the EFA Act by making certain rule-writing authorities joint with the Bureau. Specifically, as of the transfer date, the Board's authority to implement the EFA Act's provisions (EFA Act § 609(a)), reduce hold periods (EFA Act § 603(d)(1)), establish exceptions to the funds-availability schedule (EFA Act § 604(f)), and publish model disclosure provisions (EFA Act § 605(f)(1)) will become joint with the Bureau. Accordingly, after the transfer date, any rules promulgated pursuant to these authorities will be done so jointly with the Bureau.

#### C. Administrative Enforcement

The Dodd-Frank Act eliminates the Office of Thrift Supervision as of July 21, 2011, the "transfer date" provided in § 311 of the Dodd-Frank Act, and transfers enforcement authority for insured savings associations under § 8 of the Federal Deposit Insurance Act to the Office of the Comptroller of the

Currency.<sup>34</sup> Accordingly, as of the transfer date, compliance with part 229 will be enforced by the Office of the Comptroller of the Currency in the case of savings associations with deposits insured by the Federal Deposit Insurance Corporation. The administrative enforcement provisions are contained in § 229.3.

### V. Other Proposed Amendments

The Board proposes other amendments to the provisions of Regulation CC and its commentary. These proposed changes are discussed in the section-by-section analysis below.

#### Section-by-Section Analysis

Paragraph citations in this section-by-section analysis are as proposed to be renumbered, unless otherwise explicitly stated. Sections not discussed below are either unchanged or have only technical or conforming amendments. The Board requests comment on all aspects of the proposed rule.

#### I. Subpart A

##### A. Section 229.1—Authority and Purpose, Organization

The Board proposes to add to § 229.1(b) descriptions of the appendices to the regulation, as well as amendments to conform § 229.1(b) to amendments proposed in this notice.

##### B. Section 229.2—Definitions

The definitions of terms in § 229.2 were incorporated into the regulation at different times and are not currently in alphabetical order. The Board proposes that the paragraphs in this section be renumbered so that defined terms are in alphabetical order. Similarly, the Board proposes to renumber the paragraphs in the commentary to reflect the proposed renumbering.

##### 1. Section 229.2(b)—Automated Clearinghouse (ACH) Credit Transfer

Because the regulation uses the term ACH only within other definitions, the Board proposes to delete the definition of the term "automated clearinghouse" and replace it with a new defined term, "automated clearinghouse (ACH) credit transfer." This phrase is used in the definition of electronic payment (§ 229.2(t)) and in the commentary to § 229.10(b), which requires a bank to make funds received for deposit by an electronic payment available for withdrawal the next day. The Board intends no change to the regulation's

substance by this proposed clarifying definitional change.

##### 2. Section 229.2(c)—Automated Teller Machine or ATM

The Board proposes to clarify that an automated teller machine (ATM) includes only those devices at which a person may make deposits by cash or paper check. For example, a remote deposit capture device would not be considered an ATM because a bank's customer would be depositing an image of the check, not the paper check, into the account. The Board proposes conforming amendments to the commentary of this section. Additionally, the Board proposes to provide an example of the "other account transactions" that may be performed at an automated teller machine (ATM); specifically, making cash withdrawals from an account.

##### 3. Section 229.2(r)—Depository Bank

The Board proposes to clarify that a bank that rejects a check submitted for deposit is not a depository bank. The rationale for this proposed change is discussed in more detail below in this section-by-section analysis under § 229.52.

##### 4. Section 229.2(s)—Electronic Collection Item

The Board proposes in new § 229.2(s) to define the new term "electronic collection item" as an electronic image of and information related to a check that a bank sends for forward collection and that a paying bank has agreed to receive under § 229.36(a), and that is sufficient to create a substitute check.<sup>35</sup> Under the proposed definition, the image and information must conform to American National Standard Specifications for Electronic Exchange of Check and Image Data—X9.100–187, in conjunction with its Universal Companion Document, (hereinafter collectively referred to as ANS X9.100–187), unless the parties otherwise agree.<sup>36</sup> If an electronic collection item satisfies the requirements set forth in proposed § 229.2(s), then, as stated in proposed § 229.33, the provisions of subpart C would apply to the electronic collection item as if it were a check. (See proposed commentary to

<sup>32</sup> Per § 229.18(e), a bank must provide a change-in-terms notice to existing consumer customers by August 21, 2011.

<sup>33</sup> The amounts are indexed to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), as published by the Bureau of Labor Statistics (BLS), rounded to the nearest multiple of \$25. See § 1086(f) of the Dodd-Frank Act.

<sup>34</sup> The transfer date is subject to an extension of up to 18 months after the Dodd-Frank Act's date of enactment. See § 311 of the Dodd-Frank Act.

<sup>35</sup> The agreement to receive an electronic collection item could be in the form of a Federal Reserve Bank operating circular or a clearinghouse rule.

<sup>36</sup> X9.100–187 is available from <http://www.x9.org>. The UCD for X9.100–187 is available at [http://www.checkimagecentral.org/pdf/UCD\\_X9\\_100-187-2008\\_Version\\_1.2.pdf](http://www.checkimagecentral.org/pdf/UCD_X9_100-187-2008_Version_1.2.pdf).

§ 229.2(s)).<sup>37</sup> Some electronic presentment agreements, however, may not require an image of the check. Electronic items presented under these agreements would not be electronic collection items because they are not sufficient to create a substitute check, nor would they be treated as checks for purposes of subpart C. The proposed commentary also explains that an electronic collection item that contains an image of the front and back of a substitute check (as opposed to an original check) would be an electronic representation of a substitute check, as that phrase is defined in proposed § 229.2(hh) (current § 229.2(xx)). Not all electronic representations of substitute checks, however, would qualify as an electronic collection item, because, to be an electronic collection item, an electronic representation of a substitute check must contain sufficient information to create a substitute check.

The Board believes that ANS X9.100–187 is the most prevalent industry standard for electronic images and information that will enable the receiving bank to create a substitute check. The Board recognizes, however, that certain banks may use a different standard and that, as is the case with many technology standards, the standard likely will evolve. To the extent that banks use a different standard, the proposed definition of electronic collection item would permit parties to agree to a standard other than ANS X9.100–187 and still have the item qualify as an electronic collection item that is treated as a check for purposes of subpart C, provided that the item is sufficient to create a substitute check. The Board requests comment on the proposed standard for an electronic collection item and whether any other standard should be specified in the regulation.

#### 5. Section 229.2(u)—Electronic Presentment Point

The Board proposes in new § 229.2(u) to define electronic presentment point as the electronic location that the paying bank has designated for receiving electronic collection items. This point may be either an e-mail address or other electronic address. The Board requests comment on whether this definition provides enough specificity.

<sup>37</sup> For example, a paying bank receiving presentment of an electronic collection item would be subject to the regulation's expeditious-return requirement, provided the depository bank has agreed to accept electronic returns from the paying bank under § 229.32(a).

6. Section 229.2(v)—Electronic Return  
The Board proposes in new § 229.2(v) to define the new term “electronic return” as an electronic image of and information related to a check that a paying bank has determined not to pay and that a depository bank has agreed to receive under § 229.32(a), and that is sufficient to create a substitute check. The image and information must conform to ANS X9.100–187, unless the parties otherwise agree. The proposed commentary explains that if an electronic return satisfies the requirements set forth in § 229.2(v), then the provisions of subpart C apply to the electronic return as if it were a check (See proposed § 229.33).<sup>38</sup>

The proposed commentary to § 229.2(v) explains that a depository bank's agreement with a returning bank to accept .pdf files that are sufficient to create substitute checks would be one example of banks varying by agreement the regulation's requirement that an electronic return conform with ANS X9.100–187. By agreeing with a returning bank to accept an electronic return in the form of a .pdf file, a depository bank would thereby be entitled to expeditious return. The Board requests comment on the proposed standard for an electronic return and whether any other standard should be specified in the regulation.

#### 7. Section 229.2(w)—Electronic Return Point

The Board proposes in new § 229.2(w) to define electronic return point as the electronic location that the depository bank has designated for receiving electronic returns. The proposed commentary notes that an electronic return point may be an e-mail address or other electronic address that a depository bank has designated as the place to which electronic returns must be delivered. The Board requests comment on whether this definition provides enough specificity.

#### 8. Section 229.2(hh)—Paper or Electronic Representation of a Substitute Check

The Board proposes to modify the commentary to the definition of this term to note that an electronic representation of a substitute check may also be an electronic collection item or electronic return if the electronic representation contains sufficient information for creating a substitute

<sup>38</sup> Like an electronic collection item, an electronic return may be an electronic representation of a substitute check, but not all electronic representations of substitute checks would qualify as an electronic return.

check and conforms to ANS X9.100–187, or another format to which the parties agreed.

#### 9. Section 229.2(pp)—Routing Number

The Board proposes to add to the definition a new subparagraph providing that the term also includes the bank-identification number contained in the electronic image of or information related to a check. Further, the Board also proposes to move the two introductory paragraphs in appendix A, which provide general information about routing numbers, to the commentary to the definition of routing number.

#### 10. Deleted Terms

*Check-processing region, local check, local paying bank, nonlocal check, and nonlocal paying bank.* Because there is now only one nationwide check-processing region, there are no longer any nonlocal checks, and the definitions in the regulation implementing the distinctions between local and nonlocal checks are no longer necessary. Accordingly, the Board proposes to delete from the regulation the definitions of “check-processing region” (current § 229.2(m)), “local check” (current § 229.2(r)), “local paying bank” (current § 229.2(s)), and “nonlocal paying bank” (current § 229.2(w)), and the commentary thereto.

*Similarly situated bank.* The only place the current regulation uses this term is in the forward-collection test for expeditious return. Because the Board proposes to delete that test from the regulation (as discussed below in this section-by-section analysis under §§ 229.30(a) and 229.31(a)), the regulation's definition of similarly situated bank is no longer necessary and the Board proposes to delete current § 229.2(ee).

## II. Subpart B

Throughout subpart B and the commentary thereto, the Board proposes to eliminate all references to “check-processing regions,” “local checks,” “local paying banks,” “nonlocal checks,” and “nonlocal paying banks.”

### A. Section 229.10(c)—Next-Day Availability of Certain Check Deposits

#### 1. Section 229.10(c)(1)(vi)

Given that there is only one nationwide check-processing region, the Board proposes in § 229.10(c)(1)(vi) to delete the phrase “if both branches are located in the same state or check-processing region.” As a result, the subparagraph would require a depository bank to provide next-day availability for a check deposited in a



branch of the depository bank and drawn on the same or another branch of the same bank.

## 2. Section 229.10(c)(1)(vii)

Section 1086(e) of the Dodd-Frank Act increases from \$100 to \$200 the minimum amount of funds deposited by check or checks on a given business day that a bank must make available by opening of business on the next business day pursuant to § 603(a)(2)(D) of the EFA Act. That provision of the EFA Act is implemented in § 229.10(c)(1)(vii) of Regulation CC, and the increase is expected to take effect on July 21, 2011, regardless of whether the Board and the Bureau have amended Regulation CC. Accordingly, the Board proposes to amend the commentary to § 229.10(c)(1)(vii) to facilitate future amendments to the minimum amount of a deposited check a bank must make available on the business day following the banking day of deposit. Specifically, the Board proposes to replace references to “\$100” with references to “the minimum amount.” The Board proposes to make this amendment throughout the commentary, as well as in the model forms.

## 3. Section 229.10(c)(2)

The Board proposes to delete current § 229.10(c)(2), which states that a depository bank shall make funds available by the second business day after the banking day on which a check is deposited in the case of a check deposit that meets the requirements of §§ 229.10(c)(1)(ii), (iii), (iv), or (v), except the check is not deposited in person.<sup>39</sup> In the absence of nonlocal checks, the checks described § 229.10(c)(2) are subject to the same rule as the general rule set forth in proposed § 229.12. Section 229.10(c)(2) is therefore no longer necessary.

### B. Section 229.12—Availability Schedule

#### 1. Proposed § 229.12(a)—In General

The Board proposes to delete current § 229.12(a). It specifies the effective date (September 1, 1990) for § 229.12 and is no longer necessary.

The Board proposes that new § 229.12(a) set forth the general funds-availability rule for deposits of checks: Unless subject to one of the enumerated exceptions, funds from a check deposit must be made available for withdrawal by the second business day following

the banking day of deposit. Proposed new § 229.12(a) is derived from current § 229.12(b), which sets forth local check availability. In the absence of a distinction between local checks and nonlocal checks, current § 229.12(b)(1), (2), (3), and (4) are subsumed within this general rule, and the Board proposes to delete them.<sup>40</sup> Similarly, current § 229.12(c) applies to nonlocal checks, which is now a null set, and the Board proposes to delete § 229.12(c) and commentary thereto.

#### 2. Section 229.12(b)—Withdrawal by Cash or Similar Means

Section 229.12(b) implements the EFA Act’s permissive adjustment to the funds-availability rules for withdrawals by cash or similar means. In part, a bank may delay availability for withdrawal by cash or similar means by one business day, provided that the bank makes \$400 of the deposited funds available for withdrawal not later than 5 p.m. on the business days on which the funds must be made available under the funds-available schedule. Like other amounts specified in the EFA Act, this \$400 will be adjusted every five years for inflation. In order to facilitate future adjustments to the amount, the Board proposes to amend the commentary to § 229.12(b) by replacing references to “\$400” with references to “the cash withdrawal amount.” The Board proposes to make similar amendments throughout the commentary and model forms.

#### 3. Section 229.12(d)—Deposits at Nonproprietary ATMs

As indicated in the EFA Act’s legislative history, Congress adopted the five-day maximum hold on nonproprietary ATM deposits to match the five-day maximum hold on a nonlocal check deposit, because the depository bank did not know the composition of a nonproprietary ATM deposit (that is, whether the deposit consisted of cash, local checks, nonlocal checks, etc.).<sup>41</sup> In the absence of nonlocal checks, however, there is no longer any class of check that is subject to a maximum five-day hold.

EFA Act § 603(d)(1) states that “The Board shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) to as short

<sup>40</sup> Current § 229.12(b) states which checks are subject to second-day availability. These checks include local checks and checks that meet the requirements of §§ 229.10(c)(1)(ii), (iii), (iv), or (v), except the check is not deposited in person.

<sup>41</sup> The EFA Act conference report states that “nonproprietary ATMs today do not distinguish among check deposits or between check and cash deposits” (H.R. Rep. No. 261, 100th Cong., 1st Sess. 179 (1987)).

a time as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks.” The statute’s legislative history recommends a quantitative benchmark for the Board to use to determine whether to reduce these hold periods: a receiving bank could reasonably expect to learn of the return of two-thirds of the checks in a given category before a bank must make the deposited funds available for withdrawal at the opening of business.<sup>42</sup>

As mentioned above, in December 2010 the Reserve Banks received about 99.7 percent of deposited for forward collection electronically, presented 98.4 percent of their checks electronically, received 97.1 percent of returned checks electronically, and delivered about 76.7 percent of returned checks to depository banks electronically. Thus, about 73.0 percent of checks cleared and returned through the Reserve Banks complete the roundtrip from the depository bank to the paying bank and back again in electronic form. It is reasonable to expect that a check cleared and returned entirely in electronic form would complete this roundtrip in three business days. For example, if a check is deposited on Monday and collected electronically, the check would generally be presented to the paying bank on Tuesday. The paying bank would generally send the return electronically to a returning bank on the night between Wednesday and Thursday, which would electronically deliver the returned check to the depository bank on Thursday.

The Board therefore proposes to reduce in proposed § 229.12(d) (current § 229.12(f)) the maximum hold period for nonproprietary ATM deposits from 5 business days to 4 business days. Four business days will provide the depository bank with reasonable opportunity to learn of the nonpayment of a check deposited at a nonproprietary ATM before it must make the funds available for withdrawal.<sup>43</sup> In the example above, the depository bank can reasonably expect to learn of an unpaid electronically returned check on Thursday, and will be required under the proposed 4-business-day hold period to make funds deposited by check at a nonproprietary ATM

<sup>42</sup> Conference Report on H.R. 27 (H. Rept. 100–261), 100th Congress, 1st session, 179 (1987), pp. H6906–7.

<sup>43</sup> Section 229.19(b) requires that funds be made available for withdrawal by the opening of business on the day on which funds are required to be made available for withdrawal.

<sup>39</sup> These checks include U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, checks drawn by state or local governments, or cashier’s checks, certified checks, or teller’s checks.

available for withdrawal at the opening of business on Friday.<sup>44</sup>

As mentioned above, Congress recognized in the EFA Act legislative history that depository banks generally do not know the composition of deposits made at nonproprietary ATMs (that is, whether the deposit consisted of cash, local checks, nonlocal checks, etc.), and therefore adopted a five-day maximum hold on nonproprietary ATM deposits to match the five-day maximum hold on a nonlocal check deposit. Currently, however, all cash deposits not made in person to an employee of the depository bank and check deposits must be made available for withdrawal by the second business day following deposit. The Board requests comment on whether the funds-availability schedule's distinction between deposits to proprietary ATMs and deposits to nonproprietary ATMs continues to make sense in an environment where all in-person cash deposits and check deposits must be made available for withdrawal by the second business day following deposit.

### C. Section 229.13—Exceptions

#### 1. Section 229.13(b)—Large Deposits

Section 229.13(b) sets forth an exception to the funds-availability schedule for the aggregate amount of deposited checks totaling more than \$5,000 on any one banking day to the extent the aggregate amount exceeds \$5,000. Like other amounts specified in the EFA Act, this \$5,000 threshold will be adjusted every five years for inflation. In order to facilitate future adjustments to the amount, the Board proposes to amend the commentary to § 229.13(b) by replacing references to “\$5,000” with references to “the large-deposit amount.” The Board proposes to make similar amendments throughout the commentary and model forms.

#### 2. Section 229.13(d)—Repeated Overdrafts

Section 229.13(d) provides the depository bank with an exception to the general availability schedule in § 229.12 for a check deposited into an account that has been repeatedly overdrawn in the preceding six months. The exception relates not only to overdrafts caused by checks, but also those caused by, for example, debit card

transactions. The Board proposes to add a new paragraph, § 229.13(d)(3), clarifying that the exception does *not* include an attempted debit card transaction for which the depository bank declined the authorization request, because in that case no debit card transaction has occurred.

#### 3. Section 229.13(e)—Reasonable Cause to Doubt Collectability

Section 229.13(e) provides the depository bank with an exception to the § 229.12 general availability schedule if the depository bank has reasonable cause to believe that the check is uncollectible from the paying bank. The commentary currently states that a depository bank cannot invoke this exception simply because a check is drawn on a bank in a rural area and the depository bank knows it will not have the opportunity to learn of the nonpayment of the check before funds must be made available. If a check is collected and returned electronically, however, the rural location of a paying bank will not affect the time required to collect and return the check. The Board proposes to update the example in paragraph (4) of the commentary to § 229.13(e). Specifically, a depository bank may not invoke this exception simply because a paying bank demands paper presentment and the depository bank believes it is unlikely to receive the return prior to the time by which it must make the deposited funds available.

#### 3. Section 229.13(g)—Notice of Exception

A depository bank must provide notice to its customer when it invokes one of the exceptions in § 229.13 to apply an extended hold to a deposit. Section 229.13(g)(1)(i) sets forth the information that the notice must include. Currently, the notice must include the amount of the deposit that is being delayed. During consumer testing of the model forms, however, consumers were more readily able to recall the deposited check for which the funds were being held when the notice included the total amount of the deposit, rather than only the amount being held. Accordingly, the Board proposes to require that the notice of an exception hold contain the total amount of the deposit, in addition to the amount of the deposit being held. Additionally, consumers more readily understood when funds would be made available if the notice stated the day on which the funds will be made available, rather than explain availability in reference to the date of deposit. Therefore, the Board proposes to require that the notice

specify the day funds will be made available instead of “the time period within which” the funds will be available for withdrawal. The Board proposes conforming changes to proposed model notice C–9.

Section 229.13(g)(1)(ii) states that 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. With the elimination of nonlocal checks, depository banks must generally make check deposits available by opening of business on the second business day following the banking day of deposit. The Board believes that it is desirable for a customer to learn that its bank is extending a hold before the customer would expect the funds to become available under the bank's generally applicable availability policy. Further, it has become more feasible for banks to provide notices to their customers electronically, which results in near instant receipt of the notice to the customer. The Board therefore proposes that, if the customer has agreed to accept notices electronically, the depository bank is required to send the notice such that the bank may reasonably expect the customer to receive it no later than the first business day following the day the deposit is made or the facts become known to the depository bank, whichever is later. For example, the bank could e-mail notice of the hold to the customer. The Board requests comment on whether providing a notice in this fashion is practical.

Finally, § 229.13(g)(4) describes the notice that a depository bank must provide when it applies an emergency-conditions hold. The Board proposes to update the commentary to § 229.13(g) to explain that a depository bank may provide notice via postings to the depository bank's website or through a directed e-mail.

#### 4. Section 229.13(h)—Availability of Deposits Subject to Exceptions

If a check deposit is subject to an exception hold, § 229.13(h)(4) provides that a reasonable period for a hold extension is one business day (for a total of two) for a deposit of on-us checks, five business days (for a total of seven) for local checks, and six business days (for a total of eleven) for nonlocal checks and deposits into nonproprietary ATMs. The Board proposes that the safe harbor for the reasonable hold extension for a deposit of on-us checks remain one business day, and that safe harbor for the reasonable hold extension for other

<sup>44</sup> The Board is proposing to follow the analysis it set forth in 1999 that it would reduce the availability schedules in Regulation CC only after determining that the depository bank can reasonably expect to learn of an unpaid check on the business day before the day on which the bank must make funds available for withdrawal at the opening of business. See 64 FR 37712 (July 13, 1999).

checks be reduced to two business days (from five or six business days), for a total of four business days for all other checks.<sup>45</sup>

Section 229.13(h)(4) would continue to permit a bank to apply a longer hold extension than this, but the bank would have the burden of establishing that the longer hold extension is reasonable. The Board is proposing conforming changes to the commentary to § 229.13(h).

In adopting Regulation CC's permanent availability schedules, the Board stated that the reasonable extended-hold periods are "designed to provide adequate time for the depository bank to learn of the nonpayment of virtually all checks that are returned."<sup>46</sup> If a check is cleared and returned electronically, the depository bank should receive the returned check in three business days. Checks that are not cleared and returned entirely in electronic form, however, will typically take longer to be returned to the depository bank. The Reserve Banks, however, project that by year-end 2011, 97 percent of their checks will be cleared and returned entirely in electronic form, which the Board believes is representative of the industry as a whole.<sup>47</sup> Therefore, depository banks will receive virtually all returned checks by the third business day after the day of deposit, with the depository bank making funds available at opening of business on the fourth day. Although the proposed reasonable extended-hold period of two business days (four business days total) may increase risk for a depository bank that does not accept electronic returns, the Board believes that the reduction in the exception hold safe harbor is warranted given that it will provide faster availability for depositors as well as an incentive for depository banks to take advantage of electronic check-return infrastructure.

If the paying bank does not return checks electronically, the time required for a check to be delivered from the depository bank to the paying bank and back again may be greater than three business days. A paying bank that does not send returned checks electronically, however, generally will not meet its expeditious return requirement, and the

depository bank may have a claim for any losses it incurs due to the failure of the paying bank to send the returned check expeditiously.

#### *D. Section 229.15—General Disclosure Requirements*

##### 1. Section 229.15(a)

Section 229.15(a) sets forth the form requirements for disclosures under subpart B. In general, there are two types of disclosures under subpart B—funds-availability policy disclosures and delayed availability notices. Both types of disclosures must be written and in a form the customer may keep. The Board proposes to amend § 229.15(a) to clarify that the form requirements apply to both funds-availability policy disclosures and delayed availability notices required by subpart B.

##### 2. Section 229.15(b)(1)

Section 229.15(b) states that "[i]n its disclosure, a bank shall describe funds as being available on 'the \_\_\_\_ business day after' the day of deposit." The Board's consumer testing of the model disclosures in Appendix C (discussed in more detail below), however, indicated that consumers may more readily understand alternative formulations of statements of when deposited funds will be available for withdrawal. The Board therefore proposes in § 229.15(b)(1) to provide banks with more flexibility regarding this description.<sup>48</sup> The proposal requires a bank in its disclosure or notice to specify the business day on which funds are available for withdrawal by describing that day in relation to the banking day on which the deposit is received, and to use in this description language substantially similar to that set forth in proposed § 229.15(b)(1). Under the proposal, for example, the banking day of receipt may be described as "the same business day," and the business day after the banking day of receipt may be described as "the next business day," or described using either cardinal or ordinal numbers, such as "2 business days" or "the second business day."

#### *E. Section 229.16—Specific Availability Policy Disclosure*

##### 1. Section 229.16(b)(2)

Because the Board is eliminating references to local and nonlocal checks throughout the regulation and commentary, the Board proposes to

delete the requirement that banks that distinguish between local and nonlocal checks in their availability policy disclose that a check payable through one bank (the bank whose routing number appears in the MICR line) and payable by another bank would be considered local or nonlocal on the basis of the location of the bank by which the check is payable. In the absence of nonlocal checks, that disclosure requirement is obsolete.

##### 2. Section 229.16(c)(2)

Section 229.16(c)(2) sets forth the information required in a notice when a bank invokes a case-by-case hold. These information requirements are similar to the information requirements for exception-hold notices under § 229.13(g). Consumer testing demonstrated that consumers are both able to recall the deposit to which the hold is being applied if the notice states the total deposit amount and able to understand more readily the day on which funds will be made available if given a specific date. Therefore, the Board proposes to amend the case-by-case notice requirements in § 229.16(c)(2)(i) to require that a case-by-case notice include the total amount of the deposit and the specific date on which funds will be made available.

Further, in the absence of nonlocal checks, the case-by-case hold period is so short that a paper notice of the hold sent through the mail may not reach the customer until after the hold has been lifted. The Board therefore proposes to amend § 229.16(c)(2)(ii) and the related commentary to provide that, if the customer has agreed to accept notices electronically, a bank that invokes a case-by-case hold after the time of deposit be required to deliver the notice such that the bank may reasonably expect the notice to be received by the customer not later than the first business day following the banking day of deposit. For example, the bank could e-mail notice of the hold to the customer on the business day after the banking day of deposit. The Board requests comment on whether providing a notice in this fashion is practical.

In addition, the Board requests comment on the extent to which banks continue to find it useful to apply case-by-case holds to check deposits and on whether the regulation's provision for case-by-case holds should be deleted. In the absence of nonlocal checks, the extra hold period that a depository bank may obtain by applying a case-by-case hold is generally not sufficient for the bank to learn that a deposited check has been returned unpaid before making funds available to the depositor.

<sup>45</sup> As described above, the Board proposes to reduce the generally-applicable hold period for nonproprietary ATM deposits from five business days to four. The proposed reasonable hold extension of two business days would therefore provide a total of six business days for nonproprietary ATM deposits.

<sup>46</sup> See 55 FR 21848, 21850 (May 30, 1990).

<sup>47</sup> See the Board's **Federal Register** notice announcing its approval of the Federal Reserve Banks' 2011 fee schedules for priced services, 75 FR 67740 (Nov. 3, 2010).

<sup>48</sup> Under the Board's proposal, a bank that bases its availability-policy disclosure on the models currently provided in Appendix C will continue to receive a safe harbor for doing so. See the discussion of Appendix C below in this section-by-section analysis.

*F. Section 229.19—Miscellaneous*

1. Section 229.19(e)(2)

Section 229.19(e)(2) limits the ability of a depository bank that cashes a check for a customer to place a hold on other funds of the customer. The Board proposes to amend § 229.19(e)(2) to clarify that a depository bank that cashes a check for a customer over the counter may place a hold on funds in an account of the customer only if the check is not drawn on the depository bank. In contrast, if a depository bank cashes a check drawn on itself, the check is considered finally paid when cashed under the U.C.C.<sup>49</sup> The Board intends no change to the substance of this provision.

2. Section 229.19(g)(2)

The Board proposes to delete as obsolete the provision regarding mergers between July 1, 1998, and March 1, 2000.

*G. Section 229.21(g)—Record Retention*

Current § 229.21(g) requires a bank to maintain records evidencing compliance with subpart B's requirements for not less than two years, and states that a bank may store records using, among other media, "microfiche, microfilm, [and] magnetic tape." These listed examples in § 229.21(g) of the types of media on which a bank may store records are obsolete, and the Board proposes to replace them with a more general provision that a bank may store records using "electronic storage media," among other media.

*H. Appendix A—Routing Number Guide to Next-Day-Availability Checks*

In the absence of nonlocal checks, it is no longer necessary to retain the portion of appendix A that lists under the single remaining Reserve Bank check-processing office (the head office of the Federal Reserve Bank of Cleveland) all banks' four-digit routing symbols. The Board proposes to delete this portion of the appendix, as well as the reference to the Federal Reserve Bank of Cleveland. The Board proposes to retain in the appendix the lists of nine-digit routing numbers associated with certain next-day-availability checks.<sup>50</sup> The Board also proposes to

delete certain listed routing numbers of the Federal Reserve Banks and Federal Home Loan Banks that have been retired.

*I. Appendix C, Model Availability-Policy Disclosures, Clauses and Notices*

1. Consumer Testing Process

The model availability-policy forms in appendix C of Regulation CC include numerous obsolete provisions related to nonlocal checks. Additionally, the model forms were first published over 20 years ago, when Regulation CC was first promulgated. More recently, the Board has tested with consumers the model forms included with its other regulations.<sup>51</sup> In this instance, the Board used ICF Macro, a research and consulting firm that specializes in designing and testing documents, to conduct consumer testing to help the Board's review of the model availability-policy forms proposed in this notice. ICF Macro prepared a detailed report of the results of the testing, which is available on the Board's Web site (<http://www.federalreserve.gov>) along with this proposed rule.

The consumer testing consisted of two rounds of in-depth interviews with 9 consumers in Alexandria, Virginia, on August 19 and 20, 2010, and 11 consumers in Denver, Colorado, on September 13 and 14, 2010. Consumer participants were recruited to ensure the selection of a range of participants in terms of gender, education, ethnicity, and checking and savings account balances.<sup>52</sup> While the interview protocol varied slightly between rounds, the general structure and most of the questions were the same.

Prior to the first round of interviews, Board staff and ICF Macro collaboratively revised the forms from those currently found in appendix C.<sup>53</sup> For example, the format was substantially modified; provisions related to nonlocal checks were eliminated; and language was added regarding a bank's right to charge back a customer's account if a deposited check is returned unpaid. Based on the results of each round of interviews, the forms were again revised. The Board plans to conduct additional consumer testing of the forms in response to

public comments received on this proposal, as appropriate.

2. Model Disclosures Generally

Citations below are to the forms in the appendix as they are proposed to be renumbered, unless otherwise explicitly stated. Forms not discussed below are either unchanged or have only technical or conforming amendments.

In the absence of nonlocal checks, the Board proposes throughout appendix C to delete all references to the nonlocal-check and local-check categories. Instead, the Board proposes that the forms, as applicable, specify the types of check deposits that receive next-day availability, and then state the availability that will be provided for checks "other than those specified."

The Board proposes to modify the format of the model disclosures from a mostly narrative form to a more tabular form. For example, the Board proposes that the portions of the model disclosures specifying funds availability for deposits to established accounts and for deposits to new accounts (accounts open for 30 days or less) be presented within tables. The Board's testing on forms under other rules has consistently indicated that consumers more readily understand information presented in a tabular form.<sup>54</sup>

The Board is not proposing any changes to the model substitute-check-policy disclosure and notices in the appendix.

i. Format of Banks' Funds-availability Disclosures and Notices

The Board proposes to add to the commentary to appendix C a new paragraph A(4) discussing banks' formatting of disclosures and notices based on the proposed model funds-availability disclosures and notices in the appendix. Specifically, although the regulation does not require banks to use a certain paper size for their funds-availability disclosures and notices, the proposed model funds-availability policy disclosures are generally designed to be printed on an 8½ x 11 inch sheet of paper with black text on a white background, so as to increase their readability for consumers. Further, § 229.15(a) requires that banks generally provide disclosures and notices in a form that the customer may keep.<sup>55</sup> The proposed commentary notes that a bank that provides a disclosure or notice

<sup>49</sup> See UCC 4–215 and commentary to Regulation CC § 229.19(e).

<sup>50</sup> Treasury checks, postal money orders, and checks drawn on the Federal Reserve Banks and Federal Home Loan Banks can be identified by routing number, and these routing numbers will continue to be listed in appendix A. Next-day-availability checks such as cashier's, certified, and teller's checks cannot be identified by routing number, however, and are not listed in the appendix.

<sup>51</sup> See Interim Final Rule on Mortgage Disclosures (Regulation Z), 75 FR 58470 (Sept. 24, 2010).

<sup>52</sup> A sample of the screening instrument used to recruit interview participants is included as Appendix A to the ICF Macro report. Appendix B to the report provides a summary of the demographics of the interview participants.

<sup>53</sup> The sample forms used during the consumer interviews are included as Appendix C to the ICF Macro report.

<sup>54</sup> See 75 FR 58539 at 58542 (September 24, 2010) and ICF Macro report, p. 4.

<sup>55</sup> The commentary to § 229.13(g) indicates that notice of an extended hold should be provided in a form the customer may keep. The proposed commentary to § 229.16(c)(2) indicates that notice of a case-by-case hold should be provided in this form as well.

electronically to a customer would comport with the formatting specifications of the proposed model disclosures and notices by providing a disclosure or notice in a file format, such as a .pdf file format, that electronically represents an 8½ x 11 inch sheet of paper with black text and a white background. In addition, a bank may vary (either enlarge or decrease) the font size of the model forms. As explained in the proposed commentary, a bank that uses too small a font may not be in compliance with § 229.15(a)'s clear-and-conspicuous requirement.

#### ii. Charge Back After Making Funds From Check Deposits Available

Paragraph 5 of the commentary to appendix C states that banks may add information related to funds availability to the model forms. One of the examples currently provided is that a bank's disclosure may state that although funds have become available and the customer has withdrawn them, the customer remains responsible for deposited checks that are returned unpaid. The Board believes that all banks reserve the right to charge back a customer's account if a deposited check is returned unpaid.<sup>56</sup> The Board proposes to incorporate language to this effect within the model availability-policy disclosures themselves and to delete this as an example from paragraph A(5) of the commentary and add a provision to paragraph B(1)(a) describing the charge-back statement in the proposed model disclosures. The Board requests comment on whether this proposed revision reflects the practice of most banks.

#### iii. Reference to Day of Availability

The Board is proposing model availability-policy disclosures that in many cases would use cardinal numbers, instead of ordinal numbers, to describe the business day on which funds will be available in relation to the day on which funds are deposited. For example, the Board proposes in many cases to use "2" in place of "second," because consumers readily perceived that formulation. In addition, the Board proposes that the disclosures refer to the "next" business day after a deposit, rather than the "first" business day. The Board proposes to modify paragraph B(1)(b) of the commentary accordingly. Notwithstanding the language used in the proposed model forms, use of

ordinal numbers would continue to be permitted (*see* proposed § 229.15(b)).

#### iv. Inclusion of Optional Information

The Board proposes model availability-policy disclosures that would reflect certain provisions of the regulation that apply only to certain banks, depending on the banks' policies and practices. For example, the proposed model disclosures would include language about use of special deposit slips as a condition for next-day availability for certain types of check deposits (*see* § 229.10(c)(2)) and language similar to the appendix's current model clauses C-6 and C-7 related to check cashing, immediate availability, and holds on other funds (*see* § 229.19(e)).<sup>57</sup> The text of these portions of the disclosures would be enclosed within brackets to indicate that a bank should include it in the bank's disclosures only if it is applicable given the bank's policies and practices. The Board proposes that paragraph B(1)(c) of the commentary to appendix C be modified accordingly.

#### v. Same-Day Availability

Although § 229.10(a) of the regulation requires next-day availability for cash deposits, and § 229.10(b) requires next-day availability for electronic payments (as defined in § 229.2(t)), the model availability-policy disclosures in appendix C include clauses that state that funds from electronic direct deposits are available on the day the bank receives the funds. As indicated in paragraph B(1)(b) of the commentary to the appendix, this is because U.S. Treasury regulations and ACH association rules require that preauthorized credits, such as direct deposits, be made available on the day the bank receives the funds.

During the Board's consumer testing, many consumers expressed surprise that the sample disclosures indicated that funds from cash deposits and wire transfers (defined in § 229.2(bbb)) would not be available until the next day. When the models in Appendix C were first published over 20 years ago, most banks updated their demand-deposit-account systems on an overnight basis, such that a cash deposit or incoming wire transfer would not be reflected in the receiving customer's account balance until opening of business the next day. The Board believes, however, that most banks now provide same-day

(if not immediate) availability for cash deposits and wire transfers.

The Board therefore proposes that model funds-availability disclosures C-1 through C-3B, which are designed for banks that generally make deposits available by the next day (and are discussed in more detail below), be modified to indicate that funds from cash deposits and wire transfers will be available for withdrawal on the same business day that the bank receives the funds. The proposed commentary states that a bank basing its disclosure on one of these models should modify its disclosure to indicate that funds from cash deposits and wire transfers will be available the next day if that reflects the bank's practice.

In contrast, proposed models C-4A and C-4B, which are designed for banks that hold funds from deposits to the statutory limits, indicate that funds from cash deposits and wire transfers will be available on the business day following receipt. The proposed commentary states that a bank that bases its disclosures on one of these models but that makes funds from cash deposits and wire transfers available the same day they are received—*i.e.*, a bank that places holds to statutory limits only on check deposits—should modify its disclosures accordingly.

#### 3. Model C-1—Next-Day Availability

Proposed model C-1 may be used by a bank that has a policy of making funds from all deposits available by the first business day after a deposit is made, but not reserving the right to invoke the new-account and other exceptions in § 229.13. The Board requests comment on whether any banks have such a policy and on whether model C-1 can be deleted from Appendix C.

#### 4. Model C-2—Next-Day Availability and § 229.13 Exceptions

Proposed model C-2 may be used by a bank that has a policy of making funds from deposits available by the first business day after a deposit is made, but reserves the right to invoke the new-account and other exceptions in § 229.13.

#### 5. Model C-3A—Next-Day Availability, Case-by-Case Holds to Statutory Limits Without Cash-Withdrawal Limitation, and § 229.13 Exceptions; and Model C-3B—Next-Day Availability, Case-by-Case Holds to Statutory Limits With Cash-Withdrawal Limitation, and § 229.13 Exceptions

The Board proposes to include in the appendix two versions of model C-3. The first version, proposed C-3A, would be used by a bank that, when it

<sup>56</sup> *See* § UCC 4-214, which generally permits a collecting bank that has made provisional settlement with its customer to revoke the settlement (*e.g.*, charge back the amount or obtain a refund) if the bank itself fails to receive settlement.

<sup>57</sup> Because the Board proposes to incorporate the information set forth in current model clauses C-6 and C-7 as bracketed information within the model disclosures, the Board proposes to delete model clauses C-6 and C-7 from the appendix.

delays availability on a case-by-case basis, does not impose the cash-withdrawal limitation permitted by § 229.12(b). The second version, proposed C-3B, would be used by a bank that does impose this limitation when it delays availability on a case-by-case basis. The additional text that is included in proposed C-3B, but not C-3A, related to the cash-withdrawal limitation, derives from current model clause C-10, modified to promote consumer comprehension on the basis of the Board's testing.<sup>58</sup> The Board proposes that this text be structured as a bulleted list, because the Board's testing indicated that consumers better noticed and understood the cash-withdrawal limitation (and the distinction between other uses of funds) when it is in this form rather than in a text paragraph.<sup>59</sup>

Proposed models C-3A and C-3B include in brackets language similar to current model clauses C-6 and C-7, related to check cashing, immediate availability, and holds on other funds, modified on the basis of the Board's testing to promote consumer comprehension. A bank that bases its disclosure on proposed model C-3A or C-3B would need to include this bracketed text in its disclosure only if the text corresponds to the bank's policy and practice. A bank that has such a policy would include the proposed bracketed text in the same location as in the proposed model. Testing indicated that consumers notice and retain the information presented in these clauses better if the location of the clauses is early in the disclosure.<sup>60</sup>

Banks that base their availability-policy disclosure on model disclosure C-3A or C-3B and whose availability policy necessitates incorporation of one or more of the proposed appendix's remaining model clauses (proposed C-6, C-7, and C-8; current C-9, C-11, or C-11A) would append those model clauses to the end of the second page of proposed model C-3A or C-3B. The appendix's remaining model clauses pertain to a bank's funds-availability policy for deposits at ATMs (proposed C-6), a credit union's interest-payment policy (proposed C-7), and the

availability of funds deposited at other locations (proposed C-8).

#### 6. Model C-4A—Holds to Statutory Limits on All Deposits Without Cash-Withdrawal Limitation; and Model C-4B—Holds to Statutory Limits on All Deposits With Cash-Withdrawal Limitation

The Board proposes to remove current model disclosures C-4 (holds to statutory limits on all deposits (includes chart)) and C-5 (holds to statutory limits on all deposits), because those models are no longer necessary in the absence of nonlocal checks. The Board proposes to add new model disclosures C-4A and C-4B for a bank to use if the bank's policy is to hold funds on all deposits up to the statutory limits.

Proposed model disclosure C-4A would be used by a bank that delays availability as allowed under § 229.12 but does not impose the cash-withdrawal limitation permitted by § 229.12(b), whereas proposed model C-4B would be used by a bank that delays availability as allowed under § 229.12 and does impose the cash-withdrawal limitation permitted by § 229.12(b). The Board proposes the position of the text related to the cash-withdrawal limitation in C-4B because the Board's testing indicated that consumers better noticed and understood the information when placed at the proposed location and in the proposed format within the disclosure. Banks that base their availability-policy disclosure on proposed model disclosure C-4A or C-4B and whose availability policy necessitates incorporation of one or more of the proposed appendix's remaining model clauses (proposed C-6, C-7, or C-8) would append those model clauses to the end of the second page of proposed model C-4A or C-4B.

#### 7. Proposed Model Clauses

The Board proposes to delete current model clauses C-6 (holds on other funds (check cashing)), C-7 (holds on other funds (other account)), and C-10 (cash-withdrawal limitation), all of which the Board proposes to be incorporated into other model forms. The Board also proposes to delete current model clause C-8 (Appendix B availability (nonlocal checks)) because it is obsolete in the absence of nonlocal checks. Within current model clause C-9 (Automated Teller Machine Deposits (Extended Hold)) (proposed C-6), the Board proposes to change "fifth business day" to "fourth business day" to conform to the changes in proposed § 229.12(d), discussed above in this section-by-section analysis.

#### 8. Proposed Model Notices

##### i. Format

As with the proposed model funds-availability policy disclosures, the Board proposes to modify the format of the model notices, where appropriate, from a mostly narrative form to a more tabular form. For example, the Board proposes to convert current model notice C-18 (notice at locations where employees accept consumer deposits (case-by-case holds)) (proposed C-14) to a table.

##### ii. Proposed Model C-9—Exception or Reasonable-Cause Hold Notice

Current models C-12 and C-13 each include a checklist of reasons for which a bank may apply an exception hold. The Board's consumer testing on other disclosures has found that consumers may be confused by a listing of reasons, even though only one reason is checked and the others do not apply to the consumer's situation.<sup>61</sup> The Board therefore proposes model notices that describe only one reason for the hold, instead of a checklist of reasons. A bank using proposed model C-9 would insert the reason for the hold that is applicable to the consumer's situation in the location designated by "(reason for hold)." The checklist of reasons that is included in the current model would be moved to the proposed commentary, with proposed revisions for clarity. The proposed commentary also states that a bank may insert, in place of "(reason for hold)," a reason other than those listed in the commentary.

Current model C-12 (proposed C-9) indicates that a bank's notice of an exception hold should refer to the dollar amount being held from a deposit.<sup>62</sup> The Board proposes that proposed models C-12 also refer to the dollar amount of the deposit from which funds are being held. During the Board's testing, consumers more readily understood this approach and thought that the amount of the deposit would be more helpful in remembering the deposit in question.<sup>63</sup>

##### iii. Proposed Model C-12A—Case-by-Case Hold Notice Without Cash-Withdrawal Limitation and Proposed Model C-12B, Case-by-Case Hold Notice With Cash-Withdrawal Limitation

Current model C-16 (case-by-case hold notice) states that the day on

<sup>58</sup> Because the Board proposes to incorporate into C-3B and C-4B (discussed below) the information set forth in current model clause C-10, the Board proposes to delete model clause C-10 from the appendix.

<sup>59</sup> See p. vii of the ICF Macro report.

<sup>60</sup> The Board proposes to take an identical approach in proposed model disclosures C-4A and C-4B. Specifically, a bank that bases its disclosure on proposed model C-4A or C-4B would include the bracketed text in its disclosure only if the text corresponds to the bank's policy and practice.

<sup>61</sup> See 75 FR 58539 at 58560 (September 24, 2010), discussing the results of the Board's testing of model forms related to the suspension or reduction of a home equity line of credit. See also the ICF Macro report, page viii.

<sup>62</sup> Specifically, the model reads "We are delaying the availability of \$(amount being held) from this deposit."

<sup>63</sup> See ICF Macro report, p. ix.

which funds will be available for withdrawal may be “[*subject to our cash-withdrawal limitation policy*].” The limitation is material to the length of the hold, and, without additional inquiry, consumers may not know what the limitation is. Accordingly, the Board proposes to include in appendix C two versions of a model case-by-case hold notice: proposed C–12A may be used by a bank that imposes a case-by-case hold, but does not have a policy of imposing the cash-withdrawal limitation, whereas proposed model notice C–12B may be used by a bank that imposes such a hold and does have such a policy. Each of the two proposed versions would incorporate the specific days by which funds would be available.

Current model C–16 indicates that a bank’s notice of an exception hold should refer to the dollar amount being held from a deposit. The Board proposes that proposed models C–12A, and C–12B also refer to the dollar amount of the deposit from which funds are being held, because consumers thought that the amount of the deposit would be more helpful in remembering the deposit in question.<sup>64</sup>

iv. Proposed Model C–13—Notice at Locations Where Employees Accept Consumer Deposits and Proposed Model C–14—Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds)

Current models C–17 and C–18 (proposed C–13 and C–14) are notices that are designed to be posted, for example, on a wall near a teller window in a bank branch, and set forth a brief summary of a bank’s funds-availability policy. Current model C–17 may be used by a bank that has a policy of placing holds to statutory limits on deposits, whereas current model C–18 may be used by a bank that has a policy of placing case-by-case holds on check deposits.

The Board proposes to modify current model notice C–18 (proposed C–14) to indicate that funds from cash deposits and wire transfers will be available for withdrawal on the same business day that the bank receives the funds. Therefore, a bank with a case-by-case availability policy that makes cash deposits and wire transfers available the next business day would modify the notice accordingly. By contrast, current model C–17 (proposed C–14) indicates that funds from cash deposits and wire transfers will be available on the next business day. A bank that holds check deposits up to the statutory limits but that makes funds from cash deposits

and wire transfers available on the day they are received would modify the notice accordingly.

A bank using either notice that imposes cash-withdrawal limitations under proposed § 229.12(b) would indicate that funds from check deposits will generally be available by the third, rather than second, business day after the day of deposit, by replacing “(number)” in the lower-right-hand box of the tables in the proposed models with “third,” rather than “second.”

#### J. Appendix F—Official Board Interpretations; Preemption Determinations

Section 608 of 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 Regulation CC will supersede the time periods in the Act and regulation. Section 229.20 of the regulation implements § 608, and § 229.20(e) sets forth the procedures by which a state may submit to the Board a request for a preemption determination. In response to states’ requests, the Board issued determinations specifying the provisions of the funds availability laws in California, Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, Rhode Island, and Wisconsin that supersede the EFA Act and Regulation CC. These determinations are contained in appendix F to the regulation.

Since September 1, 1989, Connecticut, New Jersey, Rhode Island, and Wisconsin have repealed all state-specific funds availability provisions. California has repealed the funds availability provisions applicable to credit unions. In addition, the elimination of nonlocal checks under the EFA Act and Regulation CC affect the regulation’s preemption of states’ laws. The Board notes that the Dodd-Frank Act’s increase from \$100 to \$200 of the minimum amount of check deposits that banks must make available by the next business day may affect the EFA Act and Regulation CC preemption of state law. The Board therefore proposes to update the preemption determinations in the appendix. The proposed determinations would supersede any previous determinations made by the Board.

### III. Subpart C

#### A. Section 229.30—Paying Bank’s Responsibility for Return of Checks

##### 1. Section 229.30(a)—Expeditious Return of Checks

###### i. Section 229.30(a)(1)

Section 229.30(a)(1) sets forth the proposed test for expeditious return of a check by the paying bank. The current rule provides that if a paying bank determines not to pay a check, it must return the check in an expeditious manner, as provided under either the two-day/four-day test or the forward-collection test. For the reasons discussed above, the Board proposes to eliminate the forward-collection test and the four-day test for expeditious return of a check by the paying bank. As a result, the Board proposes that the two-day test for expeditious return be the only test for expeditious return in § 229.30(a)(1) (and § 229.31(a)(1)). In general, the paying bank may satisfy any expeditious return requirement by sending an electronic return if the depository bank has agreed to receive electronic returns from the paying bank under proposed § 229.32(a), a paper check or a notice in lieu if the check is unavailable. The exceptions to this general rule, including where the depository bank has not agreed to accept electronic returns from the paying bank, are set forth in proposed § 229.30(b).

###### ii. Section 229.30(a)(3)

The Board proposes to amend § 229.30(a)(3) to clarify that a paying bank may send a returned check to any bank that handled the check for forward collection if the paying bank is unable to identify the depository bank.

###### iii. Section 229.30(a)(6)

The Board proposes to move current § 229.36(a), which states that a check payable at or through a paying bank is considered to be drawn on that bank for purposes of the expeditious-return requirement of this subpart, to proposed § 229.30(a)(6).

##### 2. Section 229.30(b)—Exceptions to Expeditious Return of Checks

###### i. Section 229.30(b)(1)

The Board proposes to group together the exceptions to a paying bank’s duty of expeditious return in § 229.30(b)(1). Currently, the requirement does not apply if a paying bank is unable to identify the depository bank or if the depository bank does not maintain

<sup>64</sup> See ICF Macro report, p. ix.

accounts.<sup>65</sup> As described above, the Board proposes that a paying bank have a duty of expeditious return only if the depositary bank has agreed to accept electronic returns from the paying bank under proposed § 229.32(a). The Board proposes to set forth this rule as an exception to the general rule stated in proposed § 229.30(a)(1). Accordingly, proposed § 229.30(b)(1)(i) states that a paying bank need not return a check expeditiously if a depositary bank has not agreed to accept electronic returns from the paying bank under § 229.32(a). Although not imposing an expeditious return requirement on the paying bank in this situation will expose the depositary bank to risk, the Board believes that risk should rest with the bank choosing not to take advantage of an electronic infrastructure that provides expeditious return.

The proposed commentary to § 229.30(b)(1) includes an example of when the paying bank's duty of expeditious return would and would not apply. For example, assume that a depositary bank has not agreed to accept electronic returns directly from the paying bank, but has agreed to accept electronic returns from Returning Bank A, which has agreed to handle returns expeditiously under § 229.31(a). If Returning Bank A has not held itself out as willing to accept electronic returns directly or indirectly from the paying bank (*e.g.*, the returning bank has not published electronic return service set-up guides), the depositary bank has not agreed to accept electronic returns from the paying bank under proposed § 229.32(a). If a check is presented to the paying bank on Monday, the paying bank would not need to send the returned check such that the depositary bank normally would receive the returned check by 4 p.m. (local time of the depositary bank) on Wednesday. The paying bank, however, must comply with any deadlines under the Uniform Commercial Code, Regulation J (if sent through the Reserve Banks), or § 229.30(c).

Under the proposed approach, a paying bank that returns checks in paper form would be subject to the expeditious return requirement if the depositary bank has agreed to accept electronic returns from a returning bank that holds itself out as willing to accept electronic returns directly or indirectly from the paying bank and agrees to return checks expeditiously. The Board, however, notes that if the returning

bank from which the depositary bank has agreed to accept electronic returns has either not held itself out as willing to accept electronic returns directly or indirectly from the paying bank or has not agreed to return checks expeditiously, then the paying bank would not be subject to the expeditious return requirement under the proposal.

#### ii. Section 229.30(b)(2)

Proposed § 229.30(b)(2) addresses the situation in which the requirement to return a check expeditiously does not apply because the paying bank is unable to identify the depositary bank. In most cases in today's predominantly electronic check-clearing environment, the depositary bank's indorsement will accompany an electronic check as an addenda record associated with the check, and the paying bank will be able to route an electronic return to the depositary bank in a highly automated manner.<sup>66</sup>

In some cases, the depositary bank's indorsement may not be in the accompanying addenda record, and the paying bank will be unable to rely on purely automated returns. The Board proposes to clarify in the commentary that a paying bank is not "unable" to identify the depositary bank where the depositary bank's indorsement is not in an addenda record associated with the electronic image, but is legibly included within the image of a check presented electronically to the paying bank. In these cases, the paying bank may visually review the image of the check to determine the identity of the depositary bank and create an electronic return addressed to the depositary bank or a returning bank agreeing to handle it on the basis of that indorsement within the image. Provided the depositary bank accepts electronic returns (directly or indirectly) from the paying bank under § 229.32(a), the expeditious-return requirement would apply in this situation.

In other cases, however, the depositary bank's indorsement may not be in an addenda record associated with an electronic image, and also may be absent from or illegible within the image of the check that is presented to the paying bank. In these cases, the paying bank may be unable to identify the depositary bank and the expeditious-return requirement would not apply to the paying bank. If the paying bank has an agreement to send electronic returns

to a bank that handled the check for forward collection, the paying bank may under § 229.30(b)(2) send the electronic return to that bank, subject to that agreement. Such a bank may be better able to identify the depositary bank. In general, the paying bank must advise the bank to which the return is sent that it is unable to identify the depositary bank. The Board proposes to clarify in the commentary that, in the case of electronic returns, the paying bank meets this requirement by inserting the routing number of the bank to which it is sending the return where the paying bank otherwise would have inserted the routing number of the depositary bank. The Board requests comment on whether the regulation and commentary provide the appropriate level of detail with respect to paying banks' preparation and addressing of electronic returns in cases where it is unable to identify the depositary bank.

#### 3. Section 229.30(c)—Extension of Deadline

The Board proposes amending § 229.30(c), which extends the paying bank's deadline to initiate the return of a check. The current rule generally extends the deadline to the time at which a paying bank dispatches the return, if the paying bank uses a means of delivery that ordinarily would result in receipt by the bank to which the return is sent on or before the receiving bank's next banking day following the day of the applicable deadline by the earlier of the close of that banking day or a 2 p.m. cutoff hour (or such later time as set by the receiving bank under UCC 4–108).<sup>67</sup> The provision allows the paying bank an extension, provided that the paying bank sends the return such that it would ordinarily be received by the depositary bank within the timeframes mandated by the regulation's current tests for expeditious return.

As discussed above, the Board proposes to eliminate the forward-collection test and the four-day test for expeditious return of a nonlocal check, such that the two-day test for expeditious return would be the only remaining test. Correspondingly, the Board proposes to simplify the extension in § 229.30(c): The paying bank's deadline for return would be extended to the time of dispatch if the paying bank sends the return such that

<sup>65</sup> In the current regulation, these exceptions to a paying bank's duty of expeditious return are set forth, respectively, in §§ 229.30(b) and 229.30(e). The exceptions to a returning bank's duty are in §§ 229.31(b) and 229.31(e).

<sup>66</sup> As is discussed below under § 229.35(a) and appendix D, the Board proposes to require a depositary bank that transfers an electronic collection item to apply its indorsement in accordance with ANS X9.100–187, unless the parties otherwise agree.

<sup>67</sup> The current paragraph provides a further extension if the paying bank uses a "highly expeditious" means of return, or if the paying bank's deadline for return falls on a Saturday that is a banking day for the paying bank under the UCC. (Saturday is never a banking day under Regulation CC.)



it reaches the depository bank by 4 p.m. on the second business day after the banking day on which the check was presented to the paying bank; *i.e.*, such that the return would ordinarily reach the depository bank within the time required by the two-day expeditious-return test. The proposed 4 p.m. deadline would correspond to the expeditious return deadline in proposed § 229.30(a). As noted in the proposed commentary, a paying bank may rely on the return schedules of a returning bank in determining whether the returned check or electronic return would “ordinarily” reach the depository bank by 4 p.m. on the second business day after the banking day on which the check was presented to the paying bank.

Alternatively, the Board requests comment on whether a paying bank that sends a returned check to a returning bank and relies on this extension should bear the risk that the returning bank may not return the check expeditiously. Specifically, the Board requests comment on whether it should modify the extension such that the return must actually reach the depository bank within the two-day timeframe for expeditious return in order for the extension to apply. Such a modification to the extension might further encourage paying banks to initiate return of a check in a timely fashion.

#### 4. Section 229.30(d)—Identification of a Returned Check

##### i. Placement of Reason for Return on a Substitute Check

Section 229.30(d) currently states that “[a] paying bank returning a check shall clearly indicate on the face 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.” When current § 229.30(d) became effective in 2004, the placement on substitute checks was consistent with the industry standard for substitute checks, American National Standard Specifications for an Image Replacement Document—IRD, X9.100–140 (ANS X9.100–140). Under the terms of the revised industry standard, however, the reason for return of a substitute check must be placed above a substitute check’s image of the original check—*i.e.*, not within the image of the original check that appears on the front of the substitute check, but nonetheless within the portion of the front of the substitute check that is “clipped” when an image

of the substitute check is captured.<sup>68</sup> The change to the standard is intended to make it less likely that the return-reason information will obscure underlying data from the original check, such as the name of the payee or the amount of the check, while continuing to ensure that the reason for the return is retained in any captured image of the substitute check, as well as on any subsequent substitute check.

The current commentary explains that § 229.30(d) specifies where to place the return-reason information on a returned substitute check in order to ensure that “the information is retained on any subsequent substitute check.” The revised industry standard, ANS X9.100–140, is consistent with this purpose. Accordingly, the Board proposes to modify the § 229.30(d) to state that “[i]f the check is a substitute check or electronic return, the paying bank shall place this information [the reason for the return] such that the information would be retained on any subsequent substitute check.” Further, the Board proposes to amend the commentary to state that the requirement to place the return-reason information such that it is retained on any subsequent substitute check 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. The Board believes it is necessary for the regulation to continue to permit this latter possibility in order to encompass situations in which a paying bank presented with a previously-created substitute check opts to physically stamp the reason for the return on the substitute check.

##### ii. Refer-to-Maker Reason for Return

Current commentary to § 229.30(d) states that “refer to maker” may be a permissible reason for return in appropriate cases but does not elaborate as to which cases may be appropriate. The Board, however, does not believe that “refer to maker,” by itself, is an appropriate reason for return in any case. “Refer to maker” is an instruction rather than a reason for return. Alone, it does not provide the depository bank with sufficient information to determine whether it should represent the check. Accordingly, the Board proposes to amend the commentary to § 229.30(d) to state that “refer to maker” is insufficient

as a reason for return, because “refer to maker” is an instruction to the recipient of the returned check and not a reason for return (*e.g.*, insufficient funds). A paying bank may use “refer to maker” in addition to the reason for return. The Board requests comment on whether there are circumstances in which it is appropriate to use only “refer to maker” when returning a check.

#### 5. Section 229.30(e)—Notice in Lieu of Return

Section 229.30(f) currently states that 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 current § 229.33(b).

Historically, notices in lieu of return were used when an original check was lost or destroyed. Following implementation of the Check 21 Act, however, the unavailability of an original check does not prevent return of the check, provided that an image of the check sufficient to create a substitute check is available. The Board therefore proposes to revise the § 229.30(e) commentary to provide that a bank may send a notice in lieu of return only where neither the check itself nor an image of and information related to the check sufficient to create a substitute check is available.

The commentary states that notice by electronic transmission, other than a legible facsimile or similar image of both sides of a check, does not satisfy the requirements for a notice in lieu of return. The Board proposes to amend the commentary to § 229.30(e) to provide that, if no image of both sides of the check is available, the notice in lieu of return may be sent by means of an electronic transmission, so long as it contains the required information. For example, the notice may be sent by ACH payment record if permitted by applicable ACH rules, or by an electronic check record if permitted by applicable rules and standards. These records are similar to the currently-permitted written notices of nonpayment where legible copies of both sides of the check are unavailable. The Board requests comment, however, on whether a bank would ever have the information necessary for a notice in lieu of return if it had neither the check nor an image of both sides of the check. As under the current rule, notice by telephone or other similar oral transmission would not be permitted.

Because notice in lieu of return must include the information required for a notice of nonpayment, and the Board

<sup>68</sup>In addition to the image of the front of the original check, the portion of the front of the substitute check that is clipped includes the area on the check above the original check image and the routing number of the truncating bank to the left of the image.

proposes to eliminate the notice of nonpayment requirement, the Board proposes to move the information requirements for a notice in lieu of return from current § 229.33(b) to new § 229.30(e)(2). The Board proposes that the information requirements for a notice in lieu of return remain unchanged.

Currently, a notice in lieu is not required to contain the check's original MICR line. The Board understands, however, that a depository bank can often use the data from the original MICR line of a returned check to find in its computer systems an image of the item, which the depository bank captured when it took the check for deposit, and which the depository bank can either re-clear or charge back to its customer's account.<sup>69</sup> The Board requests comment on whether the information-content specifications for a notice in lieu of return should be modified to reflect these capabilities by requiring that a notice in lieu of return include the check's original MICR line.

As an alternative to the proposed approach, the Board requests comment on whether the regulation's provision for notice in lieu of return should be deleted. Specifically, the only factual scenario in which a notice in lieu of return may be necessary under the proposal is where a paper check is presented to the paying bank and the paying bank loses the check, but has access to a copy that is not in the proper format to permit creation of a substitute check or electronic return. Forward interbank check collection, however, including presentment to the paying bank, is almost always electronic, and, furthermore, paying banks initiate almost all check returns electronically. Given the overwhelming prevalence of electronic presentment and electronic initiation of return, the paying bank almost always will be able to return an electronic collection item that was presented to it. Therefore, it may no longer be necessary for paying banks to use notices in lieu of return.<sup>70</sup> The Board requests comment on whether a

<sup>69</sup> If the depository bank chooses to re-clear a check on the basis of an image of the check it captured when it took the check for deposit, it should ensure that the re-cleared check reflects the fact that the check has already been returned one time.

<sup>70</sup> If an electronic collection item presented to the paying bank contained an illegible image of the check and the paying bank decided to return the item (perhaps for an unrelated reason, such as insufficient funds), the paying bank could return the electronic collection item as an electronic return, instead of initiating a notice in lieu of return.

provision for notice in lieu of return continues to be necessary.

#### 6. Section 229.30(f)—Reliance on Routing Number

The regulation currently provides that a paying bank may return a check based on any routing number designating the depository bank appearing on the check in the depository bank's indorsement. The Board proposes in § 229.30(f) to add that the paying bank may also rely on any routing number designating the depository bank in the electronic image of or information related to the check.

#### B. Section 229.31—Returning Bank's Responsibility for Return of Checks

##### 1. Section 229.31(a)—Expeditious Return of Checks

###### i. Section 229.31(a)(1)

For the reasons discussed above under § 229.30(a)(1), the Board proposes to make conforming amendments to § 229.31(a) and eliminate the forward-collection test and the four-day test for expeditious return of a check by the returning bank, such that the two-day test for expeditious return would be the only test in § 229.31(a)(1). Further, a returning bank would be subject to the expeditious return requirement if it agrees to return checks expeditiously. The Board proposes to amend the commentary to § 229.31(a)(1) to explain that a returning bank may condition its agreement to return checks expeditiously on receiving an electronic return from the paying bank or returning bank. The Board also proposes to amend the commentary to § 229.31(a)(1), by removing as an example of when a returning bank agrees to return checks expeditiously a returning bank handling a returned check for return that it did not handle for forward collection. While the Board intends a paying bank to continue to be able to send a returned check to a returning bank that did not handle the check for forward collection, the Board does not believe that a returning bank that receives such a check should be deemed to agree to handle the returned check expeditiously. Under this proposed change, for example, a returning bank may accept a paper returned check that it did not handle for forward collection, while not being deemed to have agreed to handle it for expeditious return.

###### ii. Section 229.31(a)(3)

The Board proposes to clarify in proposed § 229.31(a)(3) (currently in § 229.31(a)) that if the returning bank is unable to identify the depository bank with respect to a returned check, it may send the returned check to any bank

that handled the check for forward collection if it was not a collecting bank with respect to the check, or to a prior collecting bank if it was a collecting bank.

###### iii. Section 229.31(a)(4)

The substance of proposed § 229.31(a)(4) (currently in § 229.31(a)) currently provides that a returning bank's time for expeditious return under the forward-collection test and its deadline for return are extended by one business day if the returning bank converts a returned check to a qualified returned check.<sup>71</sup> This extension does not apply to the two-day/four-day test, and it does not apply when the returning bank sends the check directly to the depository bank, because in that case qualifying the check does not expedite its handling by the bank to which it is sent.

The Board proposes to eliminate this extension. The extension does not apply to the two-day test for expeditious return, which the Board proposes to be the sole test. Further, the extension, if retained, might benefit returning banks that choose to qualify and send paper returned checks destined for depository banks that have agreed to accept returns electronically; a result that is inconsistent with the policy of encouraging electronic return of checks. In addition, if a returned check is destined for a depository bank that does not accept returned checks electronically (*i.e.*, if the returned check is one to which the proposed two-day test does not apply), the Board believes that a returning bank's midnight deadline affords it sufficient time to process and send the returned check, irrespective of whether the returning bank qualifies the returned check or not.

A qualified return check is prepared for automated return by placing the check in a carrier envelope or placing a strip on the check. According to current industry practice, however, such envelopes should be used only in situations in which the check has been mutilated and cannot be imaged or handled by automated check-processing equipment. Therefore, the Board requests comment on whether the regulation should continue to allow a bank to prepare a check for automated return by placing the check in a carrier envelope. Further, in today's predominantly electronic check-clearing environment, qualification of paper

<sup>71</sup> A qualified returned check is "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." Current 12 CFR 229.2(bb).

returned checks happens only rarely and it is not clear that qualification continues to be a means of expediting returned checks' delivery to the depository bank because carrier envelope's inhibit check imaging. The Board requests comment on whether the regulation's provisions for qualifying of paper returned checks by paying banks and returning banks should be deleted.

#### 2. Section 229.31(b)—Exceptions to Expeditious Return of Checks

The Board proposes changes to § 229.31(b) similar to those discussed above under § 229.30(b). Specifically, the Board proposes to group together the current exceptions to a returning bank's duty of expeditious return in § 229.31(b)(1) and to provide that, in addition to the exceptions currently provided in the regulation, the returning bank's duty of expeditious return does not apply if the depository bank has not agreed to accept electronic returns from the paying bank under § 229.32(a).

A returning bank does not have a duty to expeditiously return the check if the returning bank is not able to identify the depository bank with respect to a returned check. Section 229.31(b) of the regulation currently provides, however, that if a paying bank is not able to identify the depository bank with respect to a returned check and sends the returned check under the terms of § 229.30(b) to a returning bank, but the returning bank can identify the depository bank (for example, on the basis of its records from the forward collection of the check), then the returning bank must thereafter return the check expeditiously to the depository bank. The Board proposes to remove this requirement from the regulation (proposed § 229.31(b)(1)(iv)), because it may be difficult for a returning bank to meet the two-day test for expeditious return where the paying bank likely sent the return as if the return was not subject to the expeditious return requirement. In the absence of an expeditious-return requirement, the UCC would nonetheless require a returning bank in this situation to use ordinary care when returning the item.<sup>72</sup>

#### 3. Section 229.31(d)—Charges

The Board proposes to clarify in § 229.31(d) that a returning bank may impose a charge for handling a returned

check on the bank that sent the returned check to it, rather than another party.

#### 4. Section 229.31(e)—Notice in Lieu of Return

The Board proposes to make amendments to § 229.31(e) to conform with proposed amendments to § 229.30(e).

#### 5. Section 229.31(f)—Reliance on Routing Number

The regulation currently provides that a returning bank may return a check based on any routing number designating the depository bank appearing on the check in the depository bank's indorsement or in magnetic ink on a qualified returned check. The Board proposes to add that the returning bank may also rely on any routing number designating the depository bank in the electronic image or information included in an electronic return.

#### C. Section 229.32—Depository Bank's Responsibility for Returned Checks

##### 1. Section 229.32(a)—Acceptance of Electronic Returns

###### i. Section 229.32(a)(1)

The Board proposes in § 229.32(a)(1) three different circumstances under which a depository bank would be deemed to have agreed to accept an electronic return from the paying bank. The depository bank must accept an electronic return in at least one of these ways so as to be entitled to expeditious return under the Board's proposal. The first way in which a depository bank is considered to have agreed to accept electronic returns from the paying bank is by having a direct contractual relationship with the paying bank under which it agrees to accept electronic returns from the paying bank (proposed § 229.32(a)(1)(i)).

Secondly, under proposed § 229.32(a)(1)(ii), a depository bank could have a direct contractual relationship with a returning bank to accept electronic returns. In turn, that returning bank must hold itself out as willing to accept electronic returns directly or indirectly (e.g., from another returning bank) from the paying bank and must have agreed to handle returned checks expeditiously under § 229.31(a) in order for the depository bank to have agreed to receive electronic returns from the paying bank under § 229.32(a). The proposed commentary to proposed § 229.32(a) provides an example of such an arrangement. The Board proposes to provide examples in the proposed commentary to proposed § 229.32(a) of how a returning bank

holds itself out as willing to accept electronic returns directly or indirectly from the paying bank. Specifically, a returning bank would be considered to hold itself out as willing to accept electronic returns if it published information about its generally available electronic return service, such as information about signing up for the service and fees. The Board requests comment on whether it should provide more specificity as to under what circumstances a returning bank is deemed to hold itself out as willing to accept electronic returns directly or indirectly from a paying bank.

Third, a depository bank may have otherwise agreed with the paying bank to receive an electronic return. The proposed commentary indicates that one example of such an agreement would be where the depository bank and paying bank are both members of the same check clearing house, through which the depository bank has agreed to accept electronic returns from the paying bank.

###### ii. Section 229.32(a)(2)

Proposed § 229.32(a)(2) establishes that a depository bank receives an electronic return when the return is delivered to the electronic return point designated by the bank or, by agreement, otherwise is made available to the bank for retrieval or review. For example, if a depository bank designates an e-mail address as its electronic receipt address, the depository bank has received the electronic return when it is delivered to that e-mail address. In contrast, if the depository bank has an arrangement with a returning bank whereby the returning bank sends the electronic return to its storage device and then provides the depository bank with access to the storage device for retrieving electronic returns, the electronic return is received by the depository bank when the returning bank makes the electronic return available for the depository bank to retrieve or review from the storage device in accordance with the agreement between the depository bank and the returning bank.

###### iii. Section 229.32(a)(3)

Proposed § 229.32(a)(3) would permit a depository bank to require that electronic returns be separated from electronic collection items. This proposed rule is similar to the undesignated paragraph in existing § 229.32(a) (proposed § 229.32(b)(2)) that permits a depository bank to require that returned checks be separated from forward-collection checks.

<sup>72</sup> UCC § 4-202 states that a collecting bank exercises ordinary care "by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness."

## 2. Section 229.32(b)—Acceptance of Paper Returned Checks

The Board proposes to clarify that current § 229.32(a) (proposed to be redesignated as § 229.32(b)) is limited to setting forth the locations at which a depository bank must accept paper returned checks. Further, because there are no more nonlocal checks, the Board proposes to delete current § 229.32(a)(2)(iii) from the regulation, which states that if the address in the depository bank's indorsement is not in the same check-processing region as the address associated with the routing number in its indorsement, the depository bank must accept returned checks both at a location consistent with the address in the indorsement and at an office associated with the routing number.<sup>73</sup> Under the proposal, a depository bank that includes its address in its indorsement is required to receive paper returned checks at a location consistent with the address (proposed § 229.32(b)(1)(ii)(A)) and at a location, if any, at which it requests presentment of paper checks (proposed § 229.32(b)(1)(i)). Moreover, the depository bank may structure its operations such that these two locations are the same, *i.e.*, such that the depository bank accepts paper returned checks at only one location.

The Board proposes that a depository bank is entitled to expeditious return only if it agrees to accept an electronic return under § 229.32(a). The Board anticipates that virtually all depository banks will agree to do so, and that a depository bank that accepts electronic returns will generally prefer to receive all returns in electronic form. Further, return of a paper check to such a depository bank should be rare, because under the Board's proposal a paper returned check must be delivered to the bank within the two-day timeframe for expeditious return, and delivery of a paper check within that timeframe is generally difficult and costly. The Board believes it is therefore appropriate for a depository bank to be able to limit to one the number of locations at which it must accept returned checks. If the bank specifies a location for delivery of paper returned checks that is difficult to reach, and the depository bank has not agreed to accept electronic returns from the paying bank, the risk of any delay falls mainly on the depository bank itself.

<sup>73</sup> The Board also proposes to delete the second sentence of paragraph 8 of the commentary to § 229.35(a), which states that if the address in the indorsement is not consistent with the routing number, then the depository bank must accept returned checks at a branch or head office consistent with the routing number.

## 3. Section 229.32(e)—Charges

In § 229.32(e), the Board proposes to clarify that a depository bank may not impose a charge for accepting and paying the check on the bank returning a check to it, as opposed to other parties on which it is permitted to impose charges.

## 4. Section 229.32(f)—Notification to Customer

Current § 229.33(d) states that if the depository bank receives a returned check, it must provide notice of the facts to its customer by midnight of the banking day following the banking day on which it received the returned check, or within a longer reasonable time. The Board proposes to redesignate current § 229.33(d) as § 229.32(f). The commentary to this section is proposed to be revised to remove outdated provisions.

### *D. Current § 229.33—Notice of Nonpayment*

For the reasons discussed above, the Board proposes to delete the requirement in current § 229.33 that a paying bank provide notice of nonpayment of a check in the amount of \$2,500 or more. Further, the Board proposes, where appropriate, to delete references to notices of nonpayment throughout subpart C.

### *E. Section 229.33—Electronic Returns and Collection Items*

The Board's proposal defines two new items: electronic returns and electronic collection items. The proposal permits paying banks to send electronic returns to depository banks that have agreed to receive them, either directly or indirectly, from the paying bank; the proposal also permits paying banks to require that items presented for same-day settlement be presented as electronic collection items. Because such items are intended to take the place of original paper checks or substitute checks, proposed new § 229.33 provides that electronic collection items and electronic returns are subject to the requirements of subpart C as if they were checks, unless the subpart provides otherwise. For example, if a paying bank receives presentment of an electronic collection item and returns it unpaid, it would be subject to the regulation's expeditious-return requirement, provided the depository bank has agreed to accept electronic returns from the paying bank under § 229.32(a). Similarly, a depository bank that receives an electronic return must so notify its customer, as required under § 229.32(f).

## *F. Section 229.34—Warranties and Indemnities*

### 1. Section 229.34(a)—Transfer and Presentment Warranties With Respect to an Electronic Collection Item or an Electronic Return

Proposed § 229.34(a) sets forth the warranties that a bank makes when it transfers or presents an electronic collection item or electronic return and receives consideration. The Board proposes that the bank warrant that (1) 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 contains an accurate record of all MICR line information required for a substitute check under § 229.2(rr) and the amount of the check; and (2) no person will receive a transfer, presentment, or return of, or otherwise be charged for, an electronic collection item, an electronic return, 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. Each bank that transfers or presents an electronic collection item would make the warranties to the transferee bank, any subsequent collecting bank, the paying bank, and the drawer. Each bank that transfers an electronic return would make the warranties to the transferee returning bank, any subsequent returning bank, the depository bank, and the owner of the check.

These warranties are similar to the warranty that the transferor of a substitute check or paper or electronic representation of a substitute check makes under the terms of the Check 21 Act and § 229.52 of Regulation CC. These warranties would, for example, protect a bank that may need to create a substitute check from an electronic collection item or electronic return that it receives. The proposed warranties would not apply to electronic items transferred or presented pursuant to an agreement that does not require the items to include an image of the check, because such items would not purport to meet the proposed definition of an electronic collection item or electronic return and the receiving bank would not expect to be able to create a legally equivalent substitute check from the item.

### 2. Current § 229.34(b)—Warranty of Notice of Nonpayment

Because the Board proposes to delete the regulation's provision for notice of nonpayment, the Board proposes to

delete the warranty applicable to such notice that is set forth in current § 229.34(b).

### 3. Proposed § 229.34(b)—Settlement Amount, Encoding, and Offset Warranties

The Board proposes that the encoding warranty in current § 229.34(c)(3) (proposed § 229.34(b)(3)) be extended to information encoded after issue as electronic information. For purposes of this paragraph, information encoded after issue includes any information in the electronic information of an electronic collection item or electronic return.

### 4. Proposed § 229.34(c)—Transfer and Presentment Warranties With Respect to a Remotely Created Check

Under current § 229.34(d), a bank that transfers or presents a remotely created check and receives settlement or consideration for it warrants 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. The Board proposes to amend the commentary to proposed § 229.34(c) to clarify that under proposed § 229.34(e), the warranty would apply to an electronic image and information that purport to be derived from a remotely created check, even were they not in fact derived from a paper check. For example, a depository bank transferring an electronic image and information that, upon inspection, appear to be derived from a check that meets the regulation's definition of remotely created check would make the warranty of authorization for a remotely created check even if no original check existed with respect to the transaction in question. Further, a paying bank receiving presentment of such an item would receive from the presenting bank a warranty that the item was authorized by the person on whose account the item is drawn.

Currently, a bank that transfers a remotely created check makes the current § 229.34(e) warranty to the transferee bank, any subsequent collecting bank, and the paying bank. The Board's proposed warranties with respect to electronic collection items (which could be derived from remotely created checks) extend to the drawer; similarly, the current notice of nonpayment and returned check warranties extend to the owner of the check. The Board requests comment on whether the remotely created check warranties should extend to the person on whose account the remotely created check is drawn.

### 5. Section 229.34(d)—Warranties With Respect to a Returned Check

Proposed § 229.34(d) contains the warranties set forth in current § 229.34(a). The Board proposes to delete from these warranties the warranty of return of a check within the deadline specified in Regulation J. The Regulation J warranties apply only to those returned checks subject to the terms of that regulation, and need not be specified in Regulation CC.

### 6. Section 229.34(e)—Electronic Image and Information Transferred as an Electronic Collection Item or Electronic Return

Under proposed § 229.34(e), a bank that transfers or presents an electronic image and related electronic information as if it were an electronic collection item or electronic return would make all the warranties in § 229.34 as if the image and information were an electronic collection item or electronic return. In turn, because electronic collection items and electronic returns would be treated as if they were checks or returned checks under § 229.33, a bank also would make the warranties in § 229.34 as if the images and related electronic information were checks or returned checks. This proposal protects recipients of these items that likely will not be able to distinguish them from similar items that originated as paper checks and therefore meet the definitions of "electronic collection item" and "electronic return."

In order for a substitute check to be the legal equivalent of the original check, the image and information contained in the substitute check must be of a paper check. Accordingly, the Board proposes definitions that require electronic collection items and electronic returns be derived from an item that existed as paper. In some cases, a bank may receive an electronic image and electronic information that looks like an electronic collection item or electronic return, but is neither, because it was originally created electronically and there was never a paper check. Banks that receive such images and related electronic information usually cannot differentiate them from actual electronic collection items or electronic returns. Nonetheless, a bank that unknowingly receives an electronic image and related electronic information not derived from a paper instrument may nonetheless transfer the image and related electronic information as if it were derived from a paper instrument. Therefore, the Board believes that electronic images and

related electronic information transferred as electronic collection items or electronic returns should be subject to the same warranties as electronic collection items and electronic returns, and therefore, the same warranties as checks and returned checks (see proposed § 229.34(a)).

### G. Section 229.35(a)—Indorsement Standards; Appendix D—Indorsement, Reverting-Bank Identification, and Truncating-Bank Identification Standards

Section 229.35(a) requires a bank (other than the paying bank) that handles a check to indorse the check in a manner that permits a person to interpret the indorsement. Since implementation of the Check 21 Act, banks have increasingly complied with this requirement by associating their electronic indorsements with items that they handle electronically.

In appendix D, the Board proposes to require a depository bank that transfers an electronic collection item to another bank to apply its indorsement to that item electronically in accordance with ANS X9.100-187, unless the parties otherwise agree.<sup>74</sup> Similarly, the Board also proposes to require a collecting bank that transfers an electronic collection item, or a returning bank that transfers an electronic return, to another bank to apply its indorsement electronically in accordance with ANS X9.100-187, unless the parties otherwise agree. In general, the Board believes that inclusion of banks' indorsements as addenda records accompanying electronic collection items and electronic returns will facilitate the automated handling of the items by subsequent banks. In particular, inclusion of the depository bank's indorsement as an addenda record accompanying an electronic collection item will facilitate the automated routing of electronic returns by paying banks and returning banks.

### H. Section 229.36—Presentment and Issuance of Checks

#### 1. Section 229.36(a)—Receipt of Electronic Collection Items

##### i. Section 229.36(a)(1)

Proposed § 229.36(a)(1) sets forth two circumstances in which a paying bank is deemed to have agreed to accept an electronic collection item from the presenting bank. First, a paying bank may agree to accept the electronic

<sup>74</sup>This new requirement would not alter the flexibility provided by § 229.35(d) to a depository bank to arrange with another bank to apply the other bank's indorsement as the depository-bank indorsement.

collection item directly from the presenting bank. Second, a paying bank may have otherwise agreed with the presenting bank to accept an electronic collection item. The proposed commentary indicates that one example of such an agreement would be where the paying bank and presenting bank are both members of the same check clearing house, under the rules of which the paying bank has agreed to accept electronic collection items from the presenting bank.

ii. Section 229.36(a)(2)

Similar to proposed § 229.32(a)(2), proposed § 229.36(a)(2) sets forth when a bank is considered to receive an electronic collection item. A bank receives an electronic collection item when it is delivered to the electronic presentment point designated by the bank or, by agreement, otherwise is made available to the bank for retrieval or review. For example, if a paying bank designates an Internet protocol (IP) address as its electronic presentment point, the paying bank has received an electronic collection item when it is delivered to that address. In contrast, the paying bank may have an arrangement with the collecting bank whereby electronic collection items are received by the paying bank when the collecting bank makes the items available for the paying bank to retrieve or review from a storage device in accordance with the agreement between the collecting bank and the paying bank.

iii. Section 229.36(a)(3)

Similar to proposed § 229.32(a)(2), proposed § 229.36(a)(3) permits a paying bank, for ease of processing, to require that electronic collection items be separated from electronic returns.

2. Section 229.36(b)—Receipt of Paper Checks

The Board proposes in § 229.36(b)(2) that a paying bank be permitted to require that forward-collection checks be separated from returned checks. A similar provision in current § 229.36(f)(1) is limited to checks presented for same-day settlement and permits a paying bank to require that paper checks presented for same-day settlement be separated from other forward-collection checks or returned checks. The Board requests comment on whether a requirement that paper checks presented for same-day settlement be separated from other checks presentments remains necessary.

3. Section 229.36(d)—Same-Day Settlement

For the reasons discussed above in the overview of the proposal, the Board proposes in § 229.36(d)(2) to permit a paying bank to require that checks presented for same-day settlement be presented as electronic collection items to a designated electronic presentment point.

4. Section 229.36(e)—Issuance of Payable-Through Checks

Current § 229.36(e) requires a bank that arranges for checks payable by it to be payable through another bank to print conspicuously on the face of the check the name, location, and first four digits of the routing number of the bank by which the check is payable. The purpose of this provision is to alert the depository bank receiving a check for deposit that it could not rely on the routing number in the MICR line of the check to determine whether the check was local or nonlocal. Because there are no longer any nonlocal checks, the Board believes that § 229.36(e) is no longer necessary and proposes to delete it.

I. Section 229.37—Variation by Agreement

The commentary to § 229.37 provides examples of situations where variation by agreement is permissible. The Board proposes to amend the commentary to § 229.37 to include as an example of permissible variation by agreement the situation where a depository bank and a paying bank or returning bank agree to send electronic returns even where the item is available for return. Similarly, the Board proposes to amend the commentary by adding an example that permits a presenting bank and paying bank to agree that presentment takes place upon receipt of an electronic collection item.

J. Section 229.38—Liability

Section 229.38(d)(2) makes drawee banks liable to the extent they issue payable-through checks that are payable through a bank located in a different check-processing region and that circumstance causes a delay in return. Because there is now only one check-processing region, this liability provision is obsolete and the Board proposes to delete it.

K. Section 229.40—Mergers

The Board proposes to delete as obsolete the provision in § 229.40(b) regarding mergers consummated on or after July 1, 1998, and before March 1, 2000.

L. Section 229.43—Checks Payable in Guam, American Samoa, and the Northern Mariana Islands

The Board proposes to modify § 229.43 to reflect how the proposed warranties for electronic collection items and electronic returns in § 229.34 would apply to checks payable in Guam, American Samoa, and the Northern Mariana Islands. Specifically, a bank that handles Pacific island checks in the same manner as other checks may transfer electronic images and electronic information as electronic collection items or electronic returns derived from Pacific island checks. Accordingly, such a bank would make the warranties in §§ 229.34(a) and (b) with respect to Pacific island checks.

IV. Subpart D

A. Section 229.52—Substitute-Check Warranties

Sometimes a check submitted for deposit is subsequently “rejected” by the bank that receives the check. For example, a bank’s customer might submit a check at an ATM that captures an image of the check and sends the image electronically to the bank. In turn, the bank may provide provisional credit to the customer and review the item. For various reasons, the bank’s review of the item might result in the item being rejected—for example, the bank might determine that the item is not payable to the customer who submitted it for deposit. It is costly for the bank to obtain the check from the ATM to provide it back to the customer; moreover, the check may have been destroyed. Accordingly, banks sometimes provide the rejected item to the customer in the form of a substitute check. In such a scenario, the bank would be both the reconverting bank (the bank that created the substitute check) and the truncating bank (the bank that truncated the original check).

Under the terms of § 229.52(a), a bank makes the Check 21 Act warranties with respect to a substitute check when it transfers the substitute check for consideration, as the terms “transfer” and “consideration” are defined in current § 229.2(ccc) (proposed to be redesignated as § 229.2(tt)). However, a bank may not have received consideration for a substitute check it provides to its customer after it has rejected an original check submitted for deposit.

As noted in the commentary to the definition of transfer and consideration, the Check 21 Act contemplates that a nonbank person that receives a substitute check from a bank will receive warranties and indemnities with

respect to that check. Therefore, in order to prevent a bank from being able to transfer a check that the bank truncated and then reconverted without providing the substitute-check warranties and indemnity, the Board proposes to add to § 229.52(a) a new subsection stating that a bank that rejects a check submitted for deposit and sends back to its customer a substitute check (or a paper or electronic representation of a substitute check) makes the warranties in § 229.52(a) regardless of whether it received consideration for the substitute check. Because the bank would make these warranties, the substitute check would be the legal equivalent of the rejected original check, provided that the substitute check meets the requirements for legal equivalence set forth in § 229.51(a).<sup>75</sup> If the substitute check does not meet the requirements for legal equivalence, then the substitute check recipient would have a Check 21 warranty claim against the bank.

Because the bank is both the truncating bank and the reconverting bank with respect to the check, the bank must identify itself on the front of the substitute check as the truncating bank and on the front and back of the check as the reconverting bank, in accordance with the terms of § 229.51(b). The bank is not, however, a depository bank, collecting bank, or returning bank with respect to the check, and the Board proposes to add a clarifying statement to that effect in proposed § 229.2(r) (current § 229.2(o), the regulation's definition of depository bank). Moreover, the bank's identification of itself on the back of the check as a reconverting bank does not constitute the bank's indorsement of the check. To address this latter point, the Board proposes changes to the commentaries to §§ 229.35(a) and 229.51(b), and to paragraph 3(ii) of appendix D.

The Board also proposes to modify the commentary to reflect the fact that a bank that transfers and receives consideration for an electronic collection item or electronic return that is an electronic representation of a substitute check makes the warranties in § 229.52.

#### *B. Section 229.53—Substitute-Check Indemnity*

In addition to imposing the substitute check warranties on a bank that rejects a check for deposit, the Board similarly

proposes to add to § 229.53(a) a new subsection stating that a bank that rejects a check submitted for deposit and sends back to its customer a substitute check provides the indemnity set forth in § 229.53(a) regardless of whether the bank received consideration. The Board also proposes to modify the commentary to reflect the fact that a bank that transfers and receives consideration for an electronic collection item or electronic return that is an electronic representation of a substitute check is responsible for providing the indemnity in § 229.53.

### **Other Requests for Comment**

#### **I. Effective Date**

The Board proposes that the revised subparts A and B take effect 30 days following publication of the final rule. The Board recognizes that some banks may wish to use the model forms soon after the rule becomes effective, as part of their normal reordering or reprinting cycle for their funds-availability disclosures. In order to minimize the compliance costs, the Board proposes that banks would have 12 months to comply with the amendments to subpart B and the model forms in appendix C.

The Board proposes that the amendments to subparts C and D become effective six months following publication of the final rule. As discussed above, these amendments provide, among other things, that a depository bank must accept electronic returns in order to be entitled to expeditious return. The time required for depository banks that currently accept paper returned checks to implement the operational changes necessary for receiving electronic returns generally should not be significant. Many of these depository banks are small and receive a small number of returned checks. Accordingly, receiving returns as .pdfs, for example, should not require substantial changes. The Board does not expect that other changes to subpart C, such as the proposed provisions for electronic same-day settlement, would impose a significant transition burden given that almost all checks are already presented electronically. Further, under the proposal a collecting bank may continue to present paper checks under the terms of the UCC and Regulation J.

#### **II. Potential Future Changes To Reduce Risks to Depository Banks**

Given that there are no longer any nonlocal checks, a depository bank must make funds available to the depositor for withdrawal by the second business day after the banking day of deposit,

unless one of the time-period adjustments in § 229.12 or one of the exceptions in § 229.13 is applicable. Even assuming that banks collect and return all checks electronically, depository banks will in many cases nonetheless be required to make the funds represented by a check deposit available for withdrawal before learning whether the check has been returned unpaid. The Board therefore requests comment on whether this risk is significant and whether there are feasible means to help reduce any risk to depository banks. For example, the deadline in the UCC by which a paying bank must initiate return of an unpaid check is generally midnight of the banking day following the banking day of receipt of the check by the paying bank, except as the deadline may be extended by § 229.30(c) of Regulation CC. As delivery of forward-collection and returned checks becomes increasingly electronic, this amount of time (typically about 36 hours) afforded to the paying bank takes up a substantial portion of the total time required for a check to be sent from the depository bank to the paying bank and back again. The Board requests comment on whether it would be desirable to reduce the amount of time afforded to the paying bank to decide whether or not to pay a check that has been presented to it. The Board also requests comment on whether there are other, preferable, ways to reduce this risk to depository banks.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed rulemaking under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is proposed by this rulemaking is found in 12 CFR 229. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0235.

The EFA Act, as amended, and the Check 21 Act authorizes the Board to issue regulations to carry out the provisions of those Acts (12 U.S.C. 4008 and 12 U.S.C. 5014, respectively). Because the Federal Reserve does not collect any information, no issue of confidentiality arises. However, if, during a compliance examination of a financial institution, a violation or possible violation of the EFA Act or the Check 21 Act is noted then information regarding such violation may be kept

<sup>75</sup> These requirements are that 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."

confidential pursuant to Section (b)(8) of the Freedom of Information Act. 5 U.S.C. 552(b)(8). This information collection is mandatory.

Regulation CC applies to all banks, not just State Member Banks (SMBs). However, under the PRA, the Board accounts for the burden of the paperwork associated with the regulation only for entities that are supervised by the Federal Reserve. The Board accounts for the paperwork burden only for SMBs and uninsured state branches and agencies of foreign banks. Other Federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority.

The current annual burden to comply with the provisions of Regulation CC is estimated to be 202,396 hours for the 1,060 institutions supervised by the Federal Reserve and that are deemed to be respondents for the purposes of the PRA.

As discussed above, the Board proposes to amend model disclosures, clauses, and notices, in appendix C that banks may use in disclosing their funds-availability policies to their customers and to update the preemption determinations in appendix F to incorporate content requirements prescribed by section 1086 of the Dodd-Frank Act.

The Board estimates that the proposed rule would impose a one-time increase in the total annual burden under Regulation CC. The 1,060 respondents would take, on average, 80 hours (two business weeks) to update their systems to comply with the proposed disclosure requirements addressed in 12 CFR part 229. This one-time revision would increase the burden by 84,800 hours. The Board estimates that, on a continuing basis, the revision to the rule would have a negligible effect on the annual burden. The total annual burden for the Regulation CC information collection is estimated to increase from 202,396 to 287,196 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of

information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Clearance Officer, Division of Research and Statistics, Mail Stop 95-A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0235), Washington, DC 20503.

### Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, the Board is publishing an initial regulatory flexibility analysis for the proposed amendments to Regulation CC. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the proposed regulation. While the Board believes that the proposed rule likely would not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)), the Board has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603. The Board will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

The Board is proposing the foregoing amendments to Regulation CC pursuant to its authority under the EFA Act and the Check 21 Act. The proposed amendments would apply to all banks regardless of their size, and the Board anticipates that the proposal would reduce banks' overall costs of collecting and returning checks.

By providing that a depository bank preserves its right to expeditious return only if it agrees to receive returned checks electronically, the proposed rule would encourage, but not require, depository banks to accept check returns in electronic form. A depository bank that currently receives returned checks in paper form and that chooses, as encouraged by the proposal, to begin to receive returned checks electronically, will incur some cost associated with that transition. The Board expects that these costs would be relatively low for a small depository bank, which typically would receive only a small volume of returned checks. For example, as mentioned above, the Federal Reserve Banks now offer a product under which they deliver electronically to small depository banks copies (.pdf files) of

returned checks, which the banks can print on their own premises if necessary.<sup>76</sup> To receive returned checks in this fashion, a depository bank may need to establish and maintain an electronic connection to the Reserve Banks, or another returning bank that offers a similar service, and to purchase certain equipment, such as a printer capable of double-sided printing and magnetic-ink toner cartridges.

Depending on the volume of returned checks that a small depository bank receives, the Board estimates that this transition would cost a small depository bank approximately \$5,000 in net-present-value terms.<sup>77</sup> Conversely, a small depository bank that does not choose to accept returned checks electronically would, under the proposal, incur additional risk associated with that decision. Specifically, the bank would not retain its right to expeditious return of a check, and a returned check may not be delivered to the bank in a timely fashion. While this risk is difficult to quantify, it is reasonable to expect that each small depository bank will weigh the costs and benefits of whether to accept returns electronically. If the bank determines that the net present value of the risk is greater than the cost to receive returned checks electronically, then the bank can minimize its cost associated with the Board's proposal by accepting returned checks electronically.

The proposed updates to the model funds-availability policy disclosures and notices in appendix C should not impose significant cost on small banks. Under the proposal, a bank that bases its disclosures and notices on the current models in the appendix will continue to receive a safe harbor for 12 months after the final rule becomes effective, provided that the bank's disclosures and notices accurately reflect the bank's policies and practices. Moreover, a bank that chooses to update its disclosures on the basis of the proposal would not generally need to redeliver disclosures to all of its existing customers if the bank's underlying funds-availability

<sup>76</sup> After printing the .pdf files, the depository bank would be able to process the checks exactly as it would process paper checks physically delivered to it.

<sup>77</sup> This estimate takes into account the cost to a small depository bank to establish and maintain an electronic connection to the Reserve Banks, which is estimated to be \$110 per month. See 75 FR 67731 at 67747 (Nov. 3, 2010). Some small banks, however, may already have such a connection. Further, a small depository bank may choose to receive its returns electronically in a manner that does not require this connection, such as through a different returning bank, an electronic check clearinghouse, or a nonbank processor.



policies did not change; instead, in accordance with the regulation, a bank would need to provide the disclosures at the time a customer opens an account, and upon request.

Any costs to a small bank that may result from the rule will be offset to some extent by savings to the bank in other areas. For example, receiving returned checks electronically may enable a small bank to reduce its ongoing operating costs associated with receiving and processing returned checks. Further, as other banks with which the small bank does business also begin to receive returned checks electronically, the small bank, in its role as paying bank, may experience lower costs associated with sending returned checks to other banks, because a paying bank typically pays a higher fee to deliver a returned check in paper form to a depository bank, as compared to delivering a returned check electronically to the depository bank. In addition, the proposed provisions for electronic same-day settlement may reduce a small bank's costs associated with receiving check presentments, because it should further reduce the number of paper check presentments that it receives.

According to the Small Business Administration size standards defining small entities, a commercial bank, savings association, or credit union is considered a "small entity" if it has assets of \$175 million or less.<sup>78</sup> The Board can identify through data from Reports of Condition and Income ("call reports") the approximate number of small depository institutions that would be subject to the proposed rule if finalized.<sup>79</sup> Based on September 2010 call report data, there are approximately 11,030 depository institutions that have total domestic assets of \$175 million or less and thus are considered small entities for purposes of the RFA. Based on December 2010 data regarding checks returned through the Reserve Banks, the Board estimates that 41 percent of small depository institutions had at that time made arrangements to receive returned checks electronically, whereas 59 percent had not. Banks are steadily adopting electronic check handling methods, however, and the Board expects that a substantially higher percentage of small depository institutions will have made

arrangements to receive electronic check returns by the time the Board adopts a final rule. The Board specifically requests comment on the cost of its proposed rule to a small depository institution.

The Board notes that subpart A of Regulation J overlaps with the proposed rule with respect to checks collected or returned through the Reserve Banks. The provisions of Regulation J supersede any inconsistent provisions of Regulation CC, but only to the extent of the inconsistency.<sup>80</sup>

#### *Text of Proposed Revisions*

Certain conventions have been used to highlight the proposed changes to the text of the regulation and commentary. With the exception of appendices C and F to the regulation, new language is shown inside ►bold-faced arrows◄, while language proposed to be deleted is set off with [bold-faced brackets]. In appendix C, each proposed new model form is set forth in its entirety and the corresponding current form is deleted in its entirety, because the convention described above for the changes to the text within each of the forms would render illegible the formatting of the proposed forms. The Board proposes to replace the text of appendix F in its entirety. Paragraphs in the commentary are numbered to comply with **Federal Register** publication rules.

#### **List of Subjects in 12 CFR Part 229**

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

#### **Authority and Issuance**

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 229 as follows:

### **PART 229—AVAILABILITY OF FUNDS AND COLLECTIONS OF CHECKS (REGULATION CC)**

#### **Subpart A—General**

1. Section 229.1 is revised to read as follows:

##### **§ 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►, including provisions that accommodate electronic presentment and return of checks◄. 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.

►(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 C of this part contains model funds-availability policy disclosures, clauses, and notices and a model disclosure and notices related to substitute-check policies.

(7) Appendix D of this part contains indorsement standards and standards for identifying the reconverting bank and truncating bank.

(8) Appendix E of this part contains Board interpretations, which are labeled "Commentary," of the provisions of this

<sup>78</sup> U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at [http://www.sba.gov/idc/groups/public/documents/sba\\_homepage/serv\\_sstd\\_tablepdf.pdf](http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf).

<sup>79</sup> The proposed rule would not impose costs on any small entities other than depository institutions.

<sup>80</sup> See 12 CFR 210.3(f).

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)).

(9) 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. ◀

2. Section 229.2 is revised to read as follows:

#### § 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 ▶an◀ account[s] 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 ▶an◀ account[s] 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 ▶a◀ savings deposit[s] or account[s] 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.▶

▶Automated clearinghouse (ACH) credit transfer means a transfer whereby the originator orders that its account be debited and another account be credited through the ACH, which is a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular on ACH items or under rules of an ACH association or similar interbank agreement. ◀

(c) ▶Automated teller machine or ATM means an electronic device at which a natural person may make deposits to an account by cash or ▶paper◀ check and perform other account transactions▶, for example, making cash withdrawals from an account. ◀

(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) ▶(1)◀ *Bank* means—

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

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

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

▶(6)▶(vi)◀ 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)▶(vii)◀ 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).

▶(2)◀ 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:]▶(3)◀ 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) **▶(1)◀** *Check* means—

**[(1)]▶(i)◀** A negotiable demand draft drawn on or payable through or at an office of a bank;

**[(2)]▶(ii)◀** A negotiable demand draft drawn on a Federal Reserve Bank or a Federal Home Loan Bank;

**[(3)]▶(iii)◀** A negotiable demand draft drawn on the Treasury of the United States;

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

**[(5)]▶(v)◀** A United States Postal Service money order; or

**[(6)]▶(vi)◀** A traveler's check drawn on or payable through or at a bank.

**[(7)]▶(2)◀** The term *check* includes an original check and a substitute check.

**▶(3)◀** The term *check* does not include a noncash item or an item payable in a medium other than United States money.

**▶(4)◀** A draft may be a *check* even though it is described on its face by another term, such as *money order*.

**▶(5)◀** 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.

(l) **[(Reserved)]▶** *Claimant bank* means a bank that submits a claim for a recredit for a substitute check to an indemnifying bank under § 229.55. **◀**

(m) **[(Check processing region** means the geographical area served by an office of a Federal Reserve Bank for purposes of its check processing activities. **]**

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

(n) *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.

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

(p) *Contractual branch*, with respect to a bank, means a branch of another

bank that accepts a deposit on behalf of the first bank.

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

(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. **]**

*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. **▶** A bank that rejects a check submitted for deposit is not a depository bank with respect to that check. **◀**

(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. **]** *Electronic collection item* means an electronic image of and information related to a check that a bank sends for forward collection and that—

(1) A paying bank has agreed to receive under § 229.36(a);

(2) Is sufficient to create a substitute check; and

(3) Conforms with American National Standard Specifications for Electronic Exchange of Check and Image Data—X9.100–187, in conjunction with its Universal Companion Document (hereinafter collectively referred to as ANS X9.100–187), unless the Board by rule or order determines that different standard applies or the parties otherwise agree. **◀**

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

(u) **▶** *Electronic presentment point* means the electronic location that a paying bank has designated for receiving electronic collection items. **◀**

(v) **[(Nonlocal check** means a check payable by, through, or at a nonlocal paying bank. **]** *Electronic return* means an electronic image of and information related to a check that a paying bank determines not to pay and that—

(1) A depository bank has agreed to receive under § 229.32(a);

(2) Is sufficient to create a substitute check; and

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

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

bank. **]** *Electronic return point* means the electronic location that the depository bank has designated for receiving electronic returns. **◀**

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

(y) *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.

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

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

(bb) *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.

(cc) *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).

(dd) *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.

(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. **]** *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.

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

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

(hh) *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.

(ii) (1) *Paying bank* means—

[(1)] (i) 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)] (ii) The bank at which a check is payable and to which it is sent for payment or collection;

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

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

▶(2)◀ 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:] ▶(3)◀ 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.

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

(kk) *Proprietary ATM* means an ATM that is ▶(1)◀ —

[(1)]▶(i)◀ Owned or operated by, or operated exclusively for, the depository bank;

[(2)]▶(ii)◀ Located on the premises (including the outside wall) of the depository bank; or

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

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

(ll) *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.

(mm) *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.

(nn) *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.

(oo) *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).

(pp) *Routing number* means—

(1) The ▶bank-identification◀ number printed on the face of a check in fractional form or in nine-digit form; [or]

(2) The ▶bank-identification◀ number in a bank's indorsement in fractional or nine-digit form [.]▶; or

(3) In the case of an electronic collection item or electronic return, the bank-identification number contained in the electronic image of or information related to a check.◀

(qq) *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.

(rr) *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.

(ss) *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.

(tt) *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.

(uu) *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 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.

(vv) *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.

(ww) *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.

(xx) *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.

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

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

(aaa) *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.

(bbb) *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)).

3. In § 229.3, paragraph (a) is revised as follows:

#### § 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, 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.

►(4)◀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).

\* \* \* \* \*

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

4. In § 229.10, revise paragraphs (b) and (c) as follows:

#### § 229.10 Next-Day availability.

\* \* \* \* \*

(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.

►(3) *Extent of payment received.*◀ 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]**►*In general*◀. 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)] ► (2) ◀ 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)] ► (2) ◀ 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)](2) *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 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.

5. Section 229.12 is revised to read as follows:

**§ 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.*] (a) *In general.* Except as provided in § 229.10(c), paragraphs (b), (c), and (d), (e), and (f) of this section, and in § 229.13, 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)](b) *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)] (a) or (d) 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 p.m. on the business day on which the funds are available under paragraph[s] (b), (c), or (f) (a) or (d) of this section. This \$400 is in addition to the \$100 available under § 229.10(c)(1)(vii).

[(e)](c) *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)](d) *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] fourth business day following the banking day on which the funds are deposited.

6. Section 229.13 is revised as follows:

**§ 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 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 post dated when redeposited.

(d) *Repeated overdrafts.* (1) 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.

(2) A depository bank may consider a customer's account to be repeatedly overdrawn if—

(i) 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

(ii) 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.

(iii) For purposes of this paragraph (d)(2), such other charges to the account shall not include attempted charges initiated by debit card that the depository bank declines to authorize.

(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.* (i) A depository bank that extends the time when funds will be available for 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) (A) 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) (B) The deposited check was paid by the paying bank.

(ii) 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, if the depository bank exercises such diligence as the circumstances require, 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 total amount of the deposit;

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

(E) The reason the exception was invoked; and

(F) 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. If the customer has agreed to accept notices electronically, the bank shall send the notice such that the bank may reasonably expect it to be received by the customer 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.* (i) 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) (A) The reason(s) the exception may be invoked; and

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

(ii) 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.* (i) 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—

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

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

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

[(ii)] 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) [and two [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)] all other checks. A longer extension may be reasonable, but the bank has the burden of so establishing.

7. Section 229.14 is revised to read as follows:

#### § 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.

(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.

8. Section 229.15 is revised to read as follows:

#### § 229.15 General disclosure and notice requirements.

(a) *Form of disclosures and notices.* A bank shall make the disclosures and notices required by this subpart clearly and conspicuously in writing. Disclosures and notices 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 disclosures and notices, 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.] specify the business day on which funds are available for withdrawal by describing that day in relation to the banking day on which the bank received the deposit. A bank shall use the following, or substantially similar, language—

(1) The banking day of receipt may be described as "the same business day;"

(2) The business day after the banking day of receipt may be described as "the next business day;" and

(3) A business day after the banking day of receipt may be described using a phrase that includes—

(i) A cardinal number, such as "1 business day" or "2 business days;" or

(ii) An ordinal number, such as "the first business day" or "the second business day."

(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.

9. Section 229.16 is revised to read as follows:

#### § 229.16 Specific availability policy disclosure.

(a) *General.* In 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 that are subject to differing availability (such as local or nonlocal) and other 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);<sup>[1]</sup>

<sup>[1]</sup> A 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.]

(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 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 total amount of the deposit;

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

(E) 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. If the customer has agreed to accept notices electronically, the bank shall send the notice such that the bank may reasonably expect it to be received by the customer not later than the first business day following the banking day the deposit is made.

(3) *Overdraft and returned check fees.* (i) 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) (A) 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  
 (B) The deposited check was paid by the paying bank.

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

10. § 229.17 is republished to read as follows:

#### § 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.

11. § 229.18 is republished to read as follows:

#### § 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.

13. Section 229.19 is revised to read as follows:

**§ 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 p.m. or later, or, for the receipt of deposits at ATMs, contractual branches, or off-premise facilities, of 12 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)](b), if any provision of this subpart requires that funds be made available for withdrawal on any

business day after the banking day of deposit, the funds shall be available for withdrawal by the later of:

(1) 9 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 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] only if—

(i) The amount of funds that are held does not exceed[s] the amount of the check; [or] and

(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, only if—

(i) The amount of funds that are held does not exceed[s] 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[.] ; and

(iii) The check is not drawn on the depository bank.

(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.]

13a. Section 229.20 is revised to read as follows:

**§ 229.20 Relation to state law.**

(a) *In general.* (1) 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—

[(1)](i) 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)](ii) Apply to all federally insured banks located within the state.

(2) 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 1, 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.* (1) A request for a preemption determination shall include the following—

[(1)] (i) A copy of the full text of the state law in question, including any implementing regulations or judicial interpretations of that law; and

[(2)] (ii) 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.

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

14. Amend § 229.21 by revising paragraphs (f) and (g) to read as follows:

**§ 229.21 Civil liability.**

\* \* \* \* \*

(f) *Exclusions.* This section does not apply to claims that arise under

subpart C or D 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, electronic storage media 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 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.

**Subpart C—Collection of Checks**

15. Revise § 229.30 to read as follows:

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

(a) *Expeditious return of checks.* (1) 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], the paying bank shall send the returned check expeditiously such that the depository bank normally would receive the returned check no later than 4 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.

[(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 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.]

[(2) 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] satisfies its expeditious return 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 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

(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.]

[(3) 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), or, under § 229.30(b)(2), to any bank that handled the check for forward collection.]

[(4) 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.

[(5) This paragraph (a) 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).

[(6) A check payable at or through a paying bank is considered to be drawn on that bank for purposes of the expeditious return requirement of this subpart.]

(b) *Unidentifiable depository bank.* Exceptions to expeditious return of checks. (1) The expeditious return requirement of paragraph (a) of this section does not apply if—

(i) The depository bank has not agreed to accept electronic returns from the paying bank under § 229.32(a);

(ii) The check is deposited in a depository bank that does not maintain accounts; or

(iii) A paying bank is unable to identify the depository bank with respect to a check.

(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 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 (b)(2) 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.* (1) 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)] § 229.36(d)(3) 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 depository bank [to which it is sent] by 4 p.m. (local time of the depository bank) on the second business day after the banking day on which the check was presented to the paying bank. —

(1) 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, 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.]

► 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's deadline under the U.C.C. or Regulation J (12 CFR part 210), or § 229.36(d)(3) is extended to the time of dispatch of such return where a paying bank uses a means of delivery such that the returned check would ordinarily be received by the depository bank on or before the depository bank's next banking day. ◀

(d) *Identification of returned check.* A paying bank returning a check shall clearly indicate on the [face] ► front ◀ of the check that it is a returned check and the reason for return. If the check

is a substitute check ► or electronic return ◀, the paying bank shall place this information [within the image of the original check that appears on the front of the substitute check] ► such that the information would be retained on any subsequent substitute check. ◀

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

[(f)] ► (e) ◀ *Notice in lieu of return.* (1) ◀ 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)] ► paragraph (e)(2) of this section ◀. 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] ► provisions ◀ of this subpart.

► (2) The notice must include, if available, the—

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

(ii) Name of the payee(s);

(iii) Amount of the returned check;

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

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

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

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

(viii) Reason for return.

(3) The notice may include other information from the check that may be useful in identifying the check being returned and the customer and must include the name and routing number of the depository bank from its indorsement.

(4) 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. ◀

[(g)] ► (f) ◀ *Reliance on routing number.* A paying bank may [return] ► send ◀ 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 the electronic image of or information related to the check ◀.

16. Revise § 229.31 to read as follows:

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

(a) ► *Expeditious [R] ► r ◀ return of checks.* ► (1) ◀ [A] ► If the returning bank agrees to handle the return expeditiously, the ◀ returning bank shall [return a returned check in an expeditious manner as provided in either paragraph (a)(1) or (a)(2) of this section.] ► send the returned check expeditiously such that the depository bank normally would receive the returned check no later than 4 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 ◀.

[(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 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.]

(2) If the last business day on which the returning bank may deliver a returned check to the depository bank is not a 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 p.m.]

► (3) ◀ [Subject to the requirement for expeditious return, t] ► T ◀ 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)▶, or, under § 229.31(b)(2), to any bank that handled the check for forward collection◀.

▶(4)◀ 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.]

▶(b) *Exceptions to expeditious return of checks.* (1) The expeditious return requirement of paragraph (a) of this section does not apply if—

(i) The depository bank has not agreed to accept electronic returns from the paying bank under § 229.32(a);

(ii) The check is deposited in a depository bank that does not maintain accounts;

(iii) A returning bank is unable to identify the depository bank with respect to a check; or

(iv) The returning bank received the returned check pursuant to paragraph (b)(2) of this section or § 229.30(b)(2).

(2) If a returning bank is unable to identify the depository bank, the returning bank may send the returned check to any bank that handled the check for forward collection, if the returning bank was not a collecting bank with respect to the returned check; or 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 (b)(2) to a bank that handled the check for forward collection must advise the bank to which the check is sent that the returning bank is unable to identify the depository bank.◀

[(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;

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 requirement[s] of paragraph (a) of this section does not apply to checks deposited with a depository bank that does not maintain accounts. ]

[(f)▶(e)◀ *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) ]▶§ 229.30(e)(2)◀. 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]▶provisions◀ of this subpart.

[(g)▶(f)◀ *Reliance on routing number.* A returning bank may [return]▶send◀ 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▶, or in the electronic image or information included in the electronic return◀.

17. Revise § 229.32 to read as follows:

**§ 229.32 Depository bank’s responsibility for returned checks.**

▶(a) *Acceptance of electronic returns.* (1) A depository bank agrees to accept an electronic return from a paying bank if it has agreed to receive the electronic return—

(i) Directly from the paying bank;

(ii) Directly from a returning bank that has held itself out as willing to accept electronic returns directly or indirectly from the paying bank and has agreed to return checks expeditiously under § 229.31(a); or

(iii) As otherwise agreed with the paying bank.

(2) *When electronic return received.* A depository bank receives an electronic return when the return is delivered to the electronic return point designated by the depository bank or, by agreement, otherwise is made available to the depository bank for retrieval or review.

(3) A depository bank may require that electronic returns be separated from electronic collection items.◀

[(a) ]▶(b)◀ *Acceptance of paper returned checks.* ▶(1)◀ A depository bank shall accept▶paper◀ returned checks [and written▶ notices of nonpayment].

[(1) ]▶(i)◀ At a location▶, if any,◀ at which presentment of▶paper◀

checks for forward collection is requested by the depository bank; and

[(2)(i) ]▶(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;

[(ii) ]▶(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;

[(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) ]▶(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 returned checks be separated from forward collection checks.

[(b) ]▶(c)◀ *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 banking day on which it received the check (“payment date”) by—

[(1)]▶(i)◀ Debit to an account of the depository bank on the books of the returning ▶bank◀ or paying bank;

[(2)]▶(ii)◀ Cash;

[(3)]▶(iii)◀ Wire transfer; or

[(4)]▶(iv)◀ Any other form of payment acceptable to the returning ▶bank◀ or paying bank[;]▶.◀

▶(2)◀ [provided that t]▶T◀he proceeds of the payment [are]▶ 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.

[(c)]▶(d)◀ *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 [expeditiously under § 229.31(a)], or send the check [or notice] back to the bank from which it was received.

[(d)]▶(e)◀ *Charges*. A depository bank may not impose ▶on the bank returning the check◀ a charge for accepting and paying checks being returned to it.

▶(f) *Notification to customer*. If the depository bank receives a returned check, 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, or within a longer reasonable time.◀

18. Revise § 229.33 to read as follows.

▶§ 229.33 **Electronic collection items and electronic returns.**

(a) *Checks under this subpart*. Electronic collection items and electronic returns are subject to the provisions of this subpart as if they were checks or returned checks, unless otherwise provided in this subpart.

(b) [Reserved]◀

19. Revise § 229.34 to read as follows:

§ 229.34 **Warranties.**

▶(a) *Transfer and presentment warranties with respect to an electronic collection item or an electronic return.*

(1) Each bank that transfers or presents

an electronic collection item or an electronic return 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 contains an accurate record of all MICR line information required for a substitute check under § 229.2(rr) of this part 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 collection item, an electronic return, 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 transfers or presents an electronic collection item makes the warranties in paragraph (a)(1) of this section to the transferee bank, any subsequent collecting bank, the paying bank, and the drawer; and

(3) Each bank that transfers an electronic return makes the warranties in paragraph (a)(1) of this section to the transferee returning bank, any subsequent returning bank, the depository bank, and the owner of the check.◀

[(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 s*]▶(b) *S*◀ *Settlement amount, encoding, and offset*

▶warranties for all items◀. (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 in magnetic ink ▶or as electronic information◀ on the check or returned check is [correct]▶ accurate◀. 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 ▶ or in the electronic information of an electronic collection item or electronic return◀ [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)]▶(c)◀ *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 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.

[(a) *Warranties*]▶(d) *Warranty of returned check*◀.▶(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—

[(1)]►(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 U.C.C. [, or Regulation J (12 CFR part 210),] or § 229.30(c) [of this part];

[(2)]►(ii)◄ It is authorized to return the check;

[(3)]►(iii)◄ The check has not been materially altered; and

[(4)]►(iv)◄ In the case of a notice in lieu of return, the [original] 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)◄ *Electronic image and information transferred as an electronic collection item or electronic return.* A bank that transfers or presents an electronic image and related electronic information as if it were an electronic collection item or electronic return makes the warranties in this section as if the image and information were an electronic collection item or electronic return.

[(e)]►(f)◄ *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)]►(g)◄ *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)]►(h)◄ *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.

23. In § 229.35, paragraph (b) is revised to read as follows:

**§ 229.35 Indorsements.**

\* \* \* \* \*

(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]►indorsed◄ 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.

\* \* \* \* \*

24. Revise § 229.36 to read as follows:

**§ 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 nonpayment requirements of this subpart].

[(b)]►(a)◄ [Receipt at bank office or processing center]►Receipt of electronic collection items. (1) A paying bank agrees to receive an electronic collection item from a presenting bank if it has agreed to receive the electronic collection item—

(i) Directly from the presenting bank; or

(ii) As otherwise agreed with the presenting bank.

(2) *When electronic collection item received.* A bank receives an electronic collection item when the item is delivered to the electronic presentment point designated by the bank or, by agreement, otherwise is made available to the bank for retrieval or review.

(3) A paying bank may require that electronic collection items be separated from electronic returns.

►(b)◄ *Receipt of paper checks.* (1)◄ A check ►in paper form◄ is considered

received by the paying bank when it is received:

[(1)]►(i)◄ At a location to which delivery is requested by the paying bank;

[(4)]►(ii)◄ 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;◄

[(2)]►(iii)◄ At an address of the bank associated with the routing number on the check, whether in magnetic ink or in fractional form►, or in the electronic image of or electronic information related to the check◄; or

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

►(2)◄ A paying bank may require that forward collection checks be separated from returned checks.

[(c) Reserved]

[(d)]►(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.

[(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 labeled as provided in this section.]

[(f)]►(d)◄ *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)]►(d)]►(3)◄ of this section, if►,◄ [a presenting bank delivers the check] in accordance with reasonable delivery requirements established by the paying bank►, a presenting bank delivers the check◄ and demands payment under this paragraph [(f)]►(d)◄ —

(i) ►(A)◄ As an electronic collection item to the electronic presentment point designated by the paying bank, if the paying bank agrees to receive electronic collection items from the presenting bank under § 229.36(a); or◄

►(B)◄ At a location designated by the paying bank for receipt of checks under this paragraph [(f)]►(d)◄ [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)►(1)◄ of this section or, if no location is designated, at any location described in paragraph (b)►(1)◄ of this section; and

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

►(2) A paying bank may require that checks presented under paragraph (d)(1) for settlement pursuant to paragraph (d)(3) of this section be presented as electronic collection items and be presented electronically to a designated electronic presentment point.◄

[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)]►(3)◄ If presentment of a check meets the requirements of paragraph [(f)(1)]►(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.

[(3)]►(4)◄ Notwithstanding paragraph [(f)(2)]►(d)(3)◄ 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)]►(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 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.

►(5)◄ If the closing ► in paragraph (d)(4)◄ is voluntary, unless the paying bank settles for or returns the check in accordance with paragraph [(f)(2)]►(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.

25. Revise § 229.38 to read as follows:

#### § 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 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)]►(b)◄), 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.

[Note:]►(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.

[(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 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.

26. In § 229.39, revise paragraph (c) to read as follows:

**§ 229.39 Insolvency of 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 against the collecting ►bank◄ or returning bank.

\* \* \* \* \*

27. Revise § 229.40 to read as follows:

**§ 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.]

28. Revise § 229.41 to read as follows:

**§ 229.41 Relation to [S]►s◄tate 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.

29. Revise § 229.42 to read as follows:

**§ 229.42 Exclusions.**

The expeditious-return (§§ 229.30(a) and 229.31(a))[, notice-of-nonpayment (§ 229.33),] and same-day settlement [(§ 229.36(f))►] (§ 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.

30. Revise § 229.43 to read as follows:

**§ 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 ►(a), (b), ◄(c)(2), (c)(3), (d), [(e), and] (f)►, and (g)◄;

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

(5) [(§ 229.36(d))►] § 229.36(b)◄;

(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.

**Subpart D—Substitute Checks**

31. In § 229.52, revise paragraph (a) to read 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—

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

[2] (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 described in paragraph (a)(1) of this section regardless of whether the bank received consideration. ◄

\* \* \* \* \*

32. In § 229.53, revise paragraph (a) to read 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. ◄

\* \* \* \* \*

33. Revise Appendix A to Part 229 to read as follows:

**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 (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*

<sup>1</sup> 0110	0215
0111	0216
0112	0219
0113	0220
0114	0223
0115	0260
0116	0280
0117	0310
0118	0311
0119	0312
0210	0313
0211	0319
0212	0360
0213	0410
0214	0412
0420	0441
0421	0442
0422	0510
0423	0514
0430	0515
0432	0519
0433	0520
0434	.....
0440	
0521	0650
0522	0651
0530	0652
0531	0653
0532	0654
0539	0655
0540	0660
0550	0670
0560	0710
0570	0711
0610	0712
0611	0719
0612	0720
0613	0724
0620	0730
0621	0739
0622	0740
0630	0749
0631	0750
0632	0759
0640	0810
0641	0812
0642	0813
0815	0960
0819	1010
0820	1011
0829	1012
0830	1019
0839	1020
0840	1021
0841	1022
0842	1023
0843	1030
0863	1031
0865	1039
0910	1040
0911	1041
0912	1049
0913	1070
0914	1110
0915	1111
0918	1113
0919	1119
0920	1120
0921	1122

0929
1130
1131
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3020	3210
3021	3211
3022	3212
3023	3213
3030	3220
3031	3221
3039	3222
3040	3223
3041	3224
3049	3230
3070	3231
3110	3232
3111	3233
3113	3240
3119	3241
3120	3242
3122	3243
3250	3252
3251	

<sup>1</sup>The 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	0539 0008 9
0111 0048 1	0610 0014 6
0210 0120 8	0620 0019 0
0212 0400 5	0630 0019 9
0213 0500 1	0640 0010 1
0220 0026 6	0650 0021 0
0310 0004 0	0660 0010 9
0410 0001 4	0710 0030 1
0420 0043 7	<b>[0711 0711 0]</b>
0430 0030 0	0720 0029 0
0440 0050 3	0730 0033 8
0510 0003 3	<b>[0740 0020 1]</b>
0519 0002 3	.....
0520 0027 8	<b>[0750 0012 9]</b>
0530 0020 6	0810 0004 5
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	
1110 0003 8	

Federal Home Loan Banks

0110 0053 6	0740 0101 9
0212 0639 1	<b>[0810 0091 9]</b>
0260 0973 9	<b>[0910 0091 2]</b>
0410 0291 5	<b>[1010 0091 2]</b>
0420 0091 6	1011 0194 7
0430 0143 5	1110 1083 7
<b>[0430 1862 2]</b>	1119 1083 0
0610 0876 6	1210 0070 1
0710 0450 1	1240 0287 4
0730 0091 4	1250 0050 3
►U.S. Treasury	0000 0051 8
Checks and Postal	
Money Orders	Postal Money Orders
U.S. Treasury Checks	0000 0119 3
0000 0050 5	0000 0800 2 ◀

34. Revise Appendix C to Part 229 to read as follows:

### 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 Disclosures

- C-1 Next-day availability  
 C-2 Next-day availability and section 229.13 exceptions  
 C-3▶A◀ Next-day availability, case-by-case holds to statutory limits ▶without cash-withdrawal limitation◀, and section 229.13 exceptions  
 ▶C-3B Next-day availability, case-by-case holds to statutory limits with cash-withdrawal limitation, and section 229.13 exceptions◀  
 C-4▶A◀ Holds to statutory limits on all deposits [(includes chart)] ▶without cash-withdrawal limitation◀  
 C-[5]▶4B◀ Holds to statutory limits on all deposits ▶with cash-withdrawal limitation◀  
 C-5[A] Substitute-Check-Policy Disclosure Model

#### 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)]  
 C-[9]▶6◀ Automated teller machine deposits (extended hold)  
 [C-10 Cash-withdrawal limitation]  
 C-[11]▶7◀ Credit union interest-payment policy  
 C-[11A]▶8◀ Availability of funds deposited at other locations

#### Model Notices

- C-[12]▶9◀ Exception ▶or reasonable-cause◀ hold notice  
 [C-13 Reasonable-cause hold notice]  
 C-[14]▶10◀ One-time notice for large-deposit and redeposited-check exception holds  
 C-[15]▶11◀ One-time notice for repeated-overdraft exception holds  
 C-[16]▶12A◀ Case-by-case hold notice ▶without cash-withdrawal limitation  
 C-16[B]▶12B◀ Case-by-case hold notice with cash-withdrawal limitation◀  
 C-[17]▶13◀ Notice at locations where employees accept consumer deposits  
 C-[18]▶14◀ Notice at locations where employees accept consumer deposits (case-by-case holds)  
 C-[19]▶15◀ Notice at automated teller machines  
 C-[20]▶16◀ Notice at automated teller machines (delayed receipt)  
 C-[21]▶17◀ Deposit-slip notice  
 C-[22]▶18◀ Expedited-Recredit Claim, Valid-Claim Refund Notice  
 C-[23]▶19◀ Expedited-Recredit Claim, Provisional-Refund Notice

- C-[24]▶20◀ Expedited-Recredit Claim, Denial Notice  
 C-[25]▶21◀ Expedited-Recredit Claim, Reversal Notice  
 [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 Section 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

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-3—Next-Day Availability, Case-by-Case Holds to Statutory Limits, and Section 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, will 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
- 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*

The diagram shows a personal check form with the following fields: "Pay to the order of" followed by a blank line, a vertical line, and a box for the year "19\_\_"; a "\$" symbol followed by a blank line; a blank line followed by "dollars"; "(Bank Name and Location)" followed by a blank line; a routing number box containing "123456789"; and a MICR line "000000000 000". A line points from the routing number box to the text "Routing number" below the form.

*Business Check*

The diagram shows a business check form with the following fields: "Name of Company" and "Address, City, State" followed by a blank line; "Pay to the order of" followed by a blank line, a vertical line, and a box for the year "19\_\_"; a "\$" symbol followed by a blank line; a blank line followed by "dollars"; "(Bank Name and Location)" followed by a blank line; a routing number box containing "123456789"; and a MICR line "000000000 000". A line points from the routing number box to the text "Routing number" below the form.

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 chart below will show you when funds from

the check will be available. 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.

<i>First four digits from routing number</i>	<i>When funds are available</i>	<i>When funds are available if a deposit is made on a Monday</i>
[local numbers]	\$100 on the first business day after the day of your deposit.	Tuesday
	Remaining funds on the second business day after the day of your deposit.	Wednesday
All other numbers	\$100 on the first business day after the day of your deposit.	Tuesday
	Remaining funds on the fifth business day after the day of your deposit.	Monday of the following week

#### 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)]
- 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 of 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

Pay to the order of \_\_\_\_\_ | 19\_\_\_\_  
 \$ \_\_\_\_\_  
 \_\_\_\_\_ dollars  
 (Bank Name and Location)  
 123456789 000000000 000  
 \_\_\_\_\_  
 Routing number

### Business Check

Name of Company  
 Address, City, State  
 Pay to the order of \_\_\_\_\_ | 19\_\_\_\_  
 \$ \_\_\_\_\_  
 \_\_\_\_\_ dollars  
 (Bank Name and Location)  
 000000000 123456789 000000000 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 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.

#### 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. 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.

#### 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.

BILLING CODE 6210-01-P

► *Model C-1- Next-day availability*

## DEPOSIT AVAILABILITY POLICY

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday. See the *Availability Timeline* below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

### Availability Timeline

When a deposit is made by ...	Deposited funds are available ...
<ul style="list-style-type: none"> <li>• Electronic direct deposit</li> <li>• Wire transfer</li> <li>• Cash</li> </ul>	<ul style="list-style-type: none"> <li>• The same business day</li> </ul>
<ul style="list-style-type: none"> <li>• Check</li> </ul>	<ul style="list-style-type: none"> <li>• The next business day</li> </ul>

#### What is a "Business Day?"

A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (*time of day*) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

#### [Check Cashing, Immediate Availability, and Holds on Other Funds

We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your other account(s) according to the timelines described elsewhere in this policy.]

*C-2— Next-Day Availability and Section 229.13 Exceptions***DEPOSIT AVAILABILITY POLICY**

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the *Availability Timeline* below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

**Availability Timeline for Deposits to Established Accounts**

Below is our general policy for deposits to accounts open for more than 30 days. **Longer delays may apply**, and different rules apply for **checks deposited to accounts open 30 days or less** (see page 2).

When a deposit is made by ...	Deposited funds are available ...
<ul style="list-style-type: none"> <li>• Electronic direct deposit</li> </ul>	
<ul style="list-style-type: none"> <li>• Wire transfer</li> </ul>	<ul style="list-style-type: none"> <li>• The same business day</li> </ul>
<ul style="list-style-type: none"> <li>• Cash</li> </ul>	
<ul style="list-style-type: none"> <li>• Check</li> </ul>	<ul style="list-style-type: none"> <li>• The next business day</li> </ul>

**What is a “Business Day?”**

A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (*time of day*) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

**[Check Cashing, Immediate Availability, and Holds on Other Funds**

We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your other account(s) according to the timelines described elsewhere in this policy.]

**Longer Delays May Apply**

Funds from check deposits may be delayed for up to (*number*) business days if:

- We believe a deposited check will not be paid.
- You deposit checks totaling more than \$(*large-deposit amount*) on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 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, and we will tell you when the funds will be available.



## C-2— Next-Day Availability and Section 229.13 Exceptions

## DEPOSIT AVAILABILITY POLICY (continued)

## Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)

When a deposit is made by ...	Deposited funds are available ...
<ul style="list-style-type: none"> <li>• Electronic direct deposit</li> </ul>	
<ul style="list-style-type: none"> <li>• Wire transfer</li> </ul>	<ul style="list-style-type: none"> <li>• The same business day</li> </ul>
<ul style="list-style-type: none"> <li>• Cash</li> </ul>	
<ul style="list-style-type: none"> <li>• U.S. Treasury check payable to you</li> </ul>	<ul style="list-style-type: none"> <li>• The first \$(<i>new-account amount</i>) is available on the next business day</li> <li>• Any remainder over \$(<i>new-account amount</i>) is available in 9 business days</li> </ul>
<ul style="list-style-type: none"> <li>• Government, cashier's, certified, teller's, or traveler's check that is payable to you [and deposited with a special deposit slip*]</li> </ul>	<ul style="list-style-type: none"> <li>• The first \$(<i>new-account amount</i>) is available on the next business day if deposited with a teller, otherwise 2 business days</li> </ul>
<ul style="list-style-type: none"> <li>• Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check payable to you</li> </ul>	<ul style="list-style-type: none"> <li>• Any remainder over \$(<i>new-account amount</i>) is available in 9 business days</li> </ul>
<ul style="list-style-type: none"> <li>• Other checks not specifically described above</li> </ul> <p><i>For example, personal checks, or checks not written to you</i></p>	<ul style="list-style-type: none"> <li>• In (<i>number</i>) business days</li> </ul>

[\* Special deposit slips can be obtained in any branch. Government, cashier's, certified, teller's, or traveler's checks will be processed like "other checks" if they are not deposited with a special deposit slip.]

*C-3A— Next-Day Availability, Case-by-Case Holds to Statutory Limits Without Cash-Withdrawal Limitation, and Section 229.13 Exceptions*

**DEPOSIT AVAILABILITY POLICY**

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the *Availability Timeline* below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

**Availability Timeline for Deposits to Established Accounts**

Below is our general policy for deposits to accounts open for more than 30 days. Longer delays may apply, and different rules apply for checks deposited to accounts open 30 days or less (see page 2).

When a deposit is made by ...	Deposited funds are available ...
<ul style="list-style-type: none"> <li>• Electronic direct deposit</li> <li>• Wire transfer</li> <li>• Cash</li> <li>• Check</li> </ul>	<ul style="list-style-type: none"> <li>• The same business day</li> <li>• Usually the next business day, but see "Longer Delays May Apply" below</li> </ul>

**What is a "Business Day?"**

A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (*time of day*) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

**[Check Cashing, Immediate Availability, and Holds on Other Funds**

We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your account(s) according to the timelines described elsewhere in this policy.]

**Longer Delays May Apply**

Funds from check deposits may not be available according to the timeline described above. In some cases funds may be held for up to 2 business days. In these cases, the first \$(*minimum amount*) of the deposit will be available on the next business day.

Funds from check deposits may be delayed for up to (*number*) business days if:

- We believe a deposited check will not be paid.
- You deposit checks totaling more than \$(*large-deposit amount*) on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 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, and we will tell you when the funds will be available.

If you will need the funds from a check deposit right away, ask us when the funds will be available.

*C-3A— Next-Day Availability, Case-by-Case Holds to Statutory Limits Without Cash-Withdrawal Limitation, and Section 229.13 Exceptions*

**DEPOSIT AVAILABILITY POLICY** (continued)

**Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)**

When a deposit is made by ...	Deposited funds are available ...
<ul style="list-style-type: none"> <li>• Electronic direct deposit</li> <li>• Wire transfer</li> <li>• Cash</li> </ul>	<ul style="list-style-type: none"> <li>• The same business day</li> </ul>
<ul style="list-style-type: none"> <li>• U.S. Treasury check payable to you</li> </ul>	<ul style="list-style-type: none"> <li>• The first \$(<i>new-account amount</i>) is available on the next business day</li> <li>• Any remainder over \$(<i>new-account amount</i>) is available in 9 business days</li> </ul>
<ul style="list-style-type: none"> <li>• Government, cashier's, certified, teller's, or traveler's check that is payable to you [and deposited with a special deposit slip*]</li> </ul>	<ul style="list-style-type: none"> <li>• The first \$(<i>new-account amount</i>) is available on the next business day if deposited with a teller, otherwise 2 business days</li> </ul>
<ul style="list-style-type: none"> <li>• Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check payable to you</li> </ul>	<ul style="list-style-type: none"> <li>• Any remainder over \$(<i>new-account amount</i>) is available in 9 business days</li> </ul>
<ul style="list-style-type: none"> <li>• Other checks not specifically described above</li> </ul> <p><i>For example, personal checks, or checks not written to you</i></p>	<ul style="list-style-type: none"> <li>• In (<i>number</i>) business days</li> </ul>

[\* Special deposit slips can be obtained in any branch. Government, cashier's, certified, teller's, or traveler's checks will be processed like "other checks" if they are not deposited with a special deposit slip.]

## C-3B— Next-Day Availability, Case-by-Case Holds to Statutory Limits With Cash-Withdrawal Limitation, and Section 229.13 Exceptions

### DEPOSIT AVAILABILITY POLICY

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the *Availability Timeline* below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

#### Availability Timeline for Deposits to Established Accounts

Below is our general policy for deposits to accounts open for more than 30 days. Longer delays may apply, and different rules apply for checks deposited to accounts open 30 days or less (see page 2).

When a deposit is made by ...	Deposited funds are available ...
<ul style="list-style-type: none"> <li>• Electronic direct deposit</li> <li>• Wire transfer</li> <li>• Cash</li> <li>• Check</li> </ul>	<ul style="list-style-type: none"> <li>• The same business day</li> <li>• Usually the next business day, but see "Longer Delays May Apply" below</li> </ul>

#### What is a "Business Day?"

A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (*time of day*) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

#### [Check Cashing, Immediate Availability, and Holds on Other Funds

We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your account(s) according to the timelines described elsewhere in this policy.]

#### Longer Delays May Apply

Funds from check deposits may not be available according to the timeline described above. In some cases funds may be held for up to three business days, and in other specific cases they may be held for up to (*number*) business days after the day of your deposit. We will notify you if we delay your ability to withdraw funds, and we will tell you when the funds will be available.

In the case of a 3 business day hold:

- The first \$(*minimum amount*) of the deposit will be available on the next business day.
- Up to an additional \$(*cash-withdrawal amount*) will be available for cash withdrawal beginning at (*time no later than 5:00 p.m.*) on the second business day. The entire deposit (up to \$(*large-deposit amount*)) will be available for paying checks you have written on the second business day.
- The remainder (up to \$(*large-deposit amount*)) will be available for cash withdrawal on the third business day.
- Any remainder over \$(*large-deposit amount*) is available in (*number*) business days for cash withdrawal and writing checks.

Funds from check deposits may be delayed for up to (*number*) business days if:

- We believe a deposited check will not be paid.
- You deposit checks totaling more than \$(*large-deposit amount*) on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 months.
- There is an emergency, such as failure of computer or communications equipment.

If you will need the funds from a check deposit right away, ask us when the funds will be available.

*C-3B— Next-Day Availability, Case-by-Case Holds to Statutory Limits With Cash-Withdrawal Limitation, and Section 229.13 Exceptions*

**DEPOSIT AVAILABILITY POLICY** (continued)

**Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)**

When a deposit is made by ...	Deposited funds are available ...
<ul style="list-style-type: none"> <li>• Electronic direct deposit</li> <li>• Wire transfer</li> <li>• Cash</li> </ul>	<ul style="list-style-type: none"> <li>• The same business day</li> </ul>
<ul style="list-style-type: none"> <li>• U.S. Treasury check payable to you</li> </ul>	<ul style="list-style-type: none"> <li>• The first \$(<i>new-account amount</i>) is available on the next business day</li> <li>• Any remainder over \$(<i>new-account amount</i>) is available in 9 business days</li> </ul>
<ul style="list-style-type: none"> <li>• Government, cashier's, certified, teller's, or traveler's check that is payable to you [and deposited with a special deposit slip*]</li> </ul>	<ul style="list-style-type: none"> <li>• The first \$(<i>new-account amount</i>) is available on the next business day if deposited with a teller, otherwise 2 business days</li> </ul>
<ul style="list-style-type: none"> <li>• Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check payable to you</li> </ul>	<ul style="list-style-type: none"> <li>• Any remainder over \$(<i>new-account amount</i>) is available in 9 business days</li> </ul>
<ul style="list-style-type: none"> <li>• Other checks not specifically described above <i>For example, personal checks, or checks not written to you</i></li> </ul>	<ul style="list-style-type: none"> <li>• In (<i>number</i>) business days</li> </ul>

[\* Special deposit slips can be obtained in any branch. Government, cashier's, certified, teller's, or traveler's checks will be processed like "other checks" if they are not deposited with a special deposit slip.]

*C-4A— Holds to Statutory Limits on All Deposits Without Cash-Withdrawal Limitation***DEPOSIT AVAILABILITY POLICY**

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the *Availability Timeline* below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

**Availability Timeline for Deposits to Established Accounts**

Below is our general policy for deposits to accounts open for more than 30 days. **Longer delays may apply**, and different rules apply for **checks deposited to accounts open 30 days or less** (see page 2).

A **business day** is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (*time of day*) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

When a deposit is made by ...	Deposited funds are available ...
<ul style="list-style-type: none"> <li>• <b>Electronic direct deposit</b></li> </ul>	<ul style="list-style-type: none"> <li>• The same business day</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Wire transfer</b></li> </ul>	<ul style="list-style-type: none"> <li>• The next business day</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Cash</b></li> </ul>	<ul style="list-style-type: none"> <li>• The next business day if deposited with a teller, otherwise 2 business days</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Check from an account at this bank</b></li> </ul>	<ul style="list-style-type: none"> <li>• The first \$(<i>large-deposit amount</i>) is available on the next business day</li> <li>• Any remainder over \$(<i>large-deposit amount</i>) is available in 2 business days</li> </ul>
<ul style="list-style-type: none"> <li>• <b>U.S. Treasury check</b> payable to you</li> </ul>	<ul style="list-style-type: none"> <li>• The first \$(<i>large-deposit amount</i>) is available on the next business day</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Government, cashier's, certified, or teller's check</b> payable to you and deposited with a teller [with a special deposit slip*]</li> </ul>	<ul style="list-style-type: none"> <li>• Any remainder over \$(<i>large-deposit amount</i>) is available in (<i>number</i>) business days</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Postal money order, Federal Reserve Bank check, or Federal Home Loan bank check</b> payable to you and deposited with a teller</li> </ul>	<ul style="list-style-type: none"> <li>• Any remainder over \$(<i>large-deposit amount</i>) is available in (<i>number</i>) business days</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Other checks</b> not specifically described above <i>For example, personal checks, or checks not written to you</i></li> </ul>	<ul style="list-style-type: none"> <li>• The first \$(<i>minimum amount</i>) is available on the next business day</li> <li>• The remainder (up to \$(<i>large-deposit amount</i>)) is available in 2 business days</li> <li>• Any remainder over \$(<i>large-deposit amount</i>) is available in (<i>number</i>) business days</li> </ul>

[\* *Special deposit slips can be obtained in any branch. Government, cashier's, certified, or teller's checks will be processed like "other checks" if they are not deposited with a special deposit slip.*]

**[Check Cashing, Immediate Availability, and Holds on Other Funds**

We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your account(s) according to the timelines described elsewhere in this policy.]

*C-4A— Holds to Statutory Limits on All Deposits Without Cash-Withdrawal Limitation***DEPOSIT AVAILABILITY POLICY** (continued)**Longer Delays May Apply**

Funds from check deposits may be delayed for up to *(number)* business days if:

- We believe a deposited check will not be paid.
- You deposit checks totaling more than  $\$(large-deposit\ amount)$  on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 months.
- There is a bank 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.

**Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)**

When a deposit is made by ...	Deposited funds are available ...
<ul style="list-style-type: none"> <li>• <b>Electronic direct deposit</b></li> <li>• <b>Wire transfer</b></li> <li>• <b>Cash</b></li> <li>• <b>U.S. Treasury check</b> payable to you</li> <li>• <b>Government, cashier's, certified, teller's, or traveler's check</b> that is payable to you [and deposited with a special deposit slip*]</li> <li>• <b>Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check</b> payable to you</li> <li>• <b>Other checks</b> not specifically described above <i>For example, personal checks, or checks not written to you</i></li> </ul>	<ul style="list-style-type: none"> <li>• The same business day</li> <li>• The next business day</li> <li>• The next business day if deposited with a teller, otherwise 2 business days</li> <li>• The first <math>\\$(new-account\ amount)</math> is available on the next business day</li> <li>• Any remainder over <math>\\$(new-account\ amount)</math> is available in 9 business days</li> <li>• The first <math>\\$(new-account\ amount)</math> is available on the next business day if deposited with a teller, otherwise 2 business days</li> <li>• Any remainder over <math>\\$(new-account\ amount)</math> is available in 9 business days</li> <li>• In <i>(number)</i> business days</li> </ul>

[\* Special deposit slips can be obtained in any branch. Government, cashier's, certified, teller's, traveler's checks will be processed like "other checks" if they are not deposited with a special deposit slip.]

*C-4B— Holds to Statutory Limits on All Deposits With Cash-Withdrawal Limitation***DEPOSIT AVAILABILITY POLICY**

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the *Availability Timeline* below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

**Availability Timeline for Deposits to Established Accounts**

Below is our general policy for deposits to accounts open for more than 30 days. **Longer delays may apply**, and different rules apply for checks deposited to accounts open 30 days or less (see page 2).

A **business day** is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (*time of day*) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

When a deposit is made by ...	Deposited funds are available ...
<ul style="list-style-type: none"> <li>• <b>Electronic direct deposit</b></li> </ul>	<ul style="list-style-type: none"> <li>• The same business day</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Wire transfer</b></li> </ul>	<ul style="list-style-type: none"> <li>• The next business day</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Cash</b></li> </ul>	<ul style="list-style-type: none"> <li>• The next business day if deposited with a teller, otherwise 2 business days</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Check from an account at this bank</b></li> </ul>	<ul style="list-style-type: none"> <li>• The first \$(<i>large-deposit amount</i>) is available on the next business day</li> <li>• Any remainder over \$(<i>large-deposit amount</i>) is available in 2 business days</li> </ul>
<ul style="list-style-type: none"> <li>• <b>U.S. Treasury check</b> payable to you</li> <li>• <b>Government, cashier's, certified, or teller's check</b> payable to you and deposited with a teller [with a special deposit slip*]</li> <li>• <b>Postal money order, Federal Reserve Bank check, or Federal Home Loan bank check</b> payable to you and deposited with a teller</li> </ul>	<ul style="list-style-type: none"> <li>• The first \$(<i>large-deposit amount</i>) is available on the next business day</li> <li>• Any remainder over \$(<i>large-deposit amount</i>) is available in (<i>number</i>) business days</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Other checks</b> not specifically described above <i>For example, personal checks, or checks not written to you</i></li> </ul>	<p><b>For writing checks:</b></p> <ul style="list-style-type: none"> <li>• The first \$(<i>minimum amount</i>) is available on the next business day</li> <li>• The remainder (up to \$(<i>large-deposit amount</i>)) is available in 2 business days</li> </ul> <p><b>For cash withdrawal:</b></p> <ul style="list-style-type: none"> <li>• The first \$(<i>minimum amount</i>) is available on the next business day</li> <li>• Up to an additional \$(<i>cash-withdrawal amount</i>) is available on the second business day at (<i>time no later than 5:00 p.m.</i>)</li> <li>• The remainder (up to \$(<i>large-deposit amount</i>)) is available in 3 business days</li> </ul> <p>Any remainder over \$(<i>large-deposit amount</i>) is available in (<i>number</i>) business days for cash withdrawal and for writing checks</p>

[\* *Special deposit slips can be obtained in any branch. Government, cashier's, certified, or teller's checks will be processed like "other checks" if they are not deposited with a special deposit slip.*]

**[Check Cashing, Immediate Availability, and Holds on Other Funds**

We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your account(s) according to the timelines described elsewhere in this policy.]



*C-4B— Holds to Statutory Limits on All Deposits With Cash-Withdrawal Limitation*

## DEPOSIT AVAILABILITY POLICY (continued)

**Longer Delays May Apply**

Funds from check deposits may be delayed for up to *(number)* business days if:

- We believe a deposited check will not be paid.
- You deposit checks totaling more than \$(*large-deposit amount*) on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 months.
- There is a bank 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.

## Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)

When a deposit is made by ...	Deposited funds are available ...
• Electronic direct deposit	• The same business day
• Wire transfer	• The next business day
• Cash	• The next business day if deposited with a teller, otherwise 2 business days
• U.S. Treasury check payable to you	• The first \$( <i>new-account amount</i> ) is available on the next business day • Any remainder over \$( <i>new-account amount</i> ) is available in 9 business days
• Government, cashier's, certified, teller's, or traveler's check that is payable to you [and deposited with a special deposit slip*]	• The first \$( <i>new-account amount</i> ) is available on the next business day if deposited with a teller, otherwise 2 business days • Any remainder over \$( <i>new-account amount</i> ) is available in 9 business days
• Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check payable to you	• In <i>(number)</i> business days
• Other checks not specifically described above <i>For example, personal checks, or checks not written to you</i>	

[\* Special deposit slips can be obtained in any branch. Government, cashier's, certified, teller's, traveler's checks will be processed like "other checks" if they are not deposited with a special deposit slip.]

## BILLING CODE 6210-01-C

## ◀C-5[A]—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).

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 institutions 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)

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) fourth 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 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.

C-12—Exception Hold Notice

NOTICE OF HOLD

Account number: Date of deposit: (number) (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: Date of deposit: (number) (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 indorsement 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 after the day of your deposit. 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 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 Holds

**NOTICE OF HOLD**

Account number: Date of deposit:  
(number) (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 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: Date of deposit:  
(number) (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**

<i>Description of Deposit</i>	<i>When Funds Can Be Withdrawn by Cash or Check</i>
<b>Direct deposits</b>	<b>The day we receive the deposit</b>
<b>Cash; wire transfers; cashier's, certified, teller's, or government checks; checks on (bank name) [unless (any limitation related to branches in different check-processing regions)], and the first \$100 of a day's deposits of other checks</b>	<b>The first business day after the day of deposit</b>
<b>Local checks</b>	<b>The second business day after the day of deposit</b>
<b>Nonlocal checks</b>	<b>The fifth business day after the day of deposit</b>

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 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. ]

**BILLING CODE 6210-01-P**

## ▶ C-9—Exception or reasonable-cause hold Notice

## NOTICE OF HOLD ON DEPOSIT

This notice is to inform you that we are placing a  
**(number)-DAY HOLD on \$(deposit amount)**  
recently deposited to your account.

You will not be able to withdraw or otherwise use money from the deposit described below until the hold is removed in (number) business days on (date).

Account Holder: (name)

Account Number: (number or code)

Date of Deposit: (date)

Deposit Amount: \$(deposit amount)

Hold Amount: \$(hold amount)

Funds will be available: (date)

Reason for Hold: (reason for hold)

*[If we did not notify you of this hold when you made the deposit, you can request a refund of any overdraft or returned check fees that result from the hold once the check is paid. To request a refund of such fees, (description of procedure for obtaining refund).]*

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*C-10—One-Time Notice for Large-Deposit and Redeposited-Check Exception Holds*

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**HOLDS ON LARGE DEPOSITS AND REDEPOSITED CHECKS****If you deposit into your account:**

- Checks totaling more than \$(*large-deposit amount*) on any one day
  - The first \$(*large-deposit amount*) deposited on any one day will be available according to our general policy
  - The amount over \$(*large-deposit amount*) will generally be available on the second business day for checks drawn on (*bank name*), or in (*number*) business days for other checks
  - If the deposit is a mix of checks drawn on (*bank name*) and other checks, the checks drawn on (*bank name*) will be counted toward the first \$(*large-deposit amount*), followed by the other checks
- A check that has been returned unpaid
  - The funds will generally be available on the second business day for checks drawn on (*bank name*), or in (*number*) business days for other checks

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*C-11—One-Time Notice for Repeated-Overdraft Exception Holds***NOTICE OF EXTENDED HOLDS**

As a result of repeated overdrafts to your account

**you will have delayed access to check deposits**

made to your account between *(date of notice)* and *(date, 6 months from  
date of notice)*

Account Holder: *(name)*

Account Number: *(number or code)*

Date of Notice: *(date of notice)*

- Availability:
- Checks drawn on *(bank name)* will be available in 2 business days
  - Other checks will be available in *(number)* business days

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*C-12A—Case-by-Case Hold Notice Without Cash-Withdrawal Limitation***NOTICE OF HOLD ON DEPOSIT**

This notice is to inform you that we are placing a  
**(*number*)-DAY HOLD on \$(*deposit amount*)**  
recently deposited to your account.

You will not have full access to all the money from the deposit described below until the hold is removed in (*number*) business days on (*date*). See below for more information.

**Account Holder:** (*name*)

**Account Number:** (*number or code*)

**Date of Deposit:** (*date*)

- Availability Timeline:**
- The first \$(*minimum amount*) will be available on (*date*)
  - The remaining \$(*amount held*) will be available on (*date*)

*[If we did not notify you of this hold when you made the deposit, you can request a refund of any overdraft or returned check fees that result from the hold once the check is paid. To request a refund of such fees, (*description of procedure for obtaining refund*).]*

*C-12B—Case-by-Case Hold Notice With Cash-Withdrawal Limitation***NOTICE OF HOLD ON DEPOSIT**

This notice is to inform you that we are placing a  
**(number)-DAY HOLD on \$(deposit amount)**

recently deposited to your account.

You will not have full access to all the money from the deposit described below until the hold is removed in *(number)* business days on *(date)*. See below for more information.

**Account Holder:** *(name)*

**Account Number:** *(number or code)*

**Date of Deposit:** *(date)*

**Availability Timeline:** For writing checks:

- The first *\$(minimum amount)* will be available on *(date)*
- The remaining *\$(amount held)* will be available at *(time)* on *(date)*

**For cash withdrawal:**

- The first *\$(minimum amount)* will be available on *(date)*
- Up to an additional *\$(cash-withdrawal amount)* will be available at *(time no later than 5:00 p.m.)* on *(date)*
- The remaining *\$(amount held)* will be available on *(date)*

*[If we did not notify you of this hold when you made the deposit, you can request a refund of any overdraft or returned check fees that result from the hold once the check is paid. To request a refund of such fees, (description of procedure for obtaining refund).]*



## C-13—Notice at Locations Where Employees Accept Consumer Deposits

## DEPOSIT AVAILABILITY POLICY

## How soon can I withdraw funds deposited into my account?

When a deposit is made by ...	Deposited funds are available ...
Electronic direct deposit	<ul style="list-style-type: none"><li>• The same day</li></ul>
Cash; wire transfer; cashier's, certified, teller's or government check; or a check from an account at this bank	<ul style="list-style-type: none"><li>• The next business day</li></ul>
Any other check	<ul style="list-style-type: none"><li>• The first \$(<i>minimum amount</i>) is available the next business day</li><li>• The remainder is generally available by the (<i>number</i>) business day after the deposit</li></ul>

*C-14—Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds)*

## DEPOSIT AVAILABILITY POLICY

### How soon can I withdraw funds deposited into my account?

When a deposit is made by ...	Deposited funds are available ...
Electronic direct deposit, wire transfer, or cash	<ul style="list-style-type: none"> <li>• The same day</li> <li>• Usually the next business day</li> </ul>
Check	However, we may place a hold on check deposits. In these cases, funds will generally be available by the ( <i>number</i> ) business day after the deposit.

**If you will need the funds from a check deposit right away, you should ask us when the funds will be available.**

#### BILLING CODE 6210-01-C

◀C-[19]▶15◀—*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]▶16◀—*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]▶17◀—*Deposit-Slip Notice*

Deposits may not be available for immediate withdrawal.

C-[22]▶18◀—*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]▶19◀—*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]▶20◀—*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 copy*) 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]▶21◀—*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.]

35. Appendix D to Part 229 is revised to read as follows:

**Appendix D to Part 229—Indorsement, Reverting 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 reverting bank with respect to the check, an asterisk outside the arrow at each end of the routing number to identify the bank as a reverting 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)] (C) Other information, provided that the inclusion of such information does not interfere with the readability of the indorsement.

(iii) (A) 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.<sup>[31]</sup>

<sup>[31]</sup> (B) The 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.

(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 reverting 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 reverting 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 reverting bank with respect to the check, an asterisk at each end of the number to identify the bank as a reverting 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 reverting 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 reverting bank shall comply with the following specifications when creating a substitute check:

(i) (A) If it is a depository bank, collecting bank, or returning bank with respect to the substitute check, the reverting bank shall place its own indorsement onto the back of the check as specified in this appendix.

[(ii)] (B) If it is a paying bank with respect to the substitute check or a bank that rejected a check submitted for deposit, [A] the reverting 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.

[(iii)] (i) The reverting bank shall place on the front of the check, outside the image of the original check, (A) its nine-digit routing number (without arrows) and an asterisk at each end of the number, in accordance with ANS X9.100-140, and

[(iv)] (B) [The reverting 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, reverting bank identification, or truncating bank identification placed on an original check or substitute check shall be printed in black ink.

(5) A depository bank shall indorse an electronic collection item in accordance with ANS X9.100-187, unless the parties otherwise agree, and according to the following specifications—

(i) The electronic indorsement shall contain—

(A) The depository bank's nine-digit routing number; and

(B) The indorsement date.

(ii) The electronic indorsement also may contain other information, provided that the inclusion of such information does not interfere with the readability of the indorsement.

(6) Each subsequent collecting bank or returning bank indorser shall protect the identifiability and legibility of the depository bank indorsement by indorsing an electronic collection item or electronic return in accordance with ANS X9.100-187, unless the parties otherwise agree.

36. Amend Appendix E to Part 229 as follows:

A. Revise Sections II through XI.

B. In Section XII, revise paragraphs A. and E.

C. Revise Sections XIII through XXVIII.

D. In Section XXIX, revise paragraph B.

E. Revise Sections XXX through XXXIII.

F. Revise Section XXXVIII.

The revisions read as follows:

**Appendix E to Part 229—Commentary**

*I. Introduction*

A. Background

1. The Board interpretations, which are labeled "Commentary," [and follow] of 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)) (the EFA Act), 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] EFA Act (12 U.S.C. 4001) or in section 3 of the Check 21 Act (12 U.S.C. 5002). 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 or the Check 21 Act, and to carry out the purposes of the EFA Act and the Check 21 Act. The Board also has incorporated by reference the definitions of the Uniform Commercial Code where appropriate. Some of Regulation CC's definitions 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 t]►T◄these accounts ►are excluded◄ 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 [S]►s◄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 [S]►s◄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) ►Credit Transfer◄

1. ►Automated Clearinghouse (ACH) credit transfers are included in the definition of electronic payment.◄ [The Board has defined automated clearinghouse as ]►An ACH is◄ a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular governing [automated clearinghouse]►ACH◄ items or the rules of an ACH association ►or similar interbank agreement◄. [ACH credit transfers are included in the definition of electronic payment.]►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 the different kinds of ACH payments. In an ACH credit transfer, the originator orders that its account be debited and another account credited. In contrast, in an ACH debit transfer, the originator, with prior authorization, orders another account to be debited and the originator’s account to be credited.◄ [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 the

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]►2◄. 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 a]►A◄n ATM [as]►is◄ an electronic device at which a natural person may make deposits to an account by cash or ►paper◄ check and perform other account transactions►, such as cash withdrawals◄. 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 ►dispense cash and◄ perform other transactions. A lobby deposit box or similar receptacle in which written payment orders or deposits may be placed is not an ATM. ►Finally, a remote deposit capture device is not an ATM because a natural person can deposit neither cash nor paper checks into an account using the device.◄

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 ►(12 CFR part 210)◄. 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 [S]►s◄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 [S]►s◄subparts C and D, and in connection therewith, [S]►s◄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►(b)◄(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 [S]►s◄subpart B. For the purposes of [S]►s◄subparts C and D, and in connection therewith, [S]►s◄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 ►and the Check 21 Act◄ define[s] 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 t]►T◄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 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. Check is defined in section 3 of the Check 21 Act as including nonnegotiable demand drafts. Because these instruments are often handled as cash items in the forward collection process, for the purposes of subparts C and D, and in connection therewith, subpart A, the definition of check includes nonnegotiable demand drafts drawn on or payable through a bank, drawn on a Federal Reserve Bank or Federal Home Loan Bank, or drawn on the Treasury of the United States.

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 and the Check 21 Act treat [s] 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] Neither the EFA Act nor the Check 21 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] should 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] may be 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, s] Savings and loan associations [often] may use checks drawn on Federal 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] provides that functionally equivalent instruments may be defined in the regulation as depository checks. [1] (See Section 602(11) of the EFA Act (12 U.S.C. 4001(11)). 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] Regulation CC defines 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.

[1] Section 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.”]

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]►Regulation CC does not provide◀ 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)]►[(vv)]◀ [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]►8◀. A substitute check as defined in § 229.2[(aaa)]►[(rr)]◀ 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]►9◀. The definition of check does not include an instrument payable in a foreign currency (*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(l) [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.]►[Reserved]◀

N. 229.2(n) [Reserved]

O. 229.2(o) 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.

P. 229.2(p) 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).

Q. 229.2(q) [Reserved]

R. 229.2(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.] 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]►(12 CFR part 210). The Check 21 Act uses the term depository bank.◀

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 [S]►s◀ubpart C, the bank applying its indorsement as the depository bank indorsement on the check is the depository bank.)

4. For purposes of [S]►s◀ubpart 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 [S]►s◀ubpart B.

5. A bank is not a depository bank with respect to a check if the bank receives the check for deposit but then rejects the check. For example, if a bank's customer submits a check for deposit into an ATM and the bank subsequently reviewed the item and determined not to accept the item for deposit, that bank is not a depository bank with respect to the check it rejected. Accordingly, such a bank does not take on the liabilities of a depository bank under this part.◀

[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. ]

#### ►S. 229.2(s) Electronic Collection Item

1. Banks often enter into agreements under which a check may be transferred or presented by sending an electronic image of the check and electronic information related to the check (e.g., MICR-line information). The terms of the agreements may vary. If, however, an electronic collection item satisfies all the requirements set forth in § 229.2(s), then the provisions of subpart C apply to the electronic collection item as if it were a check subject to that subpart.

a. The agreement to receive an electronic collection item may be either bilateral or through a Federal Reserve Bank operating circular, clearinghouse rule, or other interbank agreement. (See UCC § 4–110).

b. The electronic image of the front and back of the original check or substitute check as well as electronic information related to the check must be sufficient to create a substitute check. Electronic information related to the check includes information contained in the MICR line of the check prior to truncation. Some banks' agreements to receive items electronically may not require an electronic image of the front and back of an original check. Electronic items received under these agreements would not be electronic collection items under this part.

c. ANS X9.100–187 is the most prevalent industry standard for electronic images and information that will enable a bank to create a substitute check. Multiple standards may, however, exist that would enable a bank to create a substitute check from an electronic image and information. Accordingly, the parties may agree to send and receive checks as electronic images and information that conform to a different standard.

d. Electronic collection items that contain images of the front and back of a substitute check also are electronic representations of a substitute check (see § 229.2(hh)). Not all electronic representations of substitute checks, however, are electronic collection items. To be an electronic collection item, the electronic representation of a substitute check must satisfy the requirements for electronic collection items—it must contain sufficient information to create a substitute check and it must conform to ANS X9.100–

187, unless the parties agree to a different standard. ◀

#### T. 229.2(t) Electronic Payment

1. Electronic payment is defined to mean a wire transfer as defined in § 229.2[(ll)]►(bbb)◀ or an ACH credit transfer ► as defined in § 229.2(b)◀. 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]► regulation◀. Because ACH credit transfers [frequently involve important consumer payments, such as wages]►pose little risk of return to the depository bank◀, 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 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.

#### ►U. 229.2(u) Electronic Presentment Point

1. The term "electronic presentment point" means the electronic address that a paying bank has designated as the place to which electronic collection items be presented. This address may be either an e-mail address or other electronic address. ◀

#### ►V. 229.2(v) Electronic Return

1. Many paying banks have entered into agreements with returning banks, depository banks, clearinghouses, or other parties to return checks electronically. For purposes of subpart C, the term "electronic return" means an electronic image of and electronic information related to a check the paying bank determines not to pay and that is sufficient for a subsequent bank to create a substitute check (See § 229.2(rr) and accompanying commentary). To be sufficient to create a substitute check, the electronic image must include an image of both the front and back of the check. The electronic information, typically contained in an electronic record accompanying the electronic image, must include information from the MICR line of the check at the time it was truncated. The electronic record may include information in addition to MICR-line related information.

2. ANS X9.100–187 is the most prevalent industry standard for electronic images and information that will enable a subsequent bank to create a substitute check (i.e., in accordance with ANS X9.100–140). Similar to electronic presentment, multiple standards may exist that would enable a bank to create a substitute check from an electronic image

and information. Accordingly, the parties may agree to return checks as electronic images and information that conform to a different standard. For example, the depository bank may agree to receive the electronic image and information sufficient for creating a substitute check in a .pdf, rather than in accordance with ANS X9.100–187.

3. An electronic image and information related to a check the paying bank determines not to pay is subject to the provisions of subpart C only if the depository bank has agreed to receive the electronic return in accordance with § 229.32(a) (See § 229.32(a) and accompanying commentary).

4. Electronic returns that contain images of the front and back of a substitute check also are electronic representations of a substitute check (See § 229.2(hh)). Not all electronic representations of substitute checks, however, are electronic returns. To be an electronic return, the electronic representation of a substitute check must satisfy the requirements for electronic returns—it must contain sufficient information to create a substitute check and must conform to ANS X9.100–187. ◀

#### ►W. 229.2(w) Electronic Return Point

1. The term "electronic return point" means the e-mail address or other electronic address that a depository bank has designated as the place to which electronic returns must be delivered.

2. The electronic return point may be different from the electronic presentment point designated by a bank for presentment of electronic collection items. ◀

#### X. 229.2(x) [Reserved]

#### Y. 229.2(y) 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.

#### Z. 229.2(z) Good Faith

1. This definition of good faith derives from U.C.C. 3–103(a)(4).

#### AA. 229.2(aa) [Reserved]

#### BB. 229.2(bb) Interest Compensation

1. This calculation of interest compensation derives from U.C.C. 4A–506(b). (See §§ 229.34[(e)]►(f)◀ and 229.36[(f)]►(d)◀.)

#### CC. 229.2(cc) [MICR Line]►Magnetic ink character recognition line or 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.

#### DD. 229.2(dd) Merger Transaction

1. Merger transaction is a term used in [S]►s◀ubparts 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.)

#### EE. 229.2(ee) 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 [S]s◀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)]▶(e)◀ and 229.31[(f)]▶(e)◀.)

#### FF. 229.2(ff) [Reserved]

#### GG. 229.2(gg) 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.

#### HH. 229.2(hh) 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 account, 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.

▶2. An electronic representation of a substitute check also may be an electronic collection item or an electronic return if the electronic representation of the substitute check otherwise satisfies their requirements (see § 229.2(s) and (v)).

##### Example.

A bank receives electronic presentment of a substitute check that has been converted to electronic form. If the electronic file that the bank receives for presentment contains an electronic image of and information related to the substitute check that are sufficient for creating a substitute check and the electronic image and information conform to ANS X9.100-187, or another format to which the parties agree, that electronic file would be an electronic collection item in addition to an electronic representation of a substitute check.◀

#### II. 229.2(ii) Paying Bank

1. The regulation uses this term in lieu of the EFA Act's "originating depository institution."▶The Check 21 Act also uses the term "paying bank."◀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▶(a)◀ [and 229.36(a)], 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]▶under◀ [S]s◀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 [S]s◀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 [S]s◀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.

JJ. 229.2(jj) [Reserved]

#### KK. 229.2(kk) 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.]

1. [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.

2. [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 a] A [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.

#### LL. 229.2(ll) Qualified Returned Check

1. Subpart C requires the paying bank and returning bank(s) to return checks in an expeditious manner under certain circumstances. [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] While the primary way to speed the return process is to send the return electronically, a bank also could prepare the returned check for automated paper processing. [Returned checks can be automated by either the paying bank or a returning bank by placing the return in a carrier envelope or by placing a strip on the bottom of the return, and encoding the envelope or strip with the routing number of the depository bank, the amount of the check, and a special return identifier.] 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. (See § 229.2(w) and accompanying commentary for a discussion of standards for electronic returns.)

2. Generally, under the standard of care imposed by § 229.38, a paying bank 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.]

#### MM. 229.2(mm) 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[(pp)](rr) 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] electronic image

and information related to the paper check for collection to Bank B. Bank B chooses to use that file to print a substitute check that meets the requirements of § 229.2[(pp)](rr). 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.

#### NN. 229.2(nn) 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.

#### OO. 229.2(oo) 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).)

#### PP. 229.2(pp) 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 nine-digit routing number of the paying bank generally is printed in magnetic ink near the bottom of the check (the MICR [strip] line; see ANS X9.13[-1983]). 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. In the case of an electronic collection item, the routing number of the paying bank is contained in the electronic image of the check (in fractional form or nine-digit form) or in the electronic information related to the

check (in nine-digit form). Subpart C requires depository banks, [and] subsequent collecting banks, and returning banks to place their routing numbers in nine-digit form in their indorsements.

#### QQ. 229.2(qq) [Reserved]

#### RR. 229.2(rr) 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 applies). 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)(3) and 229.31(a)(2)(3) 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(a)(2)(rr)(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.

#### SS. 229.2(ss) 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.

#### TT. 229.2(tt) 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 guaratee 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.

#### UU. 229.2(uu) 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 defined 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)(uu) incorporates the U.C.C. definitions of the terms transfer and consideration by reference and for purposes of subpart D 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 presentment point) is a transfer of the check to that bank. In subpart C, the terms transfer and consideration have the meaning that they have in the UCC.

#### 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.

#### VV. 229.2(vv) 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 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] under § 229.12. [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.]

#### WW. 229.2(ww) 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.

#### XX. 229.2(xx) 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.

#### YY. 229.2(yy) 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.

#### ZZ. 229.2(zz) [Reserved]

#### AAA. 229.2(aaa) 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.

#### BBB. 229.2(bbb) Wire Transfer

1. The EFA Act [delegates to the Board the authority to define] ▶ permits ◀ the term ▶ “wire transfer [.]” ▶ to be defined by regulation. ◀ 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] ▶ nonconsumer ◀ 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. ▶ The ◀ Fedwire ▶ Funds Service ◀ (the Federal Reserve's wire transfer network), CHIPS (Clearing House Interbank Payments System, operated by [t] ▶ T ◀ 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.

#### III. Administrative Liability and 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 ▶ generally ◀ 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.” [?] Under this paragraph, cash deposited in an account at a staffed 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.

▶ 2. Nothing 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).) ◀

[?] Nothing 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).) ]

##### 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] ▶ ACH credit transfer ◀, 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 ▶ a ◀ Fedwire ▶ Funds transfer ◀, 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 s] 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] § 229.12. 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 s 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 geographical area served by a Federal Reserve Bank check processing center ("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]. As there is now only one check processing center, all "on-us" checks deposited in the U.S. must receive next-day availability. 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] The minimum amount.

a. The EFA Act and regulation also require that [up to] at least \$100 ("the minimum amount") 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] less than the minimum amount were deposited in an account by check(s) on a Monday, the entire [70] amount of the deposit must be available for withdrawal at the start of business on Tuesday. If [200] more than the minimum amount were deposited by check(s) on a Monday, this section requires that [100 of the funds] the minimum amount be available for withdrawal at the start of business on Tuesday. The portion of the customer's deposit to which the [100] minimum amount 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 for the minimum amount does not apply to deposits at nonproprietary ATMs.

b. The [100] minimum amount 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 not subject to paragraphs (c)(1)(i) through (vi) 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] minimum amount from [of] the [local] other check must be made available for withdrawal on Tuesday.

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] minimum amount 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 that exceed the minimum amount, [100] the minimum amount from [of] the total checks 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 not subject to paragraphs (c)(1)(i) through (vi) that exceeds the minimum amount, and gets [100] cash back in an amount equal to or greater than the minimum amount at the time of deposit, the bank need not make an additional [100] amount 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] minimum amount that must be available on the next business day may be made available by applying the [100] minimum amount to the negative balance, rather than making the [100] minimum amount 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.]

A. 229.12[(b)](a) [Local Checks and Certain Other Checks] In general.

1. [Local] Except as provided in § 229.10(c), § 229.12(b), (c) and (d), and § 229.13 checks must be made available for withdrawal not later than the second business day following the banking day on which the checks were deposited. Thus, the proceeds of a check deposited on a Monday generally must be made available for withdrawal on Wednesday.

[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] [2]. Exceptions are made for withdrawals by cash or similar means, [and] for deposits in banks located outside the 48 contiguous states, for checks deposited in a nonproprietary ATM, and for the reasons set forth in § 229.13. [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.]

##### B. 229.12[(d)](b) 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 [other than checks subject to § 229.10(c)] need not be available for cash withdrawal until 5 p.m. on the day specified in the schedule. At 5 p.m., \$400 of the deposit must be made available for cash withdrawal (the "cash withdrawal amount"). [This \$400] The cash withdrawal amount is in addition to the [first \$100] minimum amount of a day's deposit under § 229.10(c)(1)(vii), 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] cash withdrawal amount is based on 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] cash withdrawal amount 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.

C. 229.12[(e)](c) 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 [other than those subject to next-day availability under § 229.10(c)] [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.

D. 229.12[(f)](d) 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] [fourth] 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] [Friday].

2. The provisions of section 229.10(c)(1)(vii) [requiring a depository bank

to make up to \$100 of an aggregate daily deposit] [setting forth the minimum amount of a deposit that must be made] 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] [permits other exceptions to be established by regulation, specifically] 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 subject to the general availability schedule in § 229.12 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] [Regulation CC contains] 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] [general] [schedule[s]] for [local and nonlocal] checks [in § 229.12] [do] [es] 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] [ ]; that is, [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] minimum amount 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 (the “large-deposit amount”). This exception applies to [local and nonlocal] checks under § 229.12, 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] any amount under the large-deposit amount is subject to the availability otherwise provided for checks, the amount in excess of [\$5,000] the large-deposit threshold 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 that is not subject to next-day availability, [\$2,100 (the proceeds of the cash deposit and [\$100] the minimum amount under § 229.10(c) from the [local] check deposit)] must be made available for withdrawal on Tuesday. [An additional \$4,900 of the proceeds of the local check] The amount under the large-deposit threshold less the minimum amount under § 229.10(c) must be available for withdrawal on Wednesday in accordance with the [local] general schedule, and the remaining [\$4,000] amount over the large-deposit threshold 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] provides that the regulation may include 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 subject to § 229.12, 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 not 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] the minimum amount of a check available for withdrawal under § 229.10(c)(1)(vii) can charge back the full amount of the check, including the [\$100] the minimum amount made available, if the check is returned unpaid, and the [\$100] minimum amount 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] provides that the regulation may include 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 regardless of whether the items were paid or returned unpaid.

4. Under either test described above, the “other charges to the account” that would have created an overdraft had they been paid do not include attempted debit card transactions for which the depository bank has declined the authorization request, because there is no transaction that has occurred.

5. 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.

6. This exception applies to [local and nonlocal] checks subject to § 229.12, 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] minimum amount 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 under § 229.12, 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] minimum amount 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] Appendix C contains a model reasonable cause exception notice as a model notice in appendix C (C–[13]–9). The commentary in appendix C to the model notice includes several reasons for which this exception may be invoked. The [Board does

not intend to provide] commentary list is not a comprehensive list of reasons for which this exception may be invoked; another reason that does not appear in the commentary to the [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] a paying bank demands paper presentment and the depository bank knows it will not have the opportunity to learn of nonpayment 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] an interruption of computer facilities 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 subject to § 229.12, 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] minimum amount 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] a number or code that identifies the customer's account [number], the date of deposit, the total amount of the deposit, the amount of the deposit that is being delayed, 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] day on 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, [if] [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 [s] a total dollar amount for each of the [time periods when] days on which the 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]–9) 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] sent 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 is made do not become known to the depository bank until after notice would otherwise have to be given. In these cases, the bank must [mail] send 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. If the customer has agreed to accept notices electronically, the bank shall send the notice such that the bank may reasonably expect it to be received by the customer 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.

f. 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] and other 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)(o)) 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) 10. 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) 9.

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 large-deposit threshold. The notice should enable a customer to determine the availability of the deposit in the case of a deposit of multiple checks subject to differing hold periods. [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 (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 also should reflect the bank's priorities in placing exception holds on next-day (or second-day), local, and nonlocal and other 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] identifier, 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) 11. 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 on the depository bank's website or through a directed e-mail, 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[,] and two [five] business days for [local checks, and six business days for nonlocal checks] all other 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 two [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] learns 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, redeposit, 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] general schedule [that would apply based on the location of the paying bank] in § 229.12.

4. One business day for "on us" checks and two [ , five] business days for [local checks, and six business days for nonlocal checks or checks deposited in a nonproprietary ATM] all other checks, in addition to the time period provided in the schedule, should provide adequate time for a [the] depository bank that accepts electronic returns under § 229.32(a) 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] other 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.<sup>[3]</sup> A depository bank generally receives credit on checks [within one or two days] on the business day 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.

[3] 2. This 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 (See U.C.C. 4-214 and 4-215). Under [S]s 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 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.

[2] 3. 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[s] to payments to or for the account of any customer as compensation for the use of funds, but [to] exclude[s] 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] 4. It may be difficult for a depository bank to track which day [the depository bank] it 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] 5. This paragraph also permits a depository bank to accrue interest on checks deposited 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] 6. 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 and Notices

1. This paragraph sets forth the general requirements for the disclosures and

notices required under [S]’s subpart B. All of the disclosures and notices 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 or notice 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 or notice requirement by sending an electronic disclosure or notice that displays the text and is in a form that the customer may keep, if the customer agrees to such means of disclosure or notice. For a customer who is a consumer, a depository bank satisfies the written-disclosure or notice requirement by sending an electronic disclosure or 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 disclosure or 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. See Model Forms C1–C4.

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 in relation to the banking day on which the bank received the deposit. [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 makes electronic direct deposits available on the banking day they are received may describe the deposits as being available “the same business day.” A bank that makes check deposits available on the business day after the banking day they are received may describe the deposits as being available “the next day.” A bank that imposes delays of [four] one intervening business day[s] between the banking day of receipt and the business day of availability for [nonlocal] checks must describe those checks as being available on “the [fifth] second business day after” the day of the deposit or “2 business days” 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 some 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] this regulation 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, t]▶T◀ 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]▶5◀. 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]▶6◀. A bank taking advantage of the extended time period for making deposits at nonproprietary ATMs available for withdrawal under § 229.12[(f)]▶(d)◀ 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)]▶(b)◀, 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]▶7◀. 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 ▶written◀ 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] ▶a number or code that identifies the customer's◀ account [number], the date of the deposit, ▶the total amount of the deposit,◀ [and] the amount of the deposit being delayed▶, and the day the funds will be available for withdrawal.◀

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] ▶sent◀ 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] ▶must◀ be [provided] ▶sent◀ 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. ▶If the

customer has agreed to accept notices electronically, the bank shall send the notice such that the bank may reasonably expect it to be received by the customer not later than the first business day following the banking day the deposit is made. ◀

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] ▶sends◀ 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 appears▶s◀ 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.]

\* \* \* \* \*

##### 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 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 2:00 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 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 2:00 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 12:00 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 2:00 p.m.

c. A bank is not required to remain open until 2:00 p.m. If a bank closes before 2:00 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 12:00 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 12:00 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 2:00 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 2:00 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 under subpart B, the funds must be available for withdrawal by the later of 9:00 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)](b). Thus, if a bank has no ATMs and its branch facilities are available for customer transactions beginning at 10:00 a.m., funds must be available for customer withdrawal beginning at 10:00 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 9:00 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 9:00 a.m. [west coast time] (12:00 noon [east coast] Eastern 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)](b) states that a bank must make [up to \$400 available for cash withdrawals] the cash withdrawal

amount available no later than 5:00 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 5:00 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 5:00 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] the cash withdrawal amount that must be made available for cash withdrawal by 5:00 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 daily cash withdrawals from automated teller machines to [\$250 per day] less than the cash withdrawal amount, the regulation would not require that the bank disburse [\$400 of the proceeds of the customer's deposit] the full amount 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 the subsequent day[s]. 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. 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. 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 customer 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)(k)) and § 229.12(b)(d) 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)(dd).

### 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 for 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 minimum amount 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 on a given day either one \$150 check that is greater than the minimum amount or three checks that are



each less than the minimum amount, but that combined are more than the minimum amount, are deposited ◀ [for three \$50 checks are deposited on a given day], [ \$100 ] ▶ the minimum amount under § 229.10(c) ◀ must be made available for withdrawal on the next business day, and [ \$50 ] ▶ the remaining amount ◀ must be made available in accordance with the [ local or nonlocal ] ▶ general ◀ 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 ▶ types of ◀ 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 [S] ▶ s ◀ subparts A and B; generally the Board will not issue individual preemption determinations regarding the relation of state U.C.C. provisions to the requirements of [S] ▶ s ◀ subpart C ▶ or D ◀.

#### 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.

▶ 2. This provision does not shield a bank from civil liability if the bank relies on earlier

versions of the model forms (i.e., those not currently in appendix C) after [ date that is 12 months after the effective date of the rule ]. ◀

#### F. 229.21(f) Exclusions

1. This provision clarifies that liability under this section does not apply to violations of the requirements of [S] ▶ s ◀ subpart C ▶ or D ◀ 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 [S] ▶ s ◀ subpart C, may include a payable-through and payable-at bank; see [ § 229.2(z) ] ▶ § 229.2(ii) ◀) that determines not to pay a check to return the check expeditiously. [ Generally, a check ] ▶ A returned check, including the original check, substitute check, and electronic return, ◀ 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 ] ▶ paying bank sends the return such that the depositary bank normally would receive the returned check no later than 4 p.m. (local time of the depositary bank) two business days after presentment to the paying bank. See § 229.30(b) and commentary thereto for the exceptions to this general rule. If the paying bank need not return the check expeditiously under § 229.30(a), the paying bank, nonetheless, must return the check within its deadlines under the Uniform Commercial Code, Regulation J (12 CFR part 210) or § 229.36(d)(2), or § 229.30(c) for returning the item or notice (See § 229.30(a)(4) and accompanying commentary). ◀

[ 2. Under the “two-day/four-day” test, if a check is returned such that it would normally be received by the depositary bank two business days after presentment where both the paying and depositary banks are located in the same check processing region or four business days after presentment where the paying and depositary 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 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 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 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] § 229.30(a) 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 business day following the banking day after which the check was presented is not a banking day for the depository bank, the check electronic return may be delivered to the depository bank sent such that it is received by 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 checks. It is anticipated that the normal process of forward collection of a check coupled with these return requirements will result in the return of checks before the proceeds of local and nonlocal checks, other than those covered by section 229.10(c), must be made available for withdrawal.

3. In order to satisfy its expeditious return requirement, a paying bank may return either an electronic return or a paper check.

f. No particular [means] path of returning checks is required, thus providing flexibility to paying banks in selecting [means] the path 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 presentment 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,

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. The depository bank has agreed to accept electronic returns directly from a paying bank. If a check is presented to that paying bank on Monday, the paying bank must send the returned check such that the depository bank normally would receive the returned check by 4 p.m. (local time of the depository bank) on Wednesday.

b. The depository bank has not agreed to accept electronic returns directly from the paying bank, but has agreed to accept electronic returns from Returning Bank A, which holds itself as willing to accept electronic returns directly or indirectly from the paying bank and has agreed to handle returns expeditiously under § 229.31(a). If a check is presented to the paying bank on Monday, the paying bank must send the returned check such that the depository bank normally would receive the returned check by 4:00 p.m. (local time of the depository bank) on Wednesday. The paying bank may rely on Returning Bank A's schedules for sending returned checks in determining whether the depository bank normally would receive the returned check by 4 p.m. on Wednesday.

c. The depository bank has not agreed to accept electronic returns directly from the paying bank, but has agreed to accept electronic returns from Returning Bank A, which holds itself as willing to accept electronic returns directly or indirectly from the paying bank and has agreed to handle returns expeditiously under § 229.31(a). Returning Bank A, however, does not have an agreement with the paying bank to accept returns; rather Returning Bank B has agreed to accept returns from the paying bank and to handle such returns expeditiously. Returning Bank A has agreed to accept returns from Returning Bank B. If a check is presented to the paying bank on Monday, the paying bank must send the returned check such that the depository bank normally would receive the returned check by 4 p.m. (local time of the depository bank) on Wednesday.

d. The depository bank and paying bank are members of the same clearinghouse, through which both have agreed to accept electronic returns. If a check is presented to that paying bank on Monday, the paying bank must send an electronic return such that the depository bank normally would receive the returned check by 4 p.m. (local time of the depository bank) on Wednesday.

e. In each example, the paying bank must send the returned check such that the depository bank normally would receive the check by 4 p.m. (local time of the depository bank) on Wednesday. The paying bank may satisfy its obligation by sending either an electronic return or a paper check by such time. Additionally, if the paying bank sends the returned check in a manner such that the depository bank normally would receive the returned check by 4 p.m. on Wednesday, but the depository bank does not receive the returned check by that time due to an operational difficulty of the depository bank or returning bank, the paying bank has satisfied its expeditious return requirement.

¶ 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 and the depository bank has agreed to receive returns electronically through the 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] § 229.30(a), 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 expeditious return requirement[s]. (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, t] [T] [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], including an electronic return, in a variety of ways:

i. It may send the returned check directly to the depository bank by courier or other means of delivery [.] [or it may send the electronic return directly to the depository bank if the depository bank has agreed to accept electronic returns from the paying bank, thereby bypassing returning banks; or

ii. It may send the returned check [or electronic return] to any returning bank agreeing to handle the returned check [or electronic return] 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. [In determining whether a depository bank has agreed to accept an electronic return from a returning bank, a paying bank may rely on a returning bank's published list of depository banks to which it delivers electronic returns.]

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 [physical] location permitted under [§ 229.32(a)] [§ 229.32(b)]. If the paying bank elects to send an electronic return directly to the depository bank, it must send the electronic return to the electronic return point designated by the depository bank.

#### 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)] [§ 229.2(ii)] 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)] ▶ § 229.30(a)(5) ◀.)

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.

▶ 11. Payable-through and payable at checks

a. For purposes of subpart C, the regulation defines a payable-through and 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) 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. 229.30(b) [Unidentifiable Depository Bank] ▶ Exceptions to Expeditious Return of Checks ◀

1. ▶ This paragraph sets forth the circumstances under which a paying bank is not required to return the check to the depository bank in accordance with § 229.30(a). ◀

▶ 2. The depository bank has not agreed to accept electronic returns from the paying bank.

a. In the circumstances where a depository bank has not agreed to accept electronic returns from the paying bank under § 229.32(a), the paying bank should send a paper return directly to the depository bank or send an electronic return to a returning bank, which would then be required to send a paper return to the depository bank.

b. *Example.* The depository bank has agreed to accept electronic returns from Returning Bank A. Returning Bank A does not hold itself out as accepting electronic returns from either the paying bank or other

returning banks. Under these facts, the depository bank has not agreed to accept electronic returns from the paying bank under § 229.32(a), and therefore the paying bank need not send the returned check expeditiously to the depository bank. The paying bank, however, must comply with any deadlines under the Uniform Commercial Code, Regulation J (12 CFR part 210), or § 229.30(c). ◀

3. Depository bank without accounts

a. Subpart B of this regulation applies only to “checks” deposited in transaction “accounts.” Thus, a depository bank with only time or savings accounts need not comply with the availability requirements of subpart B. Collecting banks may not have an electronic connection with these banks as paying banks because no checks are drawn on them. Consequently, the costs of using expedited means to deliver returned checks directly to such a depository bank may not be justified. Thus, the expeditious-return requirement of § 229.30(a) does 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) ▶, and the extension in § 229.30(c) ◀ 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 requirements of §§ 229.30(a) and 229.31(a).

b. The expeditious-return requirement applies 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 expeditious-return requirement.

4. Unidentifiable depository bank

a. For most checks presented electronically, the depository bank’s indorsement will accompany the electronic image and information related to the check, either as an addenda record or within the image of the check. ◀ 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] ▶ staff generally ◀ will readily identify the depository bank from the depository bank indorsement required under § 229.35 and appendix D. ▶ For example, a paying bank would be unable to identify the depository bank if the depository bank’s indorsement is in neither an addenda record

nor within the image of the check. A paying bank, however, would not be “unable” to identify the depository bank merely because the depository bank’s indorsement is not attached as an addenda record, and therefore requires the paying bank to retrieve the image. ◀

▶ b. ◀ 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.] ▶ 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 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). ▶ 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. ◀

▶ d. If the paying bank has an agreement to send electronic returns to a bank that handled the check for forward collection, the paying bank may send an electronic return to that bank. ◀ 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. ▶ In the case of an electronic return, the advice requirement may be satisfied by the paying bank inserting the routing number of the bank to which it is sending the return where the paying bank otherwise would have inserted the routing number of the depository bank. ◀ 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] ▶ as a qualified ◀ 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.] ▶ e. ◀ 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.] ▶ Because the paying bank is unable to identify the depository bank, the paying bank will not know whether the

depository bank has agreed to accept an electronic return from the paying bank under § 229.32(a). Moreover, returning the check through the forward collection chain may require handling by more banks, and thus may take more time. 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.]►f.** 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.]►g.** 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 ►in the U.C.C., Regulation J (12 CFR part 210) and § 229.36(d)(3) of this part◄ 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)]►(d)(3)◄ of this part)[, but not of the duty of expeditious return, in two circumstances:►if the paying bank returns the check using a means of delivery such that the depository bank would ordinarily receive the return within the timeframe specified in § 229.30(a).◄

►2. If a paying bank sends an electronic return, the paying bank's midnight (or other

applicable) deadline is extended to the time it dispatches the electronic return so long as the depository bank would ordinarily receive the electronic return by 4 p.m. (local time of the depository bank) on the second business day following the banking day on which the paying bank received the check. A paying bank may rely on its returning bank's electronic return delivery schedules in determining when the depository bank would ordinarily receive an electronic return.◄

**[a.]►3.** 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► would ordinarily reach the depository bank by 4 p.m. (local time of the depository bank) on the second business day following the banking day on which the paying bank received the check. A paying bank may rely on its returning bank's delivery schedules in determining when the depository bank would ordinarily receive the returned check.◄ **[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 C.1.b. below).]**

**[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.]►4.** 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)]►(d)(3)◄ 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.]►5.** 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.]►6.** 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.]►"Refer to Maker" is an instruction to the recipient of the returned check and not a reason for return. Therefore, "Refer to Maker" is insufficient as a reason for return. "Refer to Maker" may be used in addition to the reason for return.◄ If the returned check is a substitute check, ►the requirement to place◄ the reason for return ►information such that it is retained on any subsequent substitute check 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)◄ [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.

**[F. 229.30(f)]►E. 229.30(e)◄ 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 may have an image of both sides of the check, but the image may be insufficient, or may not be in the proper format, to create a substitute check. A bank using a notice in lieu of return gives a warranty under § 229.34(e)(1)(iv) that the [original] check has not been and will not be returned.◄

**[1.]►2.** 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)] ▶ § 229.30(e)(2) ◀. 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 a legible facsimile or electronic transmission of the image of both sides of the check may satisfy the requirements for a notice in lieu of return. If no image of both sides of the check is available, the notice may be sent by other means, but not ◀ [Notice] by telephone[, telegraph,] or other [electronic] ▶ oral ◀ 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] ▶ 3 ◀. 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] ▶ 4 ◀. 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] ▶ 5 ◀. If not all of the information required by [§ 229.33(b)] ▶ § 229.30(e)(2) ◀ is available, the paying bank may make a claim against any prior bank handling the check as provided in § 229.35(b).

▶ 6. Content of notices

a. This paragraph provides that the notice must contain, if available, specified items of information that would enable a depository bank to identify the check to which the notice relates.

b. If the paying bank cannot identify the depository bank from the check itself, the paying bank should treat the notice in lieu as if it were a returned check for which the paying bank cannot identify the depository bank (see § 229.30(b)(2) and accompanying commentary).

c. If a bank is uncertain as to the accuracy of an item of information, it nevertheless

must identify the item of information, but 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. ◀

[G. 229.30(g)] ▶ F. 229.30(f) ◀ 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) ▶ or in the electronic image or information included in the electronic collection item ◀ 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] ▶ send a returned check expeditiously if the returning bank has agreed to do so ◀. 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.

▶ A returning bank may satisfy its expeditious return requirement by returning either an electronic return or returned check within the timeframe. The exceptions to this requirement are set out in § 229.31(b). ◀

2. A returning bank agrees to [handle a returned check for expeditious return] ▶ return checks expeditiously ◀ to the depository bank if it:

a. Publishes or distributes availability schedules for the return of ▶ electronic returns or ◀ returned checks and accepts the ▶ electronic return or ◀ returned check for return;

[b. Handles a returned check for return that it did not handle for forward collection;] or

[c.] ▶ b ◀. Otherwise agrees to handle a returned check for expeditious return.

▶ 3. A returning bank may agree to handle only certain types of returns expeditiously. For example, a returning bank may agree to handle electronic returns expeditiously, while not agreeing to handle returned checks expeditiously.

4. If a returning bank has not agreed to return checks expeditiously, the returning bank has no expeditious return requirement with respect to the check. Therefore, a paying bank will not satisfy its expeditious return requirement by sending a returned check to

that returning bank that has not agreed to return checks expeditiously.

5. 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(mmm)).

6. In the case of electronic returns, a returning bank agrees to handle the electronic return expeditiously if the returning bank has an agreement with the paying bank for accepting electronic returns, and handling such returns expeditiously, and the returning bank accepts the electronic return. ◀

[3] ▶ 7 ◀. [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] ▶ is sent in a manner such that it ◀ would normally be received by the depository bank by 4 p.m. [either] ▶ (local time of the depository bank) ◀ 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] ▶ 8 ◀. 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 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. [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 depository 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.]

#### 9. 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.]

#### 10. 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 an electronic return if the depository bank has agreed to accept an electronic return from the returning bank or it may send the returned check directly to the depository bank by courier or other [expeditious] means of delivery; [or]

ii. It may send an electronic return to any other returning bank that has agreed to accept an electronic return from the returning bank; or

iii. 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(b). If the returning bank elects to send the electronic return directly to the depository bank, it must send the electronic return to the electronic return point designated by the depository bank.

11. 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].

12. 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] Exceptions to Expeditious Return of Checks

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.] In general, in circumstances where the paying bank is not subject to the expeditious return requirement (see § 229.30(b)), the returning bank may not receive the returned check in a timeframe that enables it to return the check to the depository bank by the second business day following the banking day on which the check was presented to the paying bank. Moreover, the same circumstances that make expeditious return of a check difficult for a paying bank also are likely to make expeditious return of a check difficult for a returning bank.

2. Depository bank has not agreed to accept electronic returns under § 229.32(a).

a. A returning bank is not subject to the expeditious return requirement in § 229.31(a) with respect to a check if the depository bank has not agreed to accept an electronic return from the paying bank under § 229.32(a), in which case the paying bank is not required to return the check expeditiously under § 229.30(a). If a depository bank has not agreed to accept electronic returns, a returning bank is unlikely to be able to return a paper check to the depository bank in an expeditious manner.

#### 3. Unidentifiable depository banks

a. 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, if the returning bank did not handle the check for forward collection, it 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) any collecting bank that handled the returned check for forward collection. [ even if that bank does not agree to handle the check expeditiously under section 229.31(a).

2.] 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.

b. 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) that cannot identify the depository bank 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] c. As in the case of a paying bank returning a check under § 229.30(b)), a returning bank returning a check under [this paragraph] § 229.30(b)(2) 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] the check or a notice on the cash letter. [The returned check may not be prepared for automated return.] In the case of an electronic return, the advice requirement may be satisfied by the returning bank inserting the routing number of the bank to which it is sending the return where the returning bank otherwise would have inserted the routing number of the depository bank.

3. Depository banks without accounts

a. Section 229.31(b)(3) is similar to § 229.30(b)(3) and relieves the 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(b).)

#### C. 229.31(c) Settlement

1. Under the U.C.C., a collecting bank receives settlement for a check [when it] by midnight of the banking day on which 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(d) § 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 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)] § 229.36(c), 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.

[F. 229.31(f)] E. 229.31(e) Notice in Lieu of Return

1. This paragraph is similar to [§ 229.30(f)] § 229.30(e) 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) and

does not have sufficient information to create a substitute check. [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)] § 229.30(e).)

[G. 229.31(g)] F. 229.31(f) Reliance on Routing Number

1. This paragraph is similar to [§ 229.30(g)] § 229.30(f) 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 returned checks, or in the electronic image or information included in the electronic return when it is received by the returning bank. (See the Commentary to [§ 229.30(g)] § 229.30(f).)

#### XVIII. Section 229.32 Depository Bank's Responsibility for Returned Checks

##### A. 229.32(a) Acceptance of Electronic Returns

1. A paying bank and a returning bank must satisfy the expeditious return requirements under §§ 229.30(a) and 229.31(a) only if the depository bank has agreed to accept an electronic return from the paying bank. This section sets forth the circumstances under which a depository bank has agreed to accept an electronic return from the paying bank for purposes of subpart C, and therefore the circumstances under which the paying bank and returning banks have a duty to return the check expeditiously.

2. There are three different ways a depository bank can agree to accept electronic returns from the paying bank for purposes of subpart C:

a. First, a depository bank may have a direct contractual relationship with the paying bank under which it has agreed to accept electronic returns directly from the paying bank.

b. Second, a depository bank may have a direct contractual relationship with a returning bank under which the depository bank accepts electronic returns directly from the returning bank. In turn, that returning bank must hold itself out as willing to accept electronic returns directly or indirectly from the paying bank and agrees to return checks expeditiously. For example, the returning bank may hold itself out as willing to enter into a direct contractual relationship with the paying bank to accept electronic returns or returned checks for expeditious return to the depository bank. Alternatively, that returning bank may hold itself out as willing to accept electronic returns from other returning banks that accept electronic returns from the paying bank. A depository bank is deemed to have agreed to accept electronic returns under § 229.32(a)(1)(ii) if the returning bank holds itself out as willing to accept electronic returns directly or indirectly from the paying bank, notwithstanding the fact that the paying bank has no actual agreement with the returning bank to send electronic returns.

c. Third, a depository bank may have otherwise agreed with the paying bank to accept electronic returns. For example, the



depository bank and paying bank may both be members of the same clearing house, under the rules of which the depository bank has agreed to accept electronic returns from the paying bank.

d. The paying bank or returning bank must deliver the electronic return to the electronic location designated by the depository bank. Accordingly, regardless of the means by which a depository bank agrees to accept electronic returns from the paying bank, the depository bank's agreement with the paying bank or returning bank must designate an electronic return point.

3. A returning bank holds itself out as willing to accept electronic returns from a paying bank by publishing information about its generally available electronic return service, including how to enroll in the returning bank's electronic return service and fees for the service. For example, a returning bank may publish on its Web site electronic return service set-up guides for a paying bank to complete.

4. This section also sets forth when a depository bank receives an electronic return. A depository bank "receives" an electronic return when that electronic return is delivered to the electronic return point designated by the bank or when the electronic return is otherwise made available for retrieval or review in accordance with an agreement between the depository bank and the delivering paying bank or returning bank. For example, if a depository bank designates an e-mail address as its electronic return point, the depository bank has received the electronic return when it is delivered to that e-mail address. In contrast, if the depository bank has an arrangement with a returning bank whereby the returning bank sends the electronic return to its storage device and then provides the depository bank with access to the storage device for retrieving electronic returns, the electronic return is received by the depository bank when the returning bank makes the electronic return available for the depository bank to retrieve or review from the storage device in accordance with the agreement between the returning bank and the depository bank. ◀

[A. 229.32(a)] ▶▶ B. 229.32(b) ◀ Acceptance of ▶▶ Paper ◀ 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 preexisting arrangements as to where the returned checks should be delivered.] This paragraph states where the depository bank is required to accept returned ▶▶ paper ◀ checks [and written notices of nonpayment under § 229.33]. (These locations differ from locations at which a depository bank ▶▶ may accept electronic returns ◀ [or must accept electronic notices].) It is derived from U.C.C. 3-111, which specifies that presentation 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 ▶▶ paper ◀ checks:

a. The depository bank must accept returned ▶▶ paper ◀ checks at any location at which it requests presentation of forward collection checks ▶▶, ◀ such as a processing center. A depository bank does not request presentation 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 ▶▶ paper ◀ 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 ▶▶ paper ◀ checks. ▶▶ Accordingly, a depository bank may limit the locations at which it must accept returned paper checks 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 returned ▶▶ paper ◀ 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] ▶▶ iii ◀. If no routing number or address appears in its indorsement, the depository bank must accept a returned ▶▶ paper ◀ 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 ▶▶ banks ◀ or paying banks returning checks to it separate returned checks from forward collection checks being presented.

4. Under [§ 229.33(d)] ▶▶ § 229.32(f) ◀, a depository bank receiving a returned check [or notice of nonpayment] must send notice

to its customer by its midnight deadline or within a longer reasonable time.

[B. 229.32(b)] ▶▶ C. 229.32(c) ◀ Payment

1. As discussed in the commentary to § 229.31(c), 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] ▶▶ "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 ▶▶ "presenting" the returned check ◀.

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 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 ▶▶ 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 of funds 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(d)]►229.32(f)◄ and 229.35(b).)

[C. 229.32(c)]►D. 229.32(d)◄ 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)]►§ 229.31(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)]►§ 229.32(c)◄, 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)]►E. 229.32(e)◄ 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.

►F. 229.32(f) Notification to Customer

1. This paragraph requires a depository bank to notify its customer of nonpayment upon receipt of a returned check. 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 § 229.32(f) 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 learning of nonpayment, provided the notice meets all the requirements of § 229.13(g).◄

►XIX. Section 229.33 Electronic returns and collection items

A. 229.33(a) Checks under this subpart

1. If a depository bank has agreed to accept an electronic return, that electronic return is subject to the provisions of this subpart as if it were a returned check. For example, a depository bank that receives an electronic return must notify its customer by midnight of the banking day following the banking day on which it received the electronic return, or within a longer reasonable time. (See § 229.32(f)).

2. Similarly, if a bank has agreed to accept an electronic collection item from another bank (either under the same-day settlement provisions of § 229.36(d) or otherwise), the electronic collection item is subject to the provisions of this subpart as it were a check. For example, if a paying bank receives presentment of an electronic collection item, it is subject to the expeditious return requirements of this subpart, provided the depository bank has agreed to accept electronic returns from the paying bank under § 229.32(a).◄

XX. Section 229.34 Warranties

►A. Transfer and presentment warranties with respect to an electronic collection item and electronic return.

1. Paragraph (a) sets forth the warranties that a bank makes when transferring an electronic collection item or electronic return and receives settlement or other consideration for it. Electronic collection items and electronic returns are treated as checks subject to the provisions of subpart C, and therefore the warranties in § 229.34(a) are in addition to any warranties a bank makes under paragraphs (b), (c), or (d).

2. The first warranty in § 229.34(a) relates to the requirements for substitute checks. A bank that transfers an electronic collection item or electronic return warrants that the electronic image 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 that the electronic information contains a record of all MICR-line information required for a substitute check under § 229.2(rr) of this part and the amount of the check. This paragraph provides a bank that creates a substitute check from an electronic collection item or electronic return with a warranty claim against the bank that transferred the electronic collection item or electronic return to it or any prior transferor of the electronic collection item or electronic return.

3. A bank that transfers an electronic collection item or an electronic return also warrants that no person will receive a transfer, return of, or otherwise be charged for, an electronic collection item, an electronic return, 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. A bank that transfers an electronic collection item or electronic return that is an electronic representation of a substitute check also makes the warranties and indemnity in §§ 229.52 and 229.53.◄

[C. 229.34(c)]►B. 229.34(b)◄ Warranty of Settlement Amount, Encoding, and Offset

1. Paragraph [(c)]►(b)◄(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 ►bank◄, returning ►bank◄, 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)]►(b)◄(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)]►(b)◄(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]►information encoded on the item in magnetic ink or provided electronically◄ 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)]►(b)◄(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)]►(b)◄(3) provides that the warranty is made to banks in the return chain as well. Paragraph [(c)]►(b)◄(3) applies to all MICR-line encoding on a substitute check►and, in the case of an electronic collection item or electronic return, to the electronic information related to a 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)]►(b)◄(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)]►(b)◄(3) against the presenting bank or any preceding bank that handled the misencoded check.

5. Paragraph [(c)]►(b)◄(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)] ▶ C. 229.34(c) ◀ 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.

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)] ▶ § 229.34(c) ◀** warranties in that **[they] ▶ the U.C.C. 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(d)] ▶ § 229.34(c) ◀**. 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)] ▶ § 229.34(c) ◀** 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)] ▶ § 229.34(c) ◀** warranties apply to the date stated on the remotely created check.

4. A bank making the **[§ 229.34(d)] ▶ § 229.34(c) ◀** 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 reconverted to a substitute check **▶**, to an electronic collection item derived from a remotely created check, and to an electronic image and information transferred as an electronic collection item derived from a remotely created check. **◀**

**[A. 229.34(a)] ▶ D. 229.34(d) ◀ Warranty of Returned Check**

1. This paragraph includes warranties that a returned check, including a notice in lieu of return **▶** and electronic 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)] ▶ § 229.30(e) ◀**.) **▶** "Check" includes the original check, a substitute check, an electronic return, and notice in lieu of return. **◀** 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.)

**▶ E. 229.34(e) Electronic image and information transferred as an electronic collection item or electronic return**

1. Paragraph (e) sets forth the warranties that a bank makes when transferring an electronic image and related information as if it were an electronic collection item or electronic return. These warranties are the same warranties made for electronic collection items and electronic returns throughout § 229.34 and carry the same conditions, such as the requirement for receiving settlement or other consideration where applicable. Applying the § 229.34 warranties to all images and related information transferred as if they were electronic collection items or electronic returns protects a transferee bank in the event it creates a substitute check from an electronic image and related information that does not represent an item that existed in paper (i.e., an electronically created item).

2. As a practical matter, a bank receiving an electronically created image and related information generally cannot distinguish the image and related information from an image and related information that derived from a paper check. In turn, the bank receiving the

electronically created image and related information may produce a paper item that is indistinguishable from a substitute check (although the item is not a substitute check because the item never existed in paper). Therefore, a bank that transfers the paper item may be liable for a breach of the substitute check warranties. The warranties in § 229.34(e) enable a bank that receives a nonconforming substitute check to pass back liability to the bank from which it received the electronic image and related information, notwithstanding the fact that the image and information did not derive from a paper check. **◀**

**[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).)]

**[E. 229.34(d)] ▶ F. 229.34(f) ◀ Damages**

1. This paragraph adopts for the warranties in § 229.34 (a), (b), **[and] (c) ▶**, (d) and (e) **◀** the damages provided in U.C.C. 4-207(c) and 4A-506(b). (See definition of interest compensation in **[§ 229.2(oo)] ▶ § 229.2(bb) ◀**.)

**[F. 229.34(e)] ▶ G. 229.34(g) ◀ Tender of Defense**

1. This paragraph adopts for this regulation the vouching-in provisions of U.C.C. 3-119.

**[G. 229.34(f)] ▶ H. 229.34(h) ◀ 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 depository bank indorsements. It is designed to facilitate the identification of the depository 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 **▶**, if applied to a paper check **◀**.

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) reconverting 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 reconverting 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 check [item]. If the bank truncates that check [item], it should ensure that it also applies an indorsement to the item electronically in accordance with ANS X9.100-187, unless the parties otherwise agree. A reconverting 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 reconverting 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 reconverting 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 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; (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 reconverting bank with respect to the check, an asterisk at each end of the number to identify the bank as a reconverting bank, (2) the indorsement date, and (3) an optional trace or sequence number. The information required to be included in the depositary bank's indorsement of an electronic collection item, and the information that may be included, is the same as set forth above. The formatting of the information, however, should be in accordance with ANS X9.100-187.

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, as well as the other locations enumerated in § 229.32(b) (see § 229.32(b) and accompanying commentary). If a depositary bank includes an e-mail address or other electronic address for delivery of electronic returns, and has agreed to accept electronic returns from the paying bank or returning bank, the paying bank or returning bank may send electronic returns to such address.

9. In addition to indorsing a substitute check in accordance with appendix D, a reconverting 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 reconverting 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 in accordance with appendix D. In these instances, the reconverting 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 depositary 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 nonpayment] for the bank of account, the indorsement placed on the check as the depositary 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] some 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 depositary bank indorsement, thus making the depositary 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 depositary 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 depositary bank indorsement by staying clear of the area reserved for the depositary 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 depositary 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 depositary bank that made the depositary 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. Depositary 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 reconverting 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) (in those cases where the paying bank or returning bank is unable to identify the depository bank). This provision is not a substitute for a paying or returning bank making expeditious return under §§ 229.30(a) or 229.31(b)(a). 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)] 229.32(c), and [229.36 (d)] 229.36(c) 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[(oo)](bb) 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)] § 229.32(f).)

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 [S] s subpart B, but the bank indorsing as depository bank is considered the depository bank for purposes of [S] s 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 [S] s 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 [S] s 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.]

#### ▶A. 229.36(a) Receipt of Electronic Collection Items

1. This paragraph sets forth the circumstances under which a paying bank has agreed to accept an electronic collection item from the presenting bank for purposes of subpart C. There are two different ways a paying bank can agree to accept an electronic collection item from the presenting bank for purposes of subpart C:

a. First, a paying bank may have a direct contractual relationship with the presenting bank under which it has agreed to accept electronic collection items directly from the presenting bank.

b. Second, a paying bank may have otherwise agreed with the presenting bank to accept electronic collection items. For example, the presenting bank and paying bank may both be members of the same clearing house, under the rules of which the paying bank has agreed to accept electronic collection items from the presenting bank.

2. The presenting bank must deliver the electronic collection item to the electronic

location designated by the paying bank. Accordingly, regardless of the means by which a paying bank agrees to accept electronic collection items from the presenting bank, the paying bank's agreement with the presenting bank must designate an electronic presentment point.

3. This paragraph also sets forth when a paying bank receives an electronic collection item. A bank "receives" an electronic collection item when that item is delivered to the electronic presentment point designated by the bank or when the electronic collection item is otherwise made available for retrieval or review in accordance with an agreement between the paying bank and the presenting bank. For example, if a paying bank designates an Internet protocol (IP) address as its electronic presentment point, the paying bank has received the electronic collection item when it is delivered to that address. In contrast, if the paying bank has an arrangement with a presenting bank whereby the presenting bank sends the electronic collection item to its storage device and then provides the paying bank with access to the storage device for retrieving electronic collection items, the electronic collection item is received by the paying bank when the presenting bank makes the electronic collection item available for the paying bank to retrieve or review from storage device in accordance with the agreement between the presenting bank and the paying bank.

**B. 229.36(b) [Receipt at Bank Office or Processing Center] ▶ Receipt of paper checks.**

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 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 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.

[d] ▶ b. 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.

[b] ▶ c. 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. ▶ In the case of a substitute check derived from an electronic collection item, delivery may be made at an office of the bank associated with the routing number in the electronic image of or electronic information related to the check. ▶ The definition of a paying bank in [§ 229.2(z)] ▶ § 229.2(ii) 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] ▶ d. 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.

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) ▶ 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 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)] ▶ § 229.2(oo).)

**[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, and 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 mislabeled 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)]►D. 229.36(d)◄ 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 purposes of § 229.36(b).]

►ii. Electronic presentment. A paying bank may require that checks presented for same-day settlement under this paragraph be presented as electronic collection items to a designated electronic presentment point. If a paying bank so requires, the presenting bank must present checks for same-day settlement as electronic collection items, and may not present paper checks to physical locations for receiving same-day settlement under this section. An electronic collection item presented for same-day settlement is subject to the provisions of this subpart as if it were a check (See § 229.33). Therefore, references to checks in this subpart include electronic collection items presented under § 229.36(d).

iii. A paying bank may designate a presentment location for paper checks, but 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). If the paying bank does not designate any 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. With the exception of receiving electronic collection items, 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(d), the paying bank agrees to accept checks at that location for the purposes of § 229.36(b).◄

►iii. 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. ]►iv.◄ 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]►v◄. 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)]►(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 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)]►(d)(3)◄. 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)]►(d)(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 ► of the paying bank ◄) presentation 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)]►(d)(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)]►§ 229.2(bb)◄, 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)]►§ 229.2(z)◄ 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)]►(d)(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.

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 agree with a paying bank or a returning bank to accept electronic returns even when the item is available for return. (See § 229.32(a).)◄

►1]►2◄. 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]►3◄. A depository bank may authorize returning banks to commingle qualified returned checks with forward collection checks. (See [§ 229.32(a)]►§ 229.32(b)◄.)

►3]►4◄. 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]►5◄. 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]►6◄. 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]►7◄. 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)]►§ 229.36(d)(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]►electronic collection item◄. (See § 229.36[(b)]►(a)◄.)

►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 [S] s [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)] s [§ 229.2(z)] 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 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 [S] s [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]►3◄.** Responsibility under paragraph[s] (d)(1) [and (d)(2)] is treated as negligence for comparative negligence purposes, and the contribution to damages under paragraph[s] (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 [S]►s◄ubpart 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 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)]►§ 229.2(dd)◄. 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]►3◄.** Where the depository bank must accept returned checks [(§ 229.32(a))] ►§ 229.32(b)◄.

**5.** Where the depository bank must accept notice of nonpayment (§ 229.33(c)).]

**6]►4◄.** 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**

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**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)] ▶ § 229.2(ii) ◀ (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)] ▶ § 229.32(c) ◀, 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)] ▶ § 229.32(c) ◀ 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). ▶ Similarly, a bank that handles Pacific island checks in the same manner as other checks may transfer electronic collection items, electronic returns, or electronic images and related electronic information as if they were electronic collection items or electronic returns derived from Pacific island checks. Accordingly, a bank makes the warranties in §§ 229.34(a) and (e) with respect to Pacific island checks. ◀ A bank that acts as a returning bank for a Pacific island check is not subject to the warranties in § 229.34[(a)] ▶ (e) ◀. 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)] ▶ (b)(1), (b)(4), and

(c) ◀ 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)] ▶ (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. § 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, microprinting, 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.

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 section 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 section 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 section 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 ► or a bank that rejected a check submitted for deposit ◀, 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 ► 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. ► A bank that transfers and receives consideration for an electronic collection item or electronic return that is an electronic representation of a substitute check also makes the warranties. ◀

►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.

[2.] ►3. ◀ 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] ►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 U.C.C. and other Regulation CC warranties that apply to the original check also apply to the substitute check.

[4] ►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 § 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] ►6. ◀ The warranty in § 229.52(a)[(2)] ►(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.

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.

►7. A bank that rejects a check 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 § 229.2(uu), 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 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 for deposit but provides its customer with 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 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(uu).)◀

#### 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.

►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. § 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.

►A bank that transfers and receives consideration for an electronic collection item or electronic return that is an electronic representation of a substitute check also is responsible for providing the 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 version 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 that the bank has rejected for deposit regardless of whether the bank providing the indemnity has received consideration.◀

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 warranting banks, including its bank, for breach of the warranty described in § 229.52(a)[(2)]►(1)(ii)◀. 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 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 converted 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)(a) or (d), which contains returned-check warranties that are made to the owner of the check.

\* \* \* \* \*

#### 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 disclosures, 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] 18 through C- [25] 21) 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, and information the inclusion of which is dependent on a bank's policies and practices, 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 forms properly. For example, if a bank does not have a cutoff hour prior to its closing time, or if a bank does not take advantage of the section 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 the models. Acceptable changes include, for example—

a. Using "customer" and "bank" instead of pronouns

b. Changing the typeface or size, although a materially smaller size may not meet the clear and conspicuous standard of section 229.15(a)

c. Incorporating certain state-law plain-English requirements

4. a. Although banks are not required to use a certain paper size for their disclosures and notices, model funds-availability disclosures C-1, C-2, C-3A, C-3B, C-4A, and C-4B and notices C-9, C-10, C-11, C-12A, and C-12B are designed to be provided to customers on an 8½ x 11 inch sheet of paper. In addition, the following formatting techniques ensure that the information is readable:

- i. A readable font style and font size
- ii. Sufficient spacing between lines of the text
- iii. Adequate spacing between paragraphs, as appropriate
- iv. Sufficient white space and margins above, below and to the sides of the text
- v. Sufficient contrast between the text and the background, such as black text on white paper

b. While the regulation does not require banks to use the above formatting techniques in presenting the information in these disclosures and notices, banks are encouraged to consider these techniques

when deciding how to disclose information. A bank that provides a disclosure or notice electronically to a customer complies with the models' formatting techniques by providing a disclosure or notice in a file format, such as the .pdf file format, that electronically represents an 8½ x 11 inch sheet of paper with black text and a white background.

►5◄[4]. Shorter time periods for availability may always be substituted for time periods used in the models.

►6◄[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.

►7◄[6]. Banks are cautioned against using the models without reviewing their own policies and practices, as well as state and federal laws ►and regulations◄ 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 section 229.21(e). Banks are encouraged, however, to use current versions of the models when reordering or reprinting supplies.]

B. Model Availability-Policy and Substitute-Check-Policy Disclosures, Models C-1 through C-5[A]

1. Models C-1 Through C-5[A] Generally  
a. Models C-1 through C-[5A]►4B◄ are models for the availability-policy disclosures described in section 229.16 and ►model C-5 is a model for the◄ substitute-check-policy disclosure described in section 229.57. The ►funds-availability◄ models accommodate a variety of availability policies, ranging from next-day availability to holds to statutory limits on all deposits. Model►s◄ C-3►A and C-3B◄ reflect [s] the additional disclosures discussed in section 229.16(b) and (c) for banks that have a policy of extending availability times on a case-by-case basis. ►All of the funds-availability models indicate that a bank's policy may provide 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. (See § 229.19(c)(2) of the regulation.)◄

b. As already noted, there are several places in the forms where information must be inserted. This information includes the bank's cutoff times ►and◄ [.] 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, ►a bank that makes funds available on the business day the deposit was received may describe the funds as being available "the same business day." A bank that makes funds available on a business day after the business day of receipt◄ [the bank] must insert [the] ►a cardinal number (1, 2, etc.),◄ ordinal number (such as first, second, etc.)►, or the word "next" to describe◄ [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] ►4B reflect some information the inclusion of which depends on a bank's policies and practices, such as placing a hold on funds already on deposit when it cashes a check for a customer or makes funds immediately available to a customer (see § 229.19(e) of the regulation), and requiring special deposit slips as a condition for next-day availability for deposits of certain types of checks (see § 229.10(c)(2)). This information in the model availability-policy disclosures is placed within brackets to indicate that whether a bank should include the text in its availability-policy disclosure is dependent on the bank's funds-availability policies and practices. Additionally, certain other provisions of the regulation that apply only to certain banks are reflected◄ [Instead, disclosures for these provisions are included.] in model[s] C-6 through C-11A] ►clauses C-6, C-7, and C-8◄. 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.] ►these model clauses. A bank for which one or more of these clauses is applicable would append the clause(s) to the end of its availability-policy disclosure.◄

d. While section 229.10(b) of the regulation requires next-day availability for electronic payments, Treasury regulations (31 CFR 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]►C-4B◄ reflect these rules. Wire transfers [., however,]►and cash deposits◄ are not governed by Treasury or ACH rules, but banks generally make funds from [wire transfers]►these types of deposits◄ 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.]►these types of deposits. A bank that makes the proceeds of cash deposits or wire transfers available for withdrawal on the banking day they are received may specify in its disclosure that these types of deposits are available "the same business day" notwithstanding that the funds were not available at the opening of business on that day. Models C-1 through C-3B indicate that funds from these types of deposits will be available on the day received. A bank that uses one of these models should modify its disclosure to indicate that funds from cash deposits and wire transfers will be available on the next day if that reflects the bank's practice. In contrast, models C-4A and C-4B

indicate that funds from cash deposits and wire transfers will be available on the business day following receipt. A bank that uses one of these models but that makes funds from cash deposits and wire transfers available the same day they are received—i.e., a bank that places holds to statutory limits only on check deposits—may modify the forms accordingly to reflect the bank's practice.◄

2. Model C-1, Next-Day Availability. A bank may use this model when its policy is to make funds from all ►check◄ deposits available [on the first] ►by the next◄ business day after a deposit is made. This model may also be used by banks that provide [immediate availability] ►same-day for check deposits◄ by substituting the [word "immediately"] ►phrase "the same business day"◄ in place of [on the first business day after the day we receive your deposit."] ►"the next business day."◄

3. Model C-2, Next-Day Availability and Section 229.13. Exceptions. A bank may use this model when its policy is to make funds from all ►check◄ deposits available to its customers [on the first] ►by the next◄ business day after the deposit is made, and to reserve the right to invoke the new-account and other exceptions in section 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 ►checks other than next-day-availability checks◄ [a nonlocal check].

4. Model►s◄ C-3►A◄, Next-Day Availability, Case-by-Case Holds to Statutory Limits►on Check Deposits Without Cash-Withdrawal Limitation◄, and Section 229.13 Exceptions►; and C-3B, Next-Day Availability, Case-by-Case Holds to Statutory Limits on Check Deposits With Cash-Withdrawal Limitation, and Section 229.13 Exceptions◄

a. A bank may use [this model] ►these models◄ when its policy, in most cases, is to make funds from all types of deposits available ►by◄ the day after the deposit is made, but to delay availability on some ►check◄ deposits on a case-by-case basis up to the maximum time periods allowed under the regulation. A bank using [this model] ►these models◄ also reserves the right to invoke the exceptions listed in section 229.13. [A bank using this model also reserves the right to invoke the exceptions listed in section 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 ►checks other than next-day-availability checks◄ [a nonlocal check].

►b. Model availability-policy disclosure C-3A may be used by a bank that, when it delays availability of a check deposit on a case-by-case basis, does not impose the cash-withdrawal limitation permitted by section 229.12(b), whereas model availability-policy disclosure C-3B may be used by a bank that does impose this limitation when it delays availability on a case-by-case basis.

c. Models C-3A and C-3B include in brackets language related to check cashing, immediate availability, and holds on other

funds. A bank that bases its disclosure on model C-3A or C-3B would include this bracketed text in its disclosure only if the text corresponds to the bank's policy and practice. A bank that has such a policy, and that therefore includes this text in its disclosure, would include the text in the location indicated by the model. A bank that bases its availability-policy disclosure on model disclosure C-3A or C-3B and whose availability policy necessitates incorporation of one or more of the appendix's model clauses (C-9, C-11, or C-11A) would append those model clauses to the end of the second page of model C-3A or C-3B.

5. *Model C-4A, Holds to Statutory Limits on All Deposits Without Cash-Withdrawal Limitation; and C-4B, Holds to Statutory Limits on All Deposits With Cash-Withdrawal Limitation*

a. A bank may use [this model] these models when its policy is to [impose delays to the full extent] delay availability as allowed under section 229.12 and to reserve the right to invoke the section 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 checks other than next-day-availability [a nonlocal check].

b. Model availability-policy disclosure C-4A may be used by a bank that delays availability as allowed under section 229.12 but does not impose the cash-withdrawal limitation permitted by section 229.12(b), whereas model availability-policy disclosure C-4B may be used by a bank that delays availability as allowed under section 229.12 and does impose the cash-withdrawal limitation permitted by section 229.12(b).

c. Models C-4A and C-4B include in brackets language related to check cashing, immediate availability, and holds on other funds. A bank that bases its disclosure on model C-4A or C-4B would include this bracketed text in its disclosure only if the text corresponds to the bank's policy and practice. A bank that has such a policy and that therefore includes this text in its disclosure would include the text in the location indicated by the model. A bank that bases its availability-policy disclosure on model disclosure C-4A or C-4B and whose availability policy necessitates incorporation of one or more of the appendix's model clauses (C-9, C-11, or C-11A) would append those model clauses to the end of the second page of model C-4A or C-4B. [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-5A bank may use this form when its policy is to impose delays to the full extent allowed by section 229.12 and to reserve the right to invoke the section 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, Substitute-Check-Policy Disclosure* A bank may use this form when it is providing the disclosure to its consumers required by section 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. A bank for which one or more of these clauses is applicable would append the clause(s) to the end of its availability-policy disclosure.

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 section 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 section 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 fourth [fifth] business day following the date of deposit, as permitted by section 229.12(b)(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 section 229.16(b)(5).

6. *Model C-10, Cash-Withdrawal Limitation*

A bank that imposes cash-withdrawal limitations under section 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 section 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 nonlocal checks (for example, a bank using model availability-policy disclosure C-4A and C-5) and accepts deposits in more than one check-processing region].

D. Model Notices, Models C-12 through C-25

1. *Model Notices C-12 through C-25* Generally. Models C-12 through C-25 provide models for 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 section 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 or Reasonable-Cause Hold Notice*

a. i. This model satisfies the written notice required under section 229.13(g) when a bank places a hold based on a section 229.13 exception, including the reasonable-cause exception. The model notice includes a location, indicated by "(reason for hold)," in which the bank must insert the reason for placing the hold. The bulleted list below contains examples of reasons a bank may place a hold that could be inserted into the notice:

(1) A check you deposited was previously returned unpaid.

(2) You have overdrawn your account repeatedly in the last six months.

(3) The checks you deposited on this day exceeded \$5,000.

(4) There is an emergency, such as a failure of computer or communications equipment.

(5) We believe a check you deposited will not be paid, because (e.g., a reason from paragraph b).

ii. 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] may use the material set out in brackets if it imposes overdraft or returned-check fees after invoking the reasonable-cause exception under section 229.13(e).

3. *Model C-13, Reasonable-Cause Hold Notice* [This] i. Model notice C-9 also satisfies the written notice required under section 229.13(g) when a bank invokes the reasonable-cause exception under section 229.13(e). The [notice provides the bank with a list of] model notice includes a location, indicated by "(reason for hold)," in which the bank would



insert the specific reason[s 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.] The list below provides examples of reasons that a bank could insert into the notice as its reason for doubting collectibility:

(1) We received notice that the check is being returned unpaid.

(2) We have confidential information that indicates that the check may not be paid.

(3) The check is drawn on an account with repeated overdrafts.

(4) We are unable to verify a signature on the back of the check.

(5) Some information on the check is not consistent with other information on the check.

(6) There are apparent alterations on the check.

(7) The routing number of the paying bank is not a current routing number.

(8) The check is postdated.

(9) The check has a stale date, that is, it was written too long ago and is expired.

(10) We have been notified that the check has been lost or damaged in collection.

ii. The above list is not intended to be comprehensive; another reason that does not appear in the list may be inserted in place of ("reason for hold") provided the reason satisfies the conditions for invoking the reasonable cause exception.

iii. If a hold is being placed on more than one check in a deposit, each check should be described separately, and if different reasons apply, each reason should 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] may use the material set out in brackets if it imposes overdraft or returned-check fees after invoking the reasonable-cause exception under section 229.13(e).

[4] Model C-[14] 10, *One-Time Notice for Large-Deposit and Redeposited-Check Exception Holds*. This model satisfies the notice requirements of section 229.13(g)(2) concerning nonconsumer accounts.

[5] Model C-[15] 11, *One-Time Notice for Repeated-Overdraft Exception Hold*. This model satisfies the notice requirements of section 229.13(g)(3).

[6] Model C-[16] 12A, *Case-by-Case Hold Notice Without Cash-Withdrawal Limitation*; and C-[16B] 12B, *Case-by-Case Hold Notice With Cash-Withdrawal Limitation*. [This model] These models satisfies the notice required under section 229.16(c)(2) when a bank with a case-by-case hold policy imposes a hold on a deposit. Model case-by-case hold notice C-12A may be used by a bank that imposes a case-by-case hold, but does not have a policy of imposing the cash-withdrawal limitation permitted by section 229.12(b), whereas model notice C-12B may

be used by a bank that imposes such a hold and does have such a policy.

Section 229.16(c)(2) [This notice] does not require a statement of the specific reason for the hold, as is the case when a section 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] 13, *Notice at Locations Where Employees Accept Consumer Deposits*; and Model C-[18] 14, *Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds)*

a. These models satisfy the notice requirement of section 229.18(b). Model C-[17] 13 reflects an availability policy of holds to statutory limits on all deposits, and model C-[18] 14 reflects a case-by-case availability policy.

b. i. Model C-13 indicates that funds from cash deposits and wire transfers will be available on the business day following receipt. A bank that uses this model but that makes funds from these types of deposits available the same day they are received—i.e., a bank that places holds to statutory limits only on check deposits—may modify the form accordingly to reflect the bank's practice. In contrast, model C-14 indicates that funds from cash deposits and wire transfers will be available on the day received. A bank that uses this model should modify its disclosure to indicate that funds from these types of deposits will be available on the next day if that reflects the bank's practice. A bank should ensure that its notice reflects the availability given in most cases for these types of deposits.

ii. A bank that imposes cash-withdrawal limitations under section 229.12(b) should indicate that funds will generally be available by the third, rather than second, business day after the day of deposit, by replacing "(number)" in the lower-right-hand box of the tables in the models with "third" (rather than second).

[8] Model C-[19] 15, *Notice at Automated Teller Machines*. This model satisfies the ATM notice requirement of section 229.18(c)(1).

[9] Model C-[20] 16, *Notice at Automated Teller Machines (Delayed Receipt)*. This model satisfies the ATM notice requirement of section 229.18(c)(2) when receipt of deposits at off-premises ATMs is delayed under section 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] 22, *Deposit-Slip Notice*. This model satisfies the notice requirements of section 229.18(a) for deposit slips.

[11] Models C-[22] 18, *Through C-[25] 21 Generally*. Models C-[22] 18 through C-[25] 21 provide models for the various notices required when a consumer who

receives substitute checks makes an expedited recredit claim under section 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 section 229.54(e).

[12] Model C-[22] 18, *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 section 229.54(e)(1).

[13] Model C-[23] 19, *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 section 229.54(e)(1).

[14] Model C-[24] 20, *Denial Notice*. A bank may use this model when denying a claim for an expedited recredit under section 229.54(e)(2).

[15] Model C-[25] 21, *Reversal Notice*. A bank may use this model when reversing an expedited recredit that was credited to a consumer's account under section 229.54(e)(3).

37. Revise Appendix F to Part 229 to read as follows:

#### Appendix F to Part 229—Official Board Interpretations; Preemption Determinations

*Uniform Commercial Code, Section 4-213(5)*

1. State provision that may supersede Regulation CC

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. To the extent that section 4-213(5) of the U.C.C. requires certain cash deposits in a shorter time than provided in Regulation CC, that section supersedes Regulation CC.

2. State provision superseded by Regulation CC

Section 4-213(5) 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. Therefore, a depository bank may agree to extend availability beyond the requirement of section 4–213(5), but 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.

#### Other preemption determinations California

California has three separate sets of regulations establishing maximum availability schedules, all adopted pursuant to California Financial Code section 866.5 (which requires the banking commissioners to promulgate regulations establishing a reasonable period of time within which a depository institution must make deposited funds available to customers) and California Commercial Code section 4–213(4)(a), that were in effect on or before September 1, 1989. The regulations applicable to commercial banks and branches of foreign banks (collectively, *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 (collectively, *savings institutions*) (Cal. Admin. Code tit. 10, §§ 106.200–106.202) were promulgated by the savings and loan commissioner. The regulations applicable to industrial loan companies (Cal. Admin. Code tit. 10, § 40.101) were promulgated by the Commissioner of Corporations. 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.

#### 1. Funds availability periods

##### A. Banks and savings institutions.

The regulations applicable to California banks and savings institutions provide that a depository bank shall make funds deposited into a deposit account available for withdrawal as provided in Regulation CC, subject to the following:

*Cashier’s checks, teller’s checks, certified checks, or depository checks.* 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’s 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 provides for holds of the same number of days as the federal schedules and therefore supersedes the federal schedules if the California regulations do not allow the funds to be made available later in the day than does Regulation CC.

*Checks drawn on in-state bank with a different four-digit routing symbol.* California regulations require banks (not including savings institutions) to provide fourth business day availability of funds deposited into a bank with a four-digit routing symbol of 1210 (“1210 bank”) by a check drawn on an in-state bank with a four-digit routing symbol of 1220 (“1220 bank”). Similarly, a 1220 bank that receives a check drawn on a 1210, in-state bank may make the funds available for withdrawal by the fourth business day after the day of deposit. Regulation CC, however, provides that checks must be made available for withdrawal by the second business day after the banking day of deposit. Because California’s regulations permit depository banks to make funds available within a longer period of time than the federal schedules, California’s regulations are superseded by the EFA Act and subpart B of Regulation CC.

*Paying bank.* The 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.

*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.

##### B. Industrial loan companies.

Section 229.2(e)(1)(i) of Regulation CC, the term *bank* includes an insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813). That Act defines *bank* to include any State bank (12 U.S.C. 1813(a)(1)(A)) and, in turn, defines *State bank* to include an industrial bank or similar depository institution that receives deposits and is incorporated under the laws of any state (12 U.S.C. 1813(a)(2)). The California regulations applicable to industrial loan companies set forth a funds availability schedule that does not incorporate the periods set forth in Regulation CC. Accordingly, the following preemption

determination sets forth the provisions of state law that supersede federal law and those that are preempted by it.

*Check of \$100 or less.* California regulations require industrial loan companies to give next-day availability to a check of \$100 or less. Therefore, the California provision supersedes the Regulation CC provision if on a single banking day multiple checks, each under \$100, are deposited.

*U.S. Treasury, state and local government checks.* California regulations require industrial loan companies to give next-day availability to items drawn by the State of California or any of its departments, agencies, or political subdivisions. Regulation CC conditions next-day availability on receipt of the deposit at a staffed teller station or use of a special deposit slip. Therefore, 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.

*On-us checks.* California regulations require industrial loan companies to 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. 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 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.

*Cashier’s checks, teller’s checks, certified checks, or depository checks.* 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 provides for holds of the same number of days as the federal schedules and therefore supersedes the federal local and nonlocal schedules if the California regulations do not allow the funds to be made available later in the day than does Regulation CC.

*In-state and out-of-state checks.* California regulations require industrial loan companies to make funds deposited by a check drawn on a depository institution in California available no later than the sixth business day after deposit. Industrial loan companies are required to make funds deposited by a check drawn on a depository institution outside of California available no later than the twelfth business day after deposit. Regulation CC, however, generally requires depository banks to make funds deposited by a check drawn on any depository bank available no later

than the second business day after deposit. Accordingly, California's regulation permitting longer holds by industrial loan companies is preempted by Regulation CC.

**Exceptions to the availability schedules.** California regulations provide exceptions to the state availability schedules applicable to industrial loan companies for large deposits, new accounts, repeated overdrafters, 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's availability schedule (e.g., cashier's or teller's checks that are not deposited with a special deposit slip or at a staff teller station and on-us checks deposited at an off-premises ATM or another facility of the depository bank that is not considered a branch under federal law), 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.

## 2. 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 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. Thus, the state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

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.

## 3. Other general provisions

**Accounts.** The California funds availability laws 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)), negotiable order of withdrawal draft accounts, share draft accounts and other share accounts (other than time accounts). (California Financial Code section 886(b)) 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 regulations continue to apply to deposits in savings and other accounts (such as accounts in which the account-holder is another bank) that are not accounts under Regulation CC. Under § 229.19(e) of Regulation CC (*Holds on other funds*), however, the federal availability schedules may apply to savings, time, and other accounts not defined as accounts under Regulation CC in certain circumstances.

**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 whether the permissible hold under the California schedules supersedes the Regulation CC schedule, deposits are considered made on the specified number of *business days* following the *banking day* of deposit.

**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.

**Checks.** 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. All of the 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.

## Illinois

Section 4–213(5) of the U.C.C. as adopted in Illinois (Illinois Revised Statutes Chapter 26, paragraph 4–213(5), enacted July 26, 1988) provides that funds from deposits must be available in accordance with 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. Therefore, 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

Maine's funds availability (Title 9–B MRSA section 241(5), adopted in 1985) 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. Under the Superintendent of Banking's regulations, effective July 1, 1987 (Regulation 18(IV)), and adopted amendments to this regulation, effective September 1, 1988, 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–IV(A)(1), 02–029–118 Me. Code. R. § IV). 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)).

**Funds availability 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.

**Accounts.** The Maine 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)). The funds availability schedules in Regulation CC apply only to accounts as defined in Regulation CC, which generally consist of transaction accounts. The Maine funds availability law and regulations continue to apply to deposits in all accounts, including those that are not accounts under Regulation CC. Under § 229.19(e) of Regulation CC (*Holds on other funds*), however, the federal availability schedules may apply to savings, time, and other accounts not defined as accounts under Regulation CC in certain circumstances.

## Massachusetts

In 1988, Massachusetts amended its statute governing funds availability (Mass. Gen. L. ch. 167D, section 35).

### 1. Funds availability periods

Massachusetts requires banking institutions to make funds available for withdrawal in accordance with the EFA Act and Regulation CC. Massachusetts defines *local originating depository institution* (local paying bank in Regulation CC terminology) as a depository institution located in Massachusetts (as distinguished from a depository institution located in the same

check-processing region—the terminology the EFA Act uses). Regulation CC no longer distinguishes between “local” and “nonlocal” originating depository institutions, and therefore, the term “local originating depository institution” is no longer relevant for purposes of funds availability. Because the Massachusetts statute incorporates the Regulation CC availability requirements, the state requirements are consistent with the federal requirements, and the Massachusetts statute is not preempted by, nor does it supersede, the federal law.

#### 2. 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.

#### 3. Other general provisions

*Accounts.* The Massachusetts statute governs the availability of funds deposited in “any demand 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. 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.

#### *New York*

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 (collectively, *banks*); and savings banks, savings and loan associations, and credit unions (collectively, *savings institutions*) must make funds deposited in customer accounts available for withdrawal.

1. Funds availability periods  
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, except for deposits drawn on non-local, but in-state, banks. The New York schedule for banks and savings institutions permits maximum holds on funds deposited by checks drawn on a nonlocal, but in state, bank or savings institution ranging from no later than the fourth business day (in the case of banks) to no later than the fifth business day (in the case of savings institutions). Because Regulation CC requires funds to be made available no later than the second business day (unless an exception applies, as discussed below), Regulation CC preempts the New York schedule for funds availability.

*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 34.5, renumbered

from 34.4). In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. Because the federal availability schedule preempts the state schedule for all cases, the New York exceptions do not apply.

#### 2. Disclosures

The revised New York regulation does not contain funds availability disclosure requirements applicable to accounts subject to Regulation CC.

#### 3. Other provisions

*Accounts.* The New York statute governs the availability of funds deposited in savings accounts and time deposits, as well as *accounts* as defined in § 229.2(a) of Regulation CC. Regulation CC applies only to *accounts* as defined in § 229.2(a). Regulation CC does not affect the New York statute to the extent that the state law applies to deposits in savings accounts and time deposits, which are not *accounts* under Regulation CC. 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.

*Items.* 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)).

By order of the Board of Governors of the Federal Reserve System, March 3, 2011.

**Robert deV Frierson,**  
*Deputy Secretary of the Board.*

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