



FEDERAL RESERVE BANK  
OF DALLAS

WILLIAM H. WALLACE  
FIRST VICE PRESIDENT  
AND CHIEF OPERATING OFFICER

DALLAS, TEXAS 75222

October 30, 1990

Circular 90-76

**TO:** The Chief Executive Officer of each  
member bank and others concerned in  
the Eleventh Federal Reserve District

**SUBJECT**

**Subpart B of Regulation J--Funds Transfers Through Fedwire**

**DETAILS**

The Federal Reserve Board has approved a comprehensive revision to Subpart B of Regulation J, governing funds transfers through Fedwire. The revision will make Regulation J consistent with the new Article 4A of the Uniform Commercial Code. Article 4A governs the rights, responsibilities, and liabilities of parties to wholesale funds transfers.

The revision to Subpart B becomes effective January 1, 1991, and will:

- provide a more comprehensive set of rules for funds transfers involving Federal Reserve Banks than is currently provided by Subpart B;
- make Subpart B consistent with state laws applicable to funds transfers as states adopt Article 4A; and
- help to ensure that, subject to their central banking responsibilities, Federal Reserve Banks compete on an equitable basis with private-sector providers of funds-transfer services.

**ATTACHMENT**

The Board's notice is attached.

**MORE INFORMATION**

Questions concerning the revision should be addressed to Larry Ripley in the Electronic Payments Department at (214) 651-6118 or Dean Pankonien in the Legal Department at (214) 651-6228. For additional copies of this circular, please contact the Public Affairs Department at (214) 651-6289.

Sincerely yours,

A handwritten signature in cursive script, reading "William H. Waller". The signature is written in black ink and is positioned below the typed name "William H. Waller".

**FEDERAL RESERVE SYSTEM****12 CFR Part 210**

[Regulation J; Docket No. R-0697]

**Funds Transfers Through Fedwire****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Final rule.

**SUMMARY:** The Board has adapted a comprehensive revision of Subpart B to Regulation J to make it consistent with the new Article 4A of the Uniform Commercial Code, Funds Transfers. The revision sets out the rules governing funds transfers through Fedwire, as well as Commentary to the regulation that constitutes a Board interpretation of the regulation.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Oliver Ireland, Associate General Counsel (202/452-3625) or Colleen McCall, Staff Attorney, (202/452-6406), Legal Division; or Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations (202/452-3874); for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

**SUPPLEMENTARY INFORMATION:** For many years, the Regulation J provisions on funds transfers handled by Federal Reserve Banks constituted the only codified body of law applicable to these payments. Although subpart B of Regulation J specified the rules applicable to the funds transfers handled by Federal Reserve Banks, there were no codified rules for the wholesale funds transfers handled by

other banks, or by private funds-transfer systems.<sup>1</sup> Further, Regulation J did not provide comprehensive rules for the relationship between banks and their customers that were parties to fund transfers handled by Federal Reserve Banks. Although there was no comprehensive body of statutory or regulatory law on funds transfers other than consumer transactions (and only limited case law has developed in this area), the number and dollar volume of funds transfers in the United States has grown to very high levels.

Approximately 400,000 funds transfers with a total value of more than \$1.5 trillion are processed in the United States each day through the Fedwire system and the Clearing House Interbank Payments System (CHIPS).

To provide a legal framework for these transactions, several years ago the National Conference of Commissioners on Uniform State Laws, the sponsoring organization for the Uniform Commercial Code and other uniform state laws, undertook to develop a new Article 4A to the Uniform Commercial Code (UCC) on funds transfers. This project was completed in 1989 with the assistance of representatives of the banking and the corporate user community, as well as the Federal Reserve System. Article 4A has already been adopted in twelve states—California, Colorado, Connecticut, Illinois, Kansas, Louisiana, Minnesota, New York, Oklahoma, Utah, Virginia, and West Virginia. Article 4A will become effective in many of these states by January 1991 and will likely be adopted in most, if not all, remaining states within the next few years.

Article 4A provides comprehensive rules governing the rights and responsibilities of the parties to wholesale funds transfers.<sup>2</sup> These rights and responsibilities include: responsibility for unauthorized, erroneous, or erroneously executed funds transfers, risks of loss associated with the failure of a bank handling a funds transfer, responsibilities to pay for and the right to receive payment for funds transfers, and the effect of payment by funds transfer on any contractual obligation between an

<sup>1</sup> In 1987, Congress adopted the Electronic Fund Transfer Act to establish consumer rights in electronic funds transfers. 15 U.S.C. 1603 *et seq.* This Act does not apply, however, to that portion of a funds transfer sent through Fedwire. 15 U.S.C. 1603a(6)(B).

<sup>2</sup> Transactions covered by Article 4A include wire transfers sent through Fedwire or CHIPS, book transfers, and automated clearing house (ACH) credit transfers, other than transfers subject to the electronic fund Transfer Act.

originator and a beneficiary underlying a funds transfer.

Although many of the concepts embodied in the current version of subpart B of Regulation J are similar to those embodied in Article 4A, a number of the subpart B provisions are inconsistent with the structure of Article 4A and the terminology of subpart B and Article 4A differ substantially. Accordingly, in June 1990, the Board published for comment a comprehensive revision of subpart B to incorporate Article 4A and to define further its requirements applicable to Federal Reserve Banks. The Board received 32 comments on the proposal. The Board has considered the comments and revised the proposed rule as further described below. In considering modifications to the regulation, the Board has sought to ensure (1) the continued ability of the Federal Reserve Banks to effectively carry out their central banking responsibilities, (2) the consistency of the revised regulation with the Federal Reserve's role to promote the integrity and efficiency of the payments system, and (3) the consistency of the revised regulation with the tests established in the Board's competitive impact analysis. The Board believes that revised subpart B meets these objectives.<sup>3</sup>

The Board has revised subpart B of Regulation J substantially as proposed in June so as to apply Article 4A to funds transfers handled by Federal Reserve Banks, subject to a limited number of modifications and clarifications.<sup>4</sup> This revision to subpart B: (1) Provides a more comprehensive set of rules for funds transfers involving Federal Reserve Banks than is currently provided by subpart B; (2) makes subpart B consistent with state laws applicable to funds transfers as states adopt Article 4A; and (3) helps to ensure that, subject to their central banking responsibilities, Federal Reserve Banks compete on an equitable basis with private-sector providers of funds-transfer services.

<sup>3</sup> It could be argued that adoption of the rules governing Fedwire as a federal regulation, rather than as a funds-transfer system rule, in itself had an adverse competitive effect due to the supremacy of federal law over funds-transfer system rules. The Board believes that adoption of these rules as federal law is necessary, in light of the national scope of the Fedwire system.

<sup>4</sup> Under section 4A-107, Federal Reserve regulations and operating circulars supersede inconsistent provisions of Article 4A. In addition, under the Expedited Funds Availability Act, the Board has broad authority to issue regulations concerning the payments system. Nevertheless, in developing subpart B, the Board has generally varied Article 4A only to the extent that the law could be varied by a private funds-transfer system rule.

Revised subpart B incorporates Article 4A. In the event of an inconsistency between the provisions of the sections of subpart B and the provisions of Article 4A, the provisions of the sections of subpart B will prevail. Article 4A will apply to transactions involving Federal Reserve Banks even if the state in which the Federal Reserve Bank is located had not yet adopted Article 4A. The Board believes that this incorporation is necessary to ensure that the law applicable to funds transfers involving Federal Reserve Banks is uniform for all Fedwire funds transfers, regardless of the location of the banks involved in the funds transfer.

Consistent with the provisions of Article 4A concerning the choice of law by rules of private funds-transfer systems (see section 4A-507), subpart B will apply to all banks sending payment orders to or receiving payment orders from Federal Reserve Banks. In addition, it will apply to any remote parties to these funds transfers that receive notice that the funds transfer might go through Fedwire and that subpart B applies to such funds transfers (see section 4A-507(c)). In order to encourage banks to provide these notices to their customers, the proposal included a warranty by the banks sending or receiving funds transfers through Fedwire that all remote parties to the transfer have been provided such a notice. This warranty would have extended the Article 4A limitation on consequential damages to claims against Federal Reserve Banks by originators and beneficiaries of transfers through Fedwire (see section 4A-305(d)), and would have helped to provide end-to-end coverage for funds transfers through Fedwire so that the scheme of rights and liabilities under Article 4A operated effectively. These benefits applied primarily to the transition period before Article 4A is adopted in all states. The Board had been advised that private funds-transfer systems were planning to require similar warranties or employ other similar means to ensure that originators and beneficiaries are notified of the use of their funds-transfer system.

Commenters argued that private banks would be unable to obtain similar warranties by agreement and that the warranties would expose them to liabilities from remote parties that they would be unable to control. Further, although the National Automated Clearing House Association (NACHA) has attempted to achieve a result similar to the proposed warranty by requiring in its rules that its participants give such notices, CHIPS has not. The Board believes that the burden and difficulties

cited by the commenters outweigh the benefits of the warranties, which were designed primarily to address transition problems. Accordingly, the Board has deleted the warranty provisions from the final rule.

In addition to the warranty issue, in reviewing the proposal, the Board noted two other issues concerning the appropriate scope of subpart B. First, by its terms, Article 4A does not apply to funds transfers any part of which is subject to the Electronic Fund Transfer Act (see section 4A-108). The Electronic Fund Transfer Act does not apply to funds transfers sent through Fedwire (see 15 U.S.C. 1693a(6)(B)). One portion of a funds transfer could be sent through Fedwire and another portion could be transmitted in a way that made it subject to the Electronic Fund Transfer Act. In such a case, by its terms, Article 4A would not be applicable to any portion of the funds transfer, including the Fedwire portion. In order to ensure that the rules for all funds transfers through Fedwire are consistent, the final rule provides that subpart B, including Article 4A, applies to all funds transfers through Fedwire, even if a portion of the funds transfer is governed by the Electronic Fund Transfer Act. The portion of the funds transfer that is governed by the Electronic Fund Transfer Act would not be governed by subpart B.

Second, Article 4A specifies the time that a beneficiary's bank must provide the proceeds of a funds transfer to the beneficiary on the payment date. The Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*) and Regulation CC require banks to make electronic payments available for withdrawal on the business day after the banking day on which the bank has received payment in actually and finally collected funds and information on the account and amount to be credited (see 12 CFR 229.10(b)). Although Article 4A would in some cases provide for prompter availability of funds transfers than would the Expedited Funds Availability Act and Regulation CC, the Board believes the Expedited Funds Availability Act and Regulation CC should control subpart B because the express provisions of the Expedited Funds Availability Act indicate clearer expression of Congressional intent on the issue of availability of funds.<sup>5</sup>

<sup>5</sup> The Expedited Funds Availability Act provides that a state law that requires prompter availability of funds can supersede the federal law only if the state law was in effect on September 1, 1989. (12 U.S.C. 4007.) Article 4A would not supersede the Expedited Funds Availability Act in any state because it was not in effect in any state on September 1, 1989.

In addition to these issues, the final rule revising subpart B contains a number of technical changes to the proposal that are described in detail below. The Board believes that these issues are addressed in a manner that is consistent with provisions of Article 4A, and therefore do not represent a competitive inequity between Federal Reserve Banks and private-sector banks and, at the same time, do not adversely affect the Federal Reserve Banks' abilities to carry out their central banking responsibilities, including providing payment services to troubled banks and administering the discount window.

**Comment Summary**

The Board received 32 comments on the proposed revisions to subpart B of Regulation J. Commenters comprised

Commercial Banks.....	10
Bank Holding Companies.....	8
Trade Associations.....	6
Federal Reserve Banks.....	3
Clearing House.....	1
Savings and Loan Institution.....	1
Corporation.....	1
Foreign Central Bank.....	1
U.S. Branch of a Foreign Bank.....	1
Total.....	32

While all of the commenters generally favored the proposal, some commenters raised various concerns with specific aspects of the proposed revisions. The final amendments and substantive comments are summarized below:

*Supplementary Information.* One commenter suggested that the Board was inconsistent in its statement in footnote 4 that the Board is not relying "extensively" on its section 4A-107 authority to supersede provisions of Article 4A, and its statement in the competitive impact analysis to § 210.25 that the Board "does not believe that the proposed subpart B supersedes or preempts any express provisions of Article 4A." The discussion of the use of the Board's preemptive authority in supplementary information for the final rule is consistent with the discussion in the competitive impact analysis. Generally, subpart B only varies Article 4A in ways that it could be varied by a funds-transfer system rule. For example, the Board has overridden Article 4A so as to apply subpart B to portions of a funds transfer through Fedwire where other portions are subject to the Electronic Fund Transfer Act. In addition, as discussed above, the Expedited Funds Availability Act and

Regulation CC override a portion of Article 4A as incorporated in subpart B.

210.25—*Authority, purpose, and scope.* The Board proposed incorporating those provisions of Article 4A of the Uniform Commercial Code into subpart B that are not inconsistent with the provisions set forth expressly in subpart B of Regulation J to provide a more comprehensive set of rules for funds transfers involving Federal Reserve Banks than is currently provided by subpart B. One commenter stated that subpart B's incorporation of Article 4A will make state passage of Article 4A ministerial. The Board believes that state adoption of Article 4A is still desirable to govern the rights and obligations of parties to funds transfers that do not go through Fedwire and remote parties to Fedwire funds transfers to the extent that their rights and obligations are not governed by subpart B.

The Board was requested to clarify its intent regarding the preemptive effect of subpart B (incorporating Article 4A) on individual state laws. In the Commentary to § 210.25(a), the Board has clarified that subpart B only preempts inconsistent provisions of state laws, and that it does not affect state law governing funds transfers that does not conflict with the provisions of subpart B, such as Article 4A, as enacted in any state, as it applies to parties to funds transfers whose rights are not governed by subpart B.

The Board was asked to clarify whether the Uniform Commercial Code Article 1 provisions are also incorporated in proposed subpart B, and if so, whether subpart B would supersede state versions of Article 1. The commenter expressed concern that unless subpart B incorporated Article 1 or an explanation of the status of Article 1 was included in the Commentary, court decisions would be inconsistent in this respect. The Board has added a sentence to the Commentary to § 210.25(b) clarifying that the Article 1 definitions referred to in section 4A-105(d) are also incorporated in subpart B. The Commentary also clarifies that the version of Article 1 referred to is that approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute.

Two commenters stated that the Board should clarify the extent to which subpart B applies to those transfers not covered by Article 4A because a portion of the transfer is covered by the Electronic Fund Transfer Act ("EFT Act"), 15 U.S.C. 1693 *et seq.* and the Board's Regulation E, 12 CFR part 205. One of these commenters suggested that

the Regulation E Commentary be amended to state that Regulation E does not apply to a transfer any portion of which goes through Fedwire. The Board has amended the regulation and revised the Commentary to provide that subpart B governs a funds transfer sent through Fedwire, as provided in the scope provisions, even though a portion of such funds transfer is also covered by the EFT Act, but that the portion of a funds transfer governed by the EFT Act is not governed by subpart B.

One commenter suggested that the Board may need to include Article 4A in the Federal Register notice with the final regulation to satisfy the Administrative Procedure Act, 5 U.S.C. 553 *et seq.* The Board has included Article 4A in the Federal Register notice as appendix B to revised subpart B.

Eight commenters disagreed with the limitation of the scope of proposed subpart B to that of a funds-transfer system rule under Article 4A. These commenters suggested that the Board use its authority under section 4A-107 to apply subpart B to achieve end-to-end coverage so that subpart B would apply to all parties to a Fedwire funds transfer. Most of these commenters stated that it is not competitively inequitable for the Board to expand the scope of subpart B beyond the scope achievable through a funds-transfer system rule, and in fact, that section 4A-107 contemplates this action by the Board. Further, one commenter believed that proposed § 210.25 is ambiguous because it states that subpart B is not a funds-transfer system rule, but proposes to bind remote parties as if it were a funds-transfer system rule. However, one commenter, a foreign central bank, believed that it would be inconsistent with international payments practice for subpart B to purport to govern the relationship between foreign banks and their customers outside the United States merely because a portion of a funds transfer went through Fedwire. This commenter requested clarification that the Board does not intend to extend the scope of subpart B to govern the relationship between foreign banks and their customers.

The Board believes that subpart B should have the same scope as if it were a funds-transfer system rule under Article 4A. This, subpart B binds only parties that are direct Fedwire participants and remote parties that have received notice in accordance with section 4A-507 that Fedwire might be used in the funds transfer and that subpart B is the governing law. The Board recognizes that private-sector providers of funds transfer services

could not achieve end-to-end coverage for their funds-transfer system rules through federal regulation. In addition to considerations of competitive equity, the Board is concerned that applying subpart B to all parties to a funds transfer sent through Fedwire would govern rights between parties remote from a Federal Reserve Bank in which the Federal Reserve Bank has no financial interest, including foreign parties. For example, if the Board applied subpart B to achieve end-to-end coverage of funds transfers that go through Fedwire, subpart B would purport to govern the rights between an originator and originator's bank located abroad that did not contemplate that Fedwire would be used to carry out the transfer. While such coverage might provide legal certainty to such transactions, the parties to these transactions may not know of or desire such certainty. Further, the Board does not believe that there is a compelling case for achieving such added certainty for transfers through Fedwire as opposed to transfers through other funds-transfer systems or book transfers.

For these reasons, the Board has not expanded the scope of subpart B to achieve end-to-end coverage, but Fedwire participants may obtain end-to-end coverage in the same manner available to private funds-transfer systems under section 4A-507—through notice to remove parties. Consequently, the scope of proposed § 210.25 has not been changed. See, however, the discussion of the elimination of the warranties contained in proposed §§ 210.28(c) and 210.29(c) by direct Fedwire participants that remote parties had received notice. In addition, the Board revised proposed § 210.25(b) and the Commentary to that section for clarity.

In the proposal, the Board indicated that each Federal Reserve Bank will issue an operating circular governing the details of its funds-transfer operations and certain other matters. Two commenters expressed concern that a Federal Reserve Bank may individually vary the subpart B rules in its Fedwire operating circular. One of these commenters suggested that subpart B should expressly limit the Federal Reserve Banks' authority to vary § 210.25 because Fedwire is a national system and the Federal Reserve's policies should not fundamentally differ among districts. The other commenter suggested that the Board established an oversight committee to prevent operating circular discrepancies.

The Federal Reserve Banks cannot vary the subpart B rules in their operating circulars, because the regulation specifies that the circulars must be consistent with subpart B. Federal Reserve Bank and Board staff are currently drafting a model Fedwire operating circular, and the Board anticipates that the circulars issued by the Federal Reserve Banks will be substantially similar to the model circular. Further, the Board's general counsel will review the model circular for consistency with applicable law, including subpart B. Therefore, the Board has not changed this provision of § 210.25(c) in the final regulation. The Board has clarified in the Commentary to § 210.25(c) that Federal Reserve Bank Operating Circulars may supersede inconsistent provisions of Article 4A as set forth in Appendix B and as enacted in any state.

Article 4A allocates liability for unauthorized payment orders based on the commercial reasonableness of the security procedures that are used by the receiving bank to verify its customers' payment orders (see section 4A-202). In proposed § 210.25(c), the Board stated that the Federal Reserve Bank operating circulars would specify the security procedures that would be used in Fedwire transfers. Two commenters asked that subpart B explicitly address security procedures. One of these commenters believed that subpart B should provide for a course of dealing arrangement to minimize the burden of obtaining new written agreements and establishing new security procedures. The other commenter recommended that subpart B establish minimum security procedures that are deemed commercially reasonable to provided guidance for the industry.

The Board believes that the operational details of the security procedures used for Fedwire funds transfers are more appropriately addressed in the Federal Reserve Bank operating circulars, and thus has not included the specifics of the security procedures in the regulation, because the Board anticipates that the security procedures that are used will evolve over time. With respect to the comment on minimum security procedures, Article 4A contemplates that the issue of whether a particular security procedure is commercially reasonable is a question of law, to be determined by the courts under standards set forth in section 4A-202(c). For these reasons, the Board does not believe it is appropriate to prescribe by regulation what constitutes commercially reasonable security procedures. Further, the Board does not

believe that it is appropriate to specify the means by which private parties arrive at an agreement with each other as to security procedures.

A commenter suggested that Board clarify whether subpart B covers ACH credit transfer. The proposal expressly excluded ACH transfers both from the definition of Fedwire (§ 210.26(e)) and from the definition of payment order (§ 210.26(i)). In addition, § 210.25(a) states that subpart B governs only funds transfers through Fedwire. Therefore, the Board believes that it is clear that subpart B does not govern ACH credit transfers.

Finally, on its own initiative, the Board added § 210.25(b)(4) to the revised regulation to clarify that the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*) and Regulation CC (12 CFR part 229) control subpart B on availability of funds because the express provisions of the Expedited Funds Availability Act are a clearer expression of Congressional intent on this issue. The Board revised proposed § 210.25(d) for clarity.

*210.26—Definitions.* Two commenters suggested that the Board clarify whether requests for credit transfers, or drawdown requests, sent through Fedwire are considered to be payment orders under subpart B. One of these commenters noted that comment 4 to section 4A-104 states that drawdown requests in the form of a credit transfer where the same party is both originator and beneficiary are treated as payment orders under Article 4A. The same commenter did not believe that the Federal Reserve Banks should have discretion to determine in their operating circulars whether such requests are considered payment orders. The other commenter requested clarification on which rules, if any, govern drawdown requests excluded by Article 4A but sent through Fedwire.

The Board believes that requests for credit transfers sent through Fedwire should not be considered to be payment orders covered by subpart B because they are not payment orders addressed to a Federal Reserve Bank; the Federal Reserve Banks act solely as a transmission facility with respect to these messages. Therefore, the board has not expanded the definition of payment order to include these messages and has clarified that these messages are not treated as payment orders under subpart B because they are not an instruction to a Federal Reserve Bank to pay money. The exclusion of these messages from the subpart B definition of payment order does not affect whether they are subject to

Article 4A, as adopted in a given state. The Board amended the proposed § 210.26(c) definition of "automated clearing house transfer" by deleting the phrase "in the rules of an automated clearing house association," because it was redundant to the first part of the definition. In addition, the Board has amended the proposed § 210.26(h) definition of "off-line bank" for clarity. The Board has also deleted the proposed § 210.26(1) definition of "Uniform Commercial Code" and clarified in § 210.25(a) that the version of Article 4A incorporated in subpart B is that set forth in appendix B. Further, the Board revised the Commentary to § 210.26(d), "beneficiary's bank," for clarity.

**210.27—Reliance on identifying number.** Article 4A provides that a bank may rely on the number in the payment order identifying an intermediary bank, the beneficiary's bank or the beneficiary, even if the number is inconsistent with the name, if the bank does not know that the name and the number refer to different persons (see sections 4A-207 and 4A-208). Proposed § 210.27 provided notice to nonbank senders that Federal Reserve Banks may rely on numbers in the payment order identifying the intermediary bank, the beneficiary's bank, and the beneficiary. One commenter expressly agreed with this aspect of the Board's proposal. Another commenter believed that the quality of Fedwire would be reduced and risk would be increased if the Federal Reserve Banks used only the identifying numbers, and not also the names, to identify the beneficiary. This commenter recommended that the Federal Reserve use both name and account number in processing Fedwire transfers.

The Board believes that the benefits of automated processing can be fully achieved only if routing numbers or other identifying numbers can be relied upon to process Fedwire transfers. Article 4A recognizes these efficiencies by shielding banks that rely on the identifying number, as long as the bank is not aware of a discrepancy between the name and number (see sections 4A-207 and 4A-208). Therefore, the Board has retained this provision in the final regulation. The Board has revised the § 210.27(b) Commentary for clarity.

**210.28—Agreement of sender.** Section 210.28 of the proposal provided that a sender of a Fedwire funds transfer did not have a right to incur overdrafts in its account with a Federal Reserve Bank. One commenter believed that the overdraft proposal should be revised because the Board's payments system risk reduction program allows banks to

incur daylight overdrafts. The commenter maintained that the ability to incur an overdraft is necessary to the efficient operation of the nation's payment system and is necessary to reduce systemic risk.

The Board does not believe that subpart B is inconsistent with its risk reduction policies. A bank does not have a right to incur an overdraft in its account at a Federal Reserve Bank, although a Federal Reserve Bank may, in certain circumstances, permit a sender to incur an overdraft. Consequently, the Board believes that the proposed provisions addressing overdrafts are appropriate and has not substantively modified this section in the final regulation; however, it has revised the Commentary to refer to the other overdraft policies and has revised proposed § 210.28(b) (3) and (4) and the accompanying Commentary for clarity.

Sections 4A-204(a) and 4A-304 provide that to receive interest compensation, a sender must notify a receiving bank of an unauthorized or erroneously executed payment order within a reasonable time not exceeding 90 days from receipt of the notice of the payment order. The Board proposed 10 funds-transfer business days as the reasonable time after the sender receives notice that the payment order was accepted or executed, or that the sender's account was debited with respect to an order, for the sender to notify its Federal Reserve Bank that the order was unauthorized and erroneously executed. This 10 funds-transfer business days was an extension of a similar period of 10 calendar days established by § 210.34(b) of current subpart B of Regulation J.

Ten commenters disagreed with the Board's proposal to allow a sender 10 funds-transfer business days to provide this notice to its Federal Reserve Bank. While one commenter believed that two funds-transfer business days should be sufficient for senders to notify Federal Reserve Banks of an improper execution, the remaining commenters believed that the time should be longer than that proposed, because senders must provide payment order information to their nonbank customers to aid in the discovery of errors. These commenters proposed time periods ranging from 30 days to 90 days as a reasonable time for a sender to notify its Federal Reserve Bank.

The Board has modified the proposal to allow senders 30 calendar days after receiving notice that the payment order was accepted or executed, or that the sender's account was debited with respect to an order, to notify the Federal

Reserve Bank that the order was unauthorized or erroneously executed, for the purpose of eligibility for interest payment. Section 210.34(b) of current subpart B gives a sender 10 calendar days from receipt of an advice of debit to report a possible error to its Federal Reserve Bank. Banks generally report discrepancies in their account very promptly to their Federal Reserve Bank, and the Board is concerned that a significant relaxation of the current standards of timeliness in reporting problems could encourage banks to defer reconciling their accounts. In addition, the Board believes that senders can negotiate comparable timeframes to report possible errors with their bank customers. Therefore, the Board believes that 30 calendar days provides senders ample time to review notifications sent by a Federal Reserve Bank and other information available to the sender to determine whether an error has occurred and notify the Federal Reserve Bank of a possible error. In addition, the Board revised the § 210.28(c) Commentary for clarity.

**210.28(c) and 210.29(c)—Notice by sender and receiving bank of use of Fedwire.** In its proposal, the Board recognized that it would be desirable to have subpart B and Article 4A as incorporated therein govern the rights of obligations of all parties to a Fedwire funds transfer. Consistent with the Article 4A provisions concerning choice of law and the Board's competitive analysis, the Board proposed that subpart B apply to direct Fedwire participants, and to only those remote parties that receive notice that the funds transfer may be sent through Fedwire and of the governing law (see section 4A-507(c)). This approach would ensure that customers are aware of the rules that apply to their transactions, and would not bind remote parties to subpart B in a manner unavailable to private funds-transfer systems.

The Board proposed to require direct Fedwire participants to warrant to their Federal Reserve Bank that all remote parties to a Fedwire transfer have received notice that Fedwire may be used to effect the transfer, and of the governing law. This warranty scheme had two primary purposes: (1) To encourage banks to provide the notices to remote parties to a Fedwire transfer that are necessary to achieve end-to-end coverage by subpart B; and (2) to shield Federal Reserve Banks from potential liability for consequential damages to parties in states that have not adopted the Article 4A limitation on consequential damages.

Fourteen commenters opposed the warranty proposal. Four of these commenters were concerned that the proposal may require U.S. banks to bind foreign parties to subpart B for international transfers partially executed through Fedwire, and that foreign remote parties to the transfer may object to the application of U.S. law to the relationship between foreign banks and their foreign customers. Several commenters argued that U.S. banks would have to assume the risk of not providing notice or receiving similar warranties from foreign parties to the transfer in order to remain in the international payments business. Two commenters believed that an attempted foreign exportation of Article 4A and subpart B may be counterproductive to the United States' role in the current United Nations' efforts to develop universal rules for international payments. One of these commenters argued that the warranty scheme, if adopted, would encourage retaliation against U.S. banks through other countries enacting similar laws, thereby creating confusion and legal uncertainty for the U.S. banking community and the U.S. funds-transfer user community.

Ten commenters objected to the warranty requirements as burdensome and impractical because there may be unknown remote parties on either end of the transaction, and it would be impossible to ensure that notification had been given. In addition, one commenter believed that the presence of unknown parties makes it impossible for the warranties to be given in good faith and would force banks to provide warranties for which they have no recourse. Another commenter opined that the warranties may subject immediate Fedwire participants to strict liability to parties with whom a bank has no dealings or agreements. One commenter noted that smaller institutions may not be able to bear the financial consequences of a warranty breach, and therefore may be unable to maintain correspondent relationships with larger banks.

Five commenters believed that the warranty requirement would be particularly onerous on the receiving bank because the notice must be given before the transfer is effective and any customer may be a potential beneficiary, including individuals receiving transfers to be paid by the beneficiary's bank upon presentation of proper identification ("PUPID" transfers), but with whom the receiving bank has no account relationship.

Two commenters believed that the warranties give the Federal Reserve a

competitive advantage, allowing the Federal Reserve to accomplish by regulation what private-sector banks are unlikely to receive by contract. Some commenters stated that they were not aware of any other funds-transfer system that planned to impose a similar warranty scheme. One commenter argued that if banks could obtain all terms by contract, Article 4A would be unnecessary. Another commenter noted that Federal Reserve Banks are not required to provide similar warranties to their customers.

One commenter argued that banks may lose business to other banks that are willing to assume the risks of not requiring notice or warranties. Another commenter argued that notice of the governing law is not necessary because it would not affect a customer's decision to use Fedwire to make a funds transfer. This commenter also noted that the proposal does not clarify whether notice is considered to have been given when it is received or when it is sent, and therefore receipt of notice may be a critical issue of fact in litigation.

One commenter asked how banks are expected to comply with the warranty and notification provisions. Another commenter noted that the proposal provides little guidance about how notice is to be accomplished, although it believed that Article 4A requires a separate notice for each transfer.

One commenter objected to the warranties because it believed that the Federal Reserve Banks are not likely to be exposed to the possibility of consequential damages, even in states that have not enacted Article 4A, because the Federal Reserve Banks owe a duty only to parties in privity with them, and remote parties would be third-party beneficiaries of that duty. While the sender to a Federal Reserve Bank may be liable to its customer for damages greater than that allowed by Article 4A, this commenter argued that the excess liability would not transfer to the Federal Reserve Bank.

Seven commenters suggested eliminating the warranty requirements and expanding the scope of subpart B to bind all parties to a Fedwire transfer through Regulations J's federal law status. One of these commenters suggested that this approach could be further refined to cover only domestic parties. One commenter noted that this approach would insulate all parties from consequential damages. One commenter said that under an expanded scope, consequential damages should be allowed only by agreement.

One commenter suggested that the Federal Reserve Banks be required to

give comparable warranties to their immediate participants or modify the current warranties so that the sender warrants to all subsequent receivers and the receiving bank warrants to all previous senders. Another commenter suggested that where notification cannot be accomplished by contract, the Board should address the treatment of unnotified payment orders in the subpart B Commentary.

Based on an analysis of the comments, the Board has deleted the warranty provisions from the final regulation. Although the warranty would have encouraged end-to-end coverage of funds transfers and shielded Federal Reserve Banks from consequential damages, the Board believes that the complications inherent in the proposed warranty scheme and the burdens and liability the warranty would place on banks that would be subject to it outweigh these benefits. Further, the Board notes that while at least one funds-transfer system has attempted to achieve similar results by requiring notices described in section 4A-507(c), others have not, apparently for reasons cited by the commenters. See also the above discussion concerning scope under § 210.25. Finally, with respect to commenters' concerns that subpart B would govern the relationships between remote parties that may not wish their relationship to be governed by subpart B, the Board notes that under section 4A-507(b), even if the parties have received the notices contemplated by Article 4A, the parties may agree on an alternative law to govern the rights and obligations between them.

*210.29—Agreement of receiving bank.* Under section 4A-301(b), a receiving bank is obligated to transmit a payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible. To enable the Federal Reserve Banks to fulfill this duty, the Board proposed that an off-line receiving bank must either notify its Federal Reserve Bank in writing if it acts as the beneficiary's bank with respect to Fedwire payment orders for a beneficiary that is a bank, or warrant that it does not hold any such accounts.

One commenter stated that this proposed warranty off-line banks should be restricted to funds-transfer relationships with customer banks. The Board believes that § 210.29(b) already addresses this issue; the provision requires an off-line bank that does not notify the Federal Reserve Bank that it maintains an account for another bank to warrant only that it does not act as an



intermediary bank or a beneficiary's bank "with respect to payment orders received through Fedwire" for a bank beneficiary. Therefore, the Board has not modified this provision, but has clarified this point in the Commentary to § 210.29.

**210.31—Payment by a Federal Reserve Bank to a receiving bank or beneficiary.** In this section of the proposal, the Board specified the time when a Federal Reserve Bank satisfies its Article 4A obligation to pay the receiving bank or beneficiary the amount of the payment order issued by the Federal Reserve Bank (see sections 4A-402—4A-405). One commenter suggested that proposed § 210.31(b) be amended to provide that notices of credit by Federal Reserve Banks are "given" rather than "sent" to reflect telephone notice. After reviewing the UCC Article 1 definitions, the Board concluded that "sent" adequately reflects telephone notification, and therefore has not made the suggested change in the final regulation.

**210.32—Federal Reserve Bank liability; payment of interest.** In this section, the Board proposed that Federal Reserve Banks shall not exercise the section 4A-305(c) option of agreeing with a sender, receiving bank or other Federal Reserve Bank to be held liable for consequential damages.

One commenter believed the consequential damages limitation is crucial to protect both Federal Reserve Banks and their immediate participants and recommended that subpart B be expanded to preclude the recovery of consequential damages from other parties to a Fedwire transfer. Another commenter said that the statement in the competitive impact analysis that the Federal Reserve Banks do not agree to consequential damages liability was already a clear result under Article 4A, as incorporated into subpart B, and that the proposal should be revised to clarify that Federal Reserve Banks are forbidden from agreeing to consequential damages liability. This commenter also stated that Federal Reserve Banks should not be forbidden from agreeing to consequential damages liability or damages other than those provided for in Article 4A because other banks will likely follow the Federal Reserve's lead, rendering the Article 4A ability to agree to consequential damages useless.

Another commenter stated that the Board should deny consequential damages recovery to any party to a Fedwire funds transfer, especially since a Federal Reserve Bank could cause the error that leads to a consequential damages claim. It stated that the

proposal implies that other parties could agree with the Federal Reserve to assume liability for consequential damages. Further, this commenter noted the proposal did not state the implications of a Federal Reserve Bank exceeding its authority and agreeing to consequential damages liability.

The Board has amended § 210.32(a) and the corresponding Commentary to state: (1) That a Federal Reserve Bank's assumption of consequential damages liability, except as provided in section 4A-404(b), would violate subpart B, and therefore would be ineffective, and (2) that subpart B does not affect the ability of other parties to a funds transfer to agree to consequential damages liability. The Board does not believe that it is competitively inequitable to forbid the Federal Reserve Banks from agreeing to consequential damages liability because section 4A-305 provides that banks can only be held responsible for consequential damages when they agree in writing to assume such liability. Therefore, private-sector banks could similarly refuse to assume consequential damages liability.

In § 210.32(b), the Board proposed that when a Federal Reserve Bank is required under Article 4A to pay compensation in the form of interest to another party in connection with its handling of a funds transfer, it may provide such interest compensation through an as of adjustment or through an explicit interest payment if the bank receiving the compensation cannot make use of an as of adjustment because of a low or zero reserve and/or clearing balance requirement (see section 4A-506). The proposal further provided that a bank must pass on the benefit of an as of adjustment to an originator or beneficiary of a funds transfer that is entitled to compensation in the form of interest from a Federal Reserve Bank under Article 4A.

One commenter believed that subpart B should not supersede 4A-506 by requiring banks to pass along the benefit of an as of adjustment or explicit interest payment at the same rate paid by the Federal Reserve, nor should they be required to pass along an explicit interest payment as explicit interest if they have agreed to another arrangement, such as compensating balances. Further, this commenter believed that the Board should clarify the meaning of "amount of error" in proposed § 210.32(b)(1).

The Board does not believe the revised regulation supersedes section 4A-506 by requiring banks to pass along as of adjustments or explicit interest payments at the same rate paid by the Federal Reserve Bank. This requirement

to pass along compensation at the same rate paid by the Federal Reserve Bank is applicable only where the Federal Reserve Bank is required to pay compensation to a bank's customer and the bank is merely acting as a conduit in passing along the compensation. In some cases, the Federal Reserve Bank may not be able to identify the bank's customer that is entitled to the payment. The Commentary notes that a bank acting as a conduit for the Federal Reserve Bank's compensation to a customer may pass on the benefit of that payment either through a direct interest payment or, if the customer so agrees, through compensating balances, provided that the value is not less than that of a direct interest payment. The Board also amended the proposal to allow a Federal Reserve Bank to pay compensation directly to a remote party entitled to payment. In situations where the bank is responsible for paying compensation, subpart B does not alter a bank's ability to agree with the customer on a specified rate or method of compensation, pursuant to section 4A-506.

In addition, the Board has amended § 210.32(b)(1) in the final regulation and the accompanying Commentary to clarify the method by which a Federal Reserve Bank will calculate an as of adjustment, and to clarify that a Federal Reserve Bank may pay interest compensation directly to the party entitled to compensation. The Board has also revised proposed § 210.32(b)(2) and the accompanying Commentary for clarity.

**Miscellaneous.** One commenter inquired what the appropriate means of providing notification would be under section 4A-404(b) of Article 4A and subpart B. Section 4A-404(b) requires a beneficiary's bank to give notice to the beneficiary of the receipt of a payment order by midnight of the bank's next funds-transfer business day following receipt of the order unless varied by customer agreement or funds-transfer system rule. The commenter did not believe that banks should be liable for failure to provide timely notice due to circumstances beyond their control, e.g., communications failure or postal delay. Another commenter suggested that Subpart B provide that as an alternative to individual credit advises, the requirement to notify beneficiaries could be satisfied by other means, such as on-line inquiry or daily statements. This commenter stated that if a beneficiary does not choose one of these alternatives, monthly account statements should suffice to satisfy the

section 4A-404(b) notification requirement.

On a related issue, one commenter believed that § 210.31(a) should be amended to deny consequential damages where a bank refuses to make payment upon demand from a customer, if payment was not made due to a reasonable uncertainty of whether acceptance has occurred, even if acceptance occurs through credit to the bank's reserve account.

One commenter described two hypothetical cases involving PUPID transfers where the commenter believed that Article 4A may create a hardship. In the first case, if the beneficiary's bank sends notice to the beneficiary's address, but the beneficiary never collects the funds, the originator would not be entitled to reclaim the money because under section 4A-405(a), the sending of notice makes the transfer final. If, however, the beneficiary's bank did not have an address for the beneficiary, and the beneficiary failed to claim the funds within five days, the payment order would be canceled under Article 4A because it was not accepted and the funds would be returned to the originator (see, sections 4A-209(b)(1), 4A-209(c), and 4A-211(d)). This commenter proposed that Subpart B be amended to allow the beneficiary's bank (1) to return the funds to the originator for an accepted but unclaimed order after 21 calendar days from the date of receipt, and (2) to hold the funds for an unaccepted order for 21 calendar days before returning any unclaimed funds to the originator.

The Board believes that these comments involve interpretations of Article 4A. The Board believes that it is not appropriate for the Board to interpret Article 4A to address these issues solely for Fedwire at this time.

One commenter requested that the Board clarify its intention to delete §§ 210.33-210.38 of current Subpart B in the final regulation. Accordingly, the Board has amended the preamble to subpart B to clarify that §§ 210.33-210.38 of current subpart B are not part of the revised regulation.

Finally, one commenter requested an additional comment period if the proposed final rule materially differs from this draft. The Board does not believe that the final rule so differs from the proposal as to warrant an additional comment period.

#### Competitive Impact Analysis

The Board recently formalized its procedures for assessing the competitive impact of changes that have a substantial effect on payments-system

participants.\* Under these procedures, the Board will assess whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences. The following is a section-by-section competitive impact analysis of revised subpart B of Regulation J.

210.25—*Authority, purpose, and scope.* Article 4A provides that most, but not all, of its provisions may be varied by agreement of the affected parties, or by a funds-transfer system rule (see section 4A-501). A funds-transfer system rule may select the law of a particular state to govern the rights and obligations of the participants in the funds-transfer system, and to govern the rights and obligations of remote parties to the transfer to the extent they were given notice that the funds-transfer system may be used, and of the choice of law of that system (see section 4A-507). The Federal Reserve can supersede any portion of Article 4A by Board regulation or Federal Reserve Bank Operating Circular (see section 4A-107). In addition, the Board can preempt Article 4A provisions under the provisions of the Federal Reserve Act or under its authority under the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*) to regulate any aspect of the payments system in order to expedite availability of funds, improve the check processing system, or otherwise carry out the provisions of that Act.

Subpart B generally varies Article 4A provisions only to the extent that such provisions could be varied by agreement or by a private-sector funds-transfer system rule. In addition, the scope of applicability of subpart B is generally equal to that of a funds-transfer system rule that adopts a choice of law provision. Specifically, subpart B governs only parties in privity with Federal Reserve Banks or remote parties that received notice the Fedwire may be used to make the funds transfer and of the law governing Fedwire transfers.

This approach is consistent with the scope adopted by other funds-transfer systems. CHIPS has adopted a rule that the rights and obligations of both direct participants and remote parties to a funds transfer, a portion of which is executed through CHIPS, is governed by

New York law. Staff believes that this rule would be binding on CHIPS participants and on remote parties to the extent they received notice that CHIPS may be used in the transfer and of the governing law. CHIPS rules do not require direct participants in their funds-transfer systems to warrant that notice has been provided to remote parties or to provide such notice to remote parties.

NACHA has adopted a rule that the rights and obligations of the parties to a credit item subject to Article 4A will be governed by New York law, except to the extent that the parties to the transfer agree to be governed by another law. NACHA rules will require direct ACH participants to provide notice to remote parties (i.e., the originator and beneficiary) that credit items subject to Article 4A may be transmitted through one or more ACHs and of the governing law. (These NACHA rule changes will become effective on January 1, 1991.)

In the case of a funds transfer involving both Fedwire and another funds-transfer system, such as CHIPS, absent an agreement to the contrary, subpart B would take precedence over any inconsistent funds-transfer system rule applicable to a remote party that received notice that Fedwire may be used to make the transfer and of the governing law, because of the status of subpart B as federal law. Subpart B would not take precedence over a choice of law made by agreement under section 4A-507(b) between remote parties to a funds transfer a portion of which is sent through Fedwire. Because subpart B parallels closely the Article 4A provisions, the Board does not believe that there will be many instances where private-sector funds-transfer system rules would be inconsistent with, and thus preempted by, the provisions of subpart B.

With respect to a funds transfer, a portion of which is governed by the EFT Act or Regulation E, the scope of subpart B is broader than that of Article 4A. Section 4A-108 states that Article 4A does not apply to a funds transfer if any part of the transfer is governed by the EFT Act. In those limited circumstances where a transfer is carried out in part through Fedwire and is governed in part by the EFT Act, the Board believes it is important that the rights and obligations of the Federal Reserve Bank and banks in privity with the Federal Reserve Banks be defined by subpart B and Article 4A as incorporated therein with respect to the Fedwire portion of the transfer. If the only law governing these transfers were the EFT Act, the rights and obligations of the Federal Reserve Banks and their

\* These procedures are described in the Board's policy statement titled "The Federal Reserve in the Payments System," which was revised in March 1990. [55 FR 11648, March 29, 1990]

direct senders and receiving banks would not be fully defined, because the scope of the EFT Act is limited primarily to the bank/customer relationship. The Board believes that other funds-transfer systems could achieve similar coverage by agreement or through a funds-transfer system rule.

The Board does not believe that the scope of revised subpart B, or the approach taken in incorporating the Article 4A provisions in this subpart, would have an adverse competitive effect.

**210.26—Definitions.** Revised subpart B generally incorporates the definitions set forth in Article 4A, and includes definitions of other terms not defined in Article 4A. The subpart modifies the definitions of two Article 4A terms—"beneficiary's bank" and "payment order."

The subpart B definition of "beneficiary's bank" clarifies that a Federal Reserve Bank may be a beneficiary's bank even though it is not explicitly identified as such in the payment order. This appears to be consistent with the intent of Article 4A, although the Article 4A definition (section 4A-103(a)(3)) does not contemplate a bank acting as a beneficiary's bank without being designated as such in the payment order.

Subpart B also provides that a Federal Reserve Bank that is the beneficiary of a payment order is also deemed to be the beneficiary's bank on the payment order. Under Article 4A, the bank that sends the payment order to the Federal Reserve Bank as beneficiary would be considered the beneficiary's bank. In the context of Fedwire payment orders, deeming a Federal Reserve Bank to be the beneficiary's bank as well as the beneficiary of a payment order does not have any practical operational or legal impact on the other parties to the funds transfer. The Board does not believe that these changes would have an adverse competitive effect.

The subpart B definition of payment order excludes ACH transfers, which are subject to a separate Federal Reserve Bank operating circular, and excludes certain messages, such as service messages, which are not intended to be payment orders under Article 4A. Further, under the subpart B definition of payment order, certain non-value Fedwire messages (i.e., certain messages designated as requests for credit transfers) that may be defined as payment orders under Article 4A are not treated as payment orders for the purposes of subpart B, because they are not instructions to a Federal Reserve Bank to pay money. The exclusion of

these messages from the scope of subpart B does not effect their status as payment orders under Article 4A, as enacted in a particular state. The Board does not believe that this definition would have any adverse competitive effect.

**210.27—Reliance on identifying number.** Article 4A provides that a bank may rely on the number in the payment order identifying an intermediary bank, the beneficiary's bank, or the beneficiary, even if the number is inconsistent with the name, if the bank does not know that the name and number refer to different persons (see sections 4A-207 and 4A-208). The originator is obligated to pay the payment order (in the case of reliance on the number of the beneficiary) and the sender is obligated to compensate the receiving bank for any loss or expenses incurred (in the case of reliance on the number of the intermediary bank or beneficiary's bank) if the number was relied upon and the originator or sender is a bank or if the originator or sender is a nonbank that had notice of the possible reliance on the number.

Revised subpart B includes provisions providing notice to nonbank senders that Federal Reserve Banks may rely on the numbers in the payment orders identifying the intermediary bank, the beneficiary's bank, and the beneficiary. Federal Reserve Banks will provide the subpart B rules to their nonbank senders, in part, to ensure that these provisions serve as actual notice to these senders. Therefore, this notice would be provided by means similar to those that the Board presumes banks will use to give this notice to their nonbank senders, and would not have any adverse competitive effect.

**210.28—Agreement of sender.** This section provides that a sender authorizes its Federal Reserve Bank to obtain payment for a payment order by debiting the sender's account at the Federal Reserve Bank. In addition, this section provides that a sender does not have a right to an overdraft in its account, when overdrafts that are incurred become due and payable, and what actions a Federal Reserve Bank may take to recover the amount of an overdraft or to secure an overdraft. The Board does not believe that these provisions would have an adverse competitive effect because: (1) A sender does not have a right to overdraft its Federal Reserve account (although a Federal Reserve Bank may permit an overdraft under certain circumstances), (2) the requirements are reasonable, and are not obtainable solely due to unique bargaining position of the Federal

Reserve, and (3) a private-sector bank could impose similar requirements on its customers to which it gives overdraft privileges.

Article 4A provides that the sender must notify a receiving bank of an unauthorized or erroneously executed payment order within a reasonable time not exceeding 90 days from receipt of the notice of the order (see sections 4A-204 and 4A-304). Subpart B currently provides that a sender is deemed to approve the accuracy of an advice of debit unless it objects in writing within 10 calendar days of receipt of the advice (see current § 210.34(b)). The Board had proposed that 10 funds-transfer business days be deemed the reasonable time for a sender to notify its Federal Reserve Bank; revised § 210.28(c) specifies 30 calendar days as the reasonable time within which senders must act, for the purposes of receiving interest or compensation for losses as provided in Article 4A. Similarly, under Article 4A, banks may establish by agreement with their customers what constitutes a reasonable time to provide this notice.

Several commenters had noted that the proposed 10 funds-transfer business day timeframe was unreasonably short, and that banks would not be able to obtain agreements with their nonbank customers reducing the time within which the customers must notify the bank of an improper debit to that extent. The Board believes that it is particularly important that banks reconcile their accounts on a timely basis, and believes that banks could obtain agreements, similar to the requirement in the revised regulation, with their bank customers. Therefore, the Board does not believe that this requirement results in any adverse competitive effect.

**210.29—Agreement of receiving bank.** This section requires an off-line bank to notify its Federal Reserve Bank if it maintains an account for another bank, so that the Federal Reserve Bank will provide telephone notice for all Fedwire funds transfers received by that bank, including settlement transfers. If an off-line bank does not provide this notice to its Federal Reserve Bank, it warrants that it does not act as an intermediary bank or a beneficiary's bank with respect to Fedwire payment orders for a beneficiary that is a bank.

The Board believes that this warranty would have no adverse competitive effect. For example, the Board believes that this action would have no adverse competitive effect on the operations of CHIPS, because all CHIPS participants are on-line to that system. Further, this warranty is a reasonable provision designed to enable Federal Reserve

Banks to fulfill their obligation under section 4A-302 to execute payment orders at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible. The ability to require this warranty is not derived from unique bargaining position on the part of the Federal Reserve Banks; correspondent banks that provide funds-transfer services to off-line respondent banks could impose a similar warranty on their respondent receivers.

**210.30—Payment orders.** This section sets forth the terms under which a Federal Reserve Bank will accept payment orders from a sender. The section provides: That a sender must have authorization to send Fedwire payment orders to a Federal Reserve Bank; that a Federal Reserve Bank may reject any payment order; that a Federal Reserve Bank may execute a payment order through another Federal Reserve Bank; that a sender may not instruct a Federal Reserve Bank to select an intermediary bank other than a Federal Reserve Bank unless that bank is designated in the sender's payment order; and that a sender generally may not send a value-dated payment order through Fedwire. The Board believes that these provisions are reasonable and that private-sector receiving banks may arrange similar terms with their senders; therefore, these provisions do not rely on unique bargaining power of Federal Reserve Banks. Consequently, the Board believes that these provisions do not have an adverse competitive effect.

**210.31—Payment by a Federal Reserve Bank to a receiving bank or beneficiary.** The primary distinguishing characteristic of Fedwire is that payment orders are final and irrevocable to the receiver when made. This section, regarding when a Federal Reserve Bank makes payment to a receiving bank or beneficiary, parallels current § 210.36(a) by providing that payments to receiving banks and beneficiaries are final at the earlier of the time when the amount of the payment order is credited to the receiving bank's or beneficiary's account, or when the payment order is sent to the receiving bank or when notice of the credit is sent to the beneficiary. Fedwire's payment finality could be viewed as a sufficiently significant benefit to participants as to have an adverse effect on competing private-sector funds-transfer systems. However, the Board believes that Fedwire payment finality is vital to the continued integrity and efficiency of the payments system. Moreover, CHIPS will

soon be instituting a loss-sharing arrangement to ensure the finality of its settlement, thus increasing the certainty of final payment over that system. Correspondent banks providing funds-transfer services can provide payments finality similar to that specified in § 210.32 to their respondent banks and beneficiaries (see section 4A-405). For these reasons the Board believes that the benefits of Fedwire payment finality—the certainty of payment and the elimination of systemic risk—outweigh any possible adverse competitive effect.

**210.32—Federal Reserve Bank liability; payment of interest.** Article 4A provides that a bank is not liable for consequential damages, unless it agrees to be subject to such damages by express written agreement. This section, which states that, except as provided in section 4A-404(a), a Federal Reserve Bank shall not agree to be liable to a sender, receiving bank, beneficiary, or other Federal Reserve Bank for consequential damages is consistent with the presumption in Article 4A. The Board believes that many private-sector providers of funds-transfer services similarly will not agree to be liable for consequential damages; consequently, the Board believes that this provision does not have an adverse competitive effect.

Article 4A provides that the amount of interest payable under its provisions may be determined by agreement or funds-transfer system rule (see section 4A-506(a)). Subpart B provides that a Federal Reserve Bank may provide interest compensation through either an as of adjustment or explicit interest payment. The Board believes that providing interest compensation in the form of as of adjustments would not have an adverse competitive effect because the Federal Reserve includes the imputed cost of as of adjustments related to Fedwire transfers (computed at the federal funds rate) in its total cost of providing the Fedwire funds-transfer service to be recovered by the fees assessed for the service. Moreover, the Board believes that banks could agree with their customers under Article 4A to similar arrangements using compensating balances, which would be analogous to an as of adjustment provided by a Federal Reserve Bank. In cases where a Federal Reserve Bank provides compensation in the form of explicit interest, interest would be calculated in accordance with the procedures specified in Article 4A (see section 4A-506(b)).

### Final Regulatory Flexibility Act Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule, and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's impact on small entities and reasons why the alternatives were rejected. As stated in the initial regulatory flexibility analysis, the Board does not believe that there are any significant alternatives to the revision of subpart B of Regulation J that would (1) provide comprehensive rules for funds transfers involving Federal Reserve Banks, (2) make subpart B consistent with state laws applicable to funds transfers as more states adopt Article 4A, and (3) help ensure that, subject to their central banking responsibilities, Federal Reserve Banks compete on an equitable basis with private-sector providers of funds-transfer services and concurrently minimize any significant impact of the rule on small entities. The Board considered the effect of the subpart B revisions when developing them and does not believe that complying with the revised Subpart B rules will impose a significant cost on depository institutions, including small institutions.

Further, the purpose of the subpart B revisions is to provide comprehensive rules for funds transfers handled by Federal Reserve Banks. This purpose would not be achieved if the rules did not apply to small entities that send or receive funds transfers directly to or from Federal Reserve Banks. Moreover, subpart B could not address the rights and responsibilities of Federal Reserve Banks if small entities were generally excepted from its coverage. In addition, the revised Subpart B rules confer important rights upon parties to a Fedwire funds transfer, such as the right to receive interest in certain circumstances, and provide a shield from consequential damages liability if a mishap occurs. These rights would benefit small institutions as well as larger institutions. However, revised subpart B applies only to parties that are direct participants with a Federal Reserve Bank, and those other parties to a Fedwire funds transfer receiving notice that the funds transfer may go

through Fedwire and that subpart B is the governing law. Therefore, it is possible that revised subpart B will not apply to remote parties to funds transfers if they are not direct participants with a Federal Reserve Bank and they do not receive the contemplated notice. These remote parties may include small entities.

#### List of Subject in 12 CFR Part 210

Banks, banking, Federal Reserve System.

For the reasons set out in the preamble, the Board amends 12 CFR part 210 as follows:

#### PART 210—[AMENDED]

1. The authority citation for part 210 is revised to read as follows:

Authority: Federal Reserve Act, sec. 13 (12 U.S.C. 342, sec. 11(i) and (j) (12 U.S.C. 248 (i) and (j)), sec. 16 (12 U.S.C. 248(o) and 360), and sec. 19(f) (12 U.S.C. 464); and the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*)

2. The heading to part 210 is revised to read as follows:

#### PART 210—REGULATION J (COLLECTION OF CHECKS AND OTHER ITEMS BY FEDERAL RESERVE BANKS AND FUNDS TRANSFERS THROUGH FEDWIRE)

3. Subpart B is revised to read as follows:

##### Subpart B—Fund Transfers Through Fedwire

- 210.25 Authority, purpose, and scope.
- 210.26 Definitions.
- 210.27 Reliance on identifying number.
- 210.28 Agreement of sender.
- 210.29 Agreement of receiving bank.
- 210.30 Payment orders.
- 210.31 Payment by a Federal Reserve Bank to a receiving bank or beneficiary.
- 210.32 Federal Reserve Bank liability: payment of interest.

##### Appendix A to Subpart B—Commentary

##### Appendix B to Subpart B—Article 4A, Funds Transfers

##### Subpart B—Funds Transfers Through Fedwire

#### § 210.25 Authority, purpose, and scope.

(a) *Authority and purpose.* This subpart provides rules to govern funds transfers through Fedwire, and has been issued pursuant to the Federal Reserve Act—section 13 (12 U.S.C. 342), paragraph (f) of section 19 (12 U.S.C. 464), paragraph 14 of section 16 (12 U.S.C. 248(o)), and paragraphs (i) and (j) of section 11 (12 U.S.C. 248(i) and (j))—and other laws and has the force and effect of federal law. This Subpart is not a funds-transfer system rule as defined in Section 4A-501(b) of Article 4A.

(b) *Scope.* (1) This subpart incorporates the provisions of Article 4A set forth in appendix B to this subpart. In the event of an inconsistency between the provisions of the sections of this subpart and appendix B, to this subpart, the provisions of the sections of this subpart shall prevail.

(2) Except as otherwise provided in paragraphs (b)(3) and (b)(4) of this section, this Subpart governs the rights and obligations of:

- (i) Federal Reserve Banks sending or receiving payment orders;
- (ii) Senders that send payment orders directly to a Federal Reserve Bank;
- (iii) Receiving banks that receive payment orders directly from a Federal Reserve Bank;
- (iv) Beneficiaries that receive payment for payment orders sent to a Federal Reserve Bank by means of credit to an account maintained or used at a Federal Reserve Bank; and
- (v) Other parties to a funds transfer any part of which is carried out through Fedwire to the same extent as if this subpart were considered a funds-transfer system rule under Article 4A.

(3) This subpart governs a funds transfer that is sent through Fedwire, as provided in paragraph (b)(2) of this section, even though a portion of the funds transfer is governed by the Electronic Fund Transfer Act, but the portion of such funds transfer that is governed by the Electronic Fund Transfer Act is not governed by this subpart.

(4) In the event that any portion of this Subpart establishes rights or obligations with respect to the availability of funds that are also governed by the Expedited Funds Availability Act or the Board's Regulation CC, Availability of Funds and Collection of Checks, those provisions of the Expedited Funds Availability Act or Regulation CC shall apply and the portion of this Subpart, including Article 4A as incorporated herein, shall not apply.

(c) *Operating Circulars.* Each Federal Reserve Bank shall issue an Operating Circular consistent with this Subpart that governs the details of its funds-transfer operations and other matters it deems appropriate. Among other things, the Operating Circular may: set cut-off hours and funds-transfer business days; address available security procedures; specify format and media requirements for payment orders; identify messages that are not payment orders; and impose charges for funds-transfer services.

(d) *Government senders, receiving banks, and beneficiaries.* Except as otherwise expressly provided by the statutes of the United States, the parties

specified in paragraph (b)(2)(ii)-(v) of this section include:

- (1) A department, agency, instrumentality, independent establishment, or office of the United States, or a wholly-owned or controlled Government corporation;
- (2) An international organization;
- (3) A foreign central bank; and
- (4) A department, agency, instrumentality, independent establishment, or office of a foreign government, or a wholly-owned or controlled corporation of a foreign government.

#### § 210.26 Definitions.

As used in this subpart, the following definitions apply:

(a) *Article 4A* means article 4A of the Uniform Commercial Code as set forth in appendix B of this subpart.

(b) *As of adjustment* means a debit or credit, for reserve or clearing balance maintenance purposes only, applied to the reserve or clearing balance of a bank that either sends a payment order to a Federal Reserve Bank, or that receives a payment order from a Federal Reserve Bank, in lieu of an interest charge or payment.

(c) *Automated clearing house transfer* means any transfer designated as an automated clearing house transfer in a Federal Reserve Bank Operating Circular.

(d) *Beneficiary's bank* has the same meaning as in Article 4A, except that:

- (1) A Federal Reserve Bank need not be identified in the payment order in order to be the beneficiary's bank; and
- (2) The term includes a Federal Reserve Bank when that Federal Reserve Bank is the beneficiary of a payment order.

(e) *Fedwire* is the funds-transfer system owned and operated by the Federal Reserve Bank that is used primarily for the transmission and settlement of payment orders governed by this Subpart. Fedwire does not include the system for making automated clearing house transfers.

(f) *Interdistrict transfer* means a funds transfer involving entries to account maintained at two Federal Reserve Banks.

(g) *Intradistrict transfer* means a funds transfer involving entries to accounts maintained at one Federal Reserve Bank.

(h) *Off-line bank* means a bank that transmits payment orders to and receives payment orders from a Federal Reserve Bank by telephone orally or by other means other than electronic data transmission.

(i) *Payment order* has the same meaning as in Article 4A, except that the term does not include automated clearing house transfers or any communication designated in a Federal Reserve Bank Operating Circular issued under this Subpart as not being a payment order.

(j) *Sender's account, receiving bank's account, and beneficiary's account* mean the reserve, clearing, or other funds deposit account at a Federal Reserve Bank maintained or used by the sender, receiving bank, or beneficiary, respectively.

(k) *Sender's Federal Reserve Bank and receiving bank's Federal Reserve Bank* mean the Federal Reserve Bank at which the sender or receiving bank, respectively, maintains or uses an account.

#### § 210.27 Reliance on identifying number.

(a) *Reliance by a Federal Reserve Bank on number to identify an intermediary bank or beneficiary's bank.* A Federal Reserve Bank may rely on the number in a payment order that identifies the intermediary bank or beneficiary's bank, even if it identifies a bank different from the bank identified by name in the payment order, if the Federal Reserve Bank does not know of such an inconsistency in identification. A Federal Reserve Bank has no duty to detect any such inconsistency in identification.

(b) *Reliance by a Federal Reserve Bank on number to identify beneficiary.* A Federal Reserve Bank, acting as a beneficiary's bank, may rely on the number in a payment order that identifies the beneficiary, even if it identifies a person different from the person identified by name in the payment order, if the Federal Reserve Bank does not know of such an inconsistency in identification. A Federal Reserve Bank has no duty to detect any such inconsistency in identification.

#### § 210.28 Agreement of sender.

(a) *Payment of sender's obligation to a Federal Reserve Bank.* A sender (other than a Federal Reserve Bank), by maintaining or using an account with a Federal Reserve Bank, authorizes the sender's Federal Reserve Bank to obtain payment for the sender's payment orders by debiting the amount of the payment order from the sender's account.

(b) *Overdrafts.* (1) A sender does not have the right to an overdraft in the sender's account. In the event an overdraft is created, the overdraft shall be due and payable immediately without the need for a demand by the

Federal Reserve Bank, at the earliest of the following times:

(i) At the end of the funds-transfer business day;

(ii) At the time the Federal Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the sender; or

(iii) At the time the sender suspends payments or is closed.

(2) The sender shall have in its account, at the time the overdraft is due and payable, a balance of actually and finally collected funds sufficient to cover the aggregate amount of all its obligations to the Federal Reserve Bank, whether the obligations result from the execution of a payment order or otherwise.

(3) To secure any overdraft, as well as any other obligation due or to become due to its Federal Reserve Bank, each sender, by sending a payment order to a Federal Reserve Bank that is accepted by the Federal Reserve Bank, grants to the Federal Reserve Bank a security interest in all of the sender's assets in the possession of, or held for the account of, the Federal Reserve Bank. The security interest attaches when an overdraft, or any other obligation to the Federal Reserve Bank, becomes due and payable.

(4) A Federal Reserve Bank may take any action authorized by law to recover the amount of an overdraft that is due and payable, including, but not limited to, the exercise of rights of set off, the realization on any available collateral, and any other rights it may have as a creditor under applicable law.

(c) *Review of payment orders.* A sender, by sending a payment order to a Federal Reserve Bank, agrees that for the purposes of sections 4A-204(a) and 4A-304 of Article 4A, a reasonable time to notify a Federal Reserve Bank of the relevant facts concerning an unauthorized or erroneously executed payment order is within 30 calendar days after the sender receives notice that the payment order was accepted or executed, or that the sender's account was debited with respect to the payment order.

#### § 210.29 Agreement of receiving bank.

(a) *Payment.* A receiving bank (other than a Federal Reserve Bank) that receives a payment order from its Federal Reserve Bank authorizes that Federal Reserve Bank to pay for the payment order by crediting the amount of the payment order to the receiving bank's account.

(b) *Off-line banks.* An off-line bank that does not expressly notify its Federal Reserve Bank in writing that it maintains an account for another bank

warrants to that Federal Reserve Bank that the offline bank does not act as an intermediary bank or a beneficiary's bank with respect to payment orders received through Fedwire for a beneficiary that is a bank.

#### § 210.30 Payment orders.

(a) *Rejection.* A sender shall not send a payment order to a Federal Reserve Bank unless authorized to do so by the Federal Reserve Bank. A Federal Reserve Bank may reject, or impose conditions that must be satisfied before it will accept, a payment order for any reason.

(b) *Selection of an intermediary bank.* For an interdistrict transfer, a Federal Reserve Bank is authorized and directed to execute a payment order through another Federal Reserve Bank. A sender shall not send a payment order to a Federal Reserve Bank that requires the Federal Reserve Bank to issue a payment order to an intermediary bank (other than a Federal Reserve Bank) unless that intermediary bank is designated in the sender's payment order. A sender shall not send to a Federal Reserve Bank a payment order instructing use by a Federal Reserve Bank of a funds-transfer system or means of transmission other than Fedwire, unless the Federal Reserve Bank agrees with the sender in writing to follow such instructions.

(c) *Same-day execution.* A sender shall not issue a payment order that instructs a Federal Reserve Bank to execute the payment order on a funds-transfer business day that is later than the funds-transfer business day on which the order is received by the Federal Reserve Bank, unless the Federal Reserve Bank agrees with the sender in writing to follow such instructions.

#### § 210.31 Payment by a Federal Reserve Bank to a receiving bank or beneficiary.

(a) *Payment to a receiving bank.* Payment of a Federal Reserve Bank's obligation to pay a receiving bank (other than a Federal Reserve Bank) occurs at the earlier of the time when the amount of the payment order is credited to the receiving bank's account or when the payment order is sent to the receiving bank.

(b) *Payment to a beneficiary.* Payment by a Federal Reserve Bank to a beneficiary of a payment order, where the Federal Reserve Bank is the beneficiary's bank, occurs at the earlier of the time when the amount of the payment order is credited to the beneficiary's account or when notice of the credit is sent to the beneficiary.

**§ 210.32 Federal Reserve Bank liability; payment of interest.**

(a) *Damages.* In connection with its handling of a payment order under this subpart, a Federal Reserve Bank shall not be liable to a sender, receiving bank, beneficiary, or other Federal Reserve Bank, governed by this subpart, for any damages other than those payable under Article 4A. A Federal Reserve Bank shall not agree to be liable to a sender, receiving bank, beneficiary, or other Federal Reserve Bank for consequential damages under section 4A-305(d) of Article 4A.

(b) *Payment of interest.* (1) A Federal Reserve Bank, in its discretion, may satisfy its obligation, or that of another Federal Reserve Bank, to pay compensation in the form of interest under Article 4A by—

(i) Providing an as of adjustment to its sender, its receiving bank, or its beneficiary, as provided in the Federal Reserve Bank's Operating Circular, in an amount equal to the amount on which interest is to be calculated multiplied by the number of days for which interest is to be calculated; or

(ii) Paying compensation in the form of interest to its sender, its receiving bank, its beneficiary, or another party to the funds transfer that is entitled to such payment, in an amount that is calculated in accordance with section 4A-506 of Article 4A.

(2) If the sender or receiving bank that is the recipient of an as of adjustment or an interest payment is not the party entitled to compensation under Article 4A, the sender or receiving bank shall pass through the benefit of the as of adjustment or interest payment by making an interest payment, as of the day the as of adjustment or interest payment is effected, to the party entitled to compensation. The interest payment that is made to the party entitled to compensation shall not be less than the value of the as of adjustment or interest payment that was provided by the Federal Reserve Bank to the sender or receiving bank. The party entitled to compensation may agree to accept compensation in a form other than a direct interest payment, provided that such an alternative form of compensation is not less than the value of the interest payment that otherwise would be made.

(c) *Nonwaiver of right of recovery.* Nothing in this subpart or any Operating Circular issued hereunder shall constitute, or be construed as constituting, a waiver by a Federal Reserve Bank of a cause of action for recovery under any applicable law of mistake and restitution.

**Appendix A to Subpart B—Commentary**

The Commentary provides background material to explain the intent of the Board of Governors of the Federal Reserve System (Board) in adopting a particular provision in the subpart and to help readers interpret that provision. In some comments, examples are offered. The Commentary constitutes an official Board interpretation of subpart B of this part. Commentary is not provided for every provision of subpart B of this part, as some provisions are self-explanatory.

*Section 210.25—Authority, Purpose, and Scope*

(a) *Authority and purpose.* Section 210.25(a) states that the purpose of subpart B of this part is to provide rules to govern funds transfers through Fedwire and recites the Board's rulemaking authority for this subpart. Subpart B of this part is federal law and is not a "funds-transfer system rule," as defined in section 4A-501(b) of Article 4A, Funds Transfers, of the Uniform Commercial Code (UCC), as set forth in appendix B of this subpart. Certain provisions of Article 4A may not be varied by a funds-transfer system rule, but under section 4A-107, regulations of the Board and Operating Circulars of the Federal Reserve Banks supersede inconsistent provisions of Article 4A to the extent of the inconsistency. In addition, regulations of the Board may preempt inconsistent provisions of state law. Accordingly, subpart B of this part supersedes or preempts inconsistent provisions of state law. It does not affect state law governing funds transfers that does not conflict with the provisions of subpart B of this part, such as Article 4A, as enacted in any state, as it applies to parties to funds transfers through Fedwire whose rights are not governed by subpart B of this part.

(b) *Scope.* (1) Subpart B of this part incorporates the provisions of Article 4A set forth in appendix B of this subpart. The provisions set forth expressly in the sections of subpart B of this part supersede or preempt any inconsistent provisions of Article 4A as set forth in appendix B of this subpart or as enacted in any state. The official comments to Article 4A are not incorporated in subpart B of this part or this Commentary to subpart B of this part, but the official comments may be useful in interpreting Article 4A. Because section 4A-105 refers to other provisions of the Uniform Commercial Code, e.g., definitions in Article 1 of the UCC, these other provisions of the UCC, as approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, from time to time, are also incorporated in subpart B of this part. Subpart B of this part applies to any party to a Fedwire funds transfer that is in privity with a Federal Reserve Bank. These parties include a sender (bank or nonbank) that sends a payment order directly to a Federal Reserve Bank, a receiving bank that receives a payment order directly from a Federal Reserve Bank, and a beneficiary that receives credit to an account that it uses or maintains at a Federal Reserve Bank for a payment order sent to a Federal Reserve Bank. Other parties to a funds transfer are covered by this subpart to the same extent that this subpart would apply to

them if this subpart were a "funds-transfer system rule" under Article 4A that selected subpart B of this part as the governing law.

(2) The scope of the applicability of a funds-transfer system rule under Article 4A is specified in section 4A-501(b), and the scope of the choice of law provision is specified in section 4A-507(c). Under section 4A-507(c), a choice of law provision is binding on the participants in a funds-transfer system and certain other parties having notice that the funds-transfer system might be used for the funds transfer and of the choice of law provision. The Uniform Commercial Code provides that a person has notice when the person has actual knowledge, receives notification or has reason to know from all the facts and circumstances known to the person at the time in question. (See UCC § 1-201(25).) However, under sections 4A-507(b) and 4A-507(d), a choice of law by agreement of the parties takes precedence over a choice of law made by funds-transfer system rule.

(3) If originators, receiving banks, and beneficiaries that are not in privity with a Federal Reserve Bank have the notice contemplated by section 4A-507(c) or if those parties agree to be bound by subpart B of this part, subpart B of this part generally would apply to payment orders between those remote parties, including participants in other funds-transfer systems. For example, a funds transfer may be sent from an originator's bank through a funds-transfer system other than Fedwire to a receiving bank which, in turn, sends a payment order through Fedwire to execute the funds transfer. Similarly, a Federal Reserve Bank may execute a payment order through Fedwire to a receiving bank that sends it through a funds-transfer system other than Fedwire to a beneficiary's bank. In the first example, if the originator's bank has notice that Fedwire may be used to effect part of the funds transfer, the sending of the payment order through the other funds-transfer system to the receiving bank will be governed by subpart B of this part unless the parties to the payment order have agreed otherwise. In the second example, if the beneficiary's bank has notice that Fedwire may be used to effect part of the funds transfer, the sending of the payment order to the beneficiary's bank through the other funds-transfer system will be governed by subpart B of this part unless the parties have agreed otherwise. In both cases, the other funds-transfer system's rules would also apply to, at a minimum, the portion of these funds transfers going through that funds-transfer system. Because subpart B of this part is federal law, to the extent of any inconsistency, subpart B of this part will take precedence over any funds-transfer system rule applicable to the remote sender or receiving bank or to a Federal Reserve Bank. If remote parties to a funds transfer, a portion of which is sent through Fedwire, have expressly selected by agreement a law other than subpart B of this part under section 4A-507(b), subpart B of this part would not take precedence over the choice of law made by the agreement even though the remote parties had notice that Fedwire may be used and of the governing law. (See 4A-507(d)). In addition, subpart B of this part would not

apply to a funds transfer sent through another funds-transfer system where no Federal Reserve Bank handles the funds transfer, even though settlement for the funds transfer is made by means of a separate net settlement or funds transfer through Fedwire.

(4) Under section 4A-108, Article 4A does not apply to a funds transfer, any part of which is governed by the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*). Fedwire funds transfers to or from consumer accounts are exempt from the Electronic Fund Transfer Act and Regulation E (12 CFR part 205). A funds transfer from a consumer originator or a funds transfer to a consumer beneficiary could be carried out in part through Fedwire and in part through an automated clearing house or other means that is subject to the Electronic Fund Transfer Act or Regulation E. In these cases, subpart B of this part would not govern the portion of the funds transfer that is governed by the Electronic Fund Transfer Act or Regulation E. (See Commentary to § 210.26(i) ("payment order").)

(5) Finally, section 4A-404(a) provides that a beneficiary's bank is obligated to pay the amount of a payment order to the beneficiary on the payment date unless acceptance of the payment order occurs on the payment date after the close of the funds-transfer business day of the bank. The Expedited Funds Availability Act provides that funds received by a bank by wire transfer shall be available for withdrawal not later than the banking day after the business day on which such funds are received (12 U.S.C. 4002(a)). That Act also preempts any provision of state law that was not effective on September 1, 1989 that is inconsistent with that Act or its implementing Regulation CC (12 CFR part 229). Accordingly, the Expedited Funds Availability Act and Regulation CC may preempt section 4A-404(a) as enacted in any state. In order to ensure that section 4A-404(a), or other provisions of Article 4A, as incorporated in subpart B of this part, do not take precedence over provisions of the Expedited Funds Availability Act, this section provides that where subpart B of this part establishes rights or obligations that are also governed by the Expedited Funds Availability Act or Regulation CC, the Expedited Funds Availability Act or Regulation CC provision shall apply and subpart B of this part shall not apply.

(c) *Operating Circulars.* The Federal Reserve Banks issue Operating Circulars consistent with this Subpart that contain additional provisions applicable to payment orders sent through Fedwire. Under section 4A-107, these Operating Circulars supersede inconsistent provisions of Article 4A, as set forth in appendix B and as enacted in any state. These Operating Circulars are not funds-transfer system rules, but, by their terms, they are binding on all parties covered by this Subpart.

(d) *Government senders, receiving banks, and beneficiaries.* This section clarifies that unless a statute of the United States provides otherwise, subpart B of this part applies to governmental entities, domestic or foreign, including foreign central banks as specified in paragraph (b)(1) of this section.

#### Section 210.28—Definitions

Article 4A defines many terms (e.g., "beneficiary," "intermediary bank," "receiving bank," "security procedure") used in this subpart. These terms are defined or listed in sections 4A-103 through 4A-105. These terms, such as the term "bank" (defined in section 4A-105(d)(2)), may differ from comparable terms in subpart A of this part. As subpart B of this part incorporates consistent provisions of Article 4A, it incorporates these definitions unless these terms are expressly defined otherwise in subpart B of this part. This Subpart modifies the definitions of two Article 4A terms, "beneficiary's bank" and "payment order." This subpart also defines terms not defined in Article 4A.

(a) *Article 4A.* Article 4A means the version of that article of the Uniform Commercial Code set forth in appendix B of this subpart. It does not refer to the law of any particular state unless the context indicates otherwise. Subject to the express provisions of this Subpart, this version of Article 4A is incorporated into this Subpart and made federal law for transactions covered by this Subpart.

(b) *As of adjustments.* As of adjustments are memorandum items that affect a bank's reserve or clearing balance for the purpose of meeting the required balance, but do not represent funds that can be used for other purposes. As discussed in the Commentary to § 210.32(b), the Federal Reserve Banks generally provide as of adjustments as a means of effecting interest payments or charges.

(d) *Beneficiary's bank.* The definition of "beneficiary's bank" in subpart B of this part differs from the section 4A-103(a)(3) definition. The subpart B definition clarifies that where a Federal Reserve Bank functions as the beneficiary's bank, it need not be identified in the payment order as the beneficiary's bank and that a Federal Reserve Bank that receives a payment order as beneficiary is also the beneficiary's bank with respect to that payment order.

(e) *Fedwire.* Fedwire refers to the funds-transfer system owned and operated by the Federal Reserve Banks that is governed by this Subpart. The term does not refer to any particular computer, telecommunications facility, or funds transfer, but to the system as a whole, which may include transfers by telephone or by written instrument in particular circumstances. Fedwire does not include the system used for automated clearing house transfers.

(h) *Off-line bank.* Most Fedwire payment orders are transmitted electronically from a sender to a Federal Reserve Bank or from a Federal Reserve Bank to a receiving bank. Banks transmitting payment orders to Federal Reserve Banks electronically are often referred to as on-line banks. Some Fedwire participants, however, transmit payment orders to a Federal Reserve Bank or receive payment orders from a Federal Reserve Bank orally by telephone, or, in unusual circumstances, in writing. A bank that does not use either a terminal or a computer that links it electronically to a terminal or computer at its Federal Reserve Bank to send payment orders through Fedwire is an off-line bank.

(i) *Payment order.* (1) The definition of "payment order" in subpart B of this part differs from the section 4A-103(a)(1) definition. The subpart B definition clarifies that, for the purposes of subpart B of this part, automated clearing house transfers and certain messages that are transmitted through Fedwire are not payment orders: Federal Reserve Banks and banks participating in Fedwire send various types of messages, relating to payment orders or to other matters, through Fedwire that are not intended to be payment orders. Under the subpart B definition, these messages, and messages involved with automated clearing house transfers, are not "payment orders" and therefore are not governed by this Subpart. The Operating Circulars of the Federal Reserve Banks specify those messages that may be transmitted through Fedwire but that are not payment orders.

(2) In some cases, messages sent through Fedwire, such as certain requests for credit transfer, may be payment orders under Article 4A, but are not treated as payment orders under subpart B because they are not an instruction to a Federal Reserve Bank to pay money.

(3) This subpart and Article 4A govern a payment order even though the originator's or beneficiary's account may be a consumer account established primarily for personal, family, or household purposes. Under section 4A-108, Article 4A does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act. That Act, and Regulation E implementing it, do not apply to funds transfers through Fedwire (see 15 U.S.C. 1693a(6)(B) and 12 CFR 205.3(b)). Thus, this Subpart applies to all funds transfers through Fedwire even though some such transfers involve originators or beneficiaries that are consumers. (See also § 210.25(b) and accompanying Commentary.)

#### Section 210.27—Reliance on Identifying Number

(a) *Reliance by a Federal Reserve Bank on number to identify intermediary bank or beneficiary's bank.* Section 4A-208 provides that a receiving bank, such as a Federal Reserve Bank, may rely on the routing number of an intermediary bank or the beneficiary's bank specified in a payment order as identifying the appropriate intermediary bank or beneficiary's bank, even if the payment order identifies another bank by name, provided that the receiving bank does not know of the inconsistency. Under section 4A-208(b)(2), if the sender of the payment order is not a bank, a receiving bank may rely on the number only if the sender had notice before the receiving bank accepted the sender's order that the receiving bank might rely on the number. This section provides this notice to entities that are not banks, such as the Department of the Treasury, that send payment orders directly to a Federal Reserve Bank.

(b) *Reliance by a Federal Reserve Bank on number to identify beneficiary.* Section 4A-207 provides that a beneficiary's bank, such as a Federal Reserve Bank, may rely on the number identifying a beneficiary, such as the beneficiary's account number, specified in a



payment order as identifying the appropriate beneficiary, even if the payment order identifies another beneficiary by name, provided that the beneficiary's bank does not know of the inconsistency. Under section 4A-207(c)(2), if the originator is not a bank, an originator is not obliged to pay for a payment order if the originator did not have notice that the beneficiary's bank might rely on the identifying number and the person paid on the basis of the identifying number was not entitled to receive payment. This section of Subpart B provides this notice to entities that are not banks, such as the Department of the Treasury, that are originators of payment orders sent directly by the originators to a Federal Reserve Bank, where that Federal Reserve Bank or another Federal Reserve Bank is the beneficiary's bank (see also section 4A-402(b), providing that a sender must pay a beneficiary's bank for a payment order accepted by the beneficiary's bank).

#### *Section 210.28—Agreement of Sender*

(a) *Payment of sender's obligation to a Federal Reserve Bank.* When a sender issues a payment order to a Federal Reserve Bank and the Federal Reserve Bank issues a conforming order implementing the sender's payment order, under section 4A-403, the sender is indebted to the Federal Reserve Bank for the amount of the payment order. A sender, other than a Federal Reserve Bank, that maintains or uses an account at a Federal Reserve Bank authorizes the Federal Reserve Bank to debit that account so that the Federal Reserve Bank can obtain payment for the payment order.

(b) *Overdrafts.* (1) In some cases, debits to a sender's account will create an overdraft in the sender's account. The Board and the Federal Reserve Banks have established policies concerning when a Federal Reserve Bank will permit a bank to incur an overdraft in its account at a Federal Reserve Bank. These policies do not give a bank or other sender a right to an overdraft in its account. Subpart B clarifies that a sender does not have a right to such an overdraft. If an overdraft arises, it becomes immediately due and payable at the earliest of: The end of the funds-transfer business day of the Federal Reserve Bank; the time the Federal Reserve Bank in its sole discretion, deems itself insecure and gives notice to the sender; or the time that the sender suspends payments or is closed by governmental action, such as the appointment of a receiver. In some cases, a Federal Reserve Bank extends its Fedwire operations beyond its cut-off hour for that funds-transfer business day. For the purposes of this section, unless otherwise specified by the Federal Reserve Bank making such an extension, an overdraft becomes due and payable at the end of the extended operating hours. An overdraft becomes due and payable prior to a Federal Reserve Bank's cut-off hour if the Federal Reserve Bank deems itself insecure and gives notice to the sender. Notice that the Federal Reserve Bank deems itself insecure may be given in accordance with the provisions on notice in section 1-201(27) of the UCC, in accordance with any other applicable law or agreement, or by any other reasonable means. An overdraft also becomes due and payable at

the time that a bank is closed or suspends payments. For example, an overdraft becomes due and payable if a receiver is appointed for the bank or the bank is prevented from making payments by governmental order. The Federal Reserve Bank need not make demand on the sender for the overdraft to become due and payable.

(2) A sender must cover any overdraft and any other obligation of the sender to the Federal Reserve Bank by the time the overdraft becomes due and payable. By sending a payment order to a Federal Reserve Bank, the sender grants a security interest to the Federal Reserve Bank in any assets of the sender held by, or for the account of, the Federal Reserve Bank in order to secure all obligations due or to become due to the Federal Reserve Bank. The security interest attaches when the overdraft, or other obligation of the sender to the Federal Reserve Bank, becomes due and payable. The Security interest does not apply to assets held by the sender as custodian or trustee for the sender's customers or third parties. Once an overdraft is due and payable, a Federal Reserve Bank may exercise its right of set off, liquidate collateral, or take other similar action to satisfy the overdrafting bank's obligation owed to the Federal Reserve Bank.

(c) *Review of payment orders.* (1) Under section 4A-204, a receiving bank is required to refund the principal amount of an unauthorized payment order that the sender was not obliged to pay, together with interest on the refundable amount calculated from the date that the receiving bank received payment to the date of the refund. The sender is not entitled to compensation in the form of interest if the sender fails to exercise ordinary care to determine that the order was not authorized and to notify the receiving bank within a reasonable period of time after the sender receives a notice that the payment order was accepted or that the sender's account was debited with respect to the order. Similarly, under section 4A-304, if a sender of a payment order that was erroneously executed does not notify the bank receiving the payment order within a reasonable time, the bank is not liable to the sender for compensation in the form of interest on any amount refundable to the sender. Section 210.28(d) establishes 30 calendar days as the reasonable period of time for the purposes of these provisions of Article 4A.

(2) Section 4A-505 provides that a customer must object to a debit to its account by a receiving bank within one year after the customer received notification reasonably identifying the payment order. Subpart B of this part does not vary this one-year period.

#### *Section 210.29—Agreement of Receiving Bank*

(b) *Off-line banks.* (1) Generally, an on-line bank receiving payment orders or advices of credit for payment orders from a Federal Reserve Bank receives the payment orders or advices electronically a short time after the corresponding payment orders are received by the on-line bank's Federal Reserve Bank. An off-line bank receiving payment orders or advices of credit from a Federal Reserve Bank does not have an electronic connection

with the Federal Reserve Bank; therefore, payment orders or advices are transmitted either by telephone on the day the payment order is received by the receiving bank's Federal Reserve Bank, or sent by courier or mail along with the off-line bank's daily account statement, on the funds-transfer business day following the day the payment order is received by the off-line bank's Federal Reserve Bank.

(2) Under section 4A-302(a)(2), a Federal Reserve Bank must transmit payment orders at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date, or as soon thereafter as is feasible. Therefore, where an off-line receiving bank is an intermediary bank or beneficiary's bank in a payment order, its Federal Reserve Bank attempts to transmit the payment order to the off-line bank by telephone on the day the payment order is received by the Federal Reserve Bank. A Federal Reserve Bank can generally identify these payment orders from the type code designated in the payment order.

(3) Under section 4A-404(b), if a payment order instructs payment to the account of the beneficiary, the beneficiary's bank must notify the beneficiary of the receipt of a payment order before midnight of the next funds-transfer business day following the payment date. Where an off-line bank is the beneficiary of a payment order, telephone notice by a Federal Reserve Bank to the off-line bank of the receipt of the order is not required by Article 4A because the Federal Reserve Bank sends notice to the off-line bank by courier or mail, along with its daily account statement, on the day after the payment order is received by its Federal Reserve Bank. Payment orders for which an off-line bank is the beneficiary of the order are generally designated as settlement transactions.

(4) If an off-line receiving bank maintains an account for another bank, the off-line bank may receive payment orders designated as settlement transactions in its capacity as beneficiary's bank or intermediary bank. A Federal Reserve Bank cannot readily distinguish these payment orders from settlement transactions for which the off-line bank is the beneficiary of the order. If an off-line bank notifies its Federal Reserve Bank that it maintains an account for another bank, the Federal Reserve Bank will attempt to telephone the off-line bank with respect to all settlement transactions received by such bank, whether the off-line bank is the beneficiary, the beneficiary's bank, or an intermediary bank in the payment order. Under this section, an off-line bank that does not expressly notify its Federal Reserve Bank in writing that it maintains an account for another bank warrants to that Federal Reserve Bank that it does not act as an intermediary bank or a beneficiary's bank for a bank beneficiary with respect to payment orders received through Fedwire.

#### *Section 210.30—Payment Orders*

(a) *Rejection.* (1) A sender must make arrangements with its Federal Reserve Bank before it can send payment orders to the Federal Reserve Bank. Federal Reserve Banks

reserve the right to reject or impose conditions on the acceptance of payment orders for any reason. For example, a Federal Reserve Bank might reject or impose conditions on accepting a payment order where a sender does not have sufficient funds in its account with the Federal Reserve Bank to cover the amount of the sender's payment order and other obligations of the sender due or to become due to the Federal Reserve Bank. A Federal Reserve Bank may require a sender to execute a written agreement concerning security procedures or other matters before the sender may send payment orders to the Federal Reserve Bank.

(b) *Selection of an intermediary bank.* (1) Under section 4A-302, if a receiving bank (other than a beneficiary's bank), such as a Federal Reserve Bank, accepts a payment order, it must issue a payment order that complies with the sender's order. The sender's order may include instructions concerning an intermediary bank to be used that must be followed by a receiving bank (see section 4A-302(a)(1)). If the sender does not designate any intermediary bank in its payment order, the receiving bank may select an intermediary bank through which the sender's payment order can be expeditiously issued to the beneficiary's bank so long as the receiving bank exercises ordinary care in selecting the intermediary bank (see section 4A-302(b)).

(2) This section provides that in an interdistrict transfer, a Federal Reserve Bank is authorized and directed to select another Federal Reserve Bank as an intermediary bank. A sender may, however, instruct a Federal Reserve Bank to use a particular intermediary bank by designating that bank as the bank to be credited by that Federal Reserve Bank (or the second Federal Reserve Bank in the case of an interdistrict transfer) in its payment order, in which case the Federal Reserve Bank will send the payment order to that bank if that bank receives payment orders through Fedwire. A sender may not instruct a Federal Reserve Bank to use its discretion to select an intermediary bank other than a Federal Reserve Bank or an intermediary bank designated by the sender. In addition, a sender may not instruct a Federal Reserve Bank to use a funds-transfer system or means of transmission other than Fedwire unless the sender and the Federal Reserve Bank agree in writing to the use of the funds-transfer system or means of transmission.

(c) *Same-day execution.* Generally, Fedwire is a same-day value transfer system through which funds may be transferred from the originator to the beneficiary on the same funds-transfer business day. A sender may not send a payment order to a Federal Reserve Bank that specifies an execution date or payment date later than the day on which the payment order is issued, unless the sender of the order and the Federal Reserve Bank agree in writing to the arrangement.

*Section 210.31—Payment by a Federal Reserve Bank to a Receiving Bank or Beneficiary*

(a) *Payment to a receiving bank.* (1) Under section 4A-402, when a Federal Reserve Bank executes a sender's payment order by issuing

a conforming order to a receiving bank that accepts the payment order, the Federal Reserve Bank must pay the receiving bank the amount of the payment order. Section 210.29(a) authorizes a Federal Reserve Bank to make the payment by crediting the account at the Federal Reserve Bank maintained or used by the receiving bank. Section 210.31(a) provides that the payment occurs when the receiving bank's account is credited or when the payment order is sent by the Federal Reserve Bank to the receiving bank, whichever is earlier. Ordinarily, payment will occur during the funds-transfer business day a short time after the payment order is received, even if the receiving bank is an off-line bank. This credit is final and irrevocable when made and constitutes final settlement under section 4A-403. Payment does not waive a Federal Reserve Bank's right of recovery under the applicable law of mistake and restitution (see § 210.32(c)), affect a Federal Reserve Bank's right to apply the funds to any obligation due or to become due to the Federal Reserve Bank, or affect legal process or claims by third parties on the funds.

(2) This section on final payment does not apply to settlement for payment orders between Federal Reserve Banks. These payment orders are settled by other means.

(b) *Payment to a beneficiary.* Section 210.31(b) specifies when a Federal Reserve Bank makes payment to a beneficiary for which it is the beneficiary's bank. As in the case of payment to a receiving bank, this payment occurs at the earlier of the time that the Federal Reserve Bank credits the beneficiary's account or sends notice of the credit to the beneficiary, and is final and irrevocable when made.

*Section 210.32—Federal Reserve Bank Liability; Payment of Interest*

(a) *Damages.* (1) Under section 4A-305(d), damages for failure of a receiving bank to execute a payment order that it was obligated to execute by express agreement are limited to expenses in the transaction and incidental expenses and interest and do not include additional damages, including consequential damages, unless they are provided for in an express written agreement of the receiving bank. This section clarifies that in connection with the handling of payment orders, Federal Reserve Banks may not agree to be liable for consequential damages under this provision and shall not be liable for damages other than those that may be due under Article 4A to parties governed by this subpart. Any agreement in conflict with these provisions would not be effective, because it would be in violation of subpart B.

(2) This section does not affect the ability of other parties to a funds transfer to agree to be liable for consequential damages, the liability of a Federal Reserve Bank under section 4A-404, or the liability to parties governed by subpart B for claims not based on the handling of a payment order under this subpart.

(b) *Payment of interest.* (1) Under Article 4A, a Federal Reserve Bank may be required to pay compensation in the form of interest to another party in connection with its handling

of a funds transfer. For example, payment of compensation in the form of interest is required in certain situations pursuant to sections 4A-204 (relating to refund of payment and duty of customer to report with respect to unauthorized payment order), 4A-209 (relating to acceptance of payment order), 4A-210 (relating to rejection of payment order), 4A-304 (relating to duty of sender to report erroneously executed payment order), 4A-305 (relating to liability for late or improper execution or failure to execute a payment order), 4A-402 (relating to obligation of sender to pay receiving bank), and 4A-404 (relating to obligation of beneficiary's bank to pay and give notice to beneficiary). Under section 4A-506(a), the amount of such interest may be determined by agreement between the sender and receiving bank or by funds-transfer system rule. If there is no such agreement, under section 4A-506(b), the amount of interest is based on the Federal funds rate. Section 210.32(b) provides two means by which Federal Reserve Banks may provide compensation in the form of interest: through an as of adjustment or through an explicit interest payment.

(2) An as of adjustment is a memorandum credit or debit that is applied to the reserve or clearing balance of the bank that sent the payment order to, or received the payment order from, a Federal Reserve Bank. Federal Reserve Banks generally provide as of adjustments to correct errors and recover float. An as of adjustment differs from a debit or credit to an account in that it does not affect the actual balance of the account; it only affects the balance for reserve or clearing balance computation purposes. These adjustments affect the level of reserve or clearing balances that the bank must fund by other means and are therefore an effective substitute for explicit interest payments.

3. A party that sent or received a payment order from a Federal Reserve Bank may be unable to make use of an as of adjustment as compensation in lieu of explicit interest. For example, if the sender or receiving bank is not subject to reserve requirements or satisfies its reserve requirements with vault cash, the as of adjustment could not be used to free other balances for investment. A Federal Reserve Bank may, in its discretion, provide compensation by an explicit interest payment rather than through an as of adjustment. Interest would be calculated in accordance with the procedures specified in section 4A-506(b). Similarly, compensation in the form of explicit interest will be paid to Government senders, receiving banks, or beneficiaries described in § 210.25(d) if they are entitled to interest under this subpart. A Federal Reserve Bank may also, in its discretion, pay explicit interest directly to a remote party to a Fedwire funds transfer that is entitled to interest, rather than providing compensation to its direct sender or receiving bank.

(4) If a bank that received an as of adjustment or explicit interest payment is not the party entitled to interest compensation under Article 4A, the bank must pass the benefit of the as of adjustment or explicit interest payment made to it to the party that

is entitled to compensation in the form of interest from a Federal Reserve Bank. The benefit may be passed on either in the form of a direct payment of interest or in the form of a compensating balance, if the party entitled to interest agrees to accept the other form of compensation, and the value of the compensating balance is at least equivalent to the value of the explicit interest that otherwise would have been provided.

(c) *Nonwaiver of right of recovery.* Several sections of Article 4A allow for a party to a funds transfer to make a claim pursuant to the applicable law of mistake and restitution. Nothing in subpart B of this part or any Operating Circular issued under subpart B of this part waives any such claim. A Federal Reserve Bank, however, may waive such a claim by express written agreement in order to settle litigation or for other purposes.

#### Appendix B to Subpart B—Article 4A, Funds Transfers

##### Part 1—Subject Matter and Definitions

##### Section 4A-101. Short Title

This Article may be cited as Uniform Commercial Code—Funds Transfers.

##### Section 4A-102. Subject Matter

Except as otherwise provided in section 4A-108, this Article applies to funds transfers defined in section 4A-104.

##### Section 4A-103. Payment Order—Definitions

(a) In this Article:

(1) *Payment order* means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) The instruction does not state a condition to payment to the beneficiary other than time of payment,

(ii) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(2) *Beneficiary* means the person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) *Receiving bank* means the bank to which the sender's instruction is addressed.

(5) *Sender* means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subsection (a)(1) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

##### Section 4A-104. Funds Transfer—Definitions

In this Article:

(a) *Funds transfer* means the series of transactions, beginning with the originator's

payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(b) *Intermediary bank* means a receiving bank other than the originator's bank or the beneficiary's bank.

(c) *Originator* means the sender of the first payment order in a funds transfer.

(d) *Originator's bank* means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank.

##### Section 4A-105. Other Definitions

(a) In this Article:

(1) *Authorized account* means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) *Bank* means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(3) *Customer* means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) *Funds-transfer business day* of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) *Funds-transfer system* means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

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

(7) *Prove* with respect to a fact means to meet the burden of establishing the fact (Section 1-201(8)).

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance".....	Sec. 4A-209
"Beneficiary".....	Sec. 4A-103
"Beneficiary's bank".....	Sec. 4A-103
"Executed".....	Sec. 4A-301
"Execution date".....	Sec. 4A-301
"Funds transfer".....	Sec. 4A-104
"Funds-transfer system rule".....	Sec. 4A-501
"Intermediary bank".....	Sec. 4A-104
"Originator".....	Sec. 4A-104
"Originator's bank".....	Sec. 4A-104
"Payment by beneficiary's bank to beneficiary".....	Sec. 4A-405

"Payment by originator to beneficiary".....	Sec. 4A-406
"Payment by sender to receiving bank".....	Sec. 4A-403
"Payment date".....	Sec. 4A-401
"Payment order".....	Sec. 4A-103
"Receiving bank".....	Sec. 4A-103
"Security procedure".....	Sec. 4A-201
"Sender".....	Sec. 4A-103

(c) The following definitions in Article 4 apply to this Article:

"Clearing house".....	Sec. 4-104
"Item".....	Sec. 4-104
"Suspends payments".....	Sec. 4-104

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

##### Section 4A-106. Time Payment Order is Received

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 1-201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article.

##### Section 4A-107. Federal Reserve Regulations and Operating Circulars

Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

##### Section 4A-108. Exclusion of Consumer Transactions Governed by Federal Law

This Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. 1693 et seq.) as amended from time to time.

*Part 2—Issue and Acceptance of Payment Order*

**Section 4A-201. Security Procedure**

*Security procedure* means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

**Section 4A-202. Authorized and Verified Payment Orders**

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term *sender* in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a), or it is

effective as the order of the customer under subsection (b).

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in section 4A-203(a)(1), rights and obligations arising under this section or section 4A-203 may not be varied by agreement.

**Section 4A-203. Unenforceability of Certain Verified Payment Orders**

(a) If an accepted payment order is not, under section 4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to section 4A-202(b), the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

**Section 4A-204. Refund of Payment and Duty of Customer To Report with Respect to Unauthorized Payment Order**

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under section 4A-202, or (ii) not enforceable, in whole or in part, against the customer under section 4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in section 1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

**Section 4A-205. Erroneous Payment Orders**

(a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sender proves that the sender or a person acting on behalf of the sender pursuant to section 4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in paragraphs (2) and (3).

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (a), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in subsection (a) is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

**Section 4A-206. Transmission of Payment Order Through Funds-Transfer or Other Communication System**

(a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the

payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

#### Section 4A-207. Misdescription of Beneficiary

(a) Subject to subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subsection (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) In a case governed by subsection (b)(1), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

#### Section 4A-208. Misdescription of Intermediary Bank or Beneficiary's Bank

(a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in section 4A-302(a)(1).

#### Section 4A-209. Acceptance of Payment Order

(a) Subject to subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) When the bank (i) pays the beneficiary as stated in section 4A-405(a) or 4A-405(b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) When the bank receives payment of the entire amount of the sender's order pursuant to section 4A-403(a)(1) or 4A-403(a)(2); or

(3) The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(2) or (b)(3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to section 4A-211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

#### Section 4A-210. Rejection of Payment Order

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally,

electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to section 4A-211(d) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

#### Section 4A-211. Cancellation and Amendment of Payment Order

(a) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a), a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2).

#### Section 4A-212. Liability and Duty of Receiving Bank Regarding Unaccepted Payment Order

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain

from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in section 4A-209, and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement.

#### Part 3—Execution of Sender's Payment Order by Receiving Bank

##### Section 4A-301. Execution and Execution Date

(a) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) *Execution date* of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

##### Section 4A-302. Obligations of Receiving Bank in Execution of Payment Order

(a) Except as provided in subsections (b) through (d), if the receiving bank accepts a payment order pursuant to section 4A-209(a), the bank has the following obligations in executing the order:

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to

the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless subsection (a)(2) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by the means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

#### Section 4A-303. Erroneous Execution of Payment Order

(a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under section 4A-402(c) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under section 4A-402(c) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and

expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

#### Section 4A-304. Duty of Sender to Report Erroneously Executed Payment Order

If the sender of a payment order that is erroneously executed as stated in section 4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under section 4A-402(d) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

#### Section 4A-305. Liability for Late or Improper Execution or Failure To Execute Payment Order

(a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of section 4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of section 4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a), resulting from the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is

liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) may not be varied by agreement.

#### Part 4—Payment

##### Section 4A-401. Payment Date

*Payment date of a payment order* means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

##### Section 4A-402. Obligation of Sender To Pay Receiving Bank

(a) This section is subject to sections 4A-205 and 4A-207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject to subsection (e) and to section 4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in sections 4A-204 and 4A-304, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subsection (c) and an intermediary bank is obliged to refund payment as stated in subsection (d) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a

payment order in compliance with an instruction, as stated in section 4A-302(a)(1), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d).

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) or to receive refund under subsection (d) may not be varied by agreement.

#### Section 4A-403. Payment by Sender To Receiving Bank

(a) Payment of the sender's obligation under section 4A-402 to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.

(2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under section 4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To

the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a), the time when payment of the sender's obligation under section 4A-402(b) or 4A-402(c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

#### Section 4A-404. Obligation of Beneficiary's Bank To Pay and Give Notice to Beneficiary

(a) Subject to sections 4A-211(e), 4A-405(d), and 4A-405(e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

#### Section 4A-405. Payment by Beneficiary's Bank To Beneficiary

(a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under section 4A-404(a) occurs when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under section 4A-404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfer made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under section 4A-406.

(e) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations-multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under section 4A-406, and (iv) subject to section 4A-402(e), each sender in the funds transfer is excused from its obligation to pay its payment order under section 4A-402(c) because the funds transfer has not been completed.

#### Section 4A-406. Payment by Originator to Beneficiary; Discharge of Underlying Obligation

(a) Subject to sections 4A-211(e), 4A-405(d), and 4A-405(e), the originator of a funds transfer pays the beneficiary of the originator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the amount of the order



accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (a) was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under section 4A-404(a).

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

#### Part 5—Miscellaneous Provisions

##### Section 4A-501. Variation by Agreement and Effect of Funds-Transfer System Rule

(a) Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) *Funds-transfer system rule* means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in sections 4A-404(c), 4A-405(d), and 4A-507(c).

##### Section 4A-502. Creditor Process Served on Receiving Bank; Setoff by Beneficiary's Bank

(a) As used in this section, *creditor process* means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(1) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owned by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

##### Section 4A-503. Injunction or Restraining Order with Respect to Funds Transfer

For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

##### Section 4A-504. Order In Which Items and Payment Orders May Be Charged to Account; Order of Withdrawals from Account

(a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with

respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

##### Section 4A-505. Preclusion of Objection to Debit of Customer's Account

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

##### Section 4A-506. Rate of Interest

(a) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a), the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest 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 next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

##### Section 4A-507. Choice of Law

(a) The following rules apply unless the affected parties otherwise agree or subsection (c) applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

By order of the Board of Governors of the Federal Reserve System, September 28, 1990.

William W. Wiles,

*Secretary of the Board.*

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