



FEDERAL RESERVE BANK  
OF DALLAS

ROBERT D. McTEER, JR.  
PRESIDENT  
AND CHIEF EXECUTIVE OFFICER

DALLAS, TEXAS  
75265-5906

December 19, 1997

**Notice 97-119**

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

**SUBJECT**

**Slip-Sheet Amendments to Regulation K;  
Revised Pamphlets for Regulation CC  
and the Official Staff Commentary  
on Regulation M**

**DETAILS**

The Board of Governors of the Federal Reserve System has published slip-sheet amendments to Regulation K, effective October 10, 1997. The Board has also published revised pamphlets for Regulation CC, effective October 27, 1997, and the Official Staff Commentary on Regulation M, effective April 1, 1997.

**ENCLOSURES**

The revised slip sheet and pamphlets are enclosed. Please insert them in your Regulations binders.

**MORE INFORMATION**

For more information regarding Regulation K, please contact Susan Tetley at (214) 922-6060. For more information regarding Regulation CC, please contact Terry Campbell, (214)

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For additional copies, bankers and others are encouraged to use one of the following toll-free numbers in contacting the Federal Reserve Bank of Dallas: Dallas Office (800) 333-4460; El Paso Branch *Intrastate* (800) 592-1631, *Interstate* (800) 351-1012; Houston Branch *Intrastate* (800) 392-4162, *Interstate* (800) 221-0363; San Antonio Branch *Intrastate* (800) 292-5810.

922-6603, at the Dallas Office; Eloise Guinn, (915) 521-8201, at the El Paso Office; Luke Richards, (713) 652-1544, at the Houston Office; or Herb Barbee, (210) 978-1402, at the San Antonio Office. For more information regarding Regulation M, please contact Eugene Coy at (214) 922-6201.

For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

*Robert D. McTeer, Jr.*



# Amendments to Regulation K International Banking Operations October 1997\*

1. *Effective December 21, 1995, section 211.2 is amended by redesignating paragraphs (u) and (v) as paragraphs (v) and (w), respectively, and by adding new paragraphs (u) and (x) to read as follows:*

(u) *Strongly capitalized means—*

- (1) in relation to a parent member bank, that the standards set out in 12 CFR 208.33(b)(1) are satisfied; and
- (2) in relation to an Edge or agreement corporation or a bank holding company, that it has a risk-based capital ratio of 10.0 percent or greater.

\* \* \* \* \*

(x) *Well managed* means that the Edge or agreement corporation, its parent member bank, if any, and the bank holding company have each received a composite rating of 1 or 2 at its most recent examination or review and are not subject to any supervisory enforcement action.

2. *Effective December 21, 1995, section 211.5 is amended by redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(3) and (c)(4), respectively. In the third sentence of newly designated paragraph (c)(3), the word "accepted" is replaced with the word "received." A new paragraph (c)(2) is added to read as follows:*

- (2) (i) *Expanded general consent for de novo investments.* Notwithstanding the amount limitations of paragraph (c)(1) of this section, but subject to the other

limitations of this section, the Board grants expanded general-consent authority for investments in an organization by an investor that is strongly capitalized and well managed if—

(A) the activities of the organization are limited to activities in which a national bank may engage directly or in which a subsidiary may engage under section 211.5(d);

(B) in the case of an investor that is an Edge corporation that is not engaged in banking or an agreement corporation, the total amount invested in such organization (in one transaction or a series of transactions) does not exceed the lesser of 20 percent of the investor's tier 1 capital or 2 percent of the tier 1 capital of the parent member bank;

(C) in the case of a bank holding company or member bank investor, the total amount invested in such organization (in one transaction or a series of transactions) directly or indirectly does not exceed 2 percent of the investor's tier 1 capital;

(D) all investments made, directly or indirectly, by an Edge corporation not engaged in banking or an agreement corporation during the previous 12-month period under paragraph (c)(2) of this section, when aggregated with the proposed investment, would not exceed the lesser of 50 percent of the total capital of the Edge or agreement corporation, or 5 percent of the total capital of the parent member bank;

(E) all investments made, directly or indirectly, by a member bank or a bank holding company during the previous 12-month period under paragraph (c)(2) of this section, when aggregated with the proposed invest-

\* A complete Regulation K, as amended effective October 10, 1997, consists of—

• the regulation pamphlet dated January 1994 (see inside cover) and

• this slip sheet.

Item 7 is new. The other items were included in the July 1997 slip sheet.

ment, would not exceed 5 percent of its total capital; and

(F) both before and immediately after the proposed investment the investor, its parent member bank, if any, and any parent bank holding company are strongly capitalized and well managed.

(ii) *Determining aggregate investment limits.* For purposes of determining compliance with the aggregate investment limits set out in paragraph (c)(2)(i)(D) and (E) of this section, an investment by an investor in a subsidiary shall be counted only once notwithstanding that such subsidiary may, within 12 months of the date of making the investment, downstream all or any part of such investment to another subsidiary.

(iii) *Additional investments.* An investor that makes investments under paragraph (c)(2)(i) of this section may also make additional investments in an organization under the standards set forth in paragraphs (c)(1)(ii), (c)(1)(iii) and (c)(1)(iv) of this section.

(iv) *Ineligible investments.* The following investments are not eligible for the general consent under paragraph (c)(2)(i) of this section:

(A) an investment in a foreign country where the investor does not have an affiliate or a branch;

(B) the establishment or acquisition of an initial subsidiary bank in a foreign country;

(C) investments in general partnerships or unlimited liability companies; and

(D) an acquisition of shares or assets of an organization that is not an affiliate or joint venture of the investor.

(v) *Post-investment notice.* By the end of the month following the month in which the investment is made, the investor shall provide the Board with the following information relating to the investment:

(A) if the investment is in a joint venture, the respective responsibili-

ties of the parties to the joint venture;

(B) projections for the organization in which the investment is made for the first year following the investment; and

(C) where the investment is made in an organization that incurred a loss in the last year, a description of the reasons for the loss and the steps taken to address the problem.

3. *Effective April 1, 1996, section 211.8 is amended by replacing the words "criminal referral form" with the words "suspicious-activity report."*

4. *Effective August 28, 1996, section 211.20(b)(10) is added to read as follows:*

(10) the management of shell branches (12 USC 3105(k)).

5. *Effective January 1, 1995, section 211.21(e) is amended to read as follows:*

(e) *Change the status of an office means convert a representative office into a branch or agency, or an agency into a branch, but does not include renewal of the license of an existing office.*

6. *Effective May 9, 1996, section 211.22(a) is amended to read as follows. Section 211.22(c) is deleted, and section 211.22(d) is redesignated as 211.22(c).*

(a) *Determination of home state.*

(1) A foreign bank (except a foreign bank to which paragraph (a)(2) of this section applies) that has any combination of domestic agencies or subsidiary commercial lending companies that were established before September 29, 1994, in more than one state and have been continuously operated shall select its home state from those states in

which such offices or subsidiaries are located. A foreign bank shall do so by filing with the Board a declaration of home state by June 30, 1996. In the absence of such selection, the Board shall designate the home state for such foreign banks.

(2) A foreign bank that, as of September 29, 1994, had declared a home state or had a home state determined pursuant to the law and regulations in effect prior to that date shall have that state as its home state.

(3) A foreign bank that has any branches, agencies, subsidiary commercial lending companies, or subsidiary banks in one state, and has no such offices or subsidiaries in any other states, shall have as its home state the state in which such offices or subsidiaries are located.

7. *Effective October 10, 1997, section 211.22(d) is added to read as follows:*

(d) *Prohibition against interstate deposit-production offices.* A covered interstate branch of a foreign bank may not be used as a deposit-production office in accordance with the provisions in section 208.28 of the Board's Regulation H (12 CFR 208.28).

8. *Effective July 1, 1997, the title for section 211.24 is amended to read as follows:*

**SECTION 211.24—Approval of Offices of Foreign Banks; Procedures for Applications; Standards for Approval; Representative-Office Activities and Standards for Approval; Preservation of Existing Authority; Reports of Crimes and Suspected Crimes; Management of Shell Branches**

9. *Effective January 24, 1996, section 211.24 is amended by revising paragraphs (a)(2)(i) and (ii) to read as follows:*

(i) *Prior notice for certain representative offices.* After providing 45 days' prior written notice to the Board, a foreign bank that is subject to the BHC Act, either directly or through section 8(a) of the IBA (12 USC 3106(a)), may establish—

- (A) a regional administrative office; or
- (B) a representative office, but only if the Board has previously determined that the foreign bank proposing to establish a representative office is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor, or previously has been approved for a representative office by Board order. The Board may waive the 45-day period if it finds that immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is received by the appropriate Reserve Bank. The Board may suspend the period or require Board approval prior to the establishment of such an office if the notification raises significant policy, prudential, or supervisory concerns.

(ii) *General consent for representative offices.* The Board grants its general consent for a foreign bank that is subject to section 8(a) of the IBA (12 USC 3106(a)) to establish a representative office that solely engages in limited administrative functions (such as separately maintaining back-office support systems) that are clearly defined, are performed in connection with the United States banking activities of the foreign bank, and do not involve contact or liaison with customers or potential customers beyond incidental contact with existing customers relating to administrative matters (such as verification or correction of account information), provided that the foreign bank notifies the Board in writing within 30 days of the establishment of the representative office.

10. *Effective January 24, 1996, section 211.24 is amended by redesignating paragraph (d)(3) as (d)(4) and adding a new paragraph (d)(3) to read as follows:*

(3) *Special-purpose foreign-government banks.* A foreign government-owned organization engaged in banking activities in its home country that are not commercial in nature may apply to the Board for a determination that the organization is not a foreign bank for purposes of this section. A written request setting forth the basis for such a determination may be submitted to the Reserve Bank of the District in which the foreign organization's representative office is located in the United States or to the Board in the case of a proposed establishment of a representative office. The Board will review and act upon each such request on a case-by-case basis.

office, resides at the state-licensed branch or agency.

(3) The types of activities that a state-licensed branch or agency may manage through an office located outside the United States that it manages or controls include the types of activities authorized to a U.S. bank by state or federal charters, regulations issued by chartering or regulatory authorities, and other U.S. banking laws, including the Federal Reserve Act, and the implementing regulations, but U.S. procedural or quantitative requirements that may be applicable to the conduct of such activities by U.S. banks shall not apply.

11. *Effective April 1, 1996, section 211.24(f) is amended by replacing the words "criminal referral form" with the words "suspicious-activity report."*

12. *Effective August 28, 1996, section 211.24(g) is added to read as follows:*

(g) *Management of shell branches.*

(1) A state-licensed branch or agency shall not manage, through an office of the foreign bank which is located outside the United States and is managed or controlled by such state-licensed branch or agency, any type of activity that a bank organized under the laws of the United States or any state is not permitted to manage at any branch or subsidiary of such bank which is located outside the United States.

(2) For purposes of this subsection, an office of a foreign bank located outside the United States is "managed or controlled" by a state-licensed branch or agency if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that non-U.S.

13. *Effective July 1, 1997, section 211.24(h) is added to read as follows:*

(h) *Government securities sales practices.* An uninsured state-licensed branch or agency of a foreign bank that is required to give notice to the Board under section 15C of the Securities Exchange Act of 1934 (15 USC 78o-5) and the Department of the Treasury rules under section 15C (17 CFR 400.1(d) and 401) shall be subject to the provisions of 12 CFR 208.25 to the same extent as a state member bank that is required to give such notice.

14. *Effective January 1, 1995, section 211.29 is added to read as follows:*

**SECTION 211.29—Applications by State-Licensed Branches and Agencies to Conduct Activities Not Permissible for Federal Branches**

(a) *Scope.* A state-licensed branch or agency shall file with the Board a prior written application for permission to engage in or continue to engage in any type of activity that—

(1) is not permissible for a federal branch, pursuant to statute, regulation,

official bulletin or circular, or order or interpretation issued in writing by the Office of the Comptroller of the Currency; or

(2) is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction.

(b) *Exceptions.* No application shall be required by a state-licensed branch or agency to conduct any activity that is otherwise permissible under applicable state and federal law or regulation and that—

(1) has been determined by the FDIC pursuant to 12 CFR 362.4(c)(i)–(ii)(A) not to present a significant risk to the affected deposit insurance fund.

(2) is permissible for a federally licensed branch but the OCC imposes a quantitative limitation on the conduct of such activity by the federal branch;

(3) is conducted as agent rather than as principal, provided that the activity is one that could be conducted by a state-chartered bank headquartered in the same state in which the branch or agency is licensed; or

(4) any other activity that the Board has determined may be conducted by any state-licensed branch or agency of a foreign bank without further application to the Board.

(c) *Contents of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall contain the following information:

(1) a brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(2) an analysis of the impact of the proposed activity on the condition of the U.S. operations of the foreign bank in general and of the branch or agency in particular, including a copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(3) a resolution by the applicant's board of directors or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by senior management, authorizing the conduct of such activity and the filing of this application;

(4) if the activity is to be conducted by a state-licensed insured branch, a statement by the applicant of whether or not it is in compliance with 12 CFR 346.19 and 346.20, Pledge of Assets, and Asset Maintenance, respectively.

(5) if the activity is to be conducted by a state-licensed insured branch, statements by the applicant—

(i) that it has complied with all requirements of the Federal Deposit Insurance Corporation concerning an application to conduct the activity and the status of the application, including a copy of the FDIC's disposition of such application, if available, and

(ii) explaining why the activity will pose no significant risk to the deposit insurance fund; and

(6) any other information that the Reserve Bank deems appropriate.

(d) *Factors considered in determination.*

(1) The Board shall consider the following factors in determining whether a proposed activity is consistent with sound banking practice:

(A) the types of risks, if any, the activity poses to the U.S. operations of the foreign banking organization in general and the branch or agency in particular;

(B) if the activity poses any such risks, the magnitude of each risk; and

(C) if a risk is not de minimis, the actual or proposed procedures to control and minimize the risk.

(2) Each of the factors set forth in paragraph (d)(1) of this section shall be evaluated in light of the financial condition of the foreign bank in general and the branch or agency in particular and the volume of the activity.

(e) *Application procedures.* Applications



pursuant to this section shall be filed with the responsible Reserve Bank for the foreign bank. An application shall not be deemed complete until it contains all the information requested by the Reserve Bank and has been accepted. Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific conditions or limitations.

(f) *Divestiture or cessation.*

(1) In the event that an applicant's application for permission to continue to conduct an activity is not approved by the Board or, if applicable, the FDIC, the applicant shall submit a detailed written plan of divestiture or cessation of the activity to the responsible Reserve Bank within 60 days of the disapproval. The divestiture or cessation plan shall describe in detail the manner in which the applicant will divest itself of or cease the activity and shall include a projected timetable describing how long the divestiture or cessation is expected to take. Divestitures or cessation shall be complete within one year from the date of the disapproval, or within such shorter period of time as the Board shall direct.

(2) In the event that a foreign bank operating a state branch or agency chooses not to apply to the Board for permission to continue to conduct an activity that is not permissible for a federal branch or which is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction, the foreign bank shall submit a written plan of divestiture or cessation, in conformance with section 211.29(f)(1), of this part within 60 days of the effective date of this part or of such change or decision.

### SECTION 211.30—Criteria for Evaluating the U.S. Operations of Foreign Banks Not Subject to Consolidated Supervision

(a) *General.* Pursuant to the Foreign Bank Supervision Enhancement Act, Pub.L. 102-242, 105 Stat. 2286 (1991), the Board shall develop and publish criteria to be used in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis.

(b) *Criteria.* Following a determination by the Board that, having taken into account the standards set forth in section 211.24(c)(1) of this subpart, a foreign bank is not subject to comprehensive, consolidated supervision by its home-country supervisor, the Board shall consider the following criteria in determining whether the foreign bank's U.S. operations should be permitted to continue and, if so, whether any supervisory constraints should be placed upon the bank in connection with those operations:

- (1) the proportion of the foreign bank's total assets and total liabilities that are located or booked in its home country, as well as the distribution and location of its assets and liabilities that are located or booked elsewhere;
- (2) the extent to which the operations and assets of the foreign bank and any affiliates are subject to supervision by its home-country supervisor;
- (3) whether the appropriate authorities in the home country of such foreign bank are actively working to establish arrangements for the comprehensive, consolidated supervision of such bank and whether demonstrable progress is being made;
- (4) whether the foreign bank has effective and reliable systems of internal controls and management information and reporting, which enable its management properly to oversee its worldwide operations;
- (5) whether the foreign bank's home-country supervisor has any objection to

15. *Effective March 25, 1996, section 211.30 is added to read as follows:*

the bank continuing to operate in the United States;

- (6) whether the foreign bank's home-country supervisor and the home-country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;
- (7) the relationship of the U.S. operations to the other operations of the foreign bank, including whether the foreign bank maintains funds in its U.S. offices that are in excess of amounts due to its U.S. offices from the foreign bank's non-U.S. offices;
- (8) the soundness of the foreign bank's overall financial condition;
- (9) the managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors and the integrity of its principal shareholders;
- (10) the scope and frequency of external audits of the foreign bank;
- (11) the operating record of the foreign bank generally and its role in the banking system in its home country;
- (12) the foreign bank's record of compliance with relevant laws, as well as the adequacy of its money-laundering controls and procedures, in respect of its worldwide operations;
- (13) the operating record of the U.S. offices of the foreign bank;
- (14) the views and recommendations of the Office of the Comptroller of the Currency or the state banking regulators in those states in which the foreign bank has operations, as appropriate;
- (15) whether the foreign bank, if requested, has provided the Board with

adequate assurances that such information will be made available on the operations or activities of the foreign bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the International Banking Act, the Bank Holding Company Act, and other applicable federal banking statutes; and

(16) any other information relevant to the safety and soundness of the U.S. operations of the foreign bank.

(c) *Restrictions on U.S. operations.*

(1) *Terms of agreement.* Any foreign bank that the Board determines is not subject to comprehensive supervision or regulation on a consolidated basis by its home-country supervisor may be required to enter into an agreement to conduct its U.S. operations subject to such restrictions as the Board, having considered the criteria set forth in paragraph (b) of this section, determines to be appropriate in order to ensure the safety and soundness of its U.S. operations.

(2) *Failure to enter into or comply with agreement.* A foreign bank that is required by the Board to enter into an agreement pursuant to paragraph (c)(1) of this section and either fails to do so or fails to comply with the terms of such agreement may be subject to enforcement action in order to ensure safe and sound banking operations under 12 USC 1818, or to termination or a recommendation for termination of its U.S. operations under section 211.25(a) and (e) of this subpart and section (7)(e) of the IBA (12 USC 3105(e)).

# Regulation CC Availability of Funds and Collection of Checks

12 CFR 229; as amended effective October 27, 1997





Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the District in which the inquiry arises.

August 1997

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# Regulation CC

## Availability of Funds and Collection of Checks

12 CFR 229; as amended effective October 27, 1997

### NOTE ON REGULATION CC

*In the Code of Federal Regulations, the commentary on Regulation CC is set out separately as appendix E. In the version of Regulation CC that follows, each section of the regulation is followed by the commentary on that section. The beginning of each commentary section is clearly labeled "Commentary," and the running head at the top of each page indicates whether the text on that page is regulation or commentary.*

*The commentary provides background material to explain the Board's intent in adopting a particular part of the regulation. It also provides examples to help readers understand how a particular requirement is to work. Under section 611(e) of the Expedited Funds Availability Act (12 USC 4010(e)), no provision of section 611—*

*imposing any liability shall apply to any act done or omitted in good faith conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.*

*The commentary is an "interpretation" of the regulation by the Board within the meaning of section 611.*

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## SUBPART A—GENERAL

## SECTION 229.1—Authority and Purpose; Organization

(a) *Authority and purpose.* This part (Regulation CC; 12 CFR part 229) is issued by the Board of Governors of the Federal Reserve System ("Board") to implement the Expedited Funds Availability Act ("act") (title VI of Pub. L. 100-86), as amended by section 1001 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. 101-625) and sections 212(h), 225, and 227 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242).

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

(1) Subpart A contains general information.

It sets forth—

- (i) the authority, purpose, and organization;
- (ii) definition of terms; and
- (iii) authority for administrative enforcement of this part's provisions.

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

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

## SECTION 229.2—Definitions

As used in this part, unless the context requires otherwise:

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

- (1) a demand deposit account,
- (2) a negotiable order of withdrawal account,
- (3) a share draft account,
- (4) an automatic transfer account, or
- (5) any other transaction account described in 12 CFR 204.2(e).

"Account" does not include an account where the account holder is a bank, where the account holder is an office of an institution described in paragraphs (e)(1) through (e)(6) of this section or an office of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 USC 3101) that is located outside the United States, or where the direct or indirect account holder is the Treasury of the United States.

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

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

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

(e) *Bank* means—

- (1) an "insured bank" as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813) or a bank that is eligible to apply to become an insured bank under section 5 of that act (12 USC 1815);
- (2) a "mutual savings bank" as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813);
- (3) a "savings bank" as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813);
- (4) an "insured credit union" as defined in section 101 of the Federal Credit Union Act (12 USC 1752) or a credit union that is eligible to make application to become an insured credit union under section 201 of that act (12 USC 1781);
- (5) a "member" as defined in section 2 of the Federal Home Loan Bank Act (12 USC 1422);
- (6) a "savings association" as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813) that is an insured depository institution as defined in section 3 of that act (12 USC 1813(c)(2)) or that is eligible to apply to become an insured depository institution under section 5 of that act (12 USC 1815); or
- (7) an "agency" or "branch" of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 USC 3101).

For purposes of subpart C and, in connection therewith, this subpart A, the term "bank" also includes any person engaged in the business of banking, as well as a Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit of general local government acts as a paying bank. Unless otherwise specified, the term "bank" includes all



of a bank's offices in the United States, but not offices located outside the United States.

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

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

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

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

- (1) drawn on a bank;
- (2) signed by an officer or employee of the bank on behalf of the bank as drawer;
- (3) a direct obligation of the bank; and
- (4) provided to a customer of the bank or acquired from the bank for remittance purposes.

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

- (1) (i) the signature of the drawer on the check is genuine; and
- (ii) the bank has set aside funds that—
  - (A) are equal to the amount of the check, and
  - (B) will be used to pay the check; or
- (2) the bank will pay the check upon presentment.

(k) *Check* means—

- (1) a negotiable demand draft drawn on or payable through or at an office of a bank;
- (2) a negotiable demand draft drawn on a Federal Reserve Bank or a Federal Home Loan Bank;
- (3) a negotiable demand draft drawn on the Treasury of the United States;
- (4) a demand draft drawn on a state government or unit of general local government that is not payable through or at a bank;

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

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

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

(l) [Reserved]

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

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

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

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

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

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

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

(t) *Merger transaction* means—

- (1) a merger or consolidation of two or more banks; or

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

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

- (1) a passbook, certificate, or other document is attached;
- (2) it is accompanied by special instructions, such as a request for special advice of payment or dishonor;
- (3) it consists of more than a single thickness of paper, except a check that qualifies for handling by automated check-processing equipment; or
- (4) it has not been preprinted or post-encoded in magnetic ink with the routing number of the paying bank.

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

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

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

(y) [Reserved]

(z) *Paying bank* means—

- (1) the bank by which a check is payable, unless the check is payable at another bank and is sent to the other bank for payment or collection;
- (2) the bank at which a check is payable and to which it is sent for payment or collection;
- (3) the Federal Reserve Bank or Federal Home Loan Bank by which a check is payable;
- (4) the bank through which a check is payable and to which it is sent for payment or collection, if the check is not payable by a bank; or
- (5) the state or unit of general local government on which a check is drawn and to which it is sent for payment or collection.

For purposes of subpart C, and in connection therewith, subpart A, "paying bank" includes the bank through which a check is payable

and to which the check is sent for payment or collection, regardless of whether the check is payable by another bank, and the bank whose routing number appears on a check in fractional or magnetic form and to which the check is sent for payment or collection.

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

- (1) owned or operated by, or operated exclusively for, the depository bank;
- (2) located on the premises (including the outside wall) of the depository bank; or
- (3) located within 50 feet of the premises of the depository bank, and not identified as being owned or operated by another entity.

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

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

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

(dd) *Routing number* means—

- (1) the number printed on the face of a check in fractional form or in nine-digit form; or
- (2) the number in a bank's indorsement in fractional or nine-digit form.

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

(ff) *State* means a state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands.

(gg) *Teller's check* means a check provided to a customer of a bank or acquired from a bank

for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.

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

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

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

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

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

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

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

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

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

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

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

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

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

(qq) Unless the context requires otherwise, the terms not defined in this section have the meanings set forth in the UCC.

## COMMENTARY

### SECTION 229.2—Definitions

#### A. Background

1. Section 229.2 defines the terms used in the regulation. For the most part, terms are defined as they are in section 602 of the Expedited Funds Availability Act (12 USC 4001). The Board has made a number of changes for the sake of clarity, to conform the terminology to that which is familiar to the banking industry, to define terms that are not defined in the act, and to carry out the purposes of the act. The Board also has incorporated by reference the definitions of the Uniform Commercial Code where appropriate. Some of Regulation CC's definitions are self-explanatory and therefore are not discussed in this commentary.

#### B. 229.2(a) Account

1. The act defines "account" to mean "a demand deposit account or similar transaction account at a depository institution." The regulation defines "account" in terms of the definition of "transaction account" in the Board's Regulation D (12 CFR 204). The definition of "account" in Regulation CC, however, excludes certain deposits, such as nondocumentary obligations (see 12 CFR 204.2(a)(1)(vii)), that are covered under the definition of "transaction account" in Regulation D. The definition applies to accounts with general third-party payment powers but does not cover time deposits or savings deposits, including money market deposit accounts, even though they may have limited third-party payment powers. The Board believes that it is appropriate to exclude these accounts because of the reference to demand deposits in the act, which suggests that the act is intended to apply only to accounts that permit unlimited third-party transfers.

2. The term "account" also differs from the definition of "transaction account" in Regulation D because the term "account" refers to accounts held at banks. Under subparts A and C, the term "bank" includes not only any "depository institution," as defined in the act, but also any person engaged in the business

of banking, such as a Federal Reserve Bank, a Federal Home Loan Bank, or a private banker that is not subject to Regulation D. Thus accounts at these institutions benefit from the expeditious-return requirements of subpart C.

3. Interbank deposits, including accounts of offices of domestic banks or foreign banks located outside the United States, and direct and indirect accounts of the United States Treasury (including Treasury General Accounts and Treasury Tax and Loan Deposit Accounts) are exempt from Regulation CC.

#### C. 229.2(b) Automated Clearinghouse (ACH)

1. The Board has defined "automated clearinghouse" as a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular governing automated clearinghouse items or the rules of an ACH association. ACH credit transfers are included in the definition of "electronic payment."

2. The reference to "credit transfers" and "debit transfers" does not refer to the corresponding credit and debit entries that are part of the same transaction, but to different kinds of ACH payments. In an ACH credit transfer, the originator orders that its account be debited and another account credited. In an ACH debit transfer, the originator, with prior authorization, orders another account to be debited and the originator's account to be credited.

3. A facility that handles only "wire transfers" (defined elsewhere) is not an ACH.

#### D. 229.2(c) Automated Teller Machine

1. ATM is not defined in the act. The regulation defines an ATM as an electronic device at which a natural person may make deposits to an account by cash or check and perform other account transactions. Point-of-sale terminals, machines that only dispense cash, night depositories, and lobby deposit boxes are not ATMs within the meaning of the definition, either because they do not accept deposits of cash or checks (e.g., point-of-sale terminals and cash dispensers) or because they only accept deposits (e.g., night depositories and lobby boxes) and cannot perform other trans-

actions. A lobby deposit box or similar receptacle in which written payment orders or deposits may be placed is not an ATM.

2. A facility may be an ATM within this definition even if it is a branch under state or federal law, although an ATM is not a branch as that term is used in this regulation.

#### E. 229.2(d) Available for Withdrawal

1. Under this definition, when funds become "available for withdrawal," the funds may be put to all uses for which the customer may use actually and finally collected funds in the customer's account under the customer's account agreement with the bank. Examples of such uses include payment of checks drawn on the account, certification of checks, electronic payments, and cash withdrawals. Funds are available for these uses notwithstanding provisions of other law that may restrict the use of uncollected funds (e.g., 18 USC 1004; 12 USC 331).

2. If a bank makes funds available to a customer for a specific purpose (such as paying checks that would otherwise overdraw the customer's account and be returned for insufficient funds) before the funds must be made available under the bank's policy or this regulation, it may nevertheless apply a hold consistent with this regulation to those funds for other purposes (such as cash withdrawals). For purposes of this regulation, funds are considered available for withdrawal even though they are being held by the bank to satisfy an obligation of the customer other than the customer's potential liability for the return of the check. For example, a bank does not violate its obligations under this subpart by holding funds to satisfy a garnishment, tax levy, or court order restricting disbursements from the account, or to satisfy the customer's liability arising from the certification of a check, sale of a cashier's or teller's check, guaranty or acceptance of a check, or similar transaction to be debited from the customer's account.

#### F. 229.2(e) Bank

1. The act uses the term "depository institution," which it defines by reference to section 19(b)(1)(A)(i) through (vi) of the Federal Reserve Act (12 USC 461(b)(1)(A)(i) through

(vi)). This regulation uses the term "bank," a term that conforms to the usage the Board has previously adopted in Regulation J. "Bank" is also used in article 4 of the Uniform Commercial Code.

2. "Bank" is defined to include depository institutions, such as commercial banks, savings banks, savings and loan associations, and credit unions as defined in the act, and U.S. branches and agencies of foreign banks. For purposes of subpart B, the term does not include corporations organized under section 25A of the Federal Reserve Act, 12 USC 611-631 (Edge corporations) or corporations having an agreement or undertaking with the Board under section 25 of the Federal Reserve Act, 12 USC 601-604a (agreement corporations). For purposes of subpart C, and in connection therewith, subpart A, any Federal Reserve Bank, Federal Home Loan Bank, or any other person engaged in the business of banking is regarded as a bank. The phrase "any other person engaged in the business of banking" is derived from UCC 1-201(4), and is intended to cover entities that handle checks for collection and payment, such as Edge and agreement corporations, commercial lending companies under 12 USC 3101, certain industrial banks, and private bankers, so that virtually all checks will be covered by the same rules for forward collection and return, even though they may not be covered by the requirements of subpart B. For the purposes of subpart C, and in connection therewith, subpart A, the term may also include a state or a unit of general local government to the extent that it pays warrants or other drafts drawn directly on the state or local government itself, and the warrants or other drafts are sent to the state or local government for payment or collection.

3. Unless otherwise specified, the term "bank" includes all of a bank's offices in the United States. The regulation does not cover foreign offices of U.S. banks.

#### G. 229.2(f) Banking Day and (g) Business Day

1. The act defines "business day" as any day excluding Saturdays, Sundays, and legal holidays. "Legal holiday," however, is not de-



fined, and the variety of local holidays, together with the practice of some banks to close midweek, makes the act's definition difficult to apply. The Board believes that two kinds of business days are relevant. First, when determining the day when funds are deposited or when a bank must perform certain actions (such as returning a check), the focus should be on a day that the bank is actually open for business. Second, when counting days for purposes of determining when funds must be available under the regulation or when notice of nonpayment must be received by the depository bank, there would be confusion and uncertainty in trying to follow the schedule of a particular bank, and there is less need to identify a day when a particular bank is open. Most banks that act as intermediaries (large correspondents and Federal Reserve Banks) follow the same holiday schedule. Accordingly, the regulation has two definitions: "business day" generally follows the standard Federal Reserve holiday schedule (which is followed by most large banks), and "banking day" is defined to mean that part of a business day on which a bank is open for substantially all of its banking activities.

2. The definition of "banking day" corresponds to the definition of banking day in UCC 4-104(a)(3), except that a banking day is defined in terms of a "business day." Thus, if a bank is open on Saturday, Saturday might be a banking day for purposes of the UCC, but it would not be a banking day for purposes of Regulation CC because Saturday is never a business day under the regulation.

3. The definition of "banking day" is phrased in terms of when "an office of a bank is open" to indicate that a bank may observe a banking day on a per-branch basis. A deposit made at an ATM or off-premise facility (such as a remote depository or a lock box) is considered made at the branch holding the account into which the deposit is made for the purpose of determining the day of deposit. All other deposits are considered made at the branch at which the deposit is received. For example, under section 229.19(a)(1), funds deposited at an ATM are considered deposited at the time they are received at the ATM. On a calendar day that is a banking day for the branch or other location of the depository

bank at which the account is maintained, a deposit received at an ATM before the ATM's cutoff hour is considered deposited on that banking day, and a deposit received at an ATM after the ATM's cutoff hour is considered deposited on the next banking day of the branch or other location where the account is maintained. On a calendar day that is not a banking day for the account-holding location, all ATM deposits are considered received on that location's next banking day. This rule for determining the day of deposit would also apply to a deposit to an off-premise facility, such as a night depository or lock box, which is considered deposited when removed from the facility and available for processing under section 229.19(a)(3). If an unstaffed facility, such as a night depository or lock box, is on branch premises, the day of deposit is determined by the banking day at the branch at which the deposit is received, whether or not it is the branch at which the account is maintained.

#### H. 229.2(h) Cash

1. "Cash" means U.S. coins and currency. The phrase in the act "including Federal Reserve notes" has been deleted as unnecessary. (See 31 USC 5103.)

#### I. 229.2(i) Cashier's Check

1. The regulation adds to the second item in the act's definition of "cashier's check" the phrase, "on behalf of the bank as drawer," to clarify that the term "cashier's check" is intended to cover only checks that a bank draws on itself. The definition of cashier's check includes checks provided to a customer of the bank in connection with customer deposit-account activity, such as account disbursements and interest payments. The definition also includes checks acquired from a bank by noncustomers for remittance purposes, including loan-disbursement checks. Cashier's checks provided to customers or others are often labeled as "cashier's check," "officer's check," or "official check." The definition excludes checks that a bank draws on itself for other purposes, such as to pay employees and vendors, and checks issued by the bank in connection with a payment service, such as a

payroll or a bill-paying service. Cashier's checks are generally sold by banks to substitute the bank's credit for the customer's credit and thereby enhance the collectibility of the checks. A check issued in connection with a payment service is generally provided as a convenience to the customer rather than as a guarantee of the check's collectibility. In addition, such checks are often more difficult to distinguish from other types of checks than are cashier's checks as defined by this regulation.

#### J. 229.2(j) Certified Check

1. The act defines a "certified check" as one to which a bank has certified that the drawer's signature is genuine and that the bank has set aside funds to pay the check. Under the Uniform Commercial Code, certification of a check means the bank's signed agreement that it will honor the check as presented (UCC 3-409). The regulation defines "certified check" to include both the act's and UCC's definitions.

#### K. 229.2(k) Check

1. "Check" is defined in section 602(7) of the act as a negotiable demand draft drawn on or payable through an office of a depository institution located in the United States, excluding noncash items. The regulation includes six categories of instruments within the definition of check.

2. The first category is negotiable demand drafts drawn on or payable through or at an office of a bank. As the definition of "bank" includes only offices located in the United States, this category is limited to checks drawn on or payable through or at a banking office located in the United States.

3. The act treats drafts payable through a bank as checks, even though under the UCC the payable-through bank is a collecting bank to make presentment and is generally not authorized to make payment (UCC 4-106(a)). The act does not expressly address items that are payable at a bank. This regulation treats both payable-through and payable-at demand drafts as checks. The Board believes that treating demand drafts payable at a bank as checks will not have a substantial effect on

the operations of payable at banks—by far the largest proportion of payable-at items are not negotiable demand drafts, but time items, such as commercial paper, bonds, notes, banker's acceptances, and securities. These time items are not covered by the requirements of the act or this regulation. (The treatment of payable-through drafts is discussed in greater detail in connection with the definitions of "local check" and "paying bank.")

4. The second category is checks drawn on Federal Reserve Banks and Federal Home Loan Banks. Principal and interest payments on federal debt instruments are often paid with checks drawn on a Federal Reserve Bank as fiscal agent of the United States, and these fiscal-agency checks are indistinguishable from other checks drawn on Federal Reserve Banks. (See 31 CFR 355.) Federal Reserve Bank checks are also used by some banks as substitutes for cashier's or teller's checks. Similarly, savings and loan associations often use checks drawn on Federal Home Loan Banks as teller's checks. The definition of "check" includes checks drawn on Federal Home Loan Banks and Federal Reserve Banks because in many cases they are the functional equivalent of Treasury checks or teller's checks.

5. The third and fourth categories of instrument included in the definition of "check" refer to government checks. The act refers to checks drawn on the U.S. Treasury, even though these instruments are not drawn on or payable through an office of a depository institution, and checks drawn by state and local governments. The act also gives the Board authority to define functionally equivalent instruments as "depository checks."<sup>1</sup> Thus, the act is intended to apply to instruments other than those that meet the strict definition of "check" in section 602(7) of the act. Checks and warrants drawn by states and local governments are often used for the purposes of making unemployment-compensation payments and other payments that are important to the recipients. Consequently, the Board has expressly defined "check" to include drafts

<sup>1</sup> Section 602(11) of the act (12 USC 4001(11)) defines "depository check" as "any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board."

drawn on the U.S. Treasury and drafts or warrants drawn by a state or a unit of general local government on itself.

6. The fifth category of instrument included in the definition of "check" is U.S. Postal Service money orders. These instruments are defined as checks because they are often used as a substitute for checks by consumers, even though money orders are not negotiable under Postal Service regulations. The Board has not provided specific rules for other types of money orders; these instruments are generally drawn on or payable through or payable at banks and are treated as checks on that basis.

7. The sixth and final category of instrument included in the definition of check is traveler's checks drawn on or payable through or at a bank. "Traveler's check" is defined in paragraph (hh) of this section. Finally, for the purposes of subpart C, and in connection therewith, subpart A, the definition of "check" includes nonnegotiable demand drafts because these instruments are often handled as cash items in the forward-collection process.

8. The definition of "check" does not include an instrument payable in foreign currency (i.e., other than in United States money as defined in 31 USC 5101), a credit card draft (i.e., a sales draft used by a merchant or a draft generated by a bank as a result of a cash advance), or an ACH debit transfer. The definition of check includes a check that a bank may supply to a customer as a means of accessing a credit line without the use of a credit card.

#### L. 229.2(l)

[Reserved]

#### M. 229.2(m) Check-Processing Region

1. The act defines this term as "the geographic area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations." The Board has defined check-processing region as the territory served by one of the 48 Federal Reserve head offices, branches, or regional check-processing centers. Appendix A includes a list of routing numbers arranged by Federal Reserve Bank office. The definition of check-processing region is key to determining

whether a check is considered local or nonlocal.

#### N. 229.2(n) Consumer Account

1. "Consumer account" is defined as an account used primarily for personal, family, or household purposes. An account that does not meet the definition of "consumer account" is a nonconsumer account. Both consumer and nonconsumer accounts are subject to the requirements of this regulation, including the requirement that funds be made available according to specific schedules and that the bank make specified disclosures of its availability policies. Section 229.18(b) (Notices at Branch Locations) and section 229.18(e) (Notice of Changes in Policy) apply only to consumer accounts. Section 229.13(g)(2) (One-Time Exception Notice) and section 229.19(d) (Use of Calculated Availability) apply only to nonconsumer accounts.

#### O. 229.2(o) Depository Bank

1. The regulation uses the term "depository bank" rather than the term "receiving depository institution." "Receiving depository institution" is a term unique to the act, while "depository bank" is the term used in article 4 of the UCC and Regulation J.

2. A depository bank includes the bank in which the check is first deposited. If a foreign office of a U.S. or foreign bank sends checks to its U.S. correspondent bank for forward collection, the U.S. correspondent is the depository bank since foreign offices of banks are not included in the definition of "bank."

3. If a customer deposits a check in its account at a bank, the customer's bank is the depository bank with respect to the check. For example, if a person deposits a check into an account at a nonproprietary ATM, the bank holding the account into which the check is deposited is the depository bank even though another bank may service the nonproprietary ATM and send the check for collection. (Under section 229.35 the depository bank may agree with the bank servicing the nonproprietary ATM to have the servicing bank place its own indorsement on the check as the depository bank. For the purposes of



subpart C, the bank applying its indorsement as the depositary-bank indorsement on the check is the depositary bank.)

4. For purposes of subpart B, a bank may act as both the depositary bank and the paying bank with respect to a check, if the check is payable by the bank in which it was deposited, or if the check is payable by a nonbank payor and payable through or at the bank in which it was deposited. A bank is also considered a depositary bank with respect to checks it receives as payee. For example, a bank is a depositary bank with respect to checks it receives for loan repayment, even though these checks are not deposited in an account at the bank. Because these checks would not be "deposited to accounts," they would not be subject to the availability or disclosure requirements of subpart B.

#### P. 229.2(p) Electronic Payment

1. "Electronic payment" is defined to mean a wire transfer as defined in section 229.2(11) or an ACH credit transfer. The act requires that funds deposited by wire transfer be made available for withdrawal on the business day following deposit but expressly leaves the definition of the term "wire transfer" to the Board. Because ACH credit transfers frequently involve important consumer payments, such as wages, the regulation requires that funds deposited by ACH credit transfers be available for withdrawal on the business day following deposit.

2. ACH debit transfers, even though they may be transmitted electronically, are not defined as electronic payments because the receiver of an ACH debit transfer has the right to return the transfer, which would reverse the credit given to the originator. Thus, ACH debit transfers are more like checks than wire transfers. Further, bank customers that receive funds by originating ACH debit transfers are primarily large corporations, which would generally be able to negotiate with their banks for prompt availability.

3. A point-of-sale transaction would not be considered an electronic payment unless the transaction was effected by means of an ACH credit transfer or wire transfer.

#### Q. 229.2(q) Forward Collection

1. "Forward collection" is defined to mean the process by which a bank sends a check to the paying bank for payment as distinguished from the process by which the check is returned after nonpayment. Noncash collections are not included in the term "forward collection."

#### R. 229.2(r) Local Check

1. "Local check" is defined as a check payable by or at a local paying bank, or, in the case of nonbank payors, payable through a local paying bank. A check payable by a local bank but payable through a nonlocal bank is a local check. Conversely, a check payable through a local bank but payable by a nonlocal bank is a nonlocal check. Where two banks are named on a check and neither is designated as a payable-through bank, the check is considered payable by either bank and may be considered local or nonlocal depending on which bank it is sent to for payment. Generally, the depositary bank may rely on the routing number to determine whether a check is local or nonlocal. Appendix A includes a list of routing numbers arranged by Federal Reserve Bank Office to assist persons in determining whether or not such a check is local. If, however, a check is payable by one bank but payable through another bank, the routing number appearing on the check will be that of the payable-through bank, not the paying bank. Many credit-union share drafts and certain other checks payable by banks are payable through other banks. In such cases, the routing number cannot be relied on to determine whether the check is local or nonlocal. For payable-through checks that meet the labeling requirements of section 229.36(e), the depositary bank may rely on the four-digit routing symbol of the paying bank that is printed on the face of the check as required by that section, e.g., in the title plate, but not on the first four digits of the payable-through bank's routing number printed in magnetic ink in the MICR line or in fractional form, to determine whether the check is local or nonlocal.

### S. 229.2(s) Local Paying Bank

1. "Local paying bank" is defined as a paying bank located in the same check-processing region as the branch, contractual branch, or proprietary ATM of the depository bank. For example, a check deposited at a contractual branch would be deemed local or nonlocal based on the location of the contractual branch with respect to the location of the paying bank.

#### 2. *Examples*

a. If a check that is payable by a bank that is located in the same check-processing region as the depository bank is payable through a bank located in another check-processing region, the check is considered local or nonlocal depending on the location of the bank by which it is payable even if the check is sent to the nonlocal bank for collection.

b. The location of the depository bank is determined by the physical location of the branch or proprietary ATM at which a check is deposited. If the branch of the depository bank located in one check-processing region sends a check to the depository bank's central facility in another check-processing region, and the central facility is in the same check-processing region as the paying bank, the check is still considered nonlocal. (See the commentary on definition of "paying bank.")

### T. 229.2(t) Merger Transaction

1. "Merger transaction" is a term used in subparts B and C in connection with transition rules for merged banks. It encompasses mergers, consolidations, and purchase/assumption transactions of the type that must usually be approved under the Bank Merger Act (12 USC 1828) or similar statutes; it does not encompass acquisitions of a bank under the Bank Holding Company Act (12 USC 1842) where an acquired bank maintains its separate corporate existence.

2. Regulation CC adopts a one-year transition period for banks that are party to a merger transaction during which the merged banks will continue to be treated as separate entities. (See sections 229.19(g) and 229.40.)

### U. 229.2(u) Noncash Item

1. The act defines the term "check" to exclude noncash items, and defines "noncash items" to include checks to which another document is attached, checks accompanied by special instructions, or any similar item classified as a noncash item in the Board's regulation. To qualify as a noncash item, an item must be handled as such and may not be handled as a cash item by the depository bank.

2. The regulation's definition of "noncash item" also includes checks that consist of more than a single thickness of paper (except checks that qualify for handling by automated check-processing equipment, e.g., those placed in carrier envelopes) and checks that have not been preprinted or post-encoded in magnetic ink with the paying bank's routing number as well as checks with documents attached or accompanied by special instructions. (In the context of this definition, "paying bank" refers to the paying bank as defined for purposes of subpart C.)

3. A check that has been preprinted or post-encoded with a routing number that has been retired (e.g., because of a merger) for at least three years is a noncash item unless the current number is added for processing purposes by placing the check in an encoded carrier envelope or adding a strip to the check.

4. Checks that are accompanied by special instructions are also noncash items. For example, a person concerned about whether a check will be paid may request the depository bank to send a check for collection as a noncash item with an instruction to the paying bank to notify the depository bank promptly when the check is paid or dishonored.

5. For purposes of forward collection, a copy of a check is neither a check nor a noncash item, but may be treated as either. For purposes of return, a copy is generally a notice in lieu of return. (See sections 229.30(f) and 229.31(f).)

### V. 229.2(v)

[Reserved]

## W. 229.2(w)

[Reserved]

## X. 229.2(x)

[Reserved]

## Y. 229.2(y)

[Reserved]

## Z. 229.2(z) Paying Bank

1. The regulation uses this term in lieu of the act's "originating depository institution." For purposes of subpart B, the term "paying bank" includes the payor bank, the payable-at bank to which a check is sent, or, if the check is payable by a nonbank payor, the bank through which the check is payable and to which it is sent for payment or collection. For purposes of subpart C, the term includes the payable-through bank and the bank whose routing number appears on the check, regardless of whether the check is payable by a different bank, provided that the check is sent for payment or collection to the payable-through bank or the bank whose routing number appears on the check.

2. Under sections 229.30 and 229.36(a), a bank designated as a payable-through bank or payable-at bank and to which the check is sent for payment or collection is responsible for the expedited return of checks and notice-of-nonpayment requirements of subpart C. The payable-through or payable-at bank may contract with the payor with respect to its liability in discharging these responsibilities. The Board believes that the act makes a clear connection between availability and the time it takes for checks to be cleared and returned. Allowing the payable-through bank additional time to forward checks to the payor and await return or pay instructions from the payor would delay the return of these checks, increasing the risks to depository banks. Subpart C places on payable-through and payable-at banks the requirements of expeditious return based on the time the payable-through or payable-at bank received the check for forward collection.

3. If a check is sent for forward collection based on the routing number, the bank associ-

ated with the routing number is a paying bank for the purposes of subpart C requirements, including notice of nonpayment, even if the check is not drawn by a customer of that bank or the check is fraudulent.

4. The phrase "and to which [the check] is sent for payment or collection" includes sending not only the physical check, but information regarding the check under a truncation arrangement.

5. Federal Reserve Banks and Federal Home Loan Banks are also paying banks under all subparts of the regulation with respect to checks payable by them, even though such banks are not defined as banks for purposes of subpart B.

## AA. 229.2(aa) Proprietary ATM

1. All deposits at nonproprietary ATMs are treated as deposits of nonlocal checks and deposits at proprietary ATMs are generally treated as deposits at banking offices. The conference report on the act indicates that the special availability rules for deposits received through nonproprietary ATMs are provided because "nonproprietary ATMs today do not distinguish among check deposits or between check and cash deposits" (H.R. Rep. No. 261, 100th Cong., 1st Sess. 179 (1987)). Thus, a deposit of any combination of cash and checks at a nonproprietary ATM may be treated as if it were a deposit of nonlocal checks, because the depository bank does not know the makeup of the deposit and consequently is unable to place different holds on cash, local check, and nonlocal check deposits made at the ATM.

2. A colloquy between Senators Proxmire and Dodd during the floor debate on the Competitive Equality Banking Act (133 Cong. Rec. S11289 (Aug. 4, 1987)) indicates that whether a bank operates the ATM is the primary criterion in determining whether the ATM is proprietary to that bank. Since a bank should be capable of ascertaining the composition of deposits made to an ATM operated by that bank, an exception to the availability schedules is not warranted for these deposits. If more than one bank meets the owns-or-operates criterion, the ATM is considered proprietary to the bank that operates it. For the

purpose of this definition, the bank that operates an ATM is the bank that puts checks deposited into the ATM into the forward-collection stream. An ATM owned by one or more banks, but operated by a nonbank servicer, is considered proprietary to the bank or banks that own it.

3. The act also includes location as a factor in determining whether an ATM that is either owned or operated by a bank is proprietary to that bank. The definition of proprietary ATM includes an ATM located on the premises of the bank, either inside the branch or on its outside wall, regardless of whether the ATM is owned or operated by that bank. Since the act also defines a proprietary ATM as one that is "in close proximity" to the bank, the regulation defines an ATM located within 50 feet of a bank to be proprietary to that bank unless it is identified as being owned or operated by another entity. The Board believes that the statutory proximity test was designed to apply to situations where it would appear to the depositor that the ATM is run by his or her bank, because of the proximity of the ATM to the bank. The Board believes that an ATM located within 50 feet of a banking office would be presumed proprietary to that bank unless it is clearly identified as being owned or operated by another entity.

#### BB. 229.2(bb) Qualified Returned Check

1. Subpart C requires the paying bank and returning bank(s) to return checks in an expeditious manner. The banks may meet this responsibility by returning a check to the depository bank by the same general means used for forward collection of a check from the depository bank to the paying bank. One way to speed the return process is to prepare the returned check for automated processing. Returned checks can be automated by either the paying bank or a returning bank by placing the return in a carrier envelope or by placing a strip on the bottom of the return, and encoding the envelope or strip with the routing number of the depository bank, the amount of the check, and a special return identifier. Returns are identified by placing a "2" in position 44 of the MICR line. (See American National Standards Committee on Financial

Services, *Specification for the Placement and Location of MICR Printing, X9.13* (Sept. 8, 1983), hereinafter referred to as "ANSI X9.13-1983.")

2. Generally, under the standard of care imposed by section 229.38, a paying or returning bank would be liable for any damages incurred due to misencoding of the routing number, the amount of the check, or return identifier on a qualified returned check unless the error was due to problems with the depository bank's indorsement. (See also discussion of section 229.38(c).) A qualified returned check that contains an encoding error would still be a qualified returned check for purposes of the regulation.

3. A qualified returned check need not contain the elements of a check drawn on the depository bank, such as the name of the depository bank. Because indorsements and other information on carrier envelopes or strips will not appear on a returned check itself, banks will wish to retain carrier envelopes and/or microfilm or other records of carrier envelopes or strips with their check records.

#### CC. 229.2(cc) Returning Bank

1. "Returning bank" is defined to mean any bank (excluding the paying bank and the depository bank) handling a returned check. A returning bank may or may not be a bank that handled the returned check in the forward-collection process. A returning bank includes a bank that agrees to handle a returned check for expeditious return to the depository bank under section 229.31(a). A returning bank is also a collecting bank for the purpose of a collecting bank's duty to exercise ordinary care under UCC 4-202(b) and is analogous to a collecting bank for purposes of final settlement. (See the commentary to section 229.35(b).)

#### DD. 229.2(dd) Routing Number

1. Each bank is assigned a routing number by Thomson Financial Publishing Inc. as agent for the American Bankers Association. The routing number takes two forms: a fractional form and a nine-digit form. A paying bank is identified by both the fractional form routing number (which normally appears in the upper

right-hand corner of the check) and the nine-digit form. The nine-digit routing number of the paying bank is generally printed in magnetic ink near the bottom of the check (the "MICR strip;" see ANSI X9.13-1983). Subpart C requires depository banks and subsequent collecting banks to place their routing numbers in nine-digit form in their indorsements.

#### EE. 229.2(ee)

[Reserved]

#### FF. 229.2(ff)

[Reserved]

#### GG. 229.2(gg) Teller's Check

1. "Teller's check" is defined in the act to mean a check issued by a depository institution and drawn on another depository institution. The definition in the regulation includes not only checks drawn by a bank on another bank, but also checks payable through or at a bank. This would include checks drawn on a nonbank, as long as the check is payable through or at a bank. The definition does not include checks that are drawn by a nonbank on a nonbank even if payable through or at a bank. The definition includes checks provided to a customer of the bank in connection with customer deposit-account activity, such as account disbursements and interest payments. The definition also includes checks acquired from a bank by a noncustomer for remittance purposes, including loan-disbursement checks. The definition excludes checks used by the bank to pay employees or vendors and checks issued by the bank in connection with a payment service, such as a payroll or a bill-paying service. Teller's checks are generally sold by banks to substitute the bank's credit for the customer's credit and thereby enhance the collectibility of the checks. A check issued in connection with a payment service is generally provided as a convenience to the customer rather than as a guarantee of the check's collectibility. In addition, such checks are often more difficult to distinguish from other types of checks than are teller's checks as defined by this regulation. (See also the

commentary on the definition of "cashier's check.")

#### HH. 229.2(hh) Traveler's Check

1. The act and regulation require that traveler's checks be treated as cashier's, teller's, or certified checks when a new depositor opens an account. (See section 229.13(a); 12 USC 4003(a)(1)(C).) The act does not define "traveler's check."

2. One element of the definition states that a traveler's check is "drawn on or payable through or at a bank." Sometimes traveler's checks that are not issued by banks do not have any words on them identifying a bank as drawee or paying agent, but instead bear unique routing numbers with an 8000 prefix that identifies a bank as paying agent.

3. Because a traveler's check is payable by, at, or through a bank, it is also a check for purposes of this regulation. When not subject to the next-day availability requirement for new accounts, a traveler's check should be treated as a local or nonlocal check depending on the location of the paying bank. The depository bank may rely on the designation of the paying bank by the routing number to determine whether local or nonlocal treatment is required.

#### II. 229.2(ii) Uniform Commercial Code

1. "Uniform Commercial Code" is defined as the version of the code adopted by the individual states. For purposes of uniform citation, all citations to the UCC in this part refer to the official text as approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

#### JJ. 229.2(jj)

[Reserved]

#### KK. 229.2(kk) Unit of General Local Government

1. "Unit of general local government" is defined to include a city, county, parish, town, township, village, or other general-purpose political subdivision of a state. The term does not include special-purpose units, such as



school districts, water districts, or Indian nations.

#### LL. 229.2(ll) Wire Transfer

1. The act delegates to the Board the authority to define the term "wire transfer." The regulation defines "wire transfer" as an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt or on a day stated in the order that is transmitted by electronic or other means over certain networks or on the books of banks and that is used primarily to transfer funds between commercial accounts. Unconditional means that no condition, such as presentation of documents, must be met before the bank receiving the order is to make payment. A wire transfer may be transmitted by electronic or other means. "Electronic means" includes computer-to-computer links, on-line terminals, telegrams (including TWX, TELEX, or similar methods of communication), telephone calls, or other similar methods. Fedwire (the Federal Reserve's wire transfer network), CHIPS (Clearing House Interbank Payments System, operated by the New York Clearing House), and book transfers among banks or within one bank are covered by this definition. Credits for credit and debit card transactions are not wire transfers. The term "wire transfer" excludes "electronic fund transfers" as that term is defined by the Electronic Fund Transfer Act.

#### MM. 229.2(mm)

[Reserved]

#### NN. 229.2(nn) Good Faith

1. This definition of "good faith" derives from UCC 3-103(a)(4).

#### OO. 229.2(oo) Interest Compensation

1. This calculation of "interest compensation" derives from UCC 4A-506(b). (See sections 229.34(d) and 229.36(f).)

#### PP. 229.2(pp) Contractual Branch

1. When one bank arranges for another bank to accept deposits on its behalf, the second

bank is a contractual branch of the first bank. For further discussion of contractual-branch deposits and related disclosures, see sections 229.2(s) and 229.19(a) of the regulation and the commentary to sections 229.2(s), 229.10(c), 229.14(a), 229.16(a), 229.18(b), and 229.19(a).

## SECTION 229.3—Administrative Enforcement

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

(1) section 8 of the Federal Deposit Insurance Act (12 USC 1818) in the case of—

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

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

(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured state branches of foreign banks, by the board of directors of the Federal Deposit Insurance Corporation;

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

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

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

(b) *Additional powers.*

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

(2) In addition to its powers under any pro-

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

(c) *Enforcement by the Board.*

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

(2) If the Board determines that—

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

(ii) any other person subject to the authority of the Board under the act and this part,

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

**SUBPART B—AVAILABILITY OF FUNDS AND DISCLOSURE OF FUNDS-AVAILABILITY POLICIES**

**SECTION 229.10—Next-Day Availability**

**(a) Cash deposits.**

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

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

**(b) Electronic payments.**

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

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

- (i) payment in actually and finally collected funds; and
- (ii) information on the account and amount to be credited.

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

**(c) Certain check deposits.**

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

- (i) a check drawn on the Treasury of the United States and deposited in an account held by a payee of the check;
- (ii) a U.S. Postal Service money order deposited—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) the lesser of—

(A) \$100, or

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

(2) *Checks not deposited in person.* A depository bank shall make funds deposited in



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

(3) *Special deposit slip.*

(i) As a condition to making the funds available for withdrawal in accordance with this section, a depository bank may require that a state or local government check or a cashier's, certified, or teller's check be deposited with a special deposit slip or deposit envelope that identifies the type of check.

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

## COMMENTARY

## SECTION 229.10—Next-Day Availability

## A. Business Days and Banking Days

1. This section, as well as other provisions of this subpart governing the availability of funds, provides that funds must be made available for withdrawal not later than a specified number of business days following the banking day on which the funds are deposited. Thus, a deposit is considered made only on a banking day, i.e., a day that the bank is open to the public for carrying on substantially all of its banking functions. For example, if a deposit is made at an ATM on a Saturday, Sunday, or other day on which the bank is closed to the public, the deposit is considered received on that bank's next banking day.

2. Nevertheless, business days are used to determine the number of days following the banking day of deposit that funds must be available for withdrawal. For example, if a deposit of a local check were made on a Monday, the availability schedule requires that funds be available for withdrawal on the second business day after deposit. Therefore, funds must be made available on Wednesday regardless of whether the bank was closed on Tuesday for other than a standard legal holiday as specified in the definition of "business day."

## B. 229.10(a) Cash Deposits

1. This paragraph implements the act's requirement for next-day availability for cash deposits to accounts at a depository bank "staffed by individuals employed by such institution."<sup>2</sup> Under this paragraph, cash deposited in an account at a staffed teller station on a Monday must become available for withdrawal by the start of business on Tuesday. It must become available for withdrawal by the start of business on Wednesday if it is deposited by mail, at a proprietary ATM, or by other means other than at a staffed teller station.

<sup>2</sup> Nothing in the act or this regulation affects terms of account arrangements, such as negotiable order of withdrawal accounts, which may require prior notice of withdrawal. (See 12 CFR 204.2(e)(2).)

## C. 229.10(b) Electronic Payments

1. The act provides next-day availability for funds received for deposit by wire transfer. The regulation uses the term "electronic payment," rather than "wire transfer," to include both wire transfers and ACH credit transfers under the next-day availability requirement. (See discussion of definitions of "automated clearinghouse," "electronic payment," and "wire transfer" in section 229.2.)

2. The act requires that funds received by wire transfer be available for withdrawal not later than the business day following the day a wire transfer is received. This paragraph clarifies what constitutes receipt of an electronic payment. For the purposes of this paragraph, a bank receives an electronic payment when the bank receives both payment in finally collected funds and the payment instructions indicating the customer accounts to be credited and the amount to be credited to each account. For example, in the case of Fedwire, the bank receives finally collected funds at the time the payment is made. (See 12 CFR 210.31.) Finally collected funds generally are received for an ACH credit transfer when they are posted to the receiving bank's account on the settlement day. In certain cases, the bank receiving ACH credit payments will not receive the specific payment instructions indicating which accounts to credit until after settlement day. In these cases, the payments are not considered received until the information on the account and amount to be credited is received.

3. This paragraph also establishes the extent to which an electronic payment is considered made. Thus, if a participant on a private network fails to settle and the receiving bank receives finally settled funds representing only a partial amount of the payment, it must make only the amount that it actually received available for withdrawal.

4. The availability requirements of this regulation do not preempt or invalidate other rules, regulations, or agreements which require funds to be made available on a more prompt basis. For example, the next-day availability requirement for ACH credits in this section does not preempt ACH association rules and Treasury regulations (31 CFR 210) which pro-

vide that the proceeds of these credit payments be available to the recipient for withdrawal on the day the bank receives the funds.

### D. 229.10(c) Certain Check Deposits

1. The act generally requires that funds be made available on the business day following the banking day of deposit for Treasury checks, state and local government checks, cashier's checks, certified checks, teller's checks, and on-us checks, under specified conditions. (Treasury checks are checks drawn on the Treasury of the United States and have a routing number beginning with the digits 0000.) This section also requires next-day availability for additional types of checks not addressed in the act. Checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank and U.S. Postal Service money orders also must be made available on the first business day following the day of deposit under specified conditions. For the purposes of this section, all checks drawn on a Federal Reserve Bank or Federal Home Loan Bank that contain in the MICR line a routing number that is listed in appendix A are subject to the next-day availability requirement if they are deposited in an account held by a payee of the check and in person to an employee of the depository bank, regardless of the purpose for which the checks were issued. For all new accounts, even if the new-account exception is not invoked, traveler's checks must be included in the \$5,000 aggregation of checks deposited on any one banking day that are subject to the next-day availability requirement. (See section 229.13(a).)

#### 2. *Deposit in Account of Payee*

One statutory condition to receipt of next-day availability of Treasury checks, state and local government checks, cashier's checks, certified checks, and teller's checks is that the check must be "endorsed only by the person to whom it was issued." The act could be interpreted to include a check that has been indorsed in blank and deposited into an account of a third party that is not named as payee. The Board believes that such a check presents greater risks than a check deposited by the payee and that Congress did not intend

to require next-day availability for such checks. The regulation, therefore, provides that funds must be available on the business day following deposit only if the check is deposited in an account held by a payee of the check. For the purposes of this section, payee does not include transferees other than named payees. The regulation also applies this condition to Postal Service money orders and checks drawn on Federal Reserve Banks and Federal Home Loan Banks.

#### 3. *Deposits Made to an Employee of the Depository Bank*

a. In most cases, next-day availability of the proceeds of checks subject to this section is conditioned on the deposit of these checks in person to an employee of the depository bank. If the deposit is not made to an employee of the depository bank on the premises of such bank, the proceeds of the deposit must be made available for withdrawal by the start of business on the second business day after deposit, under paragraph (c)(2) of this section. For example, second-day availability rather than next-day availability would be allowed for deposits of checks subject to this section made at a proprietary ATM, night depository, through the mail or a lock box, or at a teller station staffed by a person who is not an employee of the depository bank. Second-day availability may also be allowed for deposits picked up by an employee of the depository bank at the customer's premises; such deposits would be considered made upon receipt at the branch or other location of the depository bank. Employees of a contractual branch would not be considered employees of the depository bank for the purposes of this regulation, and deposits at contractual branches would be treated the same as deposits to a proprietary ATM for the purpose of this regulation. (See also the commentary to section 229.19(a).)

b. In the case of Treasury checks, the act and regulation do not condition the receipt of next-day availability to deposits at staffed teller stations. Therefore, Treasury checks deposited at a proprietary ATM must be accorded next-day availability, if the check is

deposited to an account of a payee of the check.

#### 4. *On-Us Checks*

The act and regulation require next-day availability for on-us checks, i.e., checks deposited in a branch of the depository bank and drawn on the same or another branch of the same bank, if both branches are located in the same state or check-processing region. Thus, checks deposited in one branch of a bank and drawn on another branch of the same bank must receive next-day availability even if the branch on which the checks are drawn is located in another check-processing region but in the same state as the branch in which the check is deposited. For the purposes of this requirement, deposits at facilities that are not located on the premises of a brick-and-mortar branch of the bank, such as off-premise ATMs and remote depositories, are not considered deposits made at branches of the depository bank.

#### 5. *First \$100*

a. The act and regulation also require that up to \$100 of the aggregate deposit by check or checks not subject to next-day availability on any one banking day be made available on the next business day. For example, if \$70 were deposited in an account by check(s) on a Monday, the entire \$70 must be available for withdrawal at the start of business on Tuesday. If \$200 were deposited by check(s) on a Monday, this section requires that \$100 of the funds be available for withdrawal at the start of business on Tuesday. The portion of the customer's deposit to which the \$100 must be applied is at the discretion of the depository bank, as long as it is not applied to any checks subject to next-day availability. The \$100 next-day availability rule does not apply to deposits at nonproprietary ATMs.

b. The \$100 that must be made available under this rule is in addition to the amount that must be made available for withdrawal on the business day after deposit under other provisions of this section. For example, if a customer deposits a \$1,000 Treasury check and a \$1,000 local check in its account on Monday, \$1,100 must be made available for withdrawal on Tuesday—the proceeds of the \$1,000 Treas-

ury check, as well as the first \$100 of the local check.

c. A depository bank may aggregate all local and nonlocal check deposits made by the customer on a given banking day for the purposes of the \$100 next-day availability rule. Thus, if a customer has two accounts at the depository bank, and on a particular banking day makes deposits to each account, \$100 of the total deposited to the two accounts must be made available on the business day after deposit. Banks may aggregate deposits to individual and joint accounts for the purposes of this provision.

d. If the customer deposits a \$500 local check and gets \$100 cash back at the time of deposit, the bank need not make an additional \$100 available for withdrawal on the following day. Similarly, if the customer depositing the local check has a negative book balance, or negative available balance in its account at the time of deposit, the \$100 that must be available on the next business day may be made available by applying the \$100 to the negative balance, rather than making the \$100 available for withdrawal by cash or check on the following day.

#### 6. *Special Deposit Slips*

a. Under the act, a depository bank may require the use of a special deposit slip as a condition to providing next-day availability for certain types of checks. This condition was included in the act because many banks determine the availability of their customers' check deposits in an automated manner by reading the MICR-encoded routing number on the deposited checks. Using these procedures, a bank can determine whether a check is a local or nonlocal check, a check drawn on the Treasury, a Federal Reserve Bank, a Federal Home Loan Bank, or a branch of the depository bank, or a U.S. Postal Service money order. Appendix A includes the routing numbers of certain categories of checks that are subject to next-day availability. The bank cannot require a special deposit slip for these checks.

b. A bank cannot distinguish whether the check is a state or local government check, cashier's check, certified check, or teller's

check by reading the MICR-encoded routing number, because these checks bear the same routing number as other checks drawn on the same bank that are not accorded next-day availability. Therefore, a bank may require a special deposit slip for these checks.

c. The regulation specifies that if a bank decides to require the use of a special deposit slip (or a special deposit envelope in the case of a deposit at an ATM or other unstaffed facility) as a condition to granting next-day availability under paragraphs (c)(1)(iv) or (c)(1)(v) of this section or second day availability under paragraph (c)(2) of this section, and if the deposit slip that must be used is different from the bank's regular deposit slips, the bank must either provide the special slips to its customers or inform its customers how such slips may be obtained and make the slips reasonably available to the customers.

d. A bank may meet this requirement by providing customers with an order form for the special deposit slips and allowing sufficient time for the customer to order and receive the slips before this condition is imposed. If a bank provides deposit slips in its branches for use by its customers, it also must provide the special deposit slips in the branches. If special deposit envelopes are required for deposits at an ATM, the bank must provide such envelopes at the ATM.

e. Generally, a teller is not required to advise depositors of the availability of special deposit slips merely because checks requiring special deposit slips for next-day availability are deposited without such slips. If a bank provides the special deposit slips only upon the request of a depositor, however, the teller must advise the depositor of the availability of the special deposit slips, or the bank must post a notice advising customers that the slips are available upon request. If a bank prepares a deposit for a depositor, it must use a special deposit slip where appropriate. A bank may require the customer to segregate the checks subject to next-day availability for which special deposit slips could be required, and to indicate on a regular deposit slip that such checks are being deposited, if the bank so instructs its customers in its initial disclosure.

## SECTION 229.12—Availability Schedule

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

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

- (1) a local check;
- (2) a check drawn on the Treasury of the United States that is not governed by the availability requirements of section 229.10(c);
- (3) a U.S. Postal Service money order that is not governed by the availability requirements of section 229.10(c); and
- (4) a check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; if any check referred to in this paragraph (b)(4) is a local check that is not governed by the availability requirements of section 229.10(c).

(c) *Nonlocal checks.*

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

- (i) a nonlocal check; and
- (ii) a check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; a cashier's, certified, or teller's check; or a check deposited in a branch of the depository bank and drawn on the same or another branch of the same bank, if any check referred to in this paragraph (c)(1)(ii) is a nonlocal check that is not governed by the availability requirements of section 229.10(c).

(2) Nonlocal checks specified in appendix B-2 to this part must be made available for

withdrawal not later than the times prescribed in that appendix.

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

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

- (1) deposited in an account at a branch of a depository bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands; and
- (2) deposited by a check drawn on or payable at or through a paying bank not located in the same state as the depository bank.

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



## COMMENTARY

## SECTION 229.12—Availability Schedule

## A. 229.12(a) Effective Date

The availability schedule set forth in this section supersedes the temporary schedule that was effective September 1, 1988, through August 31, 1990.

## B. 229.12(b) Local Checks and Certain Other Checks

1. Local checks must be made available for withdrawal not later than the second business day following the banking day on which the checks were deposited.

2. In addition, the proceeds of Treasury checks and U.S. Postal Service money orders not subject to next-day (or second-day) availability under section 229.10(c), checks drawn on Federal Reserve Banks and Federal Home Loan Banks, checks drawn by a state or unit of general local government, cashier's checks, certified checks, and teller's checks not subject to next-day (or second-day) availability under section 229.10(c) and payable in the same check-processing region as the depository bank, must be made available for withdrawal by the second business day following deposit.

3. Exceptions are made for withdrawals by cash or similar means and for deposits in banks located outside the 48 contiguous states. Thus, the proceeds of a local check deposited on a Monday generally must be made available for withdrawal on Wednesday.

## C. 229.12(c) Nonlocal Checks

1. Nonlocal checks must be made available for withdrawal not later than the fifth business day following deposit, i.e., proceeds of a nonlocal check deposited on a Monday must be made available for withdrawal on the following Monday. In addition, a check described in section 229.10(c) that does not meet the conditions for next-day availability (or second-day availability) is treated as a nonlocal check, if the check is drawn on or payable through or at a nonlocal paying bank. Adjustments are made to the schedule for

withdrawals by cash or similar means and deposits in banks located outside the 48 contiguous states.

2. *Reduction in Schedules*

a. Section 603(d)(1) of the act (12 USC 4002(d)(1)) requires the Board to reduce the statutory schedules for any category of checks where most of those checks would be returned in a shorter period of time than provided in the schedules. The conferees indicated that "if the new system makes it possible for two-thirds of the items of a category of checks to meet this test in a shorter period of time, then the Federal Reserve must shorten the schedules accordingly." H.R. Rep. No. 261, 100th Cong., 1st Sess. at 179 (1987).

b. Reduced schedules are provided for certain nonlocal checks where significant improvements can be made to the act's schedules due to transportation arrangements or proximity between the check-processing regions of the depository bank and the paying bank, allowing for faster collection and return. Appendix B sets forth the specific reduction of schedules applicable to banks located in certain check-processing regions.

c. A reduction in schedules may apply even in those cases where the determination that the check is nonlocal cannot be made based on the routing number on the check. For example, a nonlocal credit-union payable-through share draft may be subject to a reduction in schedules if the routing number of the payable-through bank that appears on the draft is included in appendix B, even though the determination that the payable-through share draft is nonlocal is based on the location of the credit union and not the routing number on the draft.

## D. 229.12(d) Time-Period Adjustment for Withdrawal by Cash or Similar Means

1. The act provides an adjustment to the availability rules for cash withdrawals. Funds from local and nonlocal checks need not be available for cash withdrawal until 5:00 p.m. on the day specified in the schedule. At 5:00 p.m., \$400 of the deposit must be made available for cash withdrawal. This \$400 is in addition to the first \$100 of a day's deposit,



which must be made available for withdrawal at the start of business on the first business day following the banking day of deposit. If the proceeds of local and nonlocal checks become available for withdrawal on the same business day, the \$400 withdrawal limitation applies to the aggregate amount of the funds that became available for withdrawal on that day. The remainder of the funds must be available for cash withdrawal at the start of business on the business day following the business day specified in the schedule.

2. The act recognizes that the \$400 that must be provided on the day specified in the schedule may exceed a bank's daily ATM cash-withdrawal limit, and explicitly provides that the act does not supersede the bank's policy in this regard. The Board believes that the rationale for accommodating a bank's ATM withdrawal limit also applies to other cash-withdrawal limits established by that bank. Section 229.19(c)(4) of the regulation addresses the relation between a bank's cash-withdrawal limit (for over-the-counter cash withdrawals as well as ATM cash withdrawals) and the requirements of this subpart.

3. The Board believes that the Congress included this special cash-withdrawal rule to provide a depository bank with additional time to learn of the nonpayment of a check before it must make funds available to its customer. If a customer deposits a local check on a Monday, and that check is returned by the paying bank, the depository bank may not receive the returned check until Thursday, the day after funds for a local check ordinarily must be made available for withdrawal. The intent of the special cash-withdrawal rule is to minimize this risk to the depository bank. For this rule to minimize the depository bank's risk, it must apply not only to cash withdrawals, but also to withdrawals by other means that result in an irrevocable debit to the customer's account or commitment to pay by the bank on the customer's behalf during the day. Thus, the cash-withdrawal rule also includes withdrawals by electronic payment, issuance of a cashier's or teller's check, certification of a check, or other irrevocable commitment to pay, such as authorization of an on-line point-of-sale debit. The rule also would apply to checks presented over the counter for payment

on the day of presentment by the depositor or another person. Such checks could not be dishonored for insufficient funds if an amount sufficient to cover the check had become available for cash withdrawal under this rule; however, payment of such checks would be subject to the bank's cutoff hour established under UCC 4-108. The cash-withdrawal rule does not apply to checks and other provisional debits presented to the bank for payment that the bank has the right to return.

#### E. 229.12(e) Extension of Schedule for Certain Deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands

1. The act and regulation provide an extension of the availability schedules for check deposits at a branch of a bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands. The schedules for local checks, nonlocal checks (including nonlocal checks subject to the reduced schedules of appendix B), and deposits at nonproprietary ATMs are extended by one business day for checks deposited to accounts in banks located in these jurisdictions that are drawn on or payable at or through a paying bank not located in the same jurisdiction as the depository bank. For example, a check deposited in a bank in Hawaii and drawn on a San Francisco paying bank must be made available for withdrawal not later than the third business day following deposit. This extension does not apply to deposits that must be made available for withdrawal on the next business day.

2. The Congress did not provide this extension of the schedules to checks drawn on a paying bank located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands and deposited in an account at a depository bank in the 48 contiguous states. Therefore, a check deposited in a San Francisco bank drawn on a Hawaii paying bank must be made available for withdrawal not later than the second rather than the third business day following deposit.

#### F. 229.12(f) Deposits at Nonproprietary ATMs

1. The act and regulation provide a special rule for deposits made at nonproprietary ATMs. This paragraph does not apply to de-

posits made at proprietary ATMs. All deposits at a nonproprietary ATM must be made available for withdrawal by the fifth business day following the banking day of deposit. For example, a deposit made at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than Monday of the following week. The provisions of section 229.10(c)(1)(vii) requiring a depository bank to make up to \$100 of an aggregate daily deposit available for withdrawal on the first business day after the banking day of deposit do not apply to deposits at a nonproprietary ATM.

## SECTION 229.13—Exceptions

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

(1) A deposit in a new account—

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

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

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

For purposes of this paragraph, checks subject to section 229.10(c)(1)(v) include traveler's checks.

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

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

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

customer or the depository bank. This exception does not apply—

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

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

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

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

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

(e) *Reasonable cause to doubt collectibility.*

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

(2) *Overdraft and returned-check fees.* A depository bank that extends the time when

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

- (i) the overdraft or return of the check would not have occurred except for the fact that the deposited funds were delayed under paragraph (e)(1) of this section; and
- (ii) the deposited check was paid by the paying bank.

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

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

- (1) an interruption of communications or computer or other equipment facilities;
- (2) a suspension of payments by another bank;
- (3) a war; or
- (4) an emergency condition beyond the control of the depository bank,

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

(g) *Notice of exception.*

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

- (i) The notice shall include the following information:

- (A) the account number of the customer;
- (B) the date of the deposit;
- (C) the amount of the deposit that is being delayed;
- (D) the reason the exception was invoked; and
- (E) the time period within which the funds will be available for withdrawal.

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

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

- (i) the reason(s) the exception may be invoked; and
- (ii) the time period within which deposits subject to the exception generally will be available for withdrawal.

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

(3) *Notice of repeated-overdrafts exception.* In lieu of providing notice pursuant to paragraph (g)(1) of this section, a depository bank that extends the time when funds deposited in an account will be available for withdrawal based on the exception con-

tained in paragraph (d) of this section may provide a notice to the customer for each time period during which the exception will be in effect. The notice shall include the following information:

- (i) the account number of the customer;
- (ii) the fact that the availability of funds deposited in the customer's account will be delayed because the repeated-overdrafts exception will be invoked;
- (iii) the time period within which deposits subject to the exception generally will be available for withdrawal; and
- (iv) the time period during which the exception will apply.

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

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

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

(h) *Availability of deposits subject to exceptions.*

- (1) If an exception contained in paragraphs

(b) through (f) of this section applies, the depository bank may extend the time periods established under sections 229.10(c) and 229.12 by a reasonable period of time.

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

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

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

## COMMENTARY

## SECTION 229.13—Exceptions

## A. Introduction

1. While certain safeguard exceptions (such as those for new accounts and checks the bank has reasonable cause to believe are uncollectible) are established in the act, the Congress gave the Board the discretion to determine whether certain other exceptions should be included in its regulations. Specifically, the act gives the Board the authority to establish exceptions to the schedules for large or redeposited checks and for accounts that have been repeatedly overdrawn. These exceptions apply to local and nonlocal checks as well as to checks that must otherwise be accorded next-day (or second-day) availability under section 229.10(c).

2. Many checks will not be returned to the depository bank by the time funds must be made available for withdrawal under the next-day (or second-day), local, and nonlocal schedules. In order to reduce risk to depository banks, the Board has exercised its statutory authority to adopt these exceptions to the schedules in the regulation to allow the depository bank to extend the time within which it is required to make funds available.

3. The act also gives the Board the authority to suspend the schedules for any classification of checks, if the schedules result in an unacceptable level of fraud losses. The Board will adopt regulations or issue orders to implement this statutory authority if and when circumstances requiring its implementation arise.

## B. 229.13(a) New Accounts

1. *Definition of New Account*

a. The act provides an exception to the availability schedule for new accounts. An account is defined as a new account during the first 30 calendar days after the account is opened. An account is opened when the first deposit is made to the account. An account is not considered a new account, however, if each cus-

tomers on the account has a transaction-account relationship with the depository bank, including a dormant account, that is at least 30 calendar days old if each customer has had an established transaction account with the depository bank within the 30 calendar days prior to opening the second account.

b. The following are examples of what constitutes, and does not constitute, a new account:

- i. If the customer has an established account with a bank and opens a second account with the bank, the second account is not subject to the new account exception.
- ii. If a customer's account were closed and another account opened as a successor to the original account (due, for example, to the theft of checks or a debit card used to access the original account), the successor account is not subject to the new account exception, assuming the previous account relationship is at least 30 days old. Similarly, if a customer closes an established account and opens a separate account within 30 days, the new account is not subject to the new-account exception.
- iii. If a customer has a savings deposit or other deposit that is not an account (as that term is defined in section 229.2(a)) at the bank, and opens an account, the account is subject to the new-account exception.
- iv. If a person that is authorized to sign on a corporate account (but has no other relationship with the bank) opens a personal account, the personal account is subject to the new-account exception.
- v. If a customer has an established joint account at a bank, and subsequently opens an individual account with that bank, the individual account is not subject to the new-account exception.
- vi. If two customers that each have an established individual account with the bank open a joint account, the joint account is not subject to the new-account exception. If one of the customers on the account has no current or recent established account relationship with the bank, however, the joint account is subject to the new-account exception, even if the other individual on



the account has an established account relationship with the bank.

## 2. Rules Applicable to New Accounts

a. During the new-account exception period, the schedules for local and nonlocal checks do not apply, and, unlike the other exceptions provided in this section, the regulation provides no maximum time frames within which the proceeds of these deposits must be made available for withdrawal. Maximum times within which funds must be available for withdrawal during the new-account period are provided, however, for certain other deposits. Deposits received by cash and electronic payments must be made available for withdrawal in accordance with section 229.10.

b. Special rules also apply to deposits of Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks and Federal Home Loan Banks, state and local government checks, cashier's checks, certified checks, teller's checks, and, for the purposes of the new-account exception only, traveler's checks. The first \$5,000 of funds deposited to a new account on any one banking day by these check deposits must be made available for withdrawal in accordance with section 229.10(c). Thus, the first \$5,000 of the proceeds of these check deposits must be made available on the first business day following deposit, if the deposit is made in person to an employee of the depository bank and the other conditions of next-day availability are met. Funds must be made available on the second business day after deposit for deposits that are not made over the counter, in accordance with section 229.10(c)(2). (Proceeds of Treasury-check deposits must be made available on the first business day after deposit, even if the check is not deposited in person to an employee of the depository bank.) Funds in excess of the first \$5,000 deposited by these types of checks on a banking day must be available for withdrawal not later than the ninth business day following the banking day of deposit. The requirements of section 229.10(c)(1)(vi) and (vii) that on-us checks and the first \$100 of a day's deposit be made available for withdrawal on the next

business day do not apply during the new-account period.

## 3. Representation by Customer

The depository bank may rely on the representation of the customer that the customer has no established account relationship with the bank, and has not had any such account relationship within the past 30 days, to determine whether an account is subject to the new-account exception.

## C. 229.13(b) Large Deposits

1. Under the large-deposit exception, a depository bank may extend the hold placed on check deposits to the extent that the amount of the aggregate deposit on any banking day exceeds \$5,000. This exception applies to local and nonlocal checks, as well as to checks that otherwise would be made available on the next (or second) business day after the day of deposit under section 229.10(c). Although the first \$5,000 of a day's deposit is subject to the availability otherwise provided for checks, the amount in excess of \$5,000 may be held for an additional period of time as provided in section 229.13(h). When the large-deposit exception is applied to deposits composed of a mix of checks that would otherwise be subject to differing availability schedules, the depository bank has the discretion to choose the portion of the deposit to which it applies the exception. Deposits by cash or electronic payment are not subject to this exception for large deposits.

2. The following example illustrates the operation of the large-deposit exception. If a customer deposits \$2,000 in cash and a \$9,000 local check on a Monday, \$2,100 (the proceeds of the cash deposit and \$100 from the local-check deposit) must be made available for withdrawal on Tuesday. An additional \$4,900 of the proceeds of the local check must be available for withdrawal on Wednesday in accordance with the local schedule, and the remaining \$4,000 may be held for an additional period of time under the large-deposit exception.

3. Where a customer has multiple accounts with a depository bank, the bank may apply the large-deposit exception to the aggregate



deposits to all of the customer's accounts, even if the customer is not the sole holder of the accounts and not all of the holders of the customer's accounts are the same. Thus, a depository bank may aggregate the deposits made to two individual accounts in the same name, to an individual and a joint account with one common name, or to two joint accounts with at least one common name for the purpose of applying the large-deposit exception. Aggregation of deposits to multiple accounts is permitted because the Board believes that the risk to the depository bank associated with large deposits is similar regardless of how the deposits are allocated among the customer's accounts.

#### D. 229.13(c) Redeposited Checks

1. The act gives the Board the authority to promulgate an exception to the schedule for checks that have been returned unpaid and redeposited. Section 229.13(c) provides such an exception for checks that have been returned unpaid and redeposited by the customer or the depository bank. This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under section 229.10(c).

2. This exception addresses the increased risk to the depository bank that checks that have been returned once will be uncollectible when they are presented to the paying bank a second time. The Board, however, does not believe that this increased risk is present for checks that have been returned due to a missing indorsement. Thus, the exception does not apply to checks returned unpaid due to missing indorsements and redeposited after the missing indorsement has been obtained, if the reason for return indicated on the check (see section 229.30(d)) states that it was returned due to a missing indorsement. For the same reason, this exception does not apply to a check returned because it was postdated (future-dated), if the reason for return indicated on the check states that it was returned because it was postdated, and if it is no longer postdated when redeposited.

3. To determine when funds must be made available for withdrawal, the banking day on

which the check is redeposited is considered to be the day of deposit. A depository bank that made \$100 of a check available for withdrawal under section 229.10(c)(1)(vii) can charge back the full amount of the check, including the \$100, if the check is returned unpaid, and the \$100 need not be made available again if the check is redeposited.

#### E. 229.13(d) Repeated Overdrafts

1. The act gives the Board the authority to establish an exception for "deposit accounts which have been overdrawn repeatedly." This paragraph provides two tests to determine what constitutes repeated overdrafts. Under the first test, a customer's accounts are considered repeatedly overdrawn if, on six banking days within the preceding six months, the available balance in any account held by the customer is negative, or the balance would have become negative if checks or other charges to the account had been paid, rather than returned. This test can be met based on separate occurrences (e.g., checks that are returned for insufficient funds on six different days), or based on one occurrence (e.g., a negative balance that remains on the customer's account for six banking days). If the bank dishonors a check that otherwise would have created a negative balance, however, the incident is considered an overdraft only on that day.

2. The second test addresses substantial overdrafts. Such overdrafts increase the risk to the depository bank of dealing with the repeated overdrafter. Under this test, a customer incurs repeated overdrafts if, on two banking days within the preceding six months, the available balance in any account held by the customer is negative in an amount of \$5,000 or more, or would have become negative in an amount of \$5,000 or more if checks or other charges to the account had been paid.

3. The exception relates not only to overdrafts caused by checks drawn on the account, but also overdrafts caused by other debit charges (e.g., ACH debits, point-of-sale transactions, returned checks, account fees, etc.). If the potential debit is in excess of available funds, the exception applies regardless of whether the items were paid or returned un-

paid. An overdraft resulting from an error on the part of the depository bank, or from the imposition of overdraft charges for which the customer is entitled to a refund under sections 229.13(e) or 229.16(c), cannot be considered in determining whether the customer is a repeated overdrafter. The exception excludes accounts with overdraft lines of credit, unless the credit line has been exceeded or would have been exceeded if the checks or other charges to the account had been paid.

4. This exception applies to local and nonlocal checks, as well as to checks that otherwise would be made available on the next (or second) business day after the day of deposit under section 229.10(c). When a bank places or extends a hold under this exception, it need not make the first \$100 of a deposit available for withdrawal on the next business day, as otherwise would be required by section 229.10(c)(1)(vii).

#### F. 229.13(e) Reasonable Cause to Doubt Collectibility

1. In the case of certain check deposits, if the bank has reasonable cause to believe the check is uncollectible, it may extend the time funds must be made available for withdrawal. This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under section 229.10(c). When a bank places or extends a hold under this exception, it need not make the first \$100 of a deposit available for withdrawal on the next business day, as otherwise would be required by section 229.10(c)(1)(vii). If the reasonable-cause exception is invoked, the bank must include in the notice to its customer, required by section 229.13(g), the reason that the bank believes that the check is uncollectible.

2. The following are several examples of circumstances under which the reasonable-cause exception may be invoked:

a. If a bank received a notice from the paying bank that a check was not paid and is being returned to the depository bank, the depository bank could place a hold on the check or extend a hold previously placed on that check, and notify the customer that the bank

had received notice that the check is being returned. The exception could be invoked even if the notice were incomplete, if the bank had reasonable cause to believe that the notice applied to that particular check.

b. The depository bank may have received information from the paying bank, prior to the presentment of the check, that gives the bank reasonable cause to believe that the check is uncollectible. For example, the paying bank may have indicated that payment has been stopped on the check, or that the drawer's account does not currently have sufficient funds to honor the check. Such information may provide sufficient basis to invoke this exception. In these cases, the depository bank could invoke the exception and disclose as the reason the exception is being invoked the fact that information from the paying bank indicates that the check may not be paid.

c. The fact that a check is deposited more than six months after the date on the check (i.e., a stale check) is a reasonable indication that the check may be uncollectible, because under UCC section 4-404 a bank has no duty to its customer to pay a check that is more than six months old. Similarly, if a check being deposited is postdated (future-dated), the bank may have a reasonable cause to believe the check is uncollectible, because the check may not be properly payable under UCC 4-401. The bank, in its notice, should specify that the check is stale-dated or postdated.

d. There are reasons that may cause a bank to believe that a check is uncollectible that are based on confidential information. For example, a bank could conclude that a check being deposited is uncollectible based on its reasonable belief that the depositor is engaging in kiting activity. Reasonable belief as to the insolvency or pending insolvency of the drawer of the check or the drawee bank and that the checks will not be paid also may justify invoking this exception. In these cases, the bank may indicate, as the reason it is invoking the exception, that the bank has confidential information that indicates that the check might not be paid.

3. The Board has included a reasonable-cause exception notice as a model notice in appendix C (C-13). The model notice includes several reasons for which this exception may

be invoked. The Board does not intend to provide a comprehensive list of reasons for which this exception may be invoked; another reason that does not appear on the model notice may be used as the basis for extending a hold, if the reason satisfies the conditions for invoking this exception. A depository bank may invoke the reasonable-cause exception based on a combination of factors that give rise to a reasonable cause to doubt the collectibility of a check. In these cases, the bank should disclose the primary reasons for which the exception was invoked in accordance with paragraph (g) of this section.

4. The regulation provides that the determination that a check is uncollectible shall not be based on a class of checks or persons. For example, a depository bank cannot invoke this exception simply because the check is drawn on a paying bank in a rural area and the depository bank knows it will not have the opportunity to learn of nonpayment of that check before funds must be made available under the availability schedules. Similarly, a depository bank cannot invoke the reasonable-cause exception based on the race or national origin of the depositor.

5. If a depository bank invokes this exception with respect to a particular check and does not provide a written notice to the depositor at the time of deposit, the depository bank may not assess any overdraft fee (such as an NSF charge) or charge interest for use of overdraft credit, if the check is paid by the paying bank and these charges would not have occurred had the exception not been invoked. A bank may assess an overdraft fee under these circumstances, however, if it provides notice to the customer, in the notice of exception required by paragraph (g) of this section, that the fee may be subject to refund, and refunds the charges upon the request of the customer. The notice must state that the customer may be entitled to a refund of any overdraft fees that are assessed if the check being held is paid, and indicate where such requests for a refund of overdraft fees should be directed.

#### G. 229.13(f) Emergency Conditions

1. Certain emergency conditions may arise

that delay the collection or return of checks, or delay the processing and updating of customer accounts. In the circumstances specified in this paragraph, the depository bank may extend the holds that are placed on deposits of checks that are affected by such delays, if the bank exercises such diligence as the circumstances require. For example, if a bank learns that a check has been delayed in the process of collection due to severe weather conditions or other causes beyond its control, an emergency condition covered by this section may exist and the bank may place a hold on the check to reflect the delay. This exception applies to local and nonlocal checks, as well as checks that would otherwise be made available on the next (or second) business day after the day of deposit under section 229.10(c). When a bank places or extends a hold under this exception, it need not make the first \$100 of a deposit available for withdrawal on the next business day, as otherwise would be required by section 229.10(c)(1)(vii). In cases where the emergency-conditions exception does not apply, as in the case of deposits of cash or electronic payments under section 229.10(a) and (b), the depository bank may not be liable for a delay in making funds available for withdrawal if the delay is due to a bona fide error such as an unavoidable computer malfunction.

#### H. 229.13(g) Notice of Exception

##### 1. *In General*

a. If a depository bank invokes any of the safeguard exceptions to the schedules listed above, other than the new-account or emergency-conditions exception, and extends the hold on a deposit beyond the time periods permitted in sections 229.10(c) and 229.12, it must provide a notice to its customer. Except in the cases described in paragraphs (g)(2) and (g)(3) of this section, notices must be given each time an exception hold is invoked and must state the customer's account number, the date of deposit, the reason the exception was invoked, and the time period within which funds will be available for withdrawal. A depository bank satisfies the written-notice requirement by sending an electronic notice that

displays the text and is in a form that the customer may keep, if the customer agrees to such means of notice. Information is in a form that the customer may keep if, for example, it can be downloaded or printed.

b. With respect to paragraph (g)(1), the requirement that the notice state the time period within which the funds shall be made available may be satisfied if the notice identifies the date the deposit is received and information sufficient to indicate when funds will be available and the amounts that will be available at those times. For example, for a deposit involving more than one check, the bank need not provide a notice that discloses when funds from each individual check in the deposit will be available for withdrawal; instead, the bank may provide a total dollar amount for each of the time periods when funds will be available, or provide the customer with an explanation of how to determine the amount of the deposit that will be held and when the funds will be available for deposit. Appendix C (C-12) contains a model form of this exception notice.

c. For deposits made in person to an employee of the depository bank, the notice generally must be given to the person making the deposit, i.e., the "depositor," at the time of deposit. The depositor need not be the customer holding the account. For other deposits, such as deposits received at an ATM, lobby deposit box, night depository, or through the mail, notice must be mailed to the customer not later than the close of the business day following the banking day on which the deposit was made.

d. Notice to the customer also may be provided at a later time, if the facts upon which the determination to invoke the exception do not become known to the depository bank until after notice would otherwise have to be given. In these cases, the bank must mail the notice to the customer as soon as practicable, but not later than the business day following the day the facts become known. The Board has clarified in the regulation when a depository bank is deemed to have knowledge of the facts upon which the determination is made. A bank is deemed to have knowledge when the facts are brought to the attention of the person or persons in the bank responsible for making the determination, or when the facts would

have been brought to their attention if the bank had exercised due diligence.

e. In those cases described in paragraphs (g)(2) and (g)(3), the depository bank need not provide a notice every time an exception hold is applied to a deposit. When paragraph (g)(2) or (g)(3) requires disclosure of the time period within which deposits subject to the exception will be available for withdrawal, the requirement may be satisfied if the one-time notice states when on-us, local, and nonlocal checks will be available for withdrawal if an exception is invoked.

## 2. *One-Time Exception Notice*

a. Under paragraph (g)(2), if a nonconsumer account (see commentary to section 229.2(n)) is subject to the large-deposit or redeposited-check exception, the depository bank may give its customer a single notice at or prior to the time notice must be provided under paragraph (g)(1). Notices provided under paragraph (g)(2) must contain the reason the exception may be invoked and the time period within which deposits subject to the exception will be available for withdrawal (see model notice C-14). A depository bank may provide a one-time notice to a nonconsumer customer under paragraph (g)(2) only if each exception cited in the notice (the large-deposit and/or the redeposited-check exception) will be invoked for most check deposits to the customer's account to which the exception could apply. A one-time notice may state that the depository bank will apply exception holds to certain subsets of deposits to which the large-deposit or redeposited-check exception may apply, and the notice should identify such subsets. For example, the depository bank may apply the redeposited-check exception only to checks that were redeposited automatically by the depository bank in accordance with an agreement with the customer, rather than to all redeposited checks. In lieu of sending the one-time notice, a depository bank may send individual hold notices for each deposit subject to the large-deposit or redeposited-check exception in accordance with section 229.13(g)(1) (see model notice C-13). A depository bank may continue to send hold notices for each deposit subject to the large-deposit or

redeposited-check exception in accordance with section 229.13(g)(1) (see model notice C-12).

b. In the case of a deposit of multiple checks, the depository bank has the discretion to place an exception hold on any combination of checks in excess of \$5,000. The notice should enable a customer to determine the availability of the deposit in the case of a deposit of multiple checks. For example, if a customer deposits a \$5,000 local check and a \$5,000 nonlocal check, under the large-deposit exception, the depository bank may make funds available in the amount of (1) \$100 on the first business day after deposit, \$4,900 on the second business day after deposit (local check), and \$5,000 on the eleventh business day after deposit (nonlocal check with six-day exception hold), or (2) \$100 on the first business day after deposit, \$4,900 on the fifth business day after deposit (nonlocal check), and \$5,000 on the seventh business day after deposit (local check with five-day exception hold). The notice should reflect the bank's priorities in placing exception holds on next-day (or second-day), local, and nonlocal checks.

### 3. *Notice of Repeated-Overdraft Exception*

Under paragraph (g)(3), if an account is subject to the repeated-overdraft exception, the depository bank may provide one notice to its customer for each time period during which the exception will apply. Notices sent pursuant to paragraph (g)(3) must state the customer's account number, the fact the exception was invoked under the repeated-overdraft exception, the time period within which deposits subject to the exception will be made available for withdrawal, and the time period during which the exception will apply (see model notice C-15). A depository bank may provide a one-time notice to a customer under paragraph (g)(3) only if the repeated-overdraft exception will be invoked for most check deposits to the customer's account.

### 4. *Emergency-Conditions Exception Notice*

a. If an account is subject to the emergency-conditions exception under section 229.13(f),

the depository bank must provide notice in a reasonable form within a reasonable time, depending on the circumstances. For example, a depository bank may learn of a weather emergency or a power outage that affects the paying bank's operations. Under these circumstances, it likely would be reasonable for the depository bank to provide an emergency-conditions exception notice in the same manner and within the same time as required for other exception notices. On the other hand, if a depository bank experiences a weather or power-outage emergency that affects its own operations, it may be reasonable for the depository bank to provide a general notice to all depositors via postings at branches and ATMs, or through newspaper, television, or radio notices.

b. If the depository bank extends the hold placed on a deposit due to an emergency condition, the bank need not provide a notice if the funds would be available for withdrawal before the notice must be sent. For example, if on the last day of a hold period the depository bank experiences a computer failure and customer accounts cannot be updated in a timely fashion to reflect the funds as available balances, notices are not required if the funds are made available before the notices must be sent.

### 5. *Record Retention*

A depository bank must retain a record of each notice of a reasonable-cause exception for a period of two years, or such longer time as provided in the record-retention requirements of section 229.21. This record must contain a brief description of the facts on which the depository bank based its judgment that there was reasonable cause to doubt the collectibility of a check. In many cases, such as where the exception was invoked on the basis of a notice of nonpayment received, the record requirement may be met by retaining a copy of the notice sent to the customer. In other cases, such as where the exception was invoked on the basis of confidential information, a further description to the facts, such as insolvency of drawer, should be included in the record.



### I. 229.13(h) Availability of Deposits Subject to Exceptions

1. If a depository bank invokes any exception other than the new-account exception, the bank may extend the time within which funds must be made available under the schedule by a reasonable period of time. This provision establishes that an extension of up to one business day for on-us checks, five business days for local checks, and six business days for nonlocal checks and checks deposited in a nonproprietary ATM is reasonable. Under certain circumstances, however, a longer extension of the schedules may be reasonable. In these cases, the burden is placed on the depository bank to establish that a longer period is reasonable.

2. For example, assume a bank extended the hold on a local check deposit by five business days based on its reasonable cause to believe that the check is uncollectible. If, on the day before the extended hold is scheduled to expire, the bank receives a notification from the paying bank that the check is being returned unpaid, the bank may determine that a longer hold is warranted, if it decides not to charge back the customer's account based on the notification. If the bank decides to extend the hold, the bank must send a second notice, in accordance with paragraph (g) of this section, indicating the new date that the funds will be available for withdrawal.

3. With respect to Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, state and local government checks, cashier's checks, certified checks, and teller's checks subject to the next-day or (second-day) availability requirement, the depository bank may extend the time funds must be made available for withdrawal under the large-deposit, redeposited-check, repeated-overdraft, or reasonable-cause exception by a reasonable period beyond the delay that would have been permitted under the regulation had the checks not been subject to the next-day (or second-day) availability requirement. The additional hold is added to the local or nonlocal schedule that would apply based on the location of the paying bank.

4. One business day for on-us checks, five

business days for local checks, and six business days for nonlocal checks or checks deposited in a nonproprietary ATM, in addition to the time period provided in the schedule, should provide adequate time for the depository bank to learn of the nonpayment of virtually all checks that are returned. For example, if a customer deposits a \$7,000 cashier's check drawn on a nonlocal bank, and the depository bank applies the large-deposit exception to that check, \$5,000 must be available for withdrawal on the first business day after the day of deposit and the remaining \$2,000 must be available for withdrawal on the eleventh business day following the day of deposit (six business days added to the five-day schedule for nonlocal checks), unless the depository bank establishes that a longer hold is reasonable.

5. In the case of the application of the emergency-conditions exception, the depository bank may extend the hold placed on a check by not more than a reasonable period following the end of the emergency or the time funds must be available for withdrawal under sections 229.10(c) or 229.12, whichever is later.

6. This provision does not apply to holds imposed under the new-account exception. Under that exception, the maximum time period within which funds must be made available for withdrawal is specified for deposits that generally must be accorded next-day availability under section 229.10. This subpart does not specify the maximum time period within which the proceeds of local and nonlocal checks must be made available for withdrawal during the new-account period.

## SECTION 229.14—Payment of Interest

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

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

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

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

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

(2) provides notice of its interest- or dividend-payment policy in the manner required under section 229.16(d).

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



## COMMENTARY

## SECTION 229.14—Payment of Interest

## A. 229.14(a) In General

1. This section requires that a depository bank begin accruing interest on interest-bearing accounts not later than the day on which the depository bank receives credit for the funds deposited.<sup>3</sup> A depository bank generally receives credit on checks within one or two days following deposit. A bank receives credit on a cash deposit, an electronic payment, and the deposit of a check that is drawn on the depository bank itself on the day the cash, electronic payment, or check is received. In the case of a deposit at a nonproprietary ATM, credit generally is received on the day the bank that operates the ATM credits the depository bank for the amount of the deposit. In the case of a deposit at a contractual branch, credit is received on the day the depository bank receives credit for the amount of the deposit, which may be different from the day the contractual branch receives credit for the deposit.

2. Because "account" includes only transaction accounts, other interest-bearing accounts of the depository bank, such as money market deposit accounts, savings deposits, and time deposits, are not subject to this requirement; however, a bank may accrue interest on such deposits in the same way that it accrues interest under this paragraph for simplicity of operation. The Board intends the term "interest" to refer to payments to or for the account

<sup>3</sup> This section implements section 606 of the act (12 USC 4005). The act keys the requirement to pay interest to the time the depository bank receives "provisional credit" for a check. "Provisional credit" is a term used in the UCC that is derived from the code's concept of "provisional settlement." (See UCC 4-214 and 4-215.) Provisional credit is credit that is subject to charge-back if the check is returned unpaid; once the check is finally paid, the right to charge back expires and the provisional credit becomes "final."

Under subpart C, a paying bank no longer has an automatic right to charge back credits given in settlement of a check, and the concept of provisional settlement is no longer useful and has been eliminated by the regulation. Accordingly, this section uses the term "credit" rather than "provisional credit," and this section applies regardless of whether a credit would be provisional or final under the UCC. "Credit" does not include a bookkeeping entry (sometimes referred to as "deferred credit") that does not represent funds actually available for the bank's use.

of any customer as compensation for the use of funds, but to exclude the absorption of expenses incident to providing a normal banking function or a bank's forbearance from charging a fee in connection with such a service. (See 12 CFR 217.2(d).) Thus, earnings credits often applied to corporate accounts are not interest payments for the purposes of this section.

3. It may be difficult for a depository bank to track which day the depository bank receives credit for specific checks in order to accrue interest properly on the account to which the check is deposited. This difficulty may be pronounced if the bank uses different means of collecting checks based on the time of day the check is received, the dollar amount of the check, and/or the paying bank to which it must be sent. Thus, for the purpose of the interest-accrual requirement, a bank may rely on an availability schedule from its Federal Reserve Bank, Federal Home Loan Bank, or correspondent to determine when the depository bank receives credit. If availability is delayed beyond that specified in the availability schedule, a bank may charge back interest erroneously accrued or paid on the basis of that schedule.

4. This paragraph also permits a depository bank to accrue interest on checks deposited to all of its interest-bearing accounts based on when the bank receives credit on all checks sent for payment or collection. For example, if a bank receives credit on 20 percent of the funds deposited in the bank by check as of the business day of deposit (e.g., on-us checks), 70 percent as of the business day following deposit, and 10 percent on the second business day following deposit, the bank can apply these percentages to determine the day interest must begin to accrue on check deposits to all interest-bearing accounts, regardless of when the bank received credit on the funds deposited in any particular account. Thus, a bank may begin accruing interest on a uniform basis for all interest-bearing accounts, without the need to track the type of check deposited to each account.

5. This section is not intended to limit a policy of a depository bank that provides that interest accrues only on balances that exceed a specified amount, or on the minimum balance

maintained in the account during a given period, provided that the balance is determined based on the date that the depository bank receives credit for the funds. This section also is not intended to limit any policy providing that interest accrues sooner than required by this paragraph.

#### B. 229.14(b) Special Rule for Credit Unions

1. This provision implements a requirement in section 606(b) of the act and provides an exemption from the payment-of-interest requirements for credit unions that do not begin to accrue interest or dividends on their customer accounts until a later date than the day the credit union receives credit for those deposits, including cash deposits. These credit unions are exempt from the payment-of-interest requirements, as long as they provide notice of their interest-accrual policies in accordance with section 229.16(d). For example, if a credit union has a policy of computing interest on all deposits received by the 10th of the month from the first of that month, and on all deposits received after the 10th of the month from the first of the next month, that policy is not superseded by this regulation, if the credit union provides proper disclosure of this policy to its customers.

2. The act limits this exemption to credit unions; other types of banks must comply with the payment-of-interest requirements. In addition, credit unions that compute interest from the day of deposit or day of credit should not change their existing practices in order to avoid compliance with the requirement that interest accrue from the day the credit union receives credit.

#### C. 229.14(c) Exception for Checks Returned Unpaid

1. This provision is based on section 606(c) of the act (12 USC 4005(c)) and provides that interest need not be paid on funds deposited in an interest-bearing account by check that has been returned unpaid, regardless of the reason for return.

**SECTION 229.15—General Disclosure Requirements**

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

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

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

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

**COMMENTARY****SECTION 229.15—General Disclosure Requirements****A. 229.15(a) Form of Disclosures**

1. This paragraph sets forth the general requirements for the disclosures required under subpart B. All of the disclosures must be given in a clear and conspicuous manner, must be in writing, and, in most cases, must be in a form the customer may keep. A depository bank satisfies the written-disclosure requirement by sending an electronic disclosure that displays the text and is in a form that the customer may keep, if the customer agrees to such means of disclosure. Information is in a form that the customer may keep if, for example, it can be downloaded or printed. Disclosures posted at locations where employees accept consumer deposits, at ATMs, and on preprinted deposit slips need not be in a form that the customer may keep. Appendix C of the regulation contains model forms, clauses, and notices to assist banks in preparing disclosures.

2. Disclosures concerning availability must be grouped together and may not contain any information that is not related to the disclosures required by this subpart. Therefore, banks may not intersperse the required disclosures with other account disclosures and may not include other account information that is not related to their availability policy within the text of the required disclosures. Banks may, however, include information that is related to their availability policies. For example, a bank may inform its customers that, even when the bank has already made funds available for withdrawal, the customer is responsible for any problem with the deposit, such as the return of a deposited check.

3. The regulation does not require that the disclosures be segregated from other account terms and conditions. For example, banks may include the disclosure of their specific availability policy in a booklet or pamphlet that sets out all of the terms and conditions of the bank's accounts. The required disclosures must, however, be grouped together and highlighted or identified in some manner, for ex-

ample, by use of a separate heading for the disclosures, such as "When Deposits Are Available for Withdrawal."

**B. 229.15(b) Uniform Reference to Day of Availability**

1. This paragraph requires banks to disclose in a uniform manner when deposited funds will be available for withdrawal. Banks must disclose when deposited funds are available for withdrawal by stating the business day on which the customer may begin to withdraw funds. The business day funds will be available must be disclosed as "the \_\_\_\_\_ business day after" the day of deposit, or substantially similar language. The business day of availability is determined by counting the number of business days starting with the business day following the banking day on which the deposit is received, as determined under section 229.19(a), and ending with the business day on which the customer may begin to withdraw funds. For example, a bank that imposes delays of four intervening business days for nonlocal checks must describe those checks as being available on "the fifth business day after" the day of the deposit.

**C. 229.15(c) Multiple Accounts and Multiple Account Holders**

1. This paragraph clarifies that banks need not provide multiple disclosures under the regulation. A single disclosure to a customer that holds multiple accounts, or a single disclosure to one of the account holders of a jointly held account, satisfies the disclosure requirements of the regulation.

**D. 229.15(d) Dormant or Inactive Accounts**

1. This paragraph makes clear that banks need not provide disclosure of their specific availability policies to customers that hold accounts that are either dormant or inactive. The determination that certain accounts are dormant or inactive must be made by the bank. If a bank considers an account dormant or inac-

tive for purposes other than this regulation and no longer provides statements and other mailings to an account for this reason, such an account is considered dormant or inactive for purposes of this regulation.

## SECTION 229.16—Specific Availability-Policy Disclosure

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

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

- (1) a summary of the bank's availability policy;
- (2) a description of any categories of deposits or checks used by the bank when it delays availability (such as local or nonlocal checks); how to determine the category to which a particular deposit or check belongs; and when each category will be available for withdrawal (including a description of the bank's business days and when a deposit is considered received);<sup>1</sup>
- (3) a description of any of the exceptions in section 229.13 that may be invoked by the bank, including the time following a deposit that funds generally will be available for withdrawal and a statement that the bank will notify the customer if the bank invokes one of the exceptions;
- (4) a description, as specified in paragraph (c)(1) of this section, of any case-by-case

policy of delaying availability that may result in deposited funds' being available for withdrawal later than the time periods stated in the bank's availability policy; and (5) a description of how the customer can differentiate between a proprietary and a nonproprietary ATM, if the bank makes funds from deposits at nonproprietary ATMS available for withdrawal later than funds from deposits at proprietary ATMs.

(c) *Longer delays on a case-by-case basis.*

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

- (i) a statement that the time when deposited funds are available for withdrawal may be extended in some cases, and the latest time following a deposit that funds will be available for withdrawal;
- (ii) a statement that the bank will notify the customer if funds deposited in the customer's account will not be available for withdrawal until later than the time periods stated in the bank's availability policy; and
- (iii) a statement that customers should ask if they need to be sure about when a particular deposit will be available for withdrawal.

(2) *Notice at time of case-by-case delay.*

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

- (A) the account number of the customer;
- (B) the date of the deposit;
- (C) the amount of the deposit that is being delayed; and
- (D) the day the funds will be available for withdrawal.

(ii) *Timing of notice.* The notice shall be provided to the depositor at the time of

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

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

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

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

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

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

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



## COMMENTARY

## SECTION 229.16—Specific Availability-Policy Disclosure

## A. 229.16(a) General

1. This section describes the information that must be disclosed by banks to comply with sections 229.17 and 229.18(d), which require that banks furnish notices of their specific policy regarding availability of deposited funds. The disclosure provided by a bank must reflect the availability policy followed by the bank in most cases, even though a bank may in some cases make funds available sooner or impose a longer delay.

2. The disclosure must reflect the policy and practice of the bank regarding availability as to most accounts and most deposits into those accounts. In disclosing the availability policy that it follows in most cases, a bank may provide a single disclosure that reflects one policy to all its transaction account customers, even though some of its customers may receive faster availability than that reflected in the policy disclosure. Thus, a bank need not disclose to some customers that they receive faster availability than indicated in the disclosure. If, however, a bank has a policy of imposing delays in availability on any customers longer than those specified in its disclosure, those customers must receive disclosures that reflect the longer applicable availability periods. A bank may establish different availability policies for different groups of customers, such as customers in a particular geographic area or customers of a particular branch. For purposes of providing a specific availability policy, the bank may allocate customers among groups through good faith use of a reasonable method. A bank may also establish different availability policies for deposits at different locations, such as deposits at a contractual branch.

3. A bank may disclose that funds are "available for withdrawal" on a given day notwithstanding the fact that the bank uses the funds to pay checks received before that day. For example, a bank may disclose that its

policy is to make funds available from deposits of local checks on the second business day following the day of deposit, even though it may use the deposited funds to pay checks prior to the second business day; the funds used to pay checks in this example are not available for withdrawal until the second business day after deposit because the funds are not available for all uses until the second business day. (See the definition of "available for withdrawal" in section 229.2(d).)

## B. 229.16(b) Content of Specific Policy Disclosure

1. This paragraph sets forth the items that must be included, as applicable, in a bank's specific availability-policy disclosure. The information that must be disclosed by a particular bank will vary considerably depending upon the bank's availability policy. For example, a bank that makes deposited funds available for withdrawal on the business day following the day of deposit need simply disclose that deposited funds will be available for withdrawal on the first business day after the day of deposit, the bank's business days, and when deposits are considered received.

2. On the other hand, a bank that has a policy of routinely delaying on a blanket basis the time when deposited funds are available for withdrawal would have a more detailed disclosure. Such blanket hold policies might be for the maximum time allowed under the federal law or might be for shorter periods. These banks must disclose the types of deposits that will be subject to delays, how the customer can determine the type of deposit being made, and the day that funds from each type of deposit will be available for withdrawal.

3. Some banks may have a combination of next-day availability and blanket delays. For example, a bank may provide next-day availability for all deposits except for one or two categories, such as deposits at nonproprietary ATMs and nonlocal personal checks over a specified dollar amount. The bank would describe the categories that are subject to delays in availability and tell the customer when each category would be available for withdrawal,

and state that other deposits will be available for withdrawal on the first business day after the day of deposit. Similarly, a bank that provides availability on the second business day for most of its deposits would need to identify the categories of deposits which, under the regulation, are subject to next-day availability and state that all other deposits will be available on the second business day.

4. Because many banks' availability policies may be complex, a bank must give a brief summary of its policy at the beginning of the disclosure. In addition, the bank must describe any circumstances when actual availability may be longer than the schedules disclosed. Such circumstances would arise, for example, when the bank invokes one of the exceptions set forth in section 229.13 of the regulation, or when the bank delays or extends the time when deposited funds are available for withdrawal up to the time periods allowed by the regulation on a case-by-case basis. Also, a bank that must make certain checks available faster under appendix B (reduction of schedules for certain nonlocal checks) must state that some check deposits will be available for withdrawal sooner because of special rules and that a list of the pertinent routing numbers is available upon request.

5. Generally, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose to its customers that certain checks, such as some credit-union payable-through drafts, will be treated as local or nonlocal based on the location of the bank by which they are payable (e.g., the credit union), and not on the basis of the location of the bank whose routing number appears on the check. A bank is not required to provide this disclosure, however, if it makes the proceeds of both local and nonlocal checks available for withdrawal within the time periods required for local checks in sections 229.12 and 229.13.

6. The business-day cutoff time used by the bank must be disclosed and if some locations have different cutoff times the bank must note this in the disclosure and state the earliest time that might apply. A bank need not list all of the different cutoff times that might apply.

If a bank does not have a cutoff time prior to its closing time, the bank need not disclose a cutoff time.

7. A bank taking advantage of the extended time period for making deposits at nonproprietary ATMs available for withdrawal under section 229.12(f) must explain this in the initial disclosure. In addition, the bank must provide a list (on or with the initial disclosure) of either the bank's proprietary ATMs or those ATMs that are nonproprietary at which customers may make deposits. As an alternative to providing such a list, the bank may label all of its proprietary ATMs with the bank's name and state in the initial disclosure that this has been done. Similarly, a bank taking advantage of the cash-withdrawal limitations of section 229.12(d), or the provision in section 229.19(e) allowing holds to be placed on other deposits when a deposit is made or a check is cashed, must explain this in the initial disclosure.

8. A bank that provides availability based on when the bank generally receives credit for deposited checks need not disclose the time when a check drawn on a specific bank will be available for withdrawal. Instead, the bank may disclose the categories of deposits that must be available on the first business day after the day of deposit (deposits subject to section 229.10) and state the other categories of deposits and the time periods that will be applicable to those deposits. For example, a bank might disclose the four-digit Federal Reserve routing symbol for local checks and indicate that such checks as well as certain nonlocal checks will be available for withdrawal on the first or second business day following the day of deposit, depending on the location of the particular bank on which the check is drawn, and disclose that funds from all other checks will be available on the second or third business day. The bank must also disclose that the customer may request a copy of the bank's detailed schedule that would enable the customer to determine the availability of any check and must provide such schedule upon request. A change in the bank's detailed schedule would not trigger the change-in-policy disclosure requirement of section 229.18(e).

## C. 229.16(c) Longer Delays on a Case-by-Case Basis

### 1. *Notice in Specific Policy Disclosure*

a. Banks that make deposited funds available for withdrawal sooner than required by the regulation—for example, providing their customers with immediate or next-day availability for deposited funds—and delay the time when funds are available for withdrawal only from time to time determined on a case-by-case basis, must provide notice of this in their specific availability-policy disclosure. This paragraph outlines the requirements for that notice.

b. In addition to stating what their specific availability policy is in most cases, banks that may delay or extend the time when deposits are available on a case-by-case basis must state that from time to time funds may be available for withdrawal later than the time periods in their specific policy disclosure, disclose the latest time that a customer may have to wait for deposited funds to be available for withdrawal when a case-by-case hold is placed, state that customers will be notified when availability of a deposit is delayed on a case-by-case basis, and advise customers to ask if they need to be sure of the availability of a particular deposit.

c. A bank that imposes delays on a case-by-case basis is still subject to the availability requirements of this regulation. If the bank imposes a delay on a particular deposit that is not longer than the availability required by section 229.12 for local and nonlocal checks, the reason for the delay need not be based on the exceptions provided in section 229.13. If the delay exceeds the time periods permitted under section 229.12, however, then it must be based on an exception provided in section 229.13, and the bank must comply with the section 229.13 notice requirements. A bank that imposes delays on a case-by-case basis may avail itself of the one-time notice provisions in section 229.13(g)(2) and (3) for deposits to which those provisions apply.

### 2. *Notice at Time of Case-by-Case Delay*

a. In addition to including the disclosures required by paragraph (c)(1) of this section in

their specific availability-policy disclosure, banks that delay or extend the time period when funds are available for withdrawal on a case-by-case basis must give customers a notice when availability of funds from a particular deposit will be delayed or extended beyond the time when deposited funds are generally available for withdrawal. The notice must state that a delay is being imposed and indicate when the funds will be available. In addition, the notice must include the account number, the date of the deposit, and the amount of the deposit being delayed.

b. If notice of the delay was not given at the time the deposit was made and the bank assesses overdraft or returned-check fees on accounts when a case-by-case hold has been placed, the case-by-case hold notice provided to the customer must include a notice concerning overdraft or returned-check fees. The notice must state that the customer may be entitled to a refund of any overdraft or returned-check fees that result from the deposited funds' not being available if the check that was deposited was in fact paid by the payor bank, and explain how to request a refund of any fees. (See section 229.16(c)(3).)

c. The requirement that the case-by-case hold notice state the day that funds will be made available for withdrawal may be met by stating the date or the number of business days after deposit that the funds will be made available. This requirement is satisfied if the notice provides information sufficient to indicate when funds will be available and the amounts that will be available at those times. For example, for a deposit involving more than one check, the bank need not provide a notice that discloses when funds from each individual item in the deposit will be available for withdrawal. Instead, the bank may provide a total dollar amount for each of the time periods when funds will be available, or provide the customer with an explanation of how to determine the amount of the deposit that will be held and when the held funds will be available for withdrawal.

d. For deposits made in person to an employee of the depository bank, the notice generally must be given at the time of the deposit. The notice at the time of the deposit must be given to the person making the de-

posit, that is, the "depositor." The depositor need not be the customer holding the account. For other deposits, such as deposits received at an ATM, lobby deposit box, night depository, through the mail, or by armored car, notice must be mailed to the customer not later than the close of the business day following the banking day on which the deposit was made. Notice to the customer also may be provided not later than the close of the business day following the banking day on which the deposit was made if the decision to delay availability is made after the time of the deposit.

### 3. *Overdraft and Returned-Check Fees*

If a depository bank delays or extends the time when funds from a deposited check are available for withdrawal on a case-by-case basis and does not provide a written notice to its depositor at the time of deposit, the depository bank may not assess any overdraft or returned-check fees (such as an insufficient-funds charge) or charge interest for use of an overdraft line of credit, if the deposited check is paid by the paying bank and these fees would not have occurred had the additional case-by-case delay not been imposed. A bank may assess an overdraft or returned-check fee under these circumstances, however, if it provides notice to the customer in the notice required by paragraph (c)(2) of this section that the fee may be subject to refund, and refunds the fee upon the request of the customer when required to do so. The notice must state that the customer may be entitled to a refund of any overdraft or returned-check fees that are assessed if the deposited check is paid, and indicate where such requests for a refund of overdraft fees should be directed. Paragraph (c)(3) applies when a bank provides a case-by-case notice in accordance with paragraph (c)(2) and does not apply if the bank has provided an exception-hold notice in accordance with section 229.13.

### D. 229.16(d) Credit-Union Notice of Interest-Payment Policy

1. This paragraph sets forth the special disclosure requirement for credit unions that delay accrual of interest or dividends for all cash

and check deposits beyond the date of receiving provisional credit for checks being deposited. (The interest-payment requirement is set forth in section 229.14(a).) Such credit unions are required to describe their policy with respect to accrual of interest or dividends on deposits in their specific availability-policy disclosure.

**SECTION 229.17—Initial Disclosures**

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

## COMMENTARY

## SECTION 229.17—Initial Disclosures

## A. 229.17(a) New Accounts

1. This paragraph requires banks to provide a notice of their availability policy to all potential customers prior to opening an account. The requirement of a notice prior to opening an account requires banks to provide disclosures prior to accepting a deposit to open an account. Disclosures must be given at the time the bank accepts an initial deposit regardless of whether the bank has opened the account yet for the customer. If a bank, however, receives a written request by mail from a person asking that an account be opened and the request includes an initial deposit, the bank may open the account with the deposit, provided the bank mails the required disclosures to the customer not later than the business day following the banking day on which the bank receives the deposit. Similarly, if a bank receives a telephone request from a customer asking that an account be opened with a transfer from a separate account of the customer's at the bank, the disclosure may be mailed not later than the business day following the banking day of the request.



**SECTION 229.18—Additional Disclosure Requirements**

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

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

(c) *Automated teller machines.*

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

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

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

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

## COMMENTARY

### SECTION 229.18—Additional Disclosure Requirements

#### A. 229.18(a) Deposit Slips

1. This paragraph requires banks to include a notice on all preprinted deposit slips. The deposit-slip notice need only state, somewhere on the front of the deposit slip, that deposits may not be available for immediate withdrawal. The notice is required only on preprinted deposit slips—those printed with the customer's account number and name and furnished by the bank in response to a customer's order to the bank. A bank need not include the notice on deposit slips that are not preprinted and supplied to the customer—such as counter deposit slips—on those special deposit slips provided to the customer under section 229.10(c). A bank is not responsible for ensuring that the notice appear on deposit slips that the customer does not obtain from or through the bank. This paragraph applies to preprinted deposit slips furnished to customers on or after September 1, 1988.

#### B. 229.18(b) Locations Where Employees Accept Consumer Deposits

1. This paragraph describes the statutory requirement that a bank post in each location where its employees accept consumer deposits a notice of its availability policy pertaining to consumer accounts. The notice that is required must specifically state the availability periods for the various deposits that may be made to consumer accounts. The notice need not be posted at each teller window, but the notice must be posted in a place where consumers seeking to make deposits are likely to see it before making their deposits. For example, the notice might be posted at the point where the line forms for teller service in the lobby. The notice is not required at any drive-through teller windows nor is it required at night depository locations, or at locations where consumer deposits are not accepted. A bank that acts as a contractual branch at a particular location must include the availability policy that applies to its own customers but need not include the policy that applies to the custom-

ers of the bank for which it is acting as a contractual branch.

#### C. 229.18(c) Automated Teller Machines

1. This paragraph sets forth the required notices for ATMs. Paragraph (c)(1) provides that the depository bank is responsible for posting a notice on all ATMs at which deposits can be made to accounts at the depository bank. The depository bank may arrange for a third party, such as the owner or operator of the ATM, to post the notice and indemnify the depository bank from liability if the depository bank is liable under section 229.21 for the owner or operator failing to provide the required notice.

2. The notice may be posted on a sign, shown on the screen, or included on deposit envelopes provided at the ATM. This disclosure must be given before the customer has made the deposit. Therefore, a notice provided on the customer's deposit receipt or appearing on the ATM's screen after the customer has made the deposit would not satisfy this requirement.

3. Paragraph (c)(2) requires a depository bank that operates an off-premise ATM from which deposits are removed not more than two times a week to make a disclosure of this fact on the off-premise ATM. The notice must disclose to the customer the days on which deposits made at the ATM will be considered received.

#### D. 229.18(d) Upon Request

1. This paragraph requires banks to provide written notice of their specific availability policy to any person upon that person's oral or written request. The notice must be sent within a reasonable period of time following receipt of the request.

#### E. 229.18(e) Changes in Policy

1. This paragraph requires banks to send notices to their customers when the banks change their availability policies with regard to consumer accounts. A notice may be given in any form as long as it is clear and conspicuous. If the bank gives notice of a change by sending the customer a complete new availability disclosure, the bank must direct

the customer to the changed terms in the disclosure by use of a letter or insert, or by highlighting the changed terms in the disclosure.

2. Generally, a bank must send a notice at least 30 calendar days before implementing any change in its availability policy. If the change results in faster availability of deposits—for example, if the bank changes its availability for nonlocal checks from the fifth business day after deposit to the fourth business day after deposit—the bank need not send advance notice. The bank must, however, send notice of the change no later than 30 calendar days after the change is implemented. A bank is not required to give a notice when there is a change in appendix B (Reduction of Schedules for Certain Nonlocal Checks).

3. A bank that has provided its customers with a list of ATMs under section 229.16(b)(5) shall provide its customers with an updated list of ATMs once a year if there are changes in the list of ATMs previously disclosed to the customers.

## SECTION 229.19—Miscellaneous

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

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

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

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

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

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

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

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

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

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

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

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

(1) prohibit a depository bank from making

funds available to a customer for withdrawal in a shorter period of time than the time required by this subpart;

(2) affect a depository bank's right—

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

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

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

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

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

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

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

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

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

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

(e) *Holds on other funds.*

(1) A depository bank that receives a check for deposit in an account may not place a

hold on any funds of the customer at the bank, where—

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

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

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

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

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

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

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

## COMMENTARY

## SECTION 229.19—Miscellaneous

## A. 229.19(a) When Funds Are Considered Deposited

1. The time funds must be made available for withdrawal under this subpart is determined by the day the deposit is made. This paragraph provides rules to determine the day funds are considered deposited in various circumstances.

2. *Staffed Facilities and ATMs*

Funds received at a staffed teller station or ATM are considered deposited when received by the teller or placed in the ATM. Funds received at a contractual branch are considered deposited when received by a teller at the contractual branch or deposited into a proprietary ATM of the contractual branch. (See also the commentary to section 229.10(c) on deposits made to an employee of the depository bank.) Funds deposited to a deposit box in a bank lobby that is accessible to customers only during regular business hours generally are considered deposited when placed in the lobby box; a bank may, however, treat deposits to lobby boxes the same as deposits to night depositories (as provided in section 229.19(a)(3)), provided a notice appears on the lobby box informing the customer when such funds will be considered deposited.

3. *Mail*

Funds mailed to the depository bank are considered deposited on the banking day they are received by the depository bank. The funds are received by the depository bank at the time the mail is delivered to the bank, even if it is initially delivered to a mail room, rather than the check-processing area.

4. *Other Facilities*

a. In addition to deposits at staffed facilities, at ATMs, and by mail, funds may be deposited at a facility such as a night depository or a lock box. A night depository is a receptacle for receipt of deposits, typically used by corporate depositors when the branch is closed.

Funds deposited at a night depository are considered deposited on the banking day the deposit is removed, and the contents of the deposit are accessible to the depository bank for processing. For example, some businesses deposit their funds in a locked bag at the night depository late in the evening, and return to the bank the following day to open the bag. Other depositors may have an agreement with their bank that the deposit bag must be opened under the dual control of the bank and the depositor. In these cases, the funds are considered deposited when the customer returns to the bank and opens the deposit bag.

b. A lock box is a post office box used by a corporation for the collection of bill payments or other check receipts. The depository bank generally assumes the responsibility for collecting the mail from the lock box, processing the checks, and crediting the corporation for the amount of the deposit. Funds deposited through a lock-box arrangement are considered deposited on the day the deposit is removed from the lock box and are accessible to the depository bank for processing.

5. *Certain Off-Premise ATMs*

A special provision is made for certain off-premise ATMs that are not serviced daily. Funds deposited at such an ATM are considered deposited on the day they are removed from the ATM, if the ATM is not serviced more than two times each week. This provision is intended to address the practices of some banks of servicing certain remote ATMs infrequently. If a depository bank applies this provision with respect to an ATM, a notice must be posted at the ATM informing depositors that funds deposited at the ATM may not be considered deposited until a future day, in accordance with section 229.18.

6. *Banking Day of Deposit*

a. This paragraph also provides that a deposit received on a day that the depository bank is closed, or after the bank's cutoff hour, may be considered made on the next banking day. Generally, for purposes of the availability schedules of this subpart, a bank may establish a cutoff hour of 2:00 p.m. or later for receipt of deposits at its head office or branch



offices. For receipt of deposits at ATMs, contractual branches, or other off-premise facilities, such as night depositories or lock boxes, the depository bank may establish a cutoff hour of 12:00 noon or later (either local time of the branch or other location of the depository bank at which the account is maintained or local time of the ATM, contractual branch, or other off-premise facility). The depository bank must use the same timing method for establishing the cutoff hour for all ATMs, contractual branches, and other off-premise facilities used by its customers. The choice of cutoff hour must be reflected in the bank's internal procedures, and the bank must inform its customers of the cutoff hour upon request. This earlier cutoff for ATM, contractual branch, or other off-premise deposits is intended to provide greater flexibility in the servicing of these facilities.

b. Different cutoff hours may be established for different types of deposits. For example, a bank may establish a 2:00 p.m. cutoff for the receipt of check deposits, but a later cutoff for the receipt of wire transfers. Different cut-off hours also may be established for deposits received at different locations. For example, a different cutoff may be established for ATM deposits than for over-the-counter deposits, or for different teller stations at the same branch.

c. A bank is not required to remain open until 2:00 p.m. If a bank closes before 2:00 p.m., deposits received after the closing may be considered received on the next banking day. Further, as section 229.2(f) defines the term "banking day" as the portion of a business day on which a bank is open to the public for substantially all of its banking functions, a day, or a portion of a day, is not necessarily a banking day merely because the bank is open for only limited functions, such as keeping drive-in or walk-up teller windows open, when the rest of the bank is closed to the public. For example, a banking office that usually provides a full range of banking services may close at 12:00 noon but leave a drive-in teller window open for the limited purpose of receiving deposits and making cash withdrawals. Under those circumstances, the bank is considered closed and may consider deposits received after 12:00 noon as having

been received on the next banking day. The fact that a bank may reopen for substantially all of its banking functions after 2:00 p.m., or that it continues its back office operations throughout the day, would not affect this result. A bank may not, however, close individual teller stations and reopen them for next day's business before 2:00 p.m. during a banking day.

#### B. 229.19(b) Availability at Start of Business Day

1. If funds must be made available for withdrawal on a business day, the funds must be available for withdrawal by the later of 9:00 a.m. or the time the depository bank's teller facilities, including ATMs, are available for customer account withdrawals, except under the special rule for cash withdrawals set forth in section 229.12(d). Thus, if a bank has no ATMs and its branch facilities are available for customer transactions beginning at 10:00 a.m., funds must be available for customer withdrawal beginning at 10:00 a.m. If the bank has ATMs that are available 24 hours a day, rather than establishing 12:01 a.m. as the start of the business day, this paragraph sets 9:00 a.m. as the start of the day with respect to ATM withdrawals. The Board believes that this rule provides banks with sufficient time to update their accounting systems to reflect the available funds in customer accounts for that day.

2. The start of business is determined by the local time of the branch or other location of the depository bank at which the account is maintained. For example, if funds in a customer's account at a West Coast bank are first made available for withdrawal at the start of business on a given day, and the customer attempts to withdraw the funds at an East Coast ATM, the depository bank is not required to make the funds available until 9:00 a.m. West Coast time (12:00 noon East Coast time).

#### C. 229.19(c) Effect on Policies of Depository Bank

1. This subpart establishes the maximum hold that may be placed on customer deposits. A depository bank may provide availability to its

customers in a shorter time than prescribed in this subpart. A depository bank also may adopt different funds-availability policies for different segments of its customer base, as long as each policy meets the schedules in the regulation. For example, a bank may differentiate between its corporate and consumer customers, or may adopt different policies for its consumer customers based on whether a customer has an overdraft line of credit associated with the account.

2. This regulation does not affect a depository bank's right to accept or reject a check for deposit, to charge back the customer's account based on a returned check or notice of nonpayment, or to claim a refund for any credit provided to the customer. For example, even if a check is returned or a notice of nonpayment is received after the time by which funds must be made available for withdrawal in accordance with this regulation, the depository bank may charge back the customer's account for the full amount of the check. (See section 229.33(d) and commentary.)

3. Nothing in the regulation requires a depository bank to have facilities open for customers to make withdrawals at specified times or on specified days. For example, even though the special cash-withdrawal rule set forth in section 229.12(d) states that a bank must make up to \$400 available for cash withdrawals no later than 5:00 p.m. on specific business days, if a bank does not participate in an ATM system and does not have any teller windows open at or after 5:00 p.m., the bank need not join an ATM system or keep offices open. In this case, the bank complies with this rule if the funds that are required to be available for cash withdrawal at 5:00 p.m. on a particular day are available for withdrawal at the start of business on the following day. Similarly, if a depository bank is closed for customer transactions, including ATMs, on a day funds must be made available for withdrawal, the regulation does not require the bank to open.

4. The special cash-withdrawal rule in the act recognizes that the \$400 that must be made available for cash withdrawal by 5:00 p.m. on the day specified in the schedule may exceed a bank's daily ATM cash-withdrawal limit and explicitly provides that the act does

not supersede a bank's policy in this regard. As a result, if a bank has a policy of limiting cash withdrawals from automated teller machines to \$250 per day, the regulation would not require that the bank dispense \$400 of the proceeds of the customer's deposit that must be made available for cash withdrawal on that day.

5. Even though the act clearly provides that the bank's ATM withdrawal limit is not superseded by the federal availability rules on the day funds must first be made available, the act does not specifically permit banks to limit cash withdrawals at ATMs on subsequent days when the entire amount of the deposit must be made available for withdrawal. The Board believes that the rationale behind the act's provision that a bank's ATM withdrawal limit is not superseded by the requirement that funds be made available for cash withdrawal applies on subsequent days. Nothing in the regulation prohibits a depository bank from establishing ATM cash-withdrawal limits that vary among customers of the bank, as long as the limit is not dependent on the length of time funds have been in the customer's account (provided that the permissible hold has expired).

6. Some small banks, particularly credit unions, due to lack of secure facilities, keep no cash on their premises and hence offer no cash-withdrawal capability to their customers. Other banks limit the amount of cash on their premises due to bonding requirements or cost factors, and consequently reserve the right to limit the amount of cash each customer can withdraw over the counter on a given day. For example, some banks require advance notice for large cash withdrawals in order to limit the amount of cash needed to be maintained on hand at any time.

7. Nothing in the regulation is intended to prohibit a bank from limiting the amount of cash that may be withdrawn at a staffed teller station if the bank has a policy limiting the amount of cash that may be withdrawn, and if that policy is applied equally to all customers of the bank, is based on security, operating, or bonding requirements, and is not dependent on the length of time the funds have been in the customer's account (as long as the permissible hold has expired). The regulation, however, does not authorize such policies if they

are otherwise prohibited by statutory, regulatory, or common law.

#### D. 229.19(d) Use of Calculated Availability

1. A depository bank may provide availability to its nonconsumer accounts on a calculated availability basis. Under calculated availability, a specified percentage of funds from check deposits may be made available to the customer on the next business day, with the remaining percentage deferred until subsequent days. The determination of the percentage of deposited funds that will be made available each day is based on the customer's typical deposit mix as determined by a sample of the customer's deposits. Use of calculated availability is permitted only if, on average, the availability terms that result from the sample are equivalent to or more prompt than the requirements of this subpart.

#### E. 229.19(e) Holds on Other Funds

1. Section 607(d) of the act (12 USC 4006(d)) provides that once funds are available for withdrawal under the act, such funds shall not be frozen solely due to the subsequent deposit of additional checks that are not yet available for withdrawal. This provision of the act is designed to prevent evasion of the act's availability requirements.

2. This paragraph clarifies that if a customer deposits a check in an account (as defined in section 229.2(a)), the bank may not place a hold on any of the customer's funds so that the funds that are held exceed the amount of the check deposited or the total amount of funds held are not made available for withdrawal within the times required in this subpart. For example, if a bank places a hold on funds in a customer's nontransaction account, rather than a transaction account, for deposits made to the customer's transaction account, the bank may place such a hold only to the extent that the funds held do not exceed the amount of the deposit and the length of the hold does not exceed the time periods permitted by this regulation.

3. These restrictions also apply to holds placed on funds in a customer's account (as defined in section 229.2(a)) if a customer

cashes a check at a bank (other than a check drawn on that bank) over the counter. The regulation does not prohibit holds that may be placed on other funds of the customer for checks cashed over the counter, to the extent that the transaction does not involve a deposit to an account. A bank may not, however, place a hold on any account when an on-us check is cashed over the counter. On-us checks are considered finally paid when cashed (see UCC 4-215(a)(1)). When a customer cashes a check over the counter and the bank places a hold on an account of the customer, the bank must give whatever notice would have been required under sections 229.13 or 229.16 had the check been deposited in the account.

#### F. 225.19(f) Employee Training and Compliance

1. The act requires banks to take such actions as may be necessary to inform fully each employee that performs duties subject to the act of the requirements of the act, and to establish and maintain procedures reasonably designed to ensure and monitor employee compliance with such requirements.

2. This paragraph requires a bank to establish procedures to ensure compliance with these requirements and provide these procedures to the employees responsible for carrying them out.

#### G. 229.19(g) Effect of Merger Transaction

1. After banks merge, there is often a period of adjustment before their operations are consolidated. This paragraph accommodates this adjustment period by allowing merged banks to be treated as separate banks for purposes of this subpart for a period of up to one year after consummation of the merger transaction, except that a customer of any bank that is a party to the transaction that has an established account with that bank may not be treated as a new account holder for any other party to the transaction for purposes of the new-account exception of section 229.13(a), and a deposit in any branch of the merged bank is considered deposited in the bank for purposes

of the availability schedules in accordance with section 229.19(a).

2. This rule affects the status of the combined entity in a number of areas. For example this rule would affect when an ATM is a proprietary ATM (section 229.2(aa) and section 229.12(b)) and when a check is considered drawn on a branch of the depository bank (section 229.10(c)(1)(vi))

3. "Merger transaction" is defined in section 229.2(t).

## SECTION 229.20—Relation to State Law

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

- (1) supersede the provisions of the act and subpart B, and, in connection therewith, subpart A, to the extent the provisions relate to the time by which funds deposited or received for deposit in an account are available for withdrawal; and
- (2) apply to all federally insured banks located within the state.

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

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

(c) *Standards for preemption.* A provision of a state law in effect on or before September 1, 1989, is not inconsistent with the act, or subpart B, or in connection therewith, subpart A, if it requires that funds shall be available in a shorter period of time than the time provided in this subpart. Inconsistency with the act and subpart B, and in connection therewith, subpart A, may exist when state law—

- (1) permits a depository bank to make funds deposited in an account by cash, electronic payment, or check available for withdrawal in a longer period of time than the maximum period of time permitted under subpart B, and, in connection therewith, subpart A; or
- (2) provides for disclosures or notices concerning funds availability relating to accounts.

(d) *Preemption determinations.* The Board may determine, upon the request of any state,

bank, or other interested party, whether the act and subpart B, and, in connection therewith, subpart A, preempt provisions of state laws relating to the availability of funds.

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

- (1) a copy of the full text of the state law in question, including any implementing regulations or judicial interpretations of that law; and
- (2) a comparison of the provisions of state law with the corresponding provisions in the act and subparts A and B of this part, together with a discussion of the reasons why specific provisions of state law are either consistent or inconsistent with corresponding sections of the act and subparts A and B of this part.

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

## COMMENTARY

## SECTION 229.20—Relation to State Law

## A. 229.20(a) In General

1. Several states have enacted laws that govern when banks in those states must make funds available to their customers. The act provides that any state law in effect on September 1, 1989, that provides that funds be made available in a shorter period of time than provided in this regulation, will supersede the time periods in the act and the regulation. The conference report on the act clarifies this provision by stating that any state law enacted on or before September 1, 1989, may supersede federal law to the extent that the law relates to the time funds must be made available for withdrawal (H.R. Rep. No. 261, 100th Cong. 1st Sess. 182 (1987)).

2. Thus, if a state had wished to adopt a law governing funds availability, it had to have made that law effective on or before September 1, 1989. Laws adopted after that date do not supersede federal law, even if they provide for shorter availability periods than are provided under federal law. If a state that has a law governing funds availability in effect before September 1, 1989, amended its law after that date, the amendment would not supersede federal law, but an amendment deleting a state requirement would be effective.

3. If a state provides for a shorter hold for a certain category of checks than is provided for under federal law, that state requirement will supersede the federal provision. For example, most state laws base some hold periods on whether the check being deposited is drawn on an in-state or out-of-state bank. If a state contains more than one check-processing region, the state's hold period for in-state checks may be shorter than the federal maximum hold period for nonlocal checks. Thus, the state schedule would supersede the federal schedule to the extent that it applies to in-state, nonlocal checks.

4. The act also provides that any state law that provides for availability in a shorter period of time than required by federal law is applicable to all federally insured institutions

in that state, including federally chartered institutions. If a state law provides shorter availability only for deposits in accounts in certain categories of banks, such as commercial banks, the superseding state law continues to apply only to those categories of banks, rather than to all federally insured banks in the state.

## B. 229.20(b) Preemption of Inconsistent Law

1. This paragraph reflects the statutory provision that other provisions of state law that are inconsistent with federal law are preempted. Preemption does not require a determination by the Board to be effective.

## C. 229.20(c) Standards for Preemption

1. This section describes the standards the Board uses in making determinations on whether federal law will preempt state laws governing funds availability. A provision of state law is considered inconsistent with federal law if it permits a depository bank to make funds available to a customer in a longer period of time than the maximum period permitted by the act and this regulation. For example, a state law that permits a hold of four business days or longer for local checks permits a hold that is longer than that permitted under the act and this regulation, and therefore is inconsistent and preempted. State availability schedules that provide for availability in a shorter period of time than required under Regulation CC supersede the federal schedule.

2. Under a state law, some categories of deposits could be available for withdrawal sooner or later than the time required by this subpart, depending on the composition of the deposit. For example, the act and this regulation (§ 229.10(c)(1)(vii)) require next-day availability for the first \$100 of the aggregate deposit of local or nonlocal checks on any day, and a state law could require next-day availability for any check of \$100 or less that is deposited. Under the act and this regulation, if either one \$150 check or three \$50 checks are deposited on a given day, \$100 must be made available for withdrawal on the next business day, and \$50 must be made available in accordance with the local or nonlocal



schedule. Under the state law, however, the two deposits would be subject to different availability rules. In the first case, none of the proceeds of the deposit would be subject to next-day availability; in the second case, the entire proceeds of the deposit would be subject to next-day availability. In this example, because the state law would, in some of these situations, permit a hold longer than the maximum permitted by the act, this provision of state law is inconsistent and preempted in its entirety.

3. In addition to the differences between state and federal availability schedules, a number of state laws contain exceptions to the state availability schedules that are different from those provided under the act and this regulation. The state exceptions continue to apply only in those cases where the state schedule is shorter than or equal to the federal schedule, and then only up to the limit permitted by the Regulation CC schedule. Where a deposit is subject to a state exception under a state schedule that is not preempted by Regulation CC and is also subject to a federal exception, the hold on the deposit cannot exceed the hold permissible under the federal exception in accordance with Regulation CC. In such cases, only one exception notice is required, in accordance with section 229.13(g). This notice need only include the applicable federal exception as the reason the exception was invoked. For those categories of checks for which the state schedule is preempted by the federal schedule, only the federal exceptions may be used.

4. State laws that provide maximum availability periods for categories of deposits that are not covered by the act would not be preempted. Thus, state funds-availability laws that apply to funds in time and savings deposits are not affected by the act or this regulation. In addition, the availability schedules of several states apply to "items" deposited to an account. The term "items" may encompass deposits, such as nonnegotiable instruments, that are not subject to the Regulation CC availability schedules. Deposits that are not covered by Regulation CC continue to be subject to the state availability schedules. State laws that provide maximum availability periods for categories of institutions that are not

covered by the act would also not be preempted. For example, a state law that governs money market mutual funds would not be affected by the act or this regulation.

5. Generally, state rules governing the disclosure or notice of availability policies applicable to accounts also are preempted. Nevertheless, a state law requiring disclosure of funds-availability policies that apply to deposits other than "accounts," such as savings or time deposits, are not inconsistent with the act and this subpart. Banks in these states would have to follow the state disclosure rules for these deposits.

#### D. 229.20(d) Preemption Determinations

1. The Board may issue preemption determinations upon the request of an interested party in a state. The determinations will relate only to the provisions of subparts A and B; generally the Board will not issue individual preemption determinations regarding the relation of state UCC provisions to the requirements of subpart C.

#### E. 229.20(e) Procedures for Preemption Determinations

1. This provision sets forth the information that must be included in a request by an interested party for a preemption determination by the Board.

**SECTION 229.21—Civil Liability**

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

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

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

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

(ii) in the case of a class action—

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

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

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

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

(1) the amount of any damages awarded;

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

(3) the resources of the bank;

(4) the number of persons adversely affected; and

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

(c) *Bona fide errors.*

(1) *General rule.* A bank is not liable in any action brought under this section for a violation of this subpart if the bank demonstrates by a preponderance of the evidence that the violation was not intentional and

resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

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

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

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

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

(g) *Record retention.*

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

(2) If a bank has actual notice that it is being investigated, or is subject to an enforcement proceeding by an agency charged with monitoring that bank's compliance with the act and this subpart, or has been served with notice of an action filed under this section, it shall retain the records pertaining to the action or proceeding pending final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

## COMMENTARY

### SECTION 229.21—Civil Liability

#### A. 229.21(a) Civil Liability

1. This paragraph sets forth the statutory penalties for failure to comply with the requirements of this subpart. These penalties apply to provisions of state law that supersede provisions of this regulation, such as requirements that funds deposited in accounts at banks be made available more promptly than required by this regulation, but they do not apply to other provisions of state law. (See the commentary to section 229.20.)

#### B. 229.21(b) Class-Action Awards

1. This paragraph sets forth the provision in the act concerning the factors that should be considered by the court in establishing the amount of a class-action award.

#### C. 229.21(c) Bona Fide Errors

1. A bank is shielded from liability under this section for a violation of a requirement of this subpart if it can demonstrate, by a preponderance of the evidence, that the violation resulted from a bona fide error and that it maintains procedures designed to avoid such errors. For example, a bank may make a bona fide error if it fails to give next-day availability on a check drawn on the Treasury because the bank's computer system malfunctions in a way that prevents the bank from updating its customer's account; or if it fails to identify whether a payable-through check is a local or nonlocal check despite procedures designed to make this determination accurately.

#### D. 229.21(d) Jurisdiction

1. The act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

#### E. 229.21(e) Reliance on Board Rulings

1. This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, model form, notice, or

clause (if the disclosure actually corresponds to the bank's availability policy), or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on this commentary, which is issued as an official Board interpretation, as well as on the regulation itself.

#### F. 229.21(f) Exclusions

1. This provision clarifies that liability under this section does not apply to violations of the requirements of subpart C of this regulation, or to actions for wrongful dishonor of a check by a paying bank's customer.

#### G. 229.21(g) Record Retention

1. Banks must keep records to show compliance with the requirements of this subpart for at least two years. This record-retention period is extended in the case of civil actions and enforcement proceedings. Generally, a bank is not required to retain records showing that it has actually given disclosures or notices required by this subpart to each customer, but it must retain evidence demonstrating that its procedures reasonably ensure the customers' receipt of the required disclosures and notices. A bank must, however, retain a copy of each notice provided pursuant to its use of the reasonable cause exception under section 229.13(g) as well as a brief description of the facts giving rise to the availability of that exception.

## SUBPART C—COLLECTION OF CHECKS

### SECTION 229.30—Paying Bank's Responsibility for Return of Checks

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

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

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

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

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

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

(i) of similar amount as the returned check;

(ii) drawn on the depository bank; and

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

Subject to the requirement for expeditious return, a paying bank may send a returned

check to the depository bank, or to any other bank agreeing to handle the returned check expeditiously under section 229.31(a). A paying bank may convert a check to a qualified returned check. A qualified returned check must be encoded in magnetic ink with the routing number of the depository bank, the amount of the returned check, and a "2" in position 44 of the MICR line as a return identifier, in accordance with the American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (Sept. 1983). This paragraph does not affect a paying bank's responsibility to return a check within the deadlines required by the UCC, Regulation J (12 CFR 210), or section 229.30(c).

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

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

(1) on or before the receiving bank's next banking day following the otherwise applicable deadline, for all deadlines other than those described in paragraph (c)(2) of this section; this deadline is extended further if a paying bank uses a highly expeditious means of transportation, even if this means of transportation would ordinarily result in delivery after the receiving bank's next banking day; or

(2) prior to the cutoff hour for the next

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

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

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

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

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

## COMMENTARY

SECTION 229.30—Paying Bank's  
Responsibility for Return of Checks

## A. 229.30(a) Return of Checks

1. This section requires a paying bank (which, for purposes of subpart C, may include a payable-through and payable-at bank; see section 229.2(z)) that determines not to pay a check to return the check expeditiously. Generally, a check is returned expeditiously if the return process is as fast as the forward-collection process. This paragraph provides two standards for expeditious return, the two-day/four-day test and the forward-collection test.

2. Under the two-day/four-day test, if a check is returned such that it would normally be received by the depository bank two business days after presentment where both the paying and depository banks are located in the same check-processing region or four business days after presentment where the paying and depository banks are not located in the same check-processing region, the check is considered returned expeditiously. In certain limited cases, however, these times are shorter than the time it would normally take a forward-collection check deposited in the paying bank and payable by the depository bank to be collected. Therefore, the Board has included a forward-collection test, whereby a check is nonetheless considered to be returned expeditiously if the paying bank uses transportation methods and banks for return comparable to those used for forward-collection checks, even if the check is not received by the depository bank within the two-day or four-day period.

3. *Two-Day/Four-Day Test*

a. Under the first test, a paying bank must return the check so that the check would normally be received by the depository bank within specified times, depending on whether or not the paying and depository banks are located in the same check-processing region.

b. Where both banks are located in the same check-processing region, a check is returned expeditiously if it is returned to the depository bank by 4:00 p.m. (local time of

the depository bank) of the second business day after the banking day on which the check was presented to the paying bank. For example, a check presented on Monday to a paying bank must be returned to a depository bank located in the same check-processing region by 4:00 p.m. on Wednesday. For a paying bank that is located in a different check-processing region than the depository bank, the deadline to complete return is 4:00 p.m. (local time of the depository bank) of the fourth business day after the banking day on which the check was presented to the paying bank. For example, a check presented to such a paying bank on Monday must be returned to the depository bank by 4:00 p.m. on Friday.

c. This two-day/four-day test does not necessarily require actual receipt of the check by the depository bank within these times. Rather, the paying bank must send the check so that the check would normally be received by the depository bank within the specified time. Thus, the paying bank is not responsible for unforeseeable delays in the return of the check, such as transportation delays.

d. Often, returned checks will be delivered to the depository bank together with forward collection checks. Where the last day on which a check could be delivered to a depository bank under this two-day/four-day test is not a banking day for the depository bank, a returning bank might not schedule delivery of forward-collection checks to the depository bank on that day. Further, the depository bank may not process checks on that day. Consequently, if the last day of the time limit is not a banking day for the depository bank, the check may be delivered to the depository bank before the close of the depository bank's next banking day and the return will still be considered expeditious. Ordinarily, this extension of time will allow the returned checks to be delivered with the next shipment of forward-collection checks destined for the depository bank.

e. The times specified in this two-day/four-day test are based on estimated forward-collection times, but take into account the particular difficulties that may be encountered in handling returned checks. It is anticipated that the normal process for forward collection of a check coupled with these return requirements



will frequently result in the return of checks before the proceeds of local and nonlocal checks, other than those covered by section 229.10(c), must be made available for withdrawal.

f. Under this two-day/four-day test, no particular means of returning checks is required, thus providing flexibility to paying banks in selecting means of return. The Board anticipates that paying banks will often use returning banks (see section 229.31) as their agents to return checks to depository banks. A paying bank may rely on the availability schedule of the returning bank it uses in determining whether the returned check would "normally" be returned within the required time under this two-day/four-day test, unless the paying bank has reason to believe that these schedules do not reflect the actual time for return of a check.

#### 4. Forward-Collection Test

a. Under the second, forward-collection, test, a paying bank returns a check expeditiously if it returns a check by means as swift as the means similarly situated banks would use for the forward collection of a check drawn on the depository bank.

b. Generally, the paying bank would satisfy the forward-collection test if it uses a transportation method and collection path for return comparable to that used for forward collection, provided that the returning bank selected to process the return agrees to handle the returned check under the standards for expeditious return for returning banks under section 229.31(a). This test allows many paying banks a simple means of expeditious return of checks and takes into account the longer time for return that will be required by banks that do not have ready access to direct courier transportation.

c. The paying bank's normal method of sending a check for forward collection would not be expeditious, however, if it is materially slower than that of other banks of similar size and with similar check handling activity in its community.

d. Under the forward-collection test, a paying bank must handle, route, and transport a

returned check in a manner designed to be at least as fast as a similarly situated bank would collect a forward-collection check (1) of similar amount, (2) drawn on the depository bank, and (3) received for deposit by a branch of the paying bank or a similarly situated bank by noon on the banking day following the banking day of presentment of the returned check.

e. This test refers to similarly situated banks to indicate a general community standard. In the case of a paying bank (other than a Federal Reserve Bank), a similarly situated bank is a bank of similar asset size, in the same community, and with similar check-handling activity as the paying bank. (See section 229.2(ee).) A paying bank has similar check-handling activity to other banks that handle similar volumes of checks for collection.

f. Under the forward-collection test, banks that use means of handling returned checks that are less efficient than the means used by similarly situated banks must improve their procedures. On the other hand, a bank with highly efficient means of collecting checks drawn on a particular bank, such as a direct presentment of checks to a bank in a remote community, is not required to use that means for returned checks, i.e., direct return, if similarly situated banks do not present checks directly to that depository bank.

#### 5. Examples

a. If a check is presented to a paying bank on Monday and the depository bank and the paying bank are participants in the same clearinghouse, the paying bank should arrange to have the returned check received by the depository bank by Wednesday. This would be the same day the paying bank would deliver a forward-collection check to the depository bank if the paying bank received the deposit by noon on Tuesday.

b. i. If a check is presented to a paying bank on Monday and the paying bank would normally collect checks drawn on the depository bank by sending them to a correspondent or a Federal Reserve Bank by courier, the paying bank could send the returned check to its correspondent or Federal Reserve Bank,

provided that the correspondent has agreed to handle returned checks expeditiously under section 229.31(a). (All Federal Reserve Banks agree to handle returned checks expeditiously.)

ii. The paying bank must deliver the returned check to the correspondent or Federal Reserve Bank by the correspondent's or Federal Reserve Bank's appropriate cutoff hour. The appropriate cutoff hour is the cutoff hour for returned checks that corresponds to the cutoff hour for forward-collection checks drawn on the depository bank that would normally be used by the paying bank or a similarly situated bank. A returned-check cutoff hour corresponds to a forward-collection cutoff hour if it provides for the same or faster availability for checks destined for the same depository banks.

iii. In this example, delivery to the correspondent or a Federal Reserve Bank by the appropriate cutoff hour satisfies the paying bank's duty, even if use of the correspondent or Federal Reserve Bank is not the most expeditious means of returning the check. Thus, a paying bank may send a local returned check to a correspondent instead of a Federal Reserve Bank, even if the correspondent then sends the returned check to a Federal Reserve Bank the following day as a qualified returned check. Where the paying bank delivers forward-collection checks by courier to the correspondent or the Federal Reserve Bank, mailing returned checks to the correspondent or Federal Reserve Bank would not satisfy the forward-collection test.

iv. If a paying bank ordinarily mails its forward-collection checks to its correspondent or Federal Reserve Bank in order to avoid the costs of a courier delivery, but similarly situated banks use a courier to deliver forward-collection checks to their correspondent or Federal Reserve Bank, the paying bank must send its returned checks by courier to meet the forward-collection test.

c. If a paying bank normally sends its forward-collection checks directly to the depository bank, which is located in another community, but similarly situated banks send forward-collection checks drawn on the depository bank to a correspondent or a Federal Reserve Bank, the paying bank would not have to send returned checks directly to the

depository bank, but could send them to a correspondent or a Federal Reserve Bank.

d. The dollar amount of the returned check has a bearing on how it must be returned. If the paying bank and similarly situated banks present large-dollar checks drawn on the depository bank directly to the depository bank, but use a Federal Reserve Bank or a correspondent to collect small-dollar checks, generally the paying bank would be required to send its large-dollar returns directly to the depository bank (or through a returning bank, if the checks are returned as quickly), but could use a Federal Reserve Bank or a correspondent for its small-dollar returns.

#### 6. *Choice of Returning Bank*

In meeting the requirements of the forward-collection test, the paying bank is responsible for its own actions, but not for those of the depository bank or returning banks. (This is analogous to the responsibility of collecting banks under UCC 4-202(c).) For example, if the paying bank starts the return of the check in a timely manner but return is delayed by a returning bank (including delay to create a qualified returned check), generally the paying bank has met its requirements. (See section 229.38.) If, however, the paying bank selects a returning bank that the paying bank should know is not capable of meeting its return requirements, the paying bank will not have met its obligation of exercising ordinary care in selecting intermediaries to return the check. The paying bank is free to use a method of return, other than its method of forward collection, as long as the alternate method results in delivery of the returned check to the depository bank as quickly as the forward collection of a check drawn on the depository bank or, where the returning bank takes a day to create a qualified returned check under section 229.31(a), one day later than the forward-collection time. If a paying bank returns a check on its banking day of receipt without settling for the check, as permitted under UCC 4-302(a), and receives settlement for the returned check from a returning bank, it must promptly pay the amount of the check to the collecting bank from which it received the check.

### 7. *Qualified Returned Checks*

Although paying banks may wish to prepare qualified returned checks because they will be handled at a lower cost by returning banks, the one-business-day extension provided to returning banks is not available to paying banks because of the longer time that a paying bank has to dispatch the check. Normally, paying banks will be able to convert a check to a qualified returned check at any time after the determination is made to return the check until late in the day following presentment, while a returning bank may receive returned checks late on one day and be expected to dispatch them early the next morning.

### 8. *Routing of Returned Checks*

a. In effect, under either test, the paying bank acts as an agent or subagent of the depository bank in selecting a means of return. Under section 229.30(a), a paying bank is authorized to route the returned check in a variety of ways:

- i. It may send the returned check directly to the depository bank by courier or other means of delivery, bypassing returning banks; or
- ii. It may send the returned check to any returning bank agreeing to handle the returned check for expeditious return to the depository bank under section 229.31(a), regardless of whether or not the returning bank handled the check for forward collection.

b. If the paying bank elects to return the check directly to the depository bank, it is not necessarily required to return the check to the branch of first deposit. The check may be returned to the depository bank at any location permitted under section 229.32(a).

### 9. *Midnight Deadline*

a. Except for the extension permitted by section 229.30(c), discussed below, this section does not relieve a paying bank from the requirement for timely return (i.e., midnight deadline) under UCC 4-301 and 4-302, which continue to apply. Under UCC 4-302, a paying bank is accountable for the amount of a

demand item other than a documentary draft if it does not pay or return the item or send notice of dishonor by its midnight deadline. Under UCC 3-418(c) and 4-215(a), late return constitutes payment and would be final in favor of a holder in due course or a person who has in good faith changed his position in reliance on the payment. Thus, retaining this requirement gives the paying bank an additional incentive to make a prompt return.

b. The expeditious-return requirement applies to a paying bank that determines not to pay a check. This requirement applies to a payable-through or a payable-at bank that is defined as a paying bank (see section 229.2(z)) and that returns a check. This requirement begins when the payable-through or payable-at bank receives the check during forward collection, not when the payor returns the check to the payable-through or payable-at bank. Nevertheless, a check sent for payment or collection to a payable-through or payable-at bank is not considered to be drawn on that bank for purposes of the midnight deadline provision of UCC 4-301. (See discussion of section 229.36(a).)

c. The liability section of this subpart (§ 229.38) provides that a paying bank is not subject to both "accountability" for missing the midnight deadline under the UCC and liability for missing the timeliness requirements of this regulation. Also, a paying bank is not responsible for failure to make expeditious return to a party that has breached a presentment warranty under UCC 4-208, notwithstanding that the paying bank has returned the check. (See the commentary to section 229.33(a).)

### 10. *UCC Provisions Affected*

This paragraph directly affects the following provisions of the UCC, and may affect other sections or provisions:

- a. Section 4-301(d), in that instead of returning a check through a clearinghouse or to the presenting bank, a paying bank may send a returned check to the depository bank or to a returning bank.
- b. Section 4-301(a), in that time limits specified in that section may be affected by the additional requirement to make an expedi-

tious return and in that settlement for returned checks is made under section 229.31(c), not by revocation of settlement.

#### B. 229.30(b) Unidentifiable Depository Bank

1. In some cases, a paying bank will be unable to identify the depository bank through the use of ordinary care and good faith. The Board expects that these cases will be unusual as skilled return clerks will readily identify the depository bank from the depository-bank indorsement required under section 229.35 and appendix D. In cases where the paying bank is unable to identify the depository bank, the paying bank may, in accordance with section 229.30(a), send the returned check to a returning bank that agrees to handle the returned check for expeditious return to the depository bank under section 229.31(a). The returning bank may be better able to identify the depository bank.

2. In the alternative, the paying bank may send the check back up the path used for forward collection of the check. The presenting bank and prior collecting banks normally will be able to trace the collection path of the check through the use of their internal records in conjunction with the indorsements on the returned check. In these limited cases, the paying bank may send such a returned check to any bank that handled the check for forward collection, even if that bank does not agree to handle the returned check for expeditious return to the depository bank under section 229.31(a). A paying bank returning a check under this paragraph to a bank that has not agreed to handle the check expeditiously must advise that bank that it is unable to identify the depository bank. This advice must be conspicuous, such as a stamp on each check for which the depository bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one notice on the cash letter. This information will warn the bank that this check will require special research and handling in accordance with section 229.31(b). The returned check may not be prepared for automated return. The return of a check to a bank that handled the check for

forward collection is consistent with section 229.35 (b), which requires a bank handling a check to take up the check if it has not been paid.

3. The sending of a check to a bank that handled the check for forward collection under this paragraph is not subject to the requirements for expeditious return by the paying bank. Often, the paying bank will not have courier or other expeditious means of transportation to the collecting or presenting bank. Although the lack of a requirement of expeditious return will create risks for the depository bank, in many cases the inability to identify the depository bank will be due to the depository bank's, or a collecting bank's, failure to use the indorsement required by section 229.35(a) and appendix D. If the depository bank failed to use the proper indorsement, it should bear the risks of less than expeditious return. Similarly, where the inability to identify the depository bank is due to indorsements or other information placed on the back of the check by the depository bank's customer or other prior indorser, the depository bank should bear the risk that it cannot charge a returned check back to that customer. Where the inability to identify the depository bank is due to subsequent indorsements of collecting banks, these collecting banks may be liable for a loss incurred by the depository bank due to less-than-expeditious return of a check; those banks therefore have an incentive to return checks sent to them under this paragraph quickly.

4. This paragraph does not relieve a paying bank from the liability for the lack of expeditious return in cases where the paying bank is itself responsible for the inability to identify the depository bank, such as when the paying bank's customer has used a check with printing or other material on the bank in the area reserved for the depository bank's indorsement, making the indorsement unreadable. (See section 229.38(d).)

5. A paying bank's return under this paragraph is also subject to its midnight deadline under UCC 4-301, Regulation J (if the check is returned through a Federal Reserve Bank), and the exception provided in section 229.30(c). A paying bank also may send a check to a prior collecting bank to make a

claim against that bank under section 229.35(b) where the depository bank is insolvent or in other cases as provided in section 229.35(b). Finally, a paying bank may make a claim against a prior collecting bank based on a breach of warranty under UCC 4-208.

### C. 229.30(c) Extension of Deadline

1. This paragraph permits extension of the deadlines for returning a check for which the paying bank previously has settled (generally midnight of the banking day following the banking day on which the check is received by the paying bank) and for returning a check without settling for it (generally midnight of the banking day on which the check is received by the paying bank, or such other time provided by section 210.9 of Regulation J (12 CFR 210) or section 229.36(f)(2) of this part), but not of the duty of expeditious return, in two circumstances:

- a. A paying bank may have a courier that leaves after midnight (or after any other applicable deadline) to deliver its forward-collection checks. This paragraph removes the constraint of the midnight deadline for returned checks if the returned check reaches either the depository bank or the returning bank to which it is sent on that bank's banking day following the expiration of the applicable deadline. The extension also applies if the check reaches the bank to which it is sent later than the close of that bank's banking day, if highly expeditious means of transportation are used. For example, a West Coast paying bank may use this further extension to ship a returned check by air courier directly to an East Coast depository bank even if the check arrives after the close of the depository bank's banking day. This paragraph applies to the extension of all midnight deadlines except Saturday midnight deadlines (see paragraph C.1.b of this appendix).
- b. A paying bank may observe a banking day, as defined in the applicable UCC, on a Saturday, which is not a business day and therefore not a banking day under Regulation CC. In such a case, the UCC deadline for returning checks received on Friday, or for returning checks received on Saturday

without settling for them, might require the bank to return the checks by midnight Saturday. However, the bank may not have couriers leaving on Saturday to carry returned checks, and even if it did, the returning or depository bank to which the returned checks were sent might not be open until Sunday night or Monday morning to receive and process the checks. This paragraph extends the midnight deadline if the returned checks reach the returning bank by a cutoff hour (usually on Sunday night or Monday morning) that permits processing during its next processing cycle or reach the depository bank by the cutoff hour on its next banking day following the Saturday midnight deadline. This paragraph applies exclusively to the extension of Saturday midnight deadlines.

2. The time limits that are extended in each case are the paying bank's midnight deadline for returning a check for which it has already settled and the paying bank's deadline for returning a check without settling for it in UCC 4-301 and 4-302, sections 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12), and section 229.36(f)(2) of this part. As these extensions are designed to speed (§ 229.30(c)(1)), or at least not slow (§ 229.30(c)(2)), the overall return of checks, no modification or extension of the expeditious-return requirements in section 229.30(a) is required.

3. The paying bank satisfies its midnight or other return deadline by dispatching returned checks to another bank by courier, including a courier under contract with the paying bank, prior to expiration of the deadline.

4. This paragraph directly affects UCC 4-301 and 4-302 and sections 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12) to the extent that this paragraph applies by its terms, and may affect other provisions.

### D. 229.30(d) Identification of Returned Check

1. Most paying banks currently use some form of stamp on a returned check indicating the reason for return. This paragraph makes this practice mandatory. No particular form of stamp is required, but the stamp must indicate



the reason for return. A check is identified as a returned check by a reason-for-return stamp, even though the stamp does not specifically state that the check is a returned check. A reason such as "Refer to Maker" is permissible in appropriate cases. If the paying bank places the returned check in a carrier envelope, the carrier envelope should indicate that it is a returned check but need not repeat the reason for return stated in the check if it in fact appears on the check.

#### E. 229.30(e) Depository Bank Without Accounts

1. Subpart B of this regulation applies only to "checks" deposited in transaction-type "accounts." Thus, a depository bank with only time or savings accounts need not comply with the availability requirements of subpart B. Collecting banks will not have couriers delivering checks to these banks as paying banks, because no checks are drawn on them. Consequently, the costs of using a courier or other expedited means to deliver returned checks directly to such a depository bank may not be justified. Thus, the expedited-return requirement of section 229.30(a) and the notice-of-nonpayment requirement of section 229.33 do not apply to checks being returned to banks that do not hold accounts. The paying bank's midnight deadline in UCC 4-301 and 4-302 and section 210.12 of Regulation J (12 CFR 210.12) would continue to apply to these checks. Returning banks also would be required to act on such checks within their midnight deadline. Further, in order to avoid complicating the process of returning checks generally, banks without accounts are required to use the standard indorsement, and their checks are returned by returning banks and paid for by the depository bank under the same rules as checks deposited in other banks, with the exception of the expeditious-return and notice-of-nonpayment requirements of sections 229.30(a), 229.31(a), and 229.33.

2. The expeditious-return requirements also apply to a check deposited in a bank that is not a depository institution. Federal Reserve Banks, Federal Home Loan Banks, private bankers, and possibly certain industrial banks are not "depository institutions" within the

meaning of the act, and therefore are not subject to the expedited-availability and disclosure requirements of subpart B. These banks do, however, maintain "accounts" as defined in section 229.2(a), and a paying bank returning a check to one of these banks would be required to return the check to the depository bank, in accordance with the requirements of this section.

#### F. 229.30(f) Notice in Lieu of Return

1. A check that is lost or otherwise unavailable for return may be returned by sending a legible copy of both sides of the check or, if such a copy is not available to the paying bank, a written notice of nonpayment containing the information specified in section 229.33(b). The copy or written notice must clearly indicate it is a notice in lieu of return and must be handled in the same manner as other returned checks. Notice by telephone, telegraph, or other electronic transmission, other than a legible facsimile or similar image transmission of both sides of the check, does not satisfy the requirements for a notice in lieu of return. The requirement for a writing and the indication that the notice is a substitute for the returned check is necessary so that the returning and depository banks are informed that the notice carries value. Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check or must retain possession of the check for protest. A check is not unavailable for return if it is merely difficult to retrieve from a filing system or from storage by a keeper of checks in a truncation system. A notice in lieu of return may be used by a bank handling a returned check that has been lost or destroyed, including when the original returned check has been charged back as lost or destroyed as provided in section 229.35(b). A bank using a notice in lieu of return gives a warranty under section 229.34(a)(4) that the original check has not been and will not be returned.

2. The requirement of this paragraph supercedes the requirement of UCC 4-301(a) as to the form and information required of a notice of dishonor or nonpayment. Reference in the regulation and this commentary to a returned



check includes a notice in lieu of return unless the context indicates otherwise.

3. The notice in lieu of return is subject to the provisions of section 229.30 and is treated like a returned check for settlement purposes. If the original check is over \$2,500, the notice of nonpayment under section 229.33 is still required but may be satisfied by the notice in lieu of return if the notice in lieu meets the time and information requirements of section 229.33.

4. If not all of the information required by section 229.33(b) is available, the paying bank may make a claim against any prior bank handling the check as provided in section 229.35(b).

#### G. 229.30(g) Reliance on Routing Number

1. Although section 229.35 and appendix D require that the depositary-bank indorsement contain its nine-digit routing number, it is possible that a returned check will bear the routing number of the depositary bank in fractional, nine-digit, or other form. This paragraph permits a paying bank to rely on the routing number of the depositary bank as it appears on the check (in the depositary bank's indorsement) when it is received by the paying bank.

2. If there are inconsistent routing numbers, the paying bank may rely on any routing number designating the depositary bank. The paying bank is not required to resolve the inconsistency prior to processing the check. The paying bank remains subject to the requirement to act in good faith and use ordinary care under section 229.38(a).

## SECTION 229.31—Returning Bank's Responsibility for Return of Checks

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

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

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

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

If the last business day on which the returning bank may deliver a returned check to the depository bank is not a banking day for the depository bank, the returning bank meets this requirement if the returned check is received by the depository bank on or before the depository bank's next banking day.

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

(i) of similar amount as the returned check;

(ii) drawn on the depository bank; and

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

Subject to the requirement for expeditious return, the returning bank may send the returned check to the depository bank, or to any bank

agreeing to handle the returned check expeditiously under section 229.31(a). The returning bank may convert the returned check to a qualified returned check. A qualified returned check must be encoded in magnetic ink with the routing number of the depository bank, the amount of the returned check, and a "2" in position 44 of the MICR line as a return identifier, in accordance with the American National Standard Specification for Placement and Location of MICR Printing, X9.13 (Sept. 1983). The time for expeditious return under the forward-collection test, and the deadline for return under the UCC and Regulation J (12 CFR 210), are extended by one business day if the returning bank converts a returned check to a qualified returned check. This extension does not apply to the two-day/four-day test specified in paragraph (a)(1) of this section or when a returning bank is returning a check directly to the depository bank.

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

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

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

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

(c) *Settlement.* A returning bank shall settle with a bank sending a returned check to it for return by the same means that it settles or would settle with the sending bank for a

check received for forward collection drawn on the depository bank. This settlement is final when made.

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

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

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

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

## COMMENTARY

SECTION 229.31—Returning Bank's  
Responsibility for Return of Checks

## A. 229.31(a) Return of Checks

1. The standards for return of checks established by this section are similar to those for paying banks in section 229.30(a). This section requires a returning bank to return a returned check expeditiously if it agrees to handle the returned check for expeditious return under this paragraph. In effect, the returning bank is an agent or subagent of the paying bank and a subagent of the depository bank for the purposes of returning the check.

2. A returning bank agrees to handle a returned check for expeditious return to the depository bank if it—

- a. publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return;
- b. handles a returned check for return that it did not handle for forward collection; or
- c. otherwise agrees to handle a returned check for expeditious return.

3. *Two-Day/Four-Day Test*

As in the case of a paying bank, a returning bank's return of a returned check is expeditious if it meets either of two tests. Under the two-day/four-day test, the check must be returned so that it would normally be received by the depository bank by 4:00 p.m. either two or four business days after the check was presented to the paying bank, depending on whether or not the paying bank is located in the same check-processing region as the depository bank. This is the same test as the two-day/four-day test applicable to paying banks. (See the commentary to section 229.30(a).) While a returning bank will not have firsthand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, allocate with paying banks liability for late return based on the delays caused by each. In effect, the two-day/four-day test protects all paying and returning banks that return checks from claims that they failed to return a check expeditiously, where the check is returned within

the specified time following presentment to the paying bank, or a later time as would result from unforeseen delays.

4. *Forward-Collection Test*

a. The forward-collection test is similar to the forward-collection test for paying banks. Under this test, a returning bank must handle a returned check in the same manner that a similarly situated collecting bank would handle a check of similar size drawn on the depository bank for forward collection. A similarly situated bank is a bank (other than a Federal Reserve Bank) that is of similar asset size and check-handling activity in the same community. A bank has similar check-handling activity if it handles a similar volume of checks for forward collection as the forward-collection volume of the returning bank.

b. Under the forward-collection test, a returning bank must accept returned checks, including both qualified and other returned checks ("raw returns"), at approximately the same times and process them according to the same general schedules as checks handled for forward collection. Thus, a returning bank generally must process even raw returns on an overnight basis, unless its time limit is extended by one day to convert a raw return to a qualified returned check.

5. A returning bank may establish earlier cutoff hours for receipt of returned checks than for receipt of forward-collection checks, but the cutoff hour for returned checks may not be earlier than 2:00 p.m. The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returns than for forward-collection checks. All returned checks received by a cutoff hour for returned checks must be processed and dispatched by the returning bank by the time that it would dispatch forward-collection checks received at a corresponding forward-collection cutoff hour that provides for the same or faster availability for checks destined for the same depository banks.

6. *Examples*

a. If a returning bank receives a returned

check by its cutoff hour for returned checks on Monday and the depository bank and the returning bank are participants in the same clearinghouse, the returning bank should arrange to have the returned check received by the depository bank by Tuesday. This would be the same day that it would deliver a forward-collection check drawn on the depository bank and received by the returning bank at a corresponding forward-collection cutoff hour on Monday.

b. i. If a returning bank receives a returned check, and the returning bank normally would collect a forward-collection check drawn on the depository bank by sending the forward-collection check to a correspondent or a Federal Reserve Bank by courier, the returning bank could send the returned check in the same manner if the correspondent has agreed to handle returned checks expeditiously under section 229.31(a). The returning bank would have to deliver the check by the correspondent's or Federal Reserve Bank's cut-off hour for returned checks that corresponds to its cut-off hour for forward-collection checks drawn on the depository bank. A returning bank may take a day to convert a check to a qualified returned check. Where the forward-collection checks are delivered by courier, mailing the returned checks would not meet the duty established by this section for returning banks.

ii. A returning bank must return a check to the depository bank by courier or other means as fast as a courier, if similarly situated returning banks use couriers to deliver their forward-collection checks to the depository bank.

iii. For some depository banks, no community practice exists as to delivery of checks. For example, a credit union whose customers use payable-through drafts normally does not have checks presented to it because the drafts are normally sent to the payable-through bank for collection. In these circumstances, the community standard is established by taking into account the dollar volume of the checks being sent to the depository bank and the location of the depository bank and determining whether similarly situated banks normally would deliver forward-collection checks to the depository bank, taking into account the par-

ticular risks associated with returned checks. Where the community standard does not require courier delivery, other means of delivery, including mail, are acceptable.

### 7. *Qualified Return Checks*

a. The expeditious-return requirement for a returning bank in this regulation is more stringent in many cases than the duty of a collecting bank to exercise ordinary care under UCC 4-202 in returning a check. A returning bank is under a duty to act as expeditiously in returning a check as it would in the forward collection of a check. Notwithstanding its duty of expeditious return, its midnight deadline under UCC 4-202 and section 210.12(a) of Regulation J (12 CFR 210.12(a)), under the forward-collection test, a returning bank may take an extra day to qualify a returned check. A qualified returned check will be handled by subsequent returning banks more efficiently than a raw return. This paragraph gives a returning bank an extra business day beyond the time that would otherwise be required to return the returned check to convert a returned check to a qualified returned check. The qualified returned check must include the routing number of the depository bank, the amount of the check, and a return identifier encoded on the check in magnetic ink. If the returning bank is sending the returned check directly to the depository bank, this extra day is not available because preparing a qualified returned check will not expedite handling by other banks.

b. If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under section 229.38 for losses caused by any negligence. If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under section 229.38 for losses caused by any negligence or under section 229.34(c)(3) for breach of an enclosing warranty.

### 8. *Routing of Returned Check*

a. Under section 229.31(a), the returning bank is authorized to route the returned check in a variety of ways:

i. It may send the returned check directly to

- the depository bank by courier or other expeditious means of delivery; or
- ii. It may send the returned check to any returning bank agreeing to handle the returned check for expeditious return to the depository bank under this section regardless of whether or not the returning bank handled the check for forward collection.
- b. If the returning bank elects to send the returned check directly to the depository bank, it is not required to send the check to the branch of the depository bank that first handled the check. The returned check may be sent to the depository bank at any location permitted under section 229.32(a).

### 9. Responsibilities of Returning Bank

In meeting the requirements of this section, the returning bank is responsible for its own actions, but not those of the paying bank, other returning banks, or the depository bank. (See UCC 4-202(c) regarding the responsibility of collecting banks.) For example, if the paying bank has delayed the start of the return process but the returning bank acts in a timely manner, the returning bank may satisfy the requirements of this section even if the delayed return results in a loss to the depository bank. (See section 229.38.) A returning bank must handle a notice in lieu of return as expeditiously as a returned check.

### 10. UCC Sections Affected

This paragraph directly affects the following provisions of the UCC and may affect other sections or provisions:

- a. Section 4-202(b), in that time limits required by that section may be affected by the additional requirement to make an expeditious return.
- b. Section 4-214(a), in that settlement for returned checks is made under section 229.31(c) and not by charge-back of provisional credit, and in that the time limits may be affected by the additional requirement to make an expeditious return.

### B. 229.31(b) Unidentifiable Depository Bank

1. This section is similar to section 229.30(b)

but applies to returning banks instead of paying banks. In some cases a returning bank will be unable to identify the depository bank with respect to a check. Returning banks agreeing to handle checks for return to depository banks under section 229.31(a) are expected to be expert in identifying depository-bank indorsements. In the limited cases where the returning bank cannot identify the depository bank, the returning bank may send the returned check to a returning bank that agrees to handle the returned check for expeditious return under section 229.31(a), or it may send the returned check to a bank that handled the check for forward collection, even if that bank does not agree to handle the returned check expeditiously under section 229.31(a).

2. If the returning bank itself handled the check for forward collection, it may send the returned check to a collecting bank that was prior to it in the forward-collection process, which will be better able to identify the depository bank. If there are no prior collecting banks, the returning bank must research the collection of the check and identify the depository bank. As in the case of paying banks under section 229.30(b), a returning bank's sending of a check to a bank that handled the check for forward collection under section 229.31(b) is not subject to the expeditious-return requirements of section 229.31(a).

3. The returning bank's return of a check under this paragraph is subject to the midnight deadline under UCC 4-202(b). (See the definition of "returning bank" in section 229.2(cc).)

4. Where a returning bank receives a check that it does not agree to handle expeditiously under section 229.31(a), such as a check sent to it under section 229.30(b), but the returning bank is able to identify the depository bank, the returning bank must thereafter return the check expeditiously to the depository bank. The returning bank returns a check expeditiously under this paragraph if it returns the check by the same means it would use to return a check drawn on it to the depository bank or by other reasonably prompt means.

5. As in the case of a paying bank returning a check under section 229.30(b), a returning bank returning a check under this paragraph to a bank that has not agreed to handle the check expeditiously must advise that bank



that it is unable to identify the depository bank. This advice must be conspicuous, such as a stamp on each check for which the depository bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one notice on the cash letter. The returned check may not be prepared for automated return.

### C. 229.31(c) Settlement

1. Under the UCC, a collecting bank receives settlement for a check when it is presented to the paying bank. The paying bank may recover the settlement when the paying bank returns the check to the presenting bank. Under this regulation, however, the paying bank may return the check directly to the depository bank or through returning banks that did not handle the check for forward collection. On these more efficient return paths, the paying bank does not recover the settlement made to the presenting bank. Thus, this paragraph requires the returning bank to settle for a returned check (either with the paying bank or another returning bank) in the same way that it would settle for a similar check for forward collection. To achieve uniformity, this paragraph applies even if the returning bank handled the check for forward collection.

2. Any returning bank, including one that handled the check for forward collection, may provide availability for returned checks pursuant to an availability schedule as it does for forward-collection checks. These settlements by returning banks, as well as settlements between banks made during the forward collection of a check, are considered final when made, subject to any deferment of availability. (See section 229.36(d) and the commentary to section 229.35(b).)

3. A returning bank may vary the settlement method it uses by agreement with paying banks or other returning banks. Special rules apply in the case of insolvency of banks. (See section 229.39.) If payment cannot be obtained from a depository or returning bank because of its insolvency or otherwise, recovery can be had by returning, paying, and collecting banks from prior banks on the basis of

the liability of prior banks under section 229.35(b).

4. This paragraph affects UCC 4-214(a) in that a paying or collecting bank does not ordinarily have a right to charge back against the bank from which it received the returned check, although it is entitled to settlement if it returns the returned check to that bank, and may affect other sections or provisions. Under section 229.36(d), a bank collecting a check remains liable to prior collecting banks and the depository bank's customer under the UCC.

### D. 229.31(d) Charges

1. This paragraph permits any returning bank, even one that handled the check for forward collection, to impose a fee on the paying bank or other returning bank for its service in handling a returned check. Where a claim is made under section 229.35(b), the bank on which the claim is made is not authorized by this paragraph to impose a charge for taking up a check. This paragraph preempts state laws to the extent that these laws prevent returning banks from charging fees for handling returned checks.

### E. 229.31(e) Depository Bank Without Accounts

1. This paragraph is similar to section 229.30(e) and relieves a returning bank of its obligation to make expeditious return to a depository bank that does not maintain any accounts. (See the commentary to section 229.30(e).)

### F. 229.31(f) Notice in Lieu of Return

1. This paragraph is similar to section 229.30(f) and authorizes a returning bank to originate a notice in lieu of return if the returned check is unavailable for return. Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check or must retain possession of the check for protest. A check is not unavailable for return if it is merely difficult to retrieve from a filing system or from storage by a keeper of checks in a truncation system. (See the commentary to section 229.30(f).)

### G. 229.31(g) Reliance on Routing Number

1. This paragraph is similar to section 229.30(g) and permits a returning bank to rely on routing numbers appearing on a returned check such as routing numbers in the depositor's indorsement or on qualified returned checks. (See the commentary to section 229.30(g).)

## SECTION 229.32—Depository Bank's Responsibility for Returned Checks

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

- (1) at a location at which presentment of checks for forward collection is requested by the depository bank; and
- (2) (i) at a branch, head office, or other location consistent with the name and address of the bank in its indorsement on the check;
  - (ii) if no address appears in the indorsement, at a branch or head office associated with the routing number of the bank in its indorsement on the check;
  - (iii) if the address in the indorsement is not in the same check-processing region as the address associated with the routing number of the bank in its indorsement on the check, at a location consistent with the address in the indorsement and at a branch or head office associated with the routing number in the bank's indorsement; or
  - (iv) if no routing number or address appears in its indorsement on the check, at any branch or head office of the bank.

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

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

- (1) debit to an account of the depository bank on the books of the returning or paying bank;
- (2) cash;
- (3) wire transfer; or
- (4) any other form of payment acceptable to the returning or paying bank;

provided that the proceeds of the payment are available to the returning or paying bank in cash or by credit to an account of the returning or paying bank on or as of the payment date. If the payment date is not a banking day for the returning or paying bank or the depository bank is unable to make the payment

on the payment date, payment shall be made by the next day that is a banking day for the returning or paying bank. These payments are final when made.

(c) *Misrouted returned checks and written notices of nonpayment.* If a bank receives a returned check or written notice of nonpayment on the basis that it is the depository bank, and the bank determines that it is not the depository bank with respect to the check or notice, it shall either promptly send the returned check or notice to the depository bank directly or by means of a returning bank agreeing to handle the returned check expeditiously under section 229.31(a), or send the check or notice back to the bank from which it was received.

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

## COMMENTARY

## SECTION 229.32—Depositary Bank's Responsibility for Returned Checks

## A. 229.32(a) Acceptance of Returned Checks

1. This regulation seeks to encourage direct returns by paying and returning banks and may result in a number of banks sending checks to depositary banks with no preexisting arrangements as to where the returned checks should be delivered. This paragraph states where the depositary bank is required to accept returned checks and written notices of nonpayment under section 229.33. (These locations differ from locations at which a depositary bank must accept electronic notices.) It is derived from UCC 3-111, which specifies that presentment for payment may be made at the place specified in the instrument or, if there is none, at the place of business of the party to pay. In the case of returned checks, the depositary bank does not print the check and can only specify the place of "payment" of the returned check in its indorsement.

2. The paragraph specifies four locations at which the depositary bank must accept returned checks:

a. The depositary bank must accept returned checks at any location at which it requests presentment of forward-collection checks such as a processing center. A depositary bank does not request presentment of forward-collection checks at a branch of the bank merely by paying checks presented over the counter.

b. i. If the depositary bank indorsement states the name and address of the depositary bank, it must accept returned checks at the branch, head office, or other location, such as a processing center, indicated by the address. If the address is too general to identify a particular location, then the depositary bank must accept returned checks at any branch or head office consistent with the address. If, for example, the address is "New York, New York," each branch in New York City must accept returned checks.

ii. If no address appears in the depositary

bank's indorsement, the depositary bank must accept returned checks at any branch or head office associated with the depositary bank's routing number. The offices associated with the routing number of a bank are found in *American Bankers Association Key to Routing Numbers*, published by Thomson Publishing Inc., which lists a city and state address for each routing number.

iii. The depositary bank must accept returned checks at the address in its indorsement and at an address associated with its routing number in the indorsement if the written address in the indorsement and the address associated with the routing number in the indorsement are not in the same check-processing region. Under sections 229.30(g) and 229.31(g), a paying or returning bank may rely on the depositary bank's routing number in its indorsement in handling returned checks and is not required to send returned checks to an address in the depositary bank's indorsement that is not in the same check-processing region as the address associated with the routing number in the indorsement.

iv. If no routing number or address appears in its indorsement, the depositary bank must accept a returned check at any branch or head office of the bank. The indorsement requirement of section 229.35 and appendix D requires that the indorsement contain a routing number, a name, and a location. Consequently, this provision, as well as paragraph (a)(2)(ii) of this section, only applies where the depositary bank has failed to comply with the indorsement requirement.

3. For ease of processing, a depositary bank may require that returning or paying banks returning checks to it separate returned checks from forward-collection checks being presented.

4. Under section 229.33(d), a depositary bank receiving a returned check or notice of nonpayment must send notice to its customer by its midnight deadline or within a longer reasonable time.

## B. 229.32(b) Payment

1. As discussed in the commentary to section

229.31(c), under this regulation a paying or returning bank does not obtain credit for a returned check by charge-back but by, in effect, presenting the returned check to the depository bank. This paragraph imposes an obligation to "pay" a returned check that is similar to the obligation to pay a forward-collection check by a paying bank, except that the depository bank may not return a returned check for which it is the depository bank. Also, certain means of payment, such as remittance drafts, may be used only with the agreement of the returning bank.

2. The depository bank must pay for a returned check by the close of the banking day on which it received the returned check. The day on which a returned check is received is determined pursuant to UCC 4-108, which permits the bank to establish a cutoff hour, generally not earlier than 2:00 p.m., and treat checks received after that hour as being received on the next banking day. If the depository bank is unable to make payment to a returning or paying bank on the banking day that it receives the returned check, because the returning or paying bank is closed for a holiday or because the time when the depository bank received the check is after the close of Fedwire (e.g., West Coast banks with late cutoff hours), payment may be made on the next banking day of the bank receiving payment.

3. Payment must be made so that the funds are available for use by the bank returning the check to the depository bank on the day the check is received by the depository bank. For example, a depository bank meets this requirement if it sends a wire transfer of funds to the returning or paying bank on the day it receives the returned check, even if the returning or paying bank has closed for the day. A wire transfer should indicate the purpose of the payment.

4. The depository bank may use a net-settlement arrangement to settle for a returned check. Banks with net-settlement agreements could net the appropriate credits and debits for returned checks with the accounting entries for forward-collection checks if they so desired. If, for purposes of establishing additional controls or for other reasons, the banks involved desired a separate settlement for re-

turned checks, a separate net-settlement agreement could be established.

5. The bank sending the returned check to the depository bank may agree to accept payment at a later date if, for example, it does not believe that the amount of the returned check or checks warrants the costs of same-day payment. Thus, a returning or paying bank may agree to accept payment through an ACH credit or debit transfer that settles the day after the returned check is received instead of a wire transfer that settles on the same day.

6. This paragraph and this subpart do not affect the depository bank's right to recover a provisional settlement with its nonbank customer for a check that is returned. (See also sections 229.19(c)(2)(ii), 229.33(d), and 229.35(d).)

### C. 229.32(c) Misrouted Returned Checks

1. This paragraph permits a bank receiving a check on the basis that it is the depository bank to send the misrouted returned check to the correct depository bank, if it can identify the correct depository bank, either directly or through a returning bank agreeing to handle the check expeditiously under section 229.30(a). In these cases, the bank receiving the check is acting as a returning bank. Alternatively, the bank receiving the misrouted returned check must send the check back to the bank from which it was received. In either case the bank to which the returned check was misrouted could receive settlement for the check. The depository bank would be required to pay for the returned check under section 229.32(b), and any other bank to which the check is sent under this paragraph would be required to settle for the check as a returning bank under section 229.31(c). If the check was originally received "free," that is, without a charge for the check, the bank incorrectly receiving the check would have to return the check, without a charge, to the bank from which it came. The bank to which the returned check was misrouted is required to act promptly but is not required to meet the expeditious-return requirements of section 229.31(a); however, it must act within its mid-

night deadline. This paragraph does not affect a bank's duties under section 229.35(b).

#### D. 229.32(d) Charges

1. This paragraph prohibits a depository bank from charging the equivalent of a presentment fee for returned checks. A returning bank, however, may charge a fee for handling returned checks. If the returning bank receives a mixed cash letter of returned checks, which includes some checks for which the returning bank is also the depository bank, the fee may be applied to all the returned checks in the cash letter. In the case of a sorted cash letter containing only returned checks for which the returning bank is the depository bank, however, no fee may be charged.



## SECTION 229.33—Notice of Nonpayment

(a) *Requirement.* If a paying bank determines not to pay a check in the amount of \$2,500 or more, it shall provide notice of nonpayment such that the notice is received by the depository bank by 4:00 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. If the day the paying bank is required to provide notice is not a banking day for the depository bank, receipt of notice on the depository bank's next banking day constitutes timely notice. Notice may be provided by any reasonable means, including the returned check, a writing (including a copy of the check), telephone, Fedwire, telex, or other form of telegraph.

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

- (1) name and routing number of the paying bank;
- (2) name of the payee(s);
- (3) amount;
- (4) date of the indorsement of the depository bank;
- (5) account number of the customer(s) of the depository bank;
- (6) branch name or number of the depository bank from its indorsement;
- (7) trace number associated with the indorsement of the depository bank; and
- (8) reason for nonpayment.

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

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

- (1) either at the telephone or telegraph number of its return-check unit indicated in the indorsement, or, if no such number ap-

pears in the indorsement or if the number is illegible, at the general-purpose telephone or telegraph number of its head office or the branch indicated in the indorsement; and

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

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

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

## COMMENTARY

## SECTION 229.33—Notice of Nonpayment

## A. 229.33(a) Requirement

1. Notice of nonpayment as required by this section and written notice in lieu of return as provided in sections 229.30(f) and 229.31(f) serve different functions. The two kinds of notice, however, must meet the content requirements of this section. The paying bank must send a notice of nonpayment if it decides not to pay a check of \$2,500 or more. A paying bank may rely on an amount encoded on the check in magnetic ink to determine whether the check is in the amount of \$2,500 or more. The notice of nonpayment carries no value, and the check itself (or the notice in lieu of return) must be returned. The paying bank must ensure that the notice of nonpayment is received by the depository bank by 4:00 p.m. local time on the second business day following presentment. A bank identified by routing number as the paying bank is considered the paying bank under this regulation and would be required to create a notice of nonpayment even though that bank determined that the check was not drawn by a customer of that bank. (See the commentary to the definition of "paying bank" in section 229.2(z).)

2. The paying bank should not send a notice of nonpayment until it has finally determined not to pay the check. Under section 229.34(b), by sending the notice the paying bank warrants that it has returned or will return the check. If a paying bank sends a notice and subsequently decides to pay the check, the paying bank may mitigate its liability on this warranty by notifying the depository bank that the check has been paid.

3. Because the return of the check itself may serve as the required notice of nonpayment, in many cases no notice other than the return of the check will be necessary. For example, in many cases the return of a check through a clearinghouse to another participant of the clearinghouse will be made in time to meet the time requirements of this section. If the check normally will not be received by the depository bank within the time limits for

notice, the return of the check will not satisfy the notice requirement. In determining whether the returned check will satisfy the notice requirement, the paying bank may rely on the availability schedules of returning banks as the time that the returned check is expected to be delivered to the depository bank, unless the paying bank has reason to know the availability schedules are inaccurate.

4. Unless the returned check is used to satisfy the notice requirement, the requirement for notice is independent of and does not affect the requirements for timely and expeditious return of the check under section 229.30 and the UCC. (See section 229.30(a).) If a paying bank fails both to comply with this section and to comply with the requirements for timely and expeditious return under section 229.30 and the UCC and Regulation J (12 CFR 210), the paying bank shall be liable under either this section or such other requirements, but not both. (See section 229.38(b).) A paying bank is not responsible for failure to give notice of nonpayment to a party that has breached a presentment warranty under UCC 4-208, notwithstanding that the paying bank may have returned the check. (See UCC 4-208 and 4-302.)

## B. 229.33(b) Content of Notices

1. This paragraph provides that the notice must at a minimum contain eight elements which are specifically enumerated. In the case of written notices, the name and routing number of the depository bank also are required.

2. If the paying bank cannot identify the depository bank from the check itself, it may wish to send the notice to the earliest collecting bank it can identify and indicate that the notice is not being sent to the depository bank. The collecting bank may be able to identify the depository bank and forward the notice, but is under no duty to do so. In addition, the collecting bank may actually be the depository bank.

## C. 229.33(c) Acceptance of Notice

1. In the case of a written notice, the depository bank is required to accept notices at the locations specified in section 229.32(a). In the case of telephone notices, the bank may not

refuse to accept notices at the telephone numbers identified in this section, but may transfer calls or use a recording device. Banks may vary by agreement the location and manner in which notices are received.

#### D. 229.33(d) Notification to Customer

1. This paragraph requires a depository bank to notify its customer of nonpayment upon receipt of a returned check or notice of nonpayment, regardless of the amount of the check or notice. This requirement is similar to the requirement under the UCC as interpreted in *Appliance Buyers Credit Corp. v. Prospect National Bank*, 708 F.2d 290 (7th Cir. 1983), that a depository bank may be liable for damages incurred by its customer for its failure to give its customer timely advice that it has received a notice of nonpayment. Notice also must be given if a depository bank receives a notice of recovery under section 229.35(b). The notice to the customer required under this paragraph also may satisfy the notice requirement of section 229.13(g) if the depository bank invokes the reasonable-cause exception of section 229.13(e) due to the receipt of a notice of nonpayment, provided the notice meets the other requirements of section 229.13(g).

## SECTION 229.34—Warranties

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

- (1) the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned the check within its deadline under the UCC, Regulation J (12 CFR 210), or section 229.30(c) of this part;
- (2) it is authorized to return the check;
- (3) the check has not been materially altered; and
- (4) in the case of a notice in lieu of return, the original check has not and will not be returned.

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

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

- (1) the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned or will return the check within its deadline under the UCC, Regulation J (12 CFR 210), or section 229.30(c) of this part;
- (2) it is authorized to send the notice; and
- (3) the check has not been materially altered.

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

(c) *Warranty of settlement amount, encoding, and offset.*

- (1) Each bank that presents one or more checks to a paying bank and in return re-

ceives a settlement or other consideration warrants to the paying bank that the total amount of the checks presented is equal to the total amount of the settlement demanded by the presenting bank from the paying bank.

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

(3) Each bank that presents or transfers a check or returned check warrants to any bank that subsequently handles it that, at the time of presentment or transfer, the information encoded after issue in magnetic ink on the check or returned check is correct.

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

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

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

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

## COMMENTARY

## SECTION 229.34—Warranties

## A. 229.34(a) Warranty of Returned Check

1. This paragraph includes warranties that a returned check, including a notice in lieu of return, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the UCC (subject to any claims or defenses under the UCC, such as breach of a presentment warranty), Regulation J (12 CFR 210), or section 229.30(c); that the paying or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the original check has not been and will not be returned for payment. (See the commentary to section 229.30(f).) The warranty does not include a warranty that the bank complied with the expeditious-return requirements of sections 229.30(a) and 229.31(a). These warranties do not apply to checks drawn on the United States Treasury, to U.S. Postal Service money orders, or to checks drawn on a state or a unit of general local government that are not payable through or at a bank. (See section 229.42.)

## B. 229.34(b) Warranty of Notice of Nonpayment

1. This paragraph provides for warranties for notices of nonpayment. This warranty does not include a warranty that the notice is accurate and timely under section 229.33. The requirements of section 229.33 that are not covered by the warranty are subject to the liability provisions of section 229.38. These warranties are designed to give the depositary bank more confidence in relying on notices of nonpayment. This paragraph imposes liability on a paying bank that gives notice of nonpayment and then subsequently returns the check. (See the commentary on section 229.33(a).)

## C. 229.34(c) Warranty of Settlement Amount, Encoding, and Offset

1. Paragraph (c)(1) provides that a bank that presents and receives settlement for checks warrants to the paying bank that the settlement it demands (e.g., as noted on the cash letter) equals the total amount of the checks it presents. This paragraph gives the paying bank a warranty claim against the presenting bank for the amount of any excess settlement made on the basis of the amount demanded, plus expenses. If the amount demanded is understated, a paying bank discharges its settlement obligation under UCC 4-301 by paying the amount demanded, but remains liable for the amount by which the demand is understated; the presenting bank is nevertheless liable for expenses in resolving the adjustment.

2. When checks or returned checks are transferred to a collecting, returning, or depository bank, the transferor bank is not required to demand settlement, as is required upon presentment to the paying bank. However, often the checks or returned checks will be accompanied by information (such as a cash-letter listing) that will indicate the total of the checks or returned checks. Paragraph (c)(2) provides that if the transferor bank includes information indicating the total amount of checks or returned checks transferred, it warrants that the information is correct (i.e., equals the actual total of the items).

3. Paragraph (c)(3) provides that a bank that presents or transfers a check or returned check warrants the accuracy of the magnetic ink encoding that was placed on the item after issue, and that exists at the time of presentment or transfer, to any bank that subsequently handles the check or returned check. Under UCC 4-209(a), only the encoder (or the encoder and the depository bank, if the encoder is a customer of the depository bank) warrants the encoding accuracy, thus any claims on the warranty must be directed to the encoder. Paragraph (c)(3) expands on the UCC by providing that all banks that transfer or present a check or returned check make the encoding warranty. In addition, under the UCC, the encoder makes the warranty to subsequent collecting banks and the paying bank, while paragraph (c)(3) provides that the war-



ranty is made to banks in the return chain as well.

4. A paying bank that settles for an overstated cash letter because of a misencoded check may make a warranty claim against the presenting bank under paragraph (c)(1) (which would require the paying bank to show that the check was part of the overstated cash letter) or an encoding warranty claim under paragraph (c)(3) against the presenting bank or any preceding bank that handled the misencoded check.

5. Paragraph (c)(4) provides that a paying bank or a depository bank may set off excess settlement paid to another bank against settlement owed to that bank for checks presented or returned checks received (for which it is the depository bank) subsequent to the excess settlement.

#### D. 229.34(d) Damages

1. This paragraph adopts for the warranties in section 229.34(a), (b), and (c) the damages provided in UCC 4-207(c) and 4A-506(b). (See definition of "interest compensation" in section 229.2(oo).)

#### E. 229.34(e) Tender of Defense

1. This paragraph adopts for this regulation the vouching-in provisions of UCC 3-119.

#### F. 229.34(f) Notice of Claim

1. This paragraph adopts the notice provisions of UCC sections 4-207(d) and 4-208(e). The time limit set forth in this paragraph applies to notices of claims for warranty breaches only. As provided in section 229.38(g), all actions under this section must be brought within one year after the date of the occurrence of the violation involved.

## SECTION 229.35—Indorsements

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

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

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

- (1) until the check has been returned to the person initiating collection; or
- (2) until the check has been specially indorsed by a bank to a person who is not a bank.

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

## COMMENTARY

## SECTION 229.35—Indorsements

## A. 229.35(a) Indorsement Standards

1. This section and appendix D require banks to use a standard form of indorsement when indorsing checks during the forward-collection and return process. The standard provides for indorsements by all collecting and returning banks, plus a unique standard for depositary-bank indorsements. It is designed to facilitate the identification of the depositary bank and the prompt return of checks. The regulation places a duty on banks to ensure that their indorsements are legible. The indorsement standard specifies the information each indorsement must contain and its location and ink color.

2. The indorsement standard requires that the nine-digit routing number of the depositary bank be wholly contained in an area on the back of the check from 3.0 inches from the leading edge to 1.5 inches from the trailing edge of the check. This permits banks to use encoding equipment that measures from either the leading or trailing edge of the check to place indorsements in this area. The standard does not require that the entire depositary bank indorsement be contained within the specified area, but checks will be handled most efficiently if depositary banks place as much information as possible within the designated area to ensure that the information is protected from being overstamped by subsequent indorsements. The location requirement for subsequent collecting-bank indorsements (not including returning-bank indorsements) limits these indorsements to the area on the back of the check from the leading edge to 3.0 inches from the leading edge of the check. The area from the trailing edge of the check to 1.5 inches from the trailing edge is commonly used for the payee indorsement.

3. The standard requires depositary banks to use either purple or black ink. The Board encourages depositary banks to indorse checks in purple ink where possible, because use of a unique ink color will facilitate the speedy identification of the depositary bank. Black ink, however, may be used when use of

purple ink is not feasible, such as where a bank uses the same equipment to apply both depositary-bank and subsequent collecting-bank indorsements, and the equipment has only one source of ink.

4. The standard requires subsequent collecting banks to use an ink color other than purple for their indorsements. The standard also requires the depositary bank's indorsement to include its nine-digit routing number set off by arrows, the bank's name and location, and the indorsement date, and permits the indorsement to include other identifying information.

5. The standard does not include the fractional routing number for depositary banks; however, a bank may include its fractional routing number or repeat its nine-digit routing number in its indorsement. If a depositary bank includes its routing number in its indorsement more than once, paying and returning banks will be able to identify the depositary bank more readily. Depositary banks should not include information that can be confused with required information. For example, a nine-digit zip code could be confused with the nine-digit routing number.

6. A depositary bank is not required to place a street address in its indorsement; however, a bank may want to put an address in its indorsement in order to limit the number of locations at which it must accept returned checks. In instances where this address is not consistent with the routing number in the indorsement, the depositary bank is required to accept returned checks at a branch or head office consistent with the routing number. Banks should note, however, that section 229.32 requires a depositary bank to accept returned checks at the location(s) it accepts forward-collection checks. The inclusion of a depositary bank's telephone number where it would receive notices of large-dollar returns in its indorsements is optional.

7. Under the UCC, a specific guarantee of prior indorsement is not necessary. (See UCC 4-207(a) and 4-208(a).) Use of guarantee language in indorsements, such as "P.E.G." ("prior endorsements guaranteed"), may result in reducing the type size used in bank indorsements, thereby making them more difficult to read. Use of this language may make

it more difficult for other banks to identify the depository bank. Subsequent collecting-bank indorsements may not include this language.

8. The standard for returning banks requires a returning bank to apply an indorsement that avoids the area on the back of the check from 3.0 inches from the leading edge of the check to the trailing edge—the area reserved for the payee and depository-bank indorsements. Returning-bank indorsements may differ from subsequent collecting-bank indorsements. The use of various methods to process returns using a variety of equipment also may cause returning-bank indorsements to vary substantially in form, content, and placement on the check. Thus, a returning-bank indorsement may be on the face of the check or on the back of the check. A returning-bank indorsement may not be in purple ink. No content requirements have been adopted for the returning-bank indorsement.

9. If the bank maintaining the account into which a check is deposited agrees with another bank (a correspondent, ATM operator, or lock box operator) to have the other bank accept returns and notices of nonpayment for the bank of account, the indorsement placed on the check as the depository-bank indorsement may be the indorsement of the bank that acts as correspondent, ATM operator, or lock box operator as provided in paragraph (d) of this section.

10. The backs of many checks bear preprinted information or blacked out areas for various reasons. For example, some checks are printed with a carbon band across the back that allows the transfer of information from the check to a ledger with one writing. Also, contracts or loan agreements are printed on certain checks. Other checks that are mailed to recipients may contain areas on the back that are blacked out so that they may not be read through the mailer. On the deposit side, the payee of the check may place its indorsement or information identifying the drawer of the check in the area specified for the depository-bank indorsement, thus making the depository-bank indorsement unreadable.

11. The indorsement standard does not prohibit the use of a carbon band or other printed or written matter on the backs of checks and does not require banks to avoid placing their

indorsements in these areas. Nevertheless, checks will be handled more efficiently if depository banks design indorsement stamps so that the nine-digit routing number avoids the carbon band area. Indorsing parties other than banks, e.g., corporations, will benefit from the faster return of checks if they protect the identifiability and legibility of the depository-bank indorsement by staying clear of the area reserved for the depository-bank indorsement.

12. Section 229.38(d) allocates responsibility for loss resulting from a delay in return of a check due to indorsements that are unreadable because of material on the back of the check. The depository bank is responsible for a loss resulting from a delay in return caused by the condition of the check arising after its issuance until its acceptance by the depository bank that made the depository bank's indorsement illegible. The paying bank is responsible for loss resulting from a delay in return caused by indorsements that are not readable because of other material on the back of the check at the time that it was issued. Depository and paying banks may shift these risks to their customers by agreement.

13. The standard does not require the paying bank to indorse the check; however, if a paying bank does indorse a check that is returned, it should follow the indorsement standard for returning banks. The standard requires collecting and returning banks to indorse the check for tracing purposes.

#### B. 229.35(b) Liability of Bank Handling Check

1. When a check is sent for forward collection, the collection process results in a chain of indorsements extending from the depository bank through any subsequent collecting banks to the paying bank. This section extends the indorsement chain through the paying bank to the returning banks, and would permit each bank to recover from any prior indorser if the claimant bank does not receive payment for the check from a subsequent bank in the collection or return chain. For example, if a returning bank returned a check to an insolvent depository bank and did not receive the full amount of the check from the failed bank, the returning bank could obtain the unrecovered

amount of the check from any bank prior to it in the collection-and-return chain including the paying bank. Because each bank in the collection-and-return chain could recover from a prior bank, any loss would fall on the first collecting bank that received the check from the depository bank. To avoid circuity of actions, the returning bank could recover directly from the first collecting bank. Under the UCC, the first collecting bank might ultimately recover from the depository bank's customer or from the other parties on the check.

2. Where a check is returned through the same banks used for the forward collection of the check, priority during the forward-collection process controls over priority in the return process for the purpose of determining prior and subsequent banks under this regulation.

3. Where a returning bank is insolvent and fails to pay the paying bank or a prior returning bank for a returned check, section 229.39(a) requires the receiver of the failed bank to return the check to the bank that transferred the check to the failed bank. That bank then could either continue the return to the depository bank or recover based on this paragraph. Where the paying bank is insolvent, and fails to pay the collecting bank, the collecting bank also could recover from a prior collecting bank under this paragraph, and the bank from which it recovered could in turn recover from its prior collecting bank until the loss settled on the depository bank (which could recover from its customer).

4. A bank is not required to make a claim against an insolvent bank before exercising its right to recovery under this paragraph. Recovery may be made by charge-back or by other means. This right of recovery also is permitted even where nonpayment of the check is the result of the claiming bank's negligence such as failure to make expeditious return, but the claiming bank remains liable for its negligence under section 229.38.

5. This liability is imposed on a bank handling a check for collection or return regardless of whether the bank's indorsement appears on the check. Notice must be sent under this paragraph to a prior bank from which recovery is sought reasonably promptly after a

bank learns that it did not receive payment from another bank, and learns the identity of the prior bank. Written notice reasonably identifying the check and the basis for recovery is sufficient if the check is not available. Receipt of notice by the bank against which the claim is made is not a precondition to recovery by charge-back or other means; however, a bank may be liable for negligence for failure to provide timely notice. A paying or returning bank also may recover from a prior collecting bank as provided in sections 229.30(b) and 229.31(b). This provision is not a substitute for a paying or returning bank making expeditious return under sections 229.30(a) or 229.31(b). This paragraph does not affect a paying bank's accountability for a check under UCC 4-215(a) and 4-302. Nor does this paragraph affect a collecting bank's accountability under UCC 4-213 and 4-215(d). A collecting bank becomes accountable upon receipt of final settlement as provided in the foregoing UCC sections. The term "final settlement" in sections 229.31(c), 229.32(b), and 229.36(d) is intended to be consistent with the use of the term "final settlement" in the UCC (e.g., UCC 4-213, 4-214, and 4-215). (See also section 229.2(cc) and commentary.)

6. This paragraph also provides that a bank may have the rights of a "holder" based on the handling of the check for collection or return. A bank may become a holder or a holder in due course regardless of whether prior banks have complied with the indorsement standard in section 229.35(a) and appendix D.

7. This paragraph affects the following provisions of the UCC and may affect other provisions:

- a. Section 4-214(a), in that the right to recovery is not based on provisional settlement, and recovery may be had from any prior bank. Section 4-214(a) would continue to permit a depository bank to recover a provisional settlement from its customer. (See section 229.33(d).)
- b. Section 3-415 and related provisions (such as section 3-503), in that such provisions would not apply as between banks, or as between the depository bank and its customer.

### C. 229.35(c) Indorsement by Bank

1. This section protects the rights of a customer depositing a check in a bank without requiring the words "pay any bank," as required by the UCC. (See UCC 4-201(b).) Use of this language in a depository bank's indorsement will make it more difficult for other banks to identify the depository bank. The indorsement standard in appendix D prohibits such material in subsequent collecting bank indorsements. The existence of a bank indorsement provides notice of the restrictive indorsement without any additional words.

### D. 229.35(d) Indorsement for Depository Bank

1. This section permits a depository bank to arrange with another bank to indorse checks. This practice may occur when a correspondent indorses for a respondent, or when the bank servicing an ATM or lock box indorses for the bank maintaining the account in which the check is deposited—i.e., the depository bank. If the indorsing bank applies the depository bank's indorsement, checks will be returned to the depository bank. If the indorsing bank does not apply the depository bank's indorsement, by agreement with the depository bank it may apply its own indorsement as the depository-bank indorsement. In that case, the depository bank's own indorsement on the check (if any) should avoid the location reserved for the depository bank. The actual depository bank remains responsible for the availability and other requirements of subpart B, but the bank indorsing as depository bank is considered the depository bank for purposes of subpart C. The check will be returned, and notice of nonpayment will be given, to the bank indorsing as depository bank.

2. Because the depository bank for subpart B purposes will desire prompt notice of nonpayment, its arrangement with the indorsing bank should provide for prompt notice of nonpayment. The bank indorsing as depository bank may require the depository bank to agree to take up the check if the check is not paid even if the depository bank's indorsement does not appear on the check and it did not handle the check. The arrangement between the banks may constitute an agreement vary-

ing the effect of provisions of subpart C under section 229.37.



## SECTION 229.36—Presentment and Issuance of Checks

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

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

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

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

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

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

(c) *Electronic presentment.* A bank may present a check to a paying bank by transmission of information describing the check in accordance with an agreement with the paying bank. An electronic-presentment agreement may not extend return times or otherwise vary the requirements of this part with respect to parties interested in the check that are not party to the agreement.

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

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

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

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

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

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

(f) *Same-day settlement*

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

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

(ii) by 8:00 a.m. on a business day (local time of the location described in paragraph (f)(1)(i) of this section).

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

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

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

(ii) returns the check.

(3) Notwithstanding paragraph (f)(2) of this section, if a paying bank closes on a business day and receives presentment of a check on that day in accordance with paragraph (f)(1) of this section, the paying bank

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

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

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

## COMMENTARY

## SECTION 229.36—Presentment and Issuance of Checks

## A. 229.36(a) Payable-Through and Payable-at Checks

1. For purposes of subpart C, the regulation defines a payable-through or payable-at bank (which could be designated the collectible-through or collectible-at bank) as a paying bank. The requirements of section 229.30(a) and the notice-of-nonpayment requirements of section 229.33 are imposed on a payable-through or payable-at bank and are based on the time of receipt of the forward-collection check by the payable-through or payable-at bank. This provision is intended to speed the return of checks that are payable through or at a bank to the depository bank.

## B. 229.36(b) Receipt at Bank Office or Processing Center

1. This paragraph seeks to facilitate efficient presentment of checks to promote early return or notice of nonpayment to the depository bank and clarifies the law as to the effect of presentment by routing number. This paragraph differs from section 229.32(a) because presentment of checks differs from delivery of returned checks.

2. The paragraph specifies four locations at which the paying bank must accept presentment of checks. Where the check is payable through a bank and the check is sent to that bank, the payable-through bank is the paying bank for purposes of this subpart, regardless of whether the paying bank must present the check to another bank or to a nonbank payor for payment.

a. Delivery of checks may be made, and presentment is considered to occur, at a location (including a processing center) requested by the paying bank. This is the way most checks are presented by banks today. This provision adopts the common-law rule of a number of legal decisions that the processing center acts as the agent of the paying bank to accept presentment and to begin the time for processing of the check. (See also UCC 4-204(c).) If a bank designates different loca-

tions for the presentment of forward-collection checks bearing different routing numbers, for purposes of this paragraph it requests presentment of checks bearing a particular routing number only at the location designated for receipt of forward-collection checks bearing that routing number.

b. i. Delivery may be made at an office of the bank associated with the routing number on the check. The office associated with the routing number of a bank is found in *American Bankers Association Key to Routing Numbers*, published by Thomson Financial Publishing Inc., which lists a city and state address for each routing number. Checks generally are handled by collecting banks on the basis of the nine-digit routing number encoded in magnetic ink (or on the basis of the fractional-form routing number if the magnetic ink characters are obliterated) on the check, rather than the printed name or address. The definition of a paying bank in section 229.2(z) includes a bank designated by routing number, whether or not there is a name on the check, and whether or not any name is consistent with the routing number. Where a check is payable by one bank, but payable through another, the routing number is that of the payable-through bank, not that of the payor bank. As the payor bank has selected the payable-through bank as the point through which presentment is to be made, it is proper to treat the payable-through bank as the paying bank for purposes of this section.

ii. There is no requirement in the regulation that the name and address on the check agree with the address associated with the routing number on the check. A bank may generally control the use of its routing number, just as it does the use of its name. The address associated with the routing number may be a processing center.

iii. In some cases, a paying bank may have several offices in the city associated with the routing number. In such a case, it would not be reasonable or efficient to require the presenting bank to sort the checks by more specific branch addresses that might be printed on the checks, and to deliver the checks to each branch. A collecting bank normally would deliver all checks to one location. In cases where checks are delivered to a branch

other than the branch on which they may be drawn, computer and courier communication among branches should permit the paying bank to determine quickly whether to pay the check.

c. If the check specifies the name of the paying bank but no address, the bank must accept delivery at any office. Where delivery is made by a person other than a bank, or where the routing number is not readable, delivery will be made based on the name and address of the paying bank on the check. If there is no address, delivery may be made at any office of the paying bank. This provision is consistent with UCC 3-111, which states that presentment for payment may be made at the place specified in the instrument, or, if there is none, at the place of business of the party to pay. Thus, there is a trade-off for a paying bank between specifying a particular address on a check to limit locations of delivery and simply stating the name of the bank to encourage wider currency for the check.

d. If the check specifies the name and address of a branch or head office, or other location (such as a processing center), the check may be delivered by delivery to that office or other location. If the address is too general to identify a particular office, delivery may be made at any office consistent with the address. For example, if the address is "San Francisco, California," each office in San Francisco must accept presentment. The designation of an address on the check generally is in the control of the paying bank.

3. This paragraph may affect UCC 3-111 to the extent that the UCC requires presentment to occur at a place specified in the instrument.

### C. 229.36(c) Electronic Presentment

1. Under an electronic-presentment agreement, presentment takes place when the paying bank receives an electronic transmission of information describing the check rather than upon delivery of the physical check. Electronic-presentment agreements may include a variety of procedures in which the physical check is held (truncated) or delayed by the depository or collecting bank. UCC 4-110 and 4-406(b) make express provision for truncation and electronic presentment.

2. This paragraph allows electronic presentment by agreement with the paying bank; however, such agreement may not prejudice the interests of other parties to the check. For example, an electronic-presentment agreement may not extend the paying bank's time for return. Such an extension could damage the depository bank, which must make funds available to its customers under mandatory availability schedules.

### D. 229.36(d) Liability of Bank During Forward Collection

1. This paragraph makes settlement between banks during forward collection final when made, subject to any deferment of credit, just as settlements between banks during the return of checks are final. In addition, this paragraph clarifies that this change does not affect the liability scheme under UCC 4-201 during forward collection of a check. That UCC section provides that, unless a contrary intent clearly appears, a bank is an agent or subagent of the owner of a check, but that article 4 of the UCC applies even though a bank may have purchased an item and is the owner of it. This paragraph preserves the liability of a collecting bank to prior collecting banks and the depository bank's customer for negligence during the forward collection of a check under the UCC, even though this paragraph provides that settlement between banks during forward collection is "final" rather than "provisional." Settlement by a paying bank is not considered to be final payment for the purposes of UCC 4-215(a)(2) or (3), because a paying bank has the right to recover settlement from a returning or depository bank to which it returns a check under this subpart. Other provisions of the UCC not superseded by this subpart, such as section 4-202, also continue to apply to the forward collection of a check and may apply to the return of a check. (See definition of "returning bank" in section 229.2(cc).)

### E. 229.36(e) Issuance of Payable-Through Checks

1. If a bank arranges for checks payable by it

to be payable through another bank, it must require its customers to use checks that contain conspicuously on their face the name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable and the legend "payable through" followed by the name of the payable-through bank. The first four digits of the nine-digit routing number and the location of the bank by which the check is payable must be associated with the same check-processing region. (This section does not affect section 229.36(b).) The required information is deemed conspicuous if it is printed in a type size not smaller than six-point type and if it is contained in the title plate, which is located in the lower left quadrant of the check. The required information may be conspicuous if it is located elsewhere on the check.

2. If a payable-through check does not meet the requirements of this paragraph, the bank by which the check is payable may be liable to the depository bank or others as provided in section 229.38. For example, a bank by which a payable-through check is payable could be liable to a depository bank that suffers a loss, such as lost interest or liability under subpart B, that would not have occurred had the check met the requirements of this paragraph. Similarly, a bank may be liable under section 229.38 if a check payable by it that is not payable through another bank is labeled as provided in this section. For example, a bank that holds checking accounts and processes checks at a central location but has widely dispersed branches may be liable under this section if it labels all of its checks as "payable through" a single branch and includes the name, address, and four-digit routing symbol of another branch. These checks would not be payable through another bank and should not be labeled as payable-through checks. (All of a bank's offices within the United States are considered part of the same bank; see section 229.2(e).) In this example, the bank by which the checks are payable could be liable to a depository bank that suffers a loss, such as lost interest or liability under subpart B, due to the mislabeled check. The bank by which the check is payable may be liable for additional damages if it fails to act in good faith.

## F. 229.36(f) Same-Day Settlement

1. This paragraph provides that, under certain conditions, a paying bank must settle with a presenting bank for a check on the same day the check is presented in order to avail itself of the ability to return the check on its next banking day under UCC 4-301 and 4-302. This paragraph does not apply to checks presented for immediate payment over the counter. Settling for a check under this paragraph does not constitute final payment of the check under the UCC. This paragraph does not supersede or limit the rules governing collection and return of checks through Federal Reserve Banks that are contained in subpart A of Regulation J (12 CFR 210).

### 2. *Presentment Requirements*

#### a. *Location and time.*

i. For presented checks to qualify for mandatory same-day settlement, information accompanying the checks must indicate that presentment is being made under this paragraph—e.g., "these checks are being presented for same-day settlement"—and must include a demand for payment of the total amount of the checks together with appropriate payment instructions in order to enable the paying bank to discharge its settlement responsibilities under this paragraph. In addition, the check or checks must be presented at a location designated by the paying bank for receipt of checks for same-day settlement by 8:00 a.m. local time of that location. The designated presentment location must be a location at which the paying bank would be considered to have received a check under section 229.36(b). The paying bank may not designate a location solely for presentment of checks subject to settlement under this paragraph; by designating a location for the purposes of section 229.36(f), the paying bank agrees to accept checks at that location for the purposes of section 229.36(b).

ii. The designated presentment location also must be within the check-processing region consistent with the nine-digit routing number encoded in magnetic ink on the check. A paying bank that uses more than one routing number associated with a single check-processing region may designate, for purposes



of this paragraph, one or more locations in that check-processing region at which checks will be accepted, but the paying bank must accept any checks with a routing number associated with that check-processing region at each designated location. A paying bank may designate a presentment location for traveler's checks with an 8000-series routing number anywhere in the country because these traveler's checks are not associated with any check-processing region. The paying bank, however, must accept at that presentment location any other checks for which it is paying bank that have a routing number consistent with the check-processing region of that location.

iii. If the paying bank does not designate a presentment location, it must accept presentment for same-day settlement at any location identified in section 229.36(b), i.e., at an address of the bank associated with the routing number on the check, at any branch or head office if the bank is identified on the check by name without address, or at a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address. A paying bank and a presenting bank may agree that checks will be accepted for same-day settlement at an alternative location (e.g., at an intercept processor located in a different check-processing region) or that the cutoff time for same-day settlement be earlier or later than 8:00 a.m. local time.

iv. In the case of a check payable through a bank but payable by another bank, this paragraph does not authorize direct presentment to the bank by which the check is payable. The requirements of same-day settlement under this paragraph would apply to a payable-through or payable-at bank to which the check is sent for payment or collection.

b. *Reasonable delivery requirements.* A check is considered presented when it is delivered to and payment is demanded at a location specified in paragraph (f)(1). Ordinarily, a presenting bank will find it necessary to contact the paying bank to determine the appropriate presentment location and any delivery instructions. Further, because presentment might not take place during the paying bank's banking day, a paying bank may establish reasonable

delivery requirements to safeguard the checks presented, such as use of a night depository. If a presenting bank fails to follow reasonable delivery requirements established by the paying bank, it runs the risk that it will not have presented the checks. However, if no reasonable delivery requirements are established or if the paying bank does not make provisions for accepting delivery of checks during its nonbusiness hours, leaving the checks at the presentment location constitutes effective presentment.

c. *Sorting of checks.* A paying bank may require that checks presented to it for same-day settlement be sorted separately from other forward-collection checks it receives as a collecting bank or returned checks it receives as a returning or depository bank. For example, if a bank provides correspondent check-collection services and receives unsorted checks from a respondent bank that include checks for which it is the paying bank and that would otherwise meet the requirements for same-day settlement under this section, the collecting bank need not make settlement in accordance with paragraph (f)(2). If the collecting bank receives sorted checks from its respondent bank, consisting only of checks for which the collecting bank is the paying bank and that meet the requirements for same-day settlement under this paragraph, the collecting bank may not charge a fee for handling those checks and must make settlement in accordance with this paragraph.

### 3. Settlement

a. If a bank presents a check in accordance with the time and location requirements for presentment under paragraph (f)(1), the paying bank must either settle for the check on the business day it receives the check without charging a presentment fee or return the check prior to the time for settlement. (This return deadline is subject to extension under section 229.30(c).) The settlement must be in the form of a credit to an account designated by the presenting bank at a Federal Reserve Bank (e.g., a Fedwire transfer). The presenting bank may agree with the paying bank to accept settlement in another form (e.g., credit to an account of the presenting bank at the paying



bank or debit to an account of the paying bank at the presenting bank). The settlement must occur by the close of Fedwire on the business day the check is received by the paying bank. Under the provisions of section 229.34(c), a settlement owed to a presenting bank may be set off by adjustments for previous settlements with the presenting bank. (See also section 229.39(d).)

b. Checks that are presented after the 8:00 a.m. (local time) presentment deadline for same-day settlement and before the paying bank's cut-off hour are treated as if they were presented under other applicable law and settled for or returned accordingly. However, for purposes of settlement only, the presenting bank may require the paying bank to treat such checks as presented for same-day settlement on the next business day in lieu of accepting settlement by cash or other means on the business day the checks are presented to the paying bank. Checks presented after the paying bank's cutoff hour or on nonbusiness days, but otherwise in accordance with this paragraph, are considered presented for same-day settlement on the next business day.

#### 4. Closed Paying Bank

a. There may be certain business days that are not banking days for the paying bank. Some paying banks may continue to settle for checks presented on these days (e.g., by opening their back-office operations or by using an intercept processor). In other cases, a paying bank may be unable to settle for checks presented on a day it is closed. If the paying bank closes on a business day and checks are presented to the paying bank in accordance with paragraph (f)(1), the paying bank is accountable for the checks unless it settles for or returns the checks by the close of Fedwire on its next banking day. In addition, checks presented on a business day on which the paying bank is closed are considered received on the paying bank's next banking day for purposes of the UCC midnight deadline (UCC 4-301 and 4-302) and this regulation's expeditious-return and notice-of-nonpayment provisions.

b. If the paying bank is closed on a business day voluntarily, the paying bank must

pay interest compensation, as defined in section 229.2(oo), to the presenting bank for the value of the float associated with the check from the day of the voluntary closing until the day of settlement. Interest compensation is not required in the case of an involuntary closing on a business day, such as a closing required by state law. In addition, if the paying bank is closed on a business day due to emergency conditions, settlement delays and interest compensation may be excused under section 229.38(e) or UCC 4-109(b).

#### 5. Good Faith

Under section 229.38(a), both presenting banks and paying banks are held to a standard of good faith, defined in section 229.2(nn) to mean honesty in fact and the observance of reasonable commercial standards of fair dealing. For example, designating a presentment location or changing presentment locations for the primary purpose of discouraging banks from presenting checks for same-day settlement might not be considered good faith on the part of the paying bank. Similarly, presenting a large volume of checks without prior notice could be viewed as not meeting reasonable commercial standards of fair dealing and therefore may not constitute presentment in good faith. In addition, if banks, in the general course of business, regularly agree to certain practices related to same-day settlement, it might not be considered consistent with reasonable commercial standards of fair dealing, and therefore might not be considered good faith, for a bank to refuse to agree to those practices if agreeing would not cause it harm.

#### 6. UCC Sections Affected

This paragraph directly affects the following provisions of the UCC and may affect other sections or provisions:

- a. Section 4-204(b)(1), in that a presenting bank may not send a check for same-day settlement directly to the paying bank, if the paying bank designates a different location in accordance with paragraph (f)(1).
- b. Section 4-213(a), in that the medium of settlement for checks presented under this paragraph is limited to a credit to an ac-

count at a Federal Reserve Bank and that, for checks presented after the deadline for same-day settlement and before the paying bank's cutoff hour, the presenting bank may require settlement on the next business day in accordance with this paragraph rather than accept settlement on the business day of presentment by cash.

- c. Section 4-301(a), in that, to preserve the ability to exercise deferred posting, the time limit specified in that section for settlement or return by a paying bank on the banking day a check is received is superseded by the requirement to settle for checks presented under this paragraph by the close of Fedwire.
- d. Section 4-302(a), in that, to avoid accountability, the time limit specified in that section for settlement or return by a paying bank on the banking day a check is received is superseded by the requirement to settle for checks presented under this paragraph by the close of Fedwire.

**SECTION 229.37—Variation by Agreement**

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

## COMMENTARY

## SECTION 229.37—Variation by Agreement

A. This section is similar to UCC 4-103, and permits consistent treatment of agreements varying article 4 or subpart C, given the substantial interrelationship of the two documents. To achieve consistency, the official comment to UCC 4-103(a) (which in turn follows UCC 1-201(3)) should be followed in construing this section. For example, as stated in official comment 2 to section 4-103, owners of items and other interested parties are not affected by agreements under this section unless they are parties to the agreement or are bound by adoption, ratification, estoppel, or the like. In particular, agreements varying this subpart that delay the return of a check beyond the times required by this subpart may result in liability under section 229.38 to entities not party to the agreement. This section is consistent with the limits on truncation agreements in section 229.36(c).

B. The Board has not followed UCC 4-103(b), which permits Federal Reserve regulations and operating letters, clearinghouse rules, and the like to apply to parties that have not specifically assented. Nevertheless, this section does not affect the status of such agreements under the UCC.

C. The following are examples of situations where variation by agreement is permissible, subject to the limitations of this section:

1. A depository bank may authorize another bank to apply the other bank's indorsement to a check as the "depository bank." (See section 229.35(d).)
2. A depository bank may authorize returning banks to commingle qualified returned checks with forward-collection checks. (See section 229.32(a).)
3. A depository bank may limit its liability to its customer in connection with the late return of a deposited check where the lateness is caused by markings on the check by the depository bank's customer or prior indorser in the area of the depository bank indorsement. (See section 229.38(d).)
4. A paying bank may require its customer to assume the paying bank's liability for de-

layed or missent checks where the delay or missending is caused by markings placed on the check by the paying bank's customer that obscured a properly placed indorsement of the depository bank. (See section 229.38(d).)

5. A collecting or paying bank may agree to accept forward-collection checks without the indorsement of a prior collecting bank. (See section 229.35(a).)
6. A bank may agree to accept returned checks without the indorsement of a prior bank. (See section 229.35(a).)
7. A presenting bank may agree with a paying bank to present checks for same-day settlement at a location that is not in the check-processing region consistent with the routing number on the checks. (See section 229.36(f)(1)(i).)
8. A presenting bank may agree with a paying bank to present checks for same-day settlement by a deadline earlier or later than 8:00 a.m. (See section 229.36(f)(1)(ii).)

D. The Board expects to review the types of variation by agreement that develop under this section and will consider whether it is necessary to limit certain variations.

## SECTION 229.38—Liability

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

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

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

(d) *Responsibility for certain aspects of check.*

(1) A paying bank, or in the case of a check payable through the paying bank and

payable by another bank, the bank by which the check is payable, is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a check when issued by it or its customer adversely affects the ability of a bank to indorse the check legibly in accordance with section 229.35. A depository bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a check arising after the issuance of the check and prior to acceptance of the check by it adversely affects the ability of a bank to indorse the check legibly in accordance with section 229.35. Responsibility under this paragraph shall be treated as negligence of the paying or depository bank for purposes of paragraph (c) of this section.

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

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

(ii) returned the check as paying bank in accordance with section 229.30(a)(1).

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

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

the action, if it exercises such diligence as the circumstances require.

(f) *Exclusion.* Section 229.21 of this part and section 611(a), (b), and (c) of the act (12 USC 4010(a), (b), and (c)) do not apply to this subpart.

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

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



## COMMENTARY

## SECTION 229.38—Liability

## A. 229.38(a) Standard of Care; Liability; Measure of Damages

1. The standard of care established by this section applies to any bank covered by the requirements of subpart C of the regulation. Thus, the standard of care applies to a paying bank under sections 229.30 and 229.33, to a returning bank under section 229.31, to a depositary bank under sections 229.32 and 229.33, to a bank erroneously receiving a returned check or written notice of nonpayment as depositary bank under sections 229.32(d), and to a bank indorsing a check under section 229.35. The standard of care is similar to the standard imposed by UCC 1-203 and 4-103(a) and includes a duty to act in good faith, as defined in section 229.2(nn) of this regulation.

2. A bank not meeting this standard of care is liable to the depositary bank, the depositary bank's customer, the owner of the check, or another party to the check. The depositary bank's customer is usually a depositor of a check in the depositary bank (but see section 229.35(d)). The measure of damages provided in this section (loss incurred up to amount of check, less amount of loss party would have incurred even if bank had exercised ordinary care) is based on UCC 4-103(e) (amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care), as limited by 4-202(c) (bank is liable only for its own negligence and not for actions of subsequent banks in chain of collection). This subpart does not absolve a collecting bank of liability to prior collecting banks under UCC 4-201.

3. Under this measure of damages, a depositary bank or other person must show that the damage incurred results from the negligence proved. For example, the depositary bank may not simply claim that its customer will not accept a charge-back of a returned check, but must prove that it could not charge back when it received the returned check and could have charged back if no negligence had occurred, and must first attempt to collect from its customer. (See *Marcoux v. Van Wyk*,

572 F.2d 651 (8th Cir. 1978); *Appliance Buyers Credit Corp. v. Prospect Nat'l Bank*, 708 F.2d 290 (7th Cir. 1983).) Generally, a paying or returning bank's liability would not be reduced because the depositary bank did not place a hold on its customer's deposit before it learned of nonpayment of the check.

4. This paragraph also states that it does not affect a paying bank's liability to its customer. Under UCC 4-402, for example, a paying bank is liable to its customer for wrongful dishonor, which is different from failure to exercise ordinary care and has a different measure of damages.

## B. 229.38(b) Paying Bank's Failure to Make Timely Return

1. Section 229.30(a) imposes requirements on the paying bank for expeditious return of a check and leaves in place the UCC deadlines (as they may be modified by section 229.30(c)), which may allow return at a different time. This paragraph clarifies that the paying bank could be liable for failure to meet either standard, but not for failure to meet both. The regulation intends to preserve the paying bank's "accountability" for missing its midnight or other deadline under the UCC (e.g., sections 4-215 and 4-302), provisions that are not incorporated in this regulation, but may be useful in establishing the time of final payment by the paying bank.

## C. 229.38(c) Comparative Negligence

1. This paragraph establishes a "pure" comparative-negligence standard for liability under subpart C of this regulation. This comparative-negligence rule may have particular application where a paying or returning bank delays in returning a check because of difficulty in identifying the depositary bank. Some examples will illustrate liability in such cases. In each example, it is assumed that the returned check is received by the depositary bank after it has made funds available to its customer, that it may no longer recover the funds from its customer, and that the inability to recover the funds from the customer is due to a delay in returning the check contrary to the standards established by sections 229.30(a) or 229.31(a).

## 2. Examples

- a. If a depository bank fails to use the indorsement required by this regulation, and this failure is caused by a failure to exercise ordinary care, and if a paying or returning bank is delayed in returning the check because additional time is required to identify the depository bank or find its routing number, the paying or returning bank's liability to the depository bank would be reduced or eliminated.
- b. If the depository bank uses the standard indorsement, but that indorsement is obscured by a subsequent collecting bank's indorsement, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depository bank or find its routing number, the paying or returning bank may not be liable to the depository bank because the delay was not due to its negligence. Nonetheless, the collecting bank may be liable to the depository bank to the extent that its negligence in indorsing the check caused the paying or returning bank's delay.
- c. If a depository bank accepts a check that has printing, a carbon band, or other material on the back of the check that existed at the time the check was issued, and the depository bank's indorsement is obscured by the printing, carbon band, or other material, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depository bank, the returning bank may not be liable to the depository bank because the delay was not due to its negligence. Nonetheless, the paying bank may be liable to the depository bank to the extent that the printing, carbon band, or other material caused the delay.

### D. 229.38(d) Responsibility for Certain Aspects of Checks

#### 1. Responsibility for Back of Check

The indorsement standard in section 229.35 is most effective if the back of the check remains clear of other matter that may obscure bank indorsements. Because bank indorse-

ments are usually applied by automated equipment, it is not possible to avoid pre-existing matter on the back of the check. For example, bank indorsements are not required to avoid a carbon band or printed, stamped, or written terms or notations on the back of the check. Accordingly, this provision places responsibility on the paying bank or depository bank, as appropriate, for keeping the back of the check clear for bank indorsements during forward collection and return.

#### 2. Responsibility for Payable-Through Checks

a. This paragraph provides that the bank by which a payable-through check is payable is liable for damages under paragraph (a) of this section to the extent that the check is not returned through the payable-through bank as quickly as would have been necessary to meet the requirements of section 229.30(a)(1) (the two-day/four-day test) had the bank by which it is payable received the check as paying bank on the day the payable-through bank received it. The location of the bank by which a check is payable for purposes of the two-day/four-day test may be determined from the location or the first four digits of the routing number of the bank by which the check is payable. This information should be stated on the check. (See section 229.36(e) and accompanying commentary.) Responsibility under paragraph (d)(2) does not include responsibility for the time required for the forward collection of a check to the payable-through bank.

b. Generally, liability under paragraph (d)(2) will be limited in amount. Under section 229.33(a), a paying bank that returns a check in the amount of \$2,500 or more must provide notice of nonpayment to the depository bank by 4:00 p.m. on the second business day following the banking day on which the check is presented to the paying bank. Even if a payable-through check in the amount of \$2,500 or more is not returned through the payable-through bank as quickly as would have been required had the check been received by the bank by which it is payable, the depository bank should not suffer damages unless it has not received timely notice of nonpayment. Thus, ordinarily the bank by which

a payable-through check is payable would be liable under paragraph (a) only for checks in amounts up to \$2,500, and the paying bank would be responsible for notice of nonpayment for checks in the amount of \$2,500 or more.

3. Responsibility under paragraphs (d)(1) and (d)(2) is treated as negligence for comparative-negligence purposes, and the contribution to damages under paragraphs (d)(1) and (d)(2) is treated in the same way as the degree of negligence under paragraph (c) of this section.

#### E. 229.38(e) Timeliness of Action

1. This paragraph excuses certain delays. It adopts the standard of UCC 4-109(b).

#### F. 229.38(f) Exclusion

1. This paragraph provides that the civil-liability and class-action provisions, particularly the punitive-damage provisions of sections 611(a) and (b), and the bona fide error provision of 611(c) of the act (12 USC 4010(a), (b), and (c)) do not apply to regulatory provisions adopted to improve the efficiency of the payments mechanism. Allowing punitive damages for delays in the return of checks where no actual damages are incurred would only encourage litigation and provide little or no benefit to the check-collection system. In view of the provisions of paragraph (a), which incorporate traditional bank collection standards based on negligence, the provision on bona fide error is not included in subpart C.

#### G. 229.38(g) Jurisdiction

1. The act confers subject-matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

#### H. 229.38(h) Reliance on Board Rulings

1. This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on the commentary to this regulation, which is issued

as an official Board interpretation, as well as on the regulation itself.

**SECTION 229.39—Insolvency of Bank**

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

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

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

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

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

**COMMENTARY****SECTION 229.39—Insolvency of Bank****A. Introduction**

1. These provisions cover situations where a bank becomes insolvent during collection or return and are derived from UCC 4-216. They are intended to apply to all banks.

**B. 229.39(a) Duty of Receiver**

1. This paragraph requires a receiver of a closed bank to return a check to the prior bank if it does not pay for the check. This permits the prior bank, as holder, to pursue its claims against the closed bank or prior indorsers on the check.

**C. 229.39(b) Preference Against Paying or Depository Bank**

1. This paragraph gives a bank a preferred claim against a closed paying bank that finally pays a check without settling for it or a closed depository bank that becomes obligated to pay a returned check without settling for it. If the bank with a preferred claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

**D. 229.39(c) Preference Against Paying, Collecting, or Depository Bank**

1. This paragraph gives a bank a preferred claim against a closed collecting, paying, or returning bank that receives settlement but does not settle for a check. (See the commentary to section 229.35(b) for discussion of prior and subsequent banks.) As in the case of section 229.39(b), if the bank with a preferred claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

**E. 229.39(d) Preference Against Presenting Bank**

1. This paragraph gives a paying bank a preferred claim against a closed presenting bank

in the event that the presenting bank breaches an amount or encoding warranty as provided in section 229.34(c)(1) or (3) and does not reimburse the paying bank for adjustments for a settlement made by the paying bank in excess of the value of the checks presented. This preference is intended to have the effect of a perfected security interest and is intended to put the paying bank in the position of a secured creditor for purposes of the receivership provisions of the Federal Deposit Insurance Act and similar provisions of state law.

**F. 229.39(e) Finality of Settlement**

1. This paragraph provides that insolvency does not interfere with the finality of a settlement, such as a settlement by a paying bank that becomes final by expiration of the midnight deadline.

**SECTION 229.40—Effect of Merger Transaction**

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



## COMMENTARY

## SECTION 229.40—Effect of Merger Transaction

A. When banks merge, there is normally a period of adjustment required before their operations are consolidated. To allow for this adjustment period, the regulation provides that the merged banks may be treated as separate banks for a period of up to one year after the consummation of the transaction. The term "merger transaction" is defined in section 229.2(t). This rule affects the status of the combined entity in a number of areas in this subpart, for example:

1. The paying bank's responsibility for expeditious return (§ 229.30).
2. The returning bank's responsibility for expeditious return (§ 229.31).
3. Whether a returning bank is entitled to an extra day to qualify a return that will be delivered directly to a depository bank that has merged with the returning bank (§ 229.31(a)).
4. Where the depository bank must accept returned checks (§ 229.32(a)).
5. Where the depository bank must accept notice of nonpayment (§ 229.33(c)).
6. Where a paying bank must accept presentation of checks (§ 229.36(b)).

**SECTION 229.41—Relation to State  
Law**

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

## COMMENTARY

SECTION 229.41—Relation to State  
Law

A. This section specifies that state law relating to the collection of checks is preempted only to the extent that it is inconsistent with this regulation. Thus, this regulation is not a complete replacement for state laws relating to the collection or return of checks.

**SECTION 229.42—Exclusions**

The expeditious-return (§§ 229.30(a) and 229.31(a)), notice-of-nonpayment (§ 229.33), and same-day settlement requirements of this subpart do not apply to a check drawn upon the United States Treasury, to a U.S. Postal Service money order, or to a check drawn on a state or a unit of general local government that is not payable through or at a bank.

## COMMENTARY

## SECTION 229.42—Exclusions

A. Checks drawn on the United States Treasury, U.S. Postal Service money orders, and checks drawn on states and units of general local government that are presented directly to the state or unit of general local government and that are not payable through or at a bank are excluded from the coverage of the expeditious-return, notice-of-nonpayment, and same-day settlement requirements of subpart C of this part. Other provisions of this subpart continue to apply to the checks. This exclusion does not apply to checks drawn by the U.S. government on banks.

SECTION 229.43—Checks Payable in  
Guam, American Samoa, and the  
Northern Mariana Islands

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

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

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

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

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

(2) section 229.32;

(3) section 229.34(c)(2), (c)(3), (d), and (e);

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

(5) section 229.36(d);

(6) section 229.37;

(7) section 229.38(a) and (c) through (h);

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

(9) sections 229.40 through 229.42.



## COMMENTARY

## SECTION 229.43—Checks Payable in Guam, American Samoa, and the Northern Mariana Islands

## A. 229.43(a) Definitions

1. Bank offices in Guam, American Samoa, and the Northern Mariana Islands (which Regulation CC defines as Pacific island banks) do not meet the definition of bank in section 229.2(e) because they are not located in the United States. Some checks drawn on Pacific island banks (defined as Pacific island checks) bear U.S. routing numbers and are collected and returned by banks in the same manner as checks payable in the U.S.

## B. 229.43(b) Rules Applicable to Pacific Island Checks

1. When a bank handles a Pacific island check as if it were a check as defined in section 229.2(k), the bank is subject to certain provisions of Regulation CC, as provided in this section. Because the Pacific island bank is not a bank as defined in section 229.2(e), it is not a paying bank as defined in section 229.2(z) (unless otherwise noted in this section). Pacific island banks are not subject to the provisions of Regulation CC.

2. A bank may agree to handle a Pacific island check as a returned check under section 229.31 and may convert the returned Pacific island check to a qualified returned check. The returning bank is not, however, subject to the expeditious-return requirements of section 229.31. The returning bank may receive the Pacific island check directly from a Pacific island bank or from another returning bank. As a Pacific island bank is not a paying bank under Regulation CC, section 229.31(c) does not apply to a returning bank settling with the Pacific island bank.

3. A depository bank that handles a Pacific island check is not subject to the provisions of subpart B of Regulation CC, including the availability, notice, and interest-accrual requirements, with respect to that check. If, however, a bank accepts a Pacific island check for deposit (or otherwise accepts the check as transferee) and collects the Pacific

island check in the same manner as other checks, the bank is subject to the provisions of section 229.32, including the provisions regarding time and manner of settlement for returned checks in section 229.32(b), in the event the Pacific island check is returned by a returning bank. If the depository bank receives the returned Pacific island check directly from the Pacific island bank, however, the provisions of section 229.32(b) do not apply, because the Pacific island bank is not a paying bank under Regulation CC. The depository bank is not subject to the notice-of-nonpayment provisions in section 229.33 for Pacific island checks.

4. Banks that handle Pacific island checks in the same manner as other checks are subject to the indorsement provisions of section 229.35. Section 229.35(c) eliminates the need for the restrictive indorsement "pay any bank." For purposes of section 229.35(c), the Pacific island bank is deemed to be a bank.

5. Pacific island checks will often be intermingled with other checks in a single cash letter. Therefore, a bank that handles Pacific island checks in the same manner as other checks is subject to the transfer-warranty provision in section 229.34(c)(2) regarding accurate cash-letter totals and the encoding warranty in section 229.34(c)(3). A bank that acts as a returning bank for a Pacific island check is not subject to the warranties in section 229.34(a). Similarly, because the Pacific island bank is not a "bank" or a "paying bank" under Regulation CC, section 229.34(b), (c)(1), and (c)(4) do not apply. For the same reason, the provisions of section 229.36 governing paying-bank responsibilities such as place of receipt and same-day settlement do not apply to checks presented to a Pacific island bank, and the liability provisions applicable to paying banks in section 229.38 do not apply to Pacific island banks. Section 229.36(d), regarding finality of settlement between banks during forward collection, applies to banks that handle Pacific island checks in the same manner as other checks, as do the liability provisions of section 229.38, to the extent the banks are subject to the requirements of Regulation CC as provided in this section, and sections 229.37 and 229.39 through 229.42.

### APPENDIX A—Routing Number Guide to Next-Day-Availability Checks and Local Checks

A. Each bank is assigned a routing number by Thomas Financial Publishing Inc., as agent for the American Bankers Association. The routing number takes two forms: a fractional form and a nine-digit form. A paying bank is generally identified on the face of a check by its routing number in both the fractional form (which generally appears in the upper right-hand corner of the check) and the nine-digit form (which is printed in magnetic ink in a strip along the bottom of the check). Where a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable-through bank, not the payor bank.

B. The first four digits of the nine-digit routing number and the denominator of the fractional routing number form the Federal Reserve routing symbol, which identifies the Federal Reserve District, the Federal Reserve office, and the clearing arrangements used by the paying bank.

#### *First Federal Reserve District* (Federal Reserve Bank of Boston)

Head Office	Windsor Locks Office
0110 <sup>1</sup>	0111
0112	0116
0113	0117
0114	0118
0115	0119
2110 <sup>2</sup>	0211 <sup>3</sup>
2112	2111
2113	2116
2114	2117
2115	2118
	2119
	2211 <sup>3</sup>

<sup>1</sup> The first two digits identify the Federal Reserve District. Thus 01 identifies the First Federal Reserve District (Boston), and 12 identifies the Twelfth District (San Francisco).

<sup>2</sup> Adding 2 to the first digit denotes a thrift institution. Thus 21 identifies a thrift in the First District, and 32 denotes a thrift in the Twelfth District.

<sup>3</sup> Banks in Fairfield County, Connecticut, are members of the Federal Reserve Bank of New York and therefore have Second District routing numbers. Their checks, however, are processed by the Windsor Locks office. Thus, checks drawn on banks with 0211 or 2211 routing numbers would not be local checks for Second District depository banks.

#### *Second Federal Reserve District* (Federal Reserve Bank of New York)

East Rutherford Office
0210
0212
2212
0214
0215
0216
0219
0260
0280
2214
2215
2216
2219
2260

## Utica Office

0213  
0220  
0223  
2213  
2220  
2223

*Fifth Federal Reserve District*

(Federal Reserve Bank of Richmond)

Head Office	Baltimore Branch
0510	0520
0514	0521
2510	0522
2514	0540

*Third Federal Reserve District*

(Federal Reserve Bank of Philadelphia)

## Head Office

0310	2310
0311	2311
0312	2312
0313	2313
0319	2319
0360	2360

0550  
0560  
0570  
2520  
2521  
2522  
2540  
2550  
2560  
2570

*Fourth Federal Reserve District*

(Federal Reserve Bank of Cleveland)

## Head Office

	Cincinnati Branch
0410	0420
0412	0421
2410	0422
2412	0423
	2420
	2421
	2422
	2423

## Charlotte Branch

0530  
0531  
2530  
2531

## Columbia Office

0532  
0539  
2532  
2539

## Charleston Office

0515  
0519  
2515  
2519

## Pittsburgh Branch

0430  
0432  
0433  
0434  
2430  
2432  
2433  
2434

## Columbus Office

0440  
0441  
2440  
0442  
2441  
2442

*Sixth Federal Reserve District*

(Federal Reserve Bank of Atlanta)

## Head Office

0610  
0611  
0612  
0613  
2610  
2611  
2612  
2613

## Birmingham Branch

0620  
0621  
0622  
2620  
2621  
2622

## Jacksonville Branch

0630  
0631  
0632  
2630  
2631  
2632

## Nashville Branch

0640  
0641  
0642  
2640  
2641  
2642

## New Orleans Branch      Miami Branch

0650	0660
0651	0670
0652	2660
0653	2670
0654	
0655	
2650	
2651	
2652	
2653	
2654	
2655	

*Seventh Federal Reserve District*  
(Federal Reserve Bank of Chicago)

Head Office	Detroit Branch
0710	0720
0711	0724
0712	2720
0719	2724
2710	
2711	
2712	
2719	

Des Moines Office	Indianapolis Office
0730	0740
0739	0749
2730	2740
2739	2749

Milwaukee Office

0750
0759
2750
2759

*Eighth Federal Reserve District*  
(Federal Reserve Bank of St. Louis)

Head Office	Little Rock Branch
0810	0820
0812	0829
0815	2820
0819	2829
0865	
2810	
2812	
2815	
2819	
2865	

## Louisville Branch      Memphis Branch

0813	0840
0830	0841
0839	0842
0863	0843
2813	2840
2830	2841
2839	2842
2863	2843

*Ninth Federal Reserve District*  
(Federal Reserve Bank of Minneapolis)

Head Office	Helena Branch
0910	0920
0911	0921
0912	0929
0913	2920
0914	2921
0915	2929
0918	
0919	
0960	
2910	
2911	
2912	
2913	
2914	
2915	
2918	
2919	
2960	

*Tenth Federal Reserve District*  
(Federal Reserve Bank of Kansas City)

Head Office	Denver Branch
1010	1020
1011	1021
1012	1022
1019	1023
3010	1070
3011	3020
3012	3021
3019	3022
	3023
	3070

Oklahoma City  
Branch

	Omaha Branch
1030	1040
1031	1041
1039	1049
3030	3040
3031	3041
3039	3049

*Eleventh Federal Reserve District*  
(Federal Reserve Bank of Dallas)

Head Office	El Paso Branch
1110	1120
1111	1122
1113	1123
1119	1163
3110	3120
3111	3122
3113	3123
3119	3163

Houston Branch	San Antonio Branch
1130	1140
1131	1149
3130	3140
3131	3149

*Twelfth Federal Reserve District*  
(Federal Reserve Bank of San Francisco)

Head Office	Los Angeles Branch
1210	1220
1211	1221
1212	1222
1213	1223
3210	1224
3211	3220
3212	3221
3213	3222
	3223
	3224

Portland Branch  
Salt Lake City  
Branch

1230	1240
1231	1241
1232	1242
1233	1243
3230	3240
3231	3241
3232	3242
3233	3243

Seattle Branch

1250
1251
1252
3250
3251
3252

*U.S. Treasury Checks and Postal Money  
Orders*

U.S. Treasury Checks	Postal Money Orders
0000 0050 5	0000 0119 3
0000 0051 8	0000 0800 2

*Federal Reserve Offices*

0110 0001 5	0710 0030 1
0111 0048 1	0720 0029 0
0112 0048 8	0730 0033 8
0210 0120 8	0740 0020 1
0220 0026 6	0750 0012 9
0212 0400 5	0810 0004 5
0214 0950 9	0820 0013 8
0213 0500 1	0830 0059 3
0310 0004 0	0840 0003 9
0410 0001 4	0910 0008 0
0420 0043 7	0920 0026 7
0430 0030 0	1010 0004 8
0440 0050 3	1020 0019 9
0510 0003 3	1030 0024 0
0520 0027 8	1040 0012 6
0530 0020 6	1110 0003 8
0539 0008 9	1120 0001 1
0519 0002 3	1130 0004 9
0610 0014 6	1140 0072 1
0620 0019 0	1210 0037 4
0630 0019 9	1220 0016 6
0640 0010 1	1230 0001 3
0650 0021 0	1240 0031 3
0660 0010 9	1250 0001 1

*Federal Home Loan Banks*

0110 0053 6	0820 0125 0
0212 0639 1	0910 0091 2
0260 0973 9	1010 0091 2
0410 0291 5	1011 0194 7
0420 0091 6	1020 0603 8
0430 0143 5	1030 0362 9
0610 0876 6	1040 0019 7
0640 0091 0	1110 1083 7
0654 0348 0	1119 1083 0
0710 0450 1	1130 1750 8
0724 1338 2	1210 0070 1
0730 0091 4	1211 3994 4
0740 0101 9	1222 4014 6
0810 0091 9	1250 0050 3

**APPENDIX B—Reduction of Schedules  
for Certain Nonlocal Checks**

A depository bank that is located in the following check-processing territories shall make funds deposited in an account by a

nonlocal check described below available for withdrawal not later than the number of business days following the banking day on which funds are deposited, as specified below.

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<i>Federal Reserve Office</i>		<i>Number of business days following the banking day funds are deposited</i>
Utica		3 business days
0210	0280	
Nashville		3 business days
0613	2613	
Kansas City		3 business days
0865	2865	

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## APPENDIX C—Model Availability-Policy Disclosures, Clauses, and Notices

This appendix contains model availability-policy disclosures, clauses, and notices to facilitate compliance with the disclosure requirements of Regulation CC (12 CFR 229). Although use of these models is not required, banks using them properly to make disclosures required by Regulation CC are deemed to be in compliance.

### Model Availability-Policy Disclosures

- C-1 Next-day availability
- C-2 Next-day availability and section 229.13 exceptions
- C-3 Next-day availability, case-by-case holds to statutory limits, and section 229.13 exceptions
- C-4 Holds to statutory limits on all deposits (includes chart)
- C-5 Holds to statutory limits on all deposits

### Model Clauses

- C-6 Holds on other funds (check cashing)
- C-7 Holds on other funds (other account)
- C-8 Appendix B availability (nonlocal checks)
- C-9 Automated teller machine deposits (extended hold)
- C-10 Cash-withdrawal limitation
- C-11 Credit union interest-payment policy
- C-11A Availability of funds deposited at other locations

### Model Notices

- C-12 Exception hold notice
- C-13 Reasonable-cause hold notice
- C-14 One-time notice for large-deposit and redeposited-check exception holds
- C-15 One-time notice for repeated-overdraft exception holds
- C-16 Case-by-case hold notice
- C-17 Notice at locations where employees accept consumer deposits
- C-18 Notice at locations where employees accept consumer deposits (case-by-case holds)
- C-19 Notice at automated teller machines

- C-20 Notice at automated teller machines (delayed receipt)
- C-21 Deposit-slip notice

## C-1—Next-Day Availability

### YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once the funds are available, you can withdraw them in cash and we will use them to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

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

### YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

### Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

### Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

### C-3—Next-Day Availability, Case-by-Case Holds to Statutory Limits, and Section 229.13 Exceptions

#### YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

### Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the fifth business day after the day of your deposit. The first \$100 of your deposits, however, will be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

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

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

#### Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

#### C-4—Holds to Statutory Limits on All Deposits (Includes Chart)

##### YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to delay the availability of funds from your cash and check deposits. During the delay, you may not withdraw the funds in

cash and we will not use the funds to pay checks that you have written.

#### Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

#### Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

#### Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

- U.S. Treasury checks that are payable to you
- wire transfers
- checks drawn on (*bank name*) [unless (*any limitations related to branches in different states or check-processing regions*)]

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

- cash
- state and local government checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)]
- cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)]
- Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day we receive your deposit.

### Other Check Deposits

To find out when funds from other check deposits will be available, look at the first four digits of the routing number on the check:

#### Personal Check

A diagram of a personal check. The top right shows a date line for the year 19\_\_ and a dollar sign followed by a blank line for the amount. Below this is a line for "dollars". The middle section is labeled "(Bank Name and Location)". At the bottom left, there is a box containing the routing number "123456789". Below this box, a line points to the text "Routing number". To the right of the routing number box is the MICR line "000000000 000".

#### Business Check

A diagram of a business check. The top left is labeled "Name of Company Address, City, State". The top right shows a date line for the year 19\_\_ and a dollar sign followed by a blank line for the amount. Below this is a line for "dollars". The middle section is labeled "(Bank Name and Location)". At the bottom left, there is a box containing the routing number "123456789". Below this box, a line points to the text "Routing number". To the right of the routing number box is the MICR line "000000000 000".

Some checks are marked "payable through" and have a four- or nine-digit number nearby. For these checks, use this four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are

local or nonlocal. Once you have determined the first four digits of the routing number (1234 in the examples above), the chart below will show you when funds from the check will be available. If you deposit both categories of checks, \$100 from the checks will be available on the first business day after the day of your deposit, not \$100 from each category of check.

### Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

### Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we

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

receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

### C-5—Holds to Statutory Limits on All Deposits

#### YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to delay the availability of funds from your cash and check deposits. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

#### Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

#### Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

#### Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

- U.S. Treasury checks that are payable to you
- wire transfers
- checks drawn on (*bank name*) [unless (*any limitations related to branches in different states or check-processing regions*)]

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

- cash
- state and local government checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)]
- cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)]
- Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day of your deposit.

#### Other Check Deposits

The delay for other check deposits depends on whether the check is a local or a nonlocal check. To see whether a check is a local or a nonlocal check, look at the routing number on the check:

#### Personal Check

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

*Business Check*

Name of Company Address, City, State		_____ 19____
Pay to the order of _____		\$ _____
_____ dollars		
(Bank Name and Location)	_____	_____
00000000	123456789	000000000 000
	Routing number	

If the first four digits of the routing number (1234 in the examples above) are (*list of local numbers*), then the check is a local check. Otherwise, the check is a nonlocal check. Some checks are marked "payable through" and have a four- or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make funds from local and nonlocal checks available as follows.

1. *Local checks.* The first \$100 from a deposit of local checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the second business day after the day of your deposit.

For example, if you deposit a local check of \$700 on a Monday, \$100 of the deposit is available on Tuesday. The remaining \$600 is available on Wednesday.

2. *Nonlocal checks.* The first \$100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the fifth business day after the day of your deposit.

For example, if you deposit a \$700 nonlocal check on a Monday, \$100 of the deposit is available on Tuesday. The remaining \$600 is available on Monday of the following week.

**Longer Delays May Apply**

Funds you deposit by check may be delayed

for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit. If you deposit both categories of checks, \$100 from the checks will be available on the first business day after the day of your deposit, not \$100 from each category of check.

**Special Rules for New Accounts**

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.



### C-6—Holds on Other Funds (Check Cashing)

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it.

### C-7—Holds on Other Funds (Other Account)

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.

### C-8—Appendix B Availability (Nonlocal Checks)

3. *Certain other checks.* We can process nonlocal checks drawn on financial institutions in certain areas faster than usual. Therefore, funds from deposits of checks drawn on institutions in those areas will be available to you more quickly. Call us if you would like a list of the routing numbers for these institutions.

### C-9—Automated Teller Machine Deposits (Extended Hold)

#### DEPOSITS AT AUTOMATED TELLER MACHINES

Funds from any deposits (cash or checks) made at automated teller machines (ATMs) we do not own or operate will not be available until the fifth business day after the day of your deposit. This rule does not apply at ATMs that we own or operate.

*(A list of our ATMs is enclosed, or A list of ATMs where you can make deposits but that are not owned or operated by us is enclosed.*

*or All ATMs that we own or operate are identified as our machines.)*

### C-10—Cash-Withdrawal Limitation

#### CASH-WITHDRAWAL LIMITATION

We place certain limitations on withdrawals in cash. In general, \$100 of a deposit is available for withdrawal in cash on the first business day after the day of deposit. In addition, a total of \$400 of other funds becoming available on a given day is available for withdrawal in cash at or after (*time no later than 5:00 p.m.*) on that day. Any remaining funds will be available for withdrawal in cash on the following business day.

### C-11—Credit-Union Interest-Payment Policy

#### INTEREST-PAYMENT POLICY

If we receive a deposit to your account on or before the tenth of the month, you begin earning interest on the deposit (whether it was a deposit of cash or checks) as of the first day of that month. If we receive the deposit after the tenth of the month, you begin earning interest on the deposit as of the first of the following month. For example, a deposit made on June 7 earns interest from June 1, while a deposit made on June 17 earns interest from July 1.

### C-11A—Availability of Funds Deposited at Other Locations

#### DEPOSITS AT OTHER LOCATIONS

This availability policy only applies to funds deposited at (*location*). Please inquire for information about the availability of funds deposited at other locations.

### C-12—Exception Hold Notice

#### NOTICE OF HOLD

Account number:	Date of deposit:
( <i>number</i> )	( <i>date</i> )

We are delaying the availability of \$(*amount being held*) from this deposit. These funds will be available on the (*number*) business day after the day of your deposit.



We are taking this action because:

- \_\_\_ A check you deposited was previously returned unpaid.
- \_\_\_ You have overdrawn your account repeatedly in the last six months.
- \_\_\_ The checks you deposited on this day exceed \$5,000.
- \_\_\_ An emergency, such as failure of computer or communications equipment, has occurred.
- \_\_\_ We believe a check you deposited will not be paid for the following reasons:[\*]

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

[\*If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (*description of procedure for obtaining refund*).]

- \_\_\_ There are erasures or other apparent alterations on the check.
- \_\_\_ The routing number of the paying bank is not a current routing number.
- \_\_\_ The check is postdated or has a stale date.
- \_\_\_ Information from the paying bank indicates that the check may not be paid.
- \_\_\_ We have been notified that the check has been lost or damaged in collection.
- \_\_\_ Other:\_\_\_\_\_

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (*description of procedure for obtaining refund*).]

#### C-14—One-Time Notice for Large-Deposit and Redeposited-Check Exception Holds

##### NOTICE OF HOLD

If you deposit into your account:

- Checks totaling more than \$5,000 on any one day, the first \$5,000 deposited on any one banking day will be available to you according to our general policy. The amount in excess of \$5,000 will generally be available on the (*number*) business day after the day of deposit for checks drawn on (*bank name*), the (*number*) business day after the day of deposit for local checks and (*number*) business day after the day of deposit for nonlocal checks after the day of your deposit. If checks (not drawn on us) that otherwise would receive next-day availability exceed \$5,000, the excess will be treated as either local or nonlocal checks depending on the location of the paying bank. If your check deposit, exceeding \$5,000 on any one day, is a mix of local checks, nonlocal checks, checks drawn on (*bank name*), or checks that generally receive next-day availability, the excess will be calculated by first adding together the (*type of check*), then the (*type of*

#### C-13—Reasonable-Cause Hold Notice

##### NOTICE OF HOLD

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

We are delaying the availability of the funds you deposited by the following check:  
 (*description of check, such as amount and drawer*)

These funds will be available on the (*number*) business day after the day of your deposit. The reason for the delay is explained below:

- \_\_\_ We received notice that the check is being returned unpaid.
- \_\_\_ We have confidential information that indicates that the check may not be paid.
- \_\_\_ The check is drawn on an account with repeated overdrafts.
- \_\_\_ We are unable to verify the indorsement of a joint payee.
- \_\_\_ Some information on the check is not consistent with other information on the check.

check), then the (*type of check*), then the (*type of check*).

- A check that has been returned unpaid, the funds will generally be available on the (*number*) business day after the day of deposit for checks drawn on (*bank name*), the (*number*) business day after the day of deposit for local checks and the (*number*) business day for nonlocal checks. Checks (not drawn on us) that otherwise would receive next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

### C-15—One-Time Notice for Repeated-Overdraft Exception Holds

#### NOTICE OF HOLD

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

We are delaying the availability of checks deposited into your account due to repeated overdrafts of your account. For the next six months, deposits will generally be available on the (*number*) business day after the day of your deposit for checks drawn on (*bank name*), the (*number*) business day after the day of your deposit for local checks, and the (*number*) business day after the day of deposit for nonlocal checks. Checks (not drawn on us) that otherwise would have received next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

### C-16—Case-by-Case Hold Notice

#### NOTICE OF HOLD

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

We are delaying the availability of \$(*amount being held*) from this deposit. These funds will be available on the (*number*) business day after the day of your deposit ([*subject to our cash-withdrawal limitation policy*]).

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we

are imposing. To obtain a refund of such fees, (*description of procedure for obtaining refund*).]

### C-17—Notice at Locations Where Employees Accept Consumer Deposits

#### FUNDS-AVAILABILITY POLICY

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

### C-18—Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds)

#### FUNDS-AVAILABILITY POLICY

Our general policy is to allow you to withdraw funds deposited in your account on the (*number*) business day after the day we receive your deposit. Funds from electronic deposits will be available on the day we receive the deposit. In some cases, we may delay your ability to withdraw funds beyond the (*number*) business day. Then, the funds will generally be available by the fifth business day after the day of deposit.

### C-19—Notice at Automated Teller Machines

#### AVAILABILITY OF DEPOSITS

Funds from deposits may not be available for immediate withdrawal. Please refer to your

institution's rules governing funds availability for details.

**C-20—Notice at Automated Teller Machines (Delayed Receipt)**

**NOTICE**

Deposits at this ATM between [day] and [day] will not be considered received until [day]. The availability of funds from the deposit may be delayed as a result.

**C-21—Deposit-Slip Notice**

Deposits may not be available for immediate withdrawal.

## COMMENTARY

APPENDIX C—Model  
Availability-Policy Disclosures, Clauses,  
and Notices

## A. Introduction

1. Appendix C contains model disclosures, clauses and notices that may be used by banks to meet their disclosure responsibilities under the regulation. Banks using the models properly will be in compliance with the regulation's disclosure requirements.

2. Information that must be inserted by a bank using the models is (*italicized*) within parentheses in the text of the models. Optional information is enclosed in brackets.

3. Banks may make certain changes to the format or content of the models, including deleting material that is inapplicable, without losing the act's protection from liability for banks that use the forms properly. For example, if a bank does not have a cutoff hour prior to its closing time, or if a bank does not take advantage of the section 229.13 exceptions, it may delete the references to those provisions. Changes to the models may not be so extensive as to affect the substance, clarity, or meaningful sequence of the models. Acceptable changes include, for example—

- a. using "customer" and "bank" instead of pronouns
- b. changing the typeface or size
- c. incorporating certain state-law plain-English requirements

4. Shorter time periods for availability may always be substituted for time periods used in the models.

5. Banks may also add related information. For example, a bank may indicate that although funds have been made available to a customer and the customer has withdrawn them, the customer is still responsible for problems with the deposit, such as checks that were deposited being returned unpaid. Or a bank could include a telephone number to be used if a customer has an inquiry regarding a deposit.

6. Banks are cautioned against using the models without reviewing their own policies

and practices, as well as state and federal laws regarding the time periods for availability of specific types of checks. A bank using the models will be in compliance with the act and the regulation only if the bank's disclosures correspond to its availability policy.

7. Banks that have used earlier versions of the models (such as those models that gave Social Security benefits and payroll payments as examples of preauthorized credits available the day after deposit, or that did not address the cash-withdrawal limitation) are protected from civil liability under section 229.21(e). Banks are encouraged, however, to use current versions of the models when reordering or reprinting supplies.

B. Model Availability-Policy Disclosures,  
Models C-1 through C-51. *Models C-1 Through C-5 Generally*

a. Models C-1 through C-5 are models for the availability-policy disclosures described in section 229.16. The models accommodate a variety of availability policies, ranging from next-day availability to holds to statutory limits on all deposits. Model C-3 reflects the additional disclosures discussed in section 229.16(b) and (c) for banks that have a policy of extending availability times on a case-by-case basis.

b. As already noted, there are several places in the forms where information must be inserted. This information includes the bank's cutoff times, limitations relating to next-day availability, and the first four digits of routing numbers for local banks. In disclosing when funds will be available for withdrawal, the bank must insert the ordinal number (such as first, second, etc.) of the business day after deposit that the funds will become available.

c. Models C-1 through C-5 generally do not reflect any optional provisions of the regulation, or those that apply only to certain banks. Instead, disclosures for these provisions are included in models C-6 through C-11A. A bank using one of the model availability-policy disclosures should also consider whether it must incorporate one or more of models C-6 through C-11A.

d. While section 229.10(b) of the regulation

requires next-day availability for electronic payments, Treasury regulations (31 CFR 210) and ACH association rules require that preauthorized credits (direct deposits) be made available on the day the bank receives the funds. Models C-1 through C-5 reflect these rules. Wire transfers, however, are not governed by Treasury or ACH rules, but banks generally make funds from wire transfers available on the day received or on the business day following receipt. Banks should ensure that their disclosures reflect the availability given in most cases for wire transfers.

### 2. *Model C-1, Next-Day Availability*

A bank may use this model when its policy is to make funds from all deposits available on the first business day after a deposit is made. This model may also be used by banks that provide immediate availability by substituting the word "immediately" in place of "on the first business day after the day we receive your deposit."

### 3. *Model C-2, Next-Day Availability and Section 229.13 Exceptions*

A bank may use this model when its policy is to make funds from all deposits available to its customers on the first business day after the deposit is made, and to reserve the right to invoke the new-account and other exceptions in section 229.13. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check.

### 4. *Model C-3, Next-Day Availability, Case-by-Case Holds to Statutory Limits, and Section 229.13 Exceptions*

A bank may use this model when its policy, in most cases, is to make funds from all types of deposits available the day after the deposit is made, but to delay availability on some deposits on a case-by-case basis up to the maximum time periods allowed under the regulation. A bank using this model also reserves the right to invoke the exceptions listed in section 229.13. A bank using this model also reserves the right to invoke the exceptions

listed in section 229.13. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check.

### 5. *Model C-4, Holds to Statutory Limits on All Deposits*

A bank may use this model when its policy is to impose delays to the full extent allowed under section 229.12 and to reserve the right to invoke the section 229.13 exceptions. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check. Model C-4 uses a chart to show the bank's availability policy for local and nonlocal checks, and model C-5 uses a narrative description.

### 6. *Model C-5*

A bank may use this form when its policy is to impose delays to the full extent allowed by section 229.12 and to reserve the right to invoke the section 229.13 exceptions. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check.

## C. Model Clauses, Models C-6 through C-11A

### 1. *Models C-6 through C-11A Generally*

Certain clauses like those in the models must be incorporated into a bank's availability-policy disclosure under certain circumstances. The commentary to each clause indicates when a clause similar to the model clause is required.

### 2. *Model C-6, Holds on Other Funds (Check Cashing)*

A bank that reserves the right to place a hold on funds already on deposit when it cashes a check for a customer, as addressed in section 229.19(e), must incorporate this type of clause in its availability-policy disclosure.

### 3. *Model C-7, Holds on Other Funds (Other Account)*

A bank that reserves the right to place a hold on funds in an account of the customer other than the account into which the deposit is made, as addressed in section 229.19(e), must incorporate this type of clause in its availability-policy disclosure.

### 4. *Model C-8, Appendix B Availability (Nonlocal Checks)*

A bank in a check-processing region where the availability schedules for certain nonlocal checks have been reduced, as described in appendix B of Regulation CC, must incorporate this type of clause in its availability-policy disclosure. Banks using model C-5 may insert this clause at the conclusion of the discussion titled "Nonlocal Checks."

### 5. *Model C-9, Automated Teller Machine Deposits (Extended Holds)*

A bank that reserves the right to delay availability of deposits at nonproprietary ATMs until the fifth business day following the date of deposit, as permitted by section 229.12(f), must incorporate this type of clause in its availability-policy disclosure. A bank must choose among the alternative language based on how it chooses to differentiate between proprietary and nonproprietary ATMs, as required under section 229.16(b)(5).

### 6. *Model C-10, Cash-Withdrawal Limitation*

A bank that imposes cash-withdrawal limitations under section 229.12 must incorporate this type of clause in its availability-policy disclosure. Banks reserving the right to impose the cash-withdrawal limitation and using model C-3 should disclose that funds may not be available until the sixth (rather than fifth) business day in the first paragraph under the heading "Longer Delays May Apply."

### 7. *Model C-11, Credit Union Interest-Payment Policy*

A credit union subject to the notice requirement of section 229.14(b)(2) must incorporate this type of clause in its availability-policy

disclosure. This model clause is only an example of a hypothetical policy. Credit unions may follow any policy for accrual provided the method of accruing interest is the same for cash and check deposits.

### 8. *Model C-11A, Availability of Funds Deposited at Other Locations*

A clause similar to model C-11A should be used if a bank bases the availability of funds on the location where the funds are deposited (for example, at a contractual or other branch located in a different check-processing region). Similarly, a clause similar to model C-11A should be used if a bank distinguishes between local and nonlocal checks (for example, a bank using model availability-policy disclosure C-4 and C-5), and accepts deposits in more than one check-processing region.

## D. Model Notices, Models C-12 through C-21

### 1. *Model Notices C-12 through C-21 Generally*

Models C-12 through C-21 provide models for the various notices required by the regulation. A bank that cashes a check and places a hold on funds in an account of the customer (see section 229.19(e)) should modify the model hold notice accordingly. For example, the bank could replace the word "deposit" with the word "transaction" and could add the phrase "or cashed" after the word "deposited."

### 2. *Model C-12, Exception-Hold Notice*

This model satisfies the written notice required under section 229.13(g) when a bank places a hold based on a section 229.13 exception. If a hold is being placed on more than one check in a deposit, each check need not be described, but if different reasons apply, each reason must be indicated. A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft or returned-check fees after invoking



the reasonable-cause exception under section 229.13(e).

### 3. *Model C-13, Reasonable-Cause Hold Notice*

This notice satisfies the written notice required under section 229.13(g) when a bank invokes the reasonable-cause exception under section 229.13(e). The notice provides the bank with a list of specific reasons that may be given for invoking the exception. If a hold is being placed on more than one check in a deposit, each check must be described separately, and if different reasons apply, each reason must be indicated. A bank may disclose its reason for doubting collectibility by checking the appropriate reason on the model. If the "Other" category is checked, the reason must be given. A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft or returned-check fees after invoking the reasonable-cause exception under section 229.13(e).

### 4. *Model C-14, One-Time Notice for Large-Deposit and Redeposited-Check Exception Holds*

This model satisfies the notice requirements of section 229.13(g)(2) concerning nonconsumer accounts.

### 5. *Model C-15, One-Time Notice for Repeated-Overdraft Exception Hold*

This model satisfies the notice requirements of section 229.13(g)(3).

### 6. *Model C-16, Case-by-Case Hold Notice*

This model satisfies the notice required under section 229.16(c)(2) when a bank with a case-by-case hold policy imposes a hold on a deposit. This notice does not require a statement of the specific reason for the hold, as is the case when a section 229.13 exception hold is placed. A bank may specify the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit when funds will

be available. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a case-by-case hold.

### 7. *Model C-17, Notice at Locations Where Employees Accept Consumer Deposits, and Model C-18, Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds)*

These models satisfy the notice requirement of section 229.18(b). Model C-17 reflects an availability policy of holds to statutory limits on all deposits, and model C-18 reflects a case-by-case availability policy.

### 8. *Model C-19, Notice at Automated Teller Machines*

This model satisfies the ATM notice requirement of section 229.18(c)(1).

### 9. *Model C-20, Notice at Automated Teller Machines (Delayed Receipt)*

This model satisfies the ATM notice requirement of section 229.18(c)(2) when receipt of deposits at off-premises ATMs is delayed under section 229.19(a)(4). It is based on collection of deposits once a week. If collections occur more or less frequently, the description of when deposits are received must be adjusted accordingly.

### 10. *Model C-21, Deposit-Slip Notice*

This model satisfies the notice requirements of section 229.18(a) for deposit slips.



## APPENDIX D—Indorsement Standards

1. The depository bank shall indorse a check according to the following specifications:

- The indorsement shall contain—
  - the bank's nine-digit routing number, set off by arrows at each end of the number and pointing toward the number;
  - the bank's name/location; and
  - the indorsement date.
- The indorsement may also contain—
  - an optional branch identification;
  - an optional trace/sequence number;
  - an optional telephone number for receipt of notification of large-dollar returned checks; and
  - other optional information provided that the inclusion of such information does not interfere with the readability of the indorsement.
- The indorsement shall be written in dark purple or black ink.
- The indorsement shall be placed on the back of the check so that the routing number is wholly contained in the area 3.0 inches from the leading edge of the check to 1.5 inches from the trailing edge of the check.<sup>1</sup>

2. Each subsequent collecting bank indorser shall protect the identifiability and legibility of the depository bank indorsement by:

- including *only* its nine-digit routing number (without arrows), the indorsement date, and an optional trace/sequence number;
- using an ink color other than purple; and
- indorsing in the area on the back of the check from 0.0 inches to 3.0 inches from the leading edge of the check.

3. Each returning bank indorser shall protect the identifiability and legibility of the depository bank indorsement by:

- using an ink color other than purple;
- staying clear of the area on the back of the

check from 3.0 inches from the leading edge of the check to the trailing edge of the check.

<sup>1</sup> The leading edge is defined as the right side of the check looking at it from the front. The trailing edge is defined as the left side of the check looking at it from the front. See American National Standards Committee on Financial Services *Specification for the Placement and Location of MICR Printing, X9.13.*

## APPENDIX F—Official Board Interpretations; Preemption Determinations

### Uniform Commercial Code, Section 4-213(5)

Section 4-213(5) of the Uniform Commercial Code (UCC) provides that money deposited in a bank is available for withdrawal as of right at the opening of business of the banking day after deposit. Although the language “deposited in a bank” is unclear, arguably it is broader than the language “made in person to an employee of the depository bank,” which conditions the next-day availability of cash under Regulation CC (§ 229.10(a)(1)). Under Regulation CC, deposits of cash that are not made in person to an employee of the depository bank must be made available by the second business day after the banking day of deposit (§ 229.10(a)(2)). Therefore, this provision of the UCC may call for the availability of certain cash deposits in a shorter time than provided in Regulation CC.

This provision of the UCC, however, is subject to section 4-103(1), which provides, in part, that “the effect of the provisions of this Article may be varied by agreement . . . .” (The Regulation CC funds-availability requirements may not be varied by agreement.) UCC 4-213(5) supersedes the Regulation CC provision in section 229.10(a)(2), but a depository bank may not agree with its customer under section 4-103(1) of the code to extend availability beyond the time periods provided in section 229.10(a) of Regulation CC.

## California

### *Background*

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act (“the act”) and subpart B (and in connection therewith, subpart A) of Regulation CC preempt the provisions of California law concerning availability of funds. This preemption determination specifies those provisions of the California funds-availability law that supersede the act and

Regulation CC. (See also the Board’s preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

California has four separate sets of regulations establishing maximum availability schedules. The regulations applicable to commercial banks and branches of foreign banks located in California (Cal. Admin. Code tit. 10, §§ 10.190401–10.190402) were promulgated by the superintendent of banks. The regulations applicable to savings banks and savings and loan associations (Cal. Admin. Code tit. 10, §§ 106.200–106.202) were adopted by the savings and loan commissioner. The regulations applicable to credit unions (Cal. Admin. Code tit. 10, § 901) and to industrial loan companies (Cal. Admin. Code tit. 10, § 1101) were adopted by the Commissioner of Corporations.

All the regulations were adopted pursuant to California Financial Code section 866.5 and California Commercial Code section 4-213(4)(a), under which the appropriate state regulatory agency for each depository institution must issue administrative regulations to define a reasonable time for permitting customers to draw on items received for deposit in the customer’s account. California Financial Code section 867 also establishes availability periods for funds deposited by cashier’s check, certified check, teller’s check, or depository check under certain circumstances. Finally, California Financial Code section 866.2 establishes disclosure requirements.

The Board’s determination with respect to these California laws and regulations governing the funds-availability requirements applicable to depository institutions in California are as follows.

### Commercial Banks and Branches of Foreign Banks

#### *Coverage*

The California State Banking Department regulations, which apply to California state commercial banks, California national banks, and California branch offices of foreign banks, provide that a depository bank shall make funds deposited into a deposit account avail-

able for withdrawal as provided in Regulation CC with certain exceptions. The funds-availability schedules in Regulation CC apply only to "accounts" as defined in Regulation CC, which generally consist of transaction accounts. The California funds-availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts (other than time accounts), as defined in the Board's Regulation D (12 CFR 204.2(d)). (Note, however, that under section 229.19(e) of Regulation CC, "Holds on other funds," the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC in certain circumstances.)

#### *Availability Schedules*

*Temporary schedule.* Regulation CC provides that, until September 1, 1990, nonlocal checks must be made available for withdrawal by the seventh business day after the banking day of deposit, except for certain nonlocal checks listed in appendix B-1, which must be made available within a shorter time (by the fifth business day following deposit for those California checks listed). Under the temporary schedule in the California regulations, a depository bank with a four-digit routing symbol of 1210 ("1210 bank") or of 1220 ("1220 bank") that receives for deposit a check drawn on a nonlocal, in-state commercial bank or foreign bank branch<sup>1</sup> must make the funds available for withdrawal by the fourth business day after the day of deposit. The California regulations provide that 1210 and 1220 banks must make deposited checks drawn on nonlocal in-state thrifts (defined as savings and loan associations, savings banks, and credit unions) available by the fifth business day after deposit. In addition, California

law provides that all other depository banks must make deposited checks drawn on a nonlocal in-state commercial bank or foreign bank branch available by the fifth business day after deposit and checks drawn on nonlocal in-state thrifts available by the sixth business day after deposit. To the extent that these schedules provide for shorter holds than Regulation CC and its appendix B-1, the state schedules supersede the federal schedules.<sup>2</sup> For example, the California four-day schedule that applies to checks drawn on in-state nonlocal commercial banks or foreign bank branches and deposited in a 1210 or 1220 bank would be shorter than and would supersede the federal schedules.

The California regulations do not specify whether the state schedules apply to deposits of checks at nonproprietary ATMs. Under the temporary schedules in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal by the seventh business day following deposit. To the extent that the California schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in section 229.11(d).

*Permanent schedule.* Regulation CC provides that, as of September 1, 1990, nonlocal checks must be made available for withdrawal by the fifth business day after the banking day of deposit. Under the permanent schedule in the California regulations, a depository bank with a four-digit routing symbol of 1210 or of 1220 that receives for deposit a check drawn on a nonlocal, in-state commercial bank or foreign bank branch must make the funds available for withdrawal by the fourth business day after the day of deposit. These state schedules provide for shorter hold periods than and thus supersede the federal schedules.

<sup>1</sup> The California regulation uses the term "paying bank" when describing the institution on which these checks are drawn, but does not define "paying bank" or "bank." Regulation CC's definitions of "paying bank" and "bank" include savings institutions and credit unions as well as commercial banks and branches of foreign banks. However, because the California regulation makes separate provisions for checks drawn on savings institutions and credit unions, the Board concludes that the term "paying bank," as used in the California regulation, includes only commercial banks and foreign bank branches.

<sup>2</sup> Appendix B-1 of Regulation CC provides that the federal schedules will be the same as the California schedules (five days) in the following cases: a depository bank bearing a 1210 routing number receiving for-deposit checks bearing a 3220 or a 3223 routing number, and a depository bank bearing a 1220 routing number receiving for-deposit checks bearing a 3210 routing number. In the cases where federal and state law are the same, the state law is not preempted by, nor does it supersede, the federal law.

*Second-day availability.* Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a noncustomer of the bank for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

*Availability at start of day.* The California regulations do not specify when during the day funds must be made available for withdrawal. Section 229.19(b) of Regulation CC provides that funds must be made available at the start of the business day. In those cases where federal and state law provide for holds for the same number of days, to the extent that the California regulations allow funds to be made available later in the day than does Regulation CC, the federal law would preempt state law.

*Exceptions to the availability schedules.* Under the state preemption standards of Regulation CC (see section 229.20(c) and accompanying commentary), for deposits subject to the state availability schedules, a state exception may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability schedule limit under a state exception, the depository bank may further extend the hold under any federal exception that can be applied to the deposit. If no state exceptions exist, then no exception holds may be placed on deposits covered by state schedules. Thus, to the extent that California law provides for exceptions to the California schedules that supersede Regulation CC, those exceptions may be applied in order to extend the state availability schedules up to the federal availability schedules or such later time as is permitted by a federal exception.

### *Disclosures*

California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal.

Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. California Financial Code section 866.2 requires disclosures that differ from those required by Regulation CC and, therefore, is preempted to the extent that it applies to "accounts" as defined in Regulation CC. The state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

### *Savings Institutions*

#### *Coverage*

The California Department of Savings and Loan regulations, which apply to California savings and loan associations and California savings banks, provide that a depository bank shall make funds deposited into a transaction or non-transaction account available for withdrawal as provided in Regulation CC. The funds-availability schedules in Regulation CC apply only to "accounts" as defined in Regulation CC, which generally consist of transaction accounts. The California funds-availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts as defined in the Board's Regulation D (12 CFR 204.2(d)). (Note, however, that under section 229.19(e) of Regulation CC, "Holds on other funds," the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC in certain circumstances.)

### Availability Schedules

**Second-day availability.** Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a noncustomer of the bank for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

**Temporary and permanent schedules.** Other than the provisions of section 867 discussed above, California law incorporates the Regulation CC availability requirements with respect to deposits to accounts covered by Regulation CC. Because the state requirements are consistent with the federal requirements, the California regulation is not preempted by, nor does it supersede, the federal law.

### Disclosures

California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal. Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. To the extent that California Financial Code section 866.2 requires disclosures that differ from those required by Regulation CC and apply to "accounts" as defined in Regulation CC (gen-

erally, transaction accounts), the California law is preempted by Regulation CC.

The Department of Savings and Loan regulations provide that for those non-transaction accounts covered by state law but not by federal law, disclosures in accordance with Regulation CC will be deemed to comply with the state-law disclosure requirements. To the extent that the Department of Savings and Loan regulations permit reliance on Regulation CC disclosures for transaction accounts and to the extent the state regulations survive the preemption of California Financial Code section 866.2, they are not preempted by, nor do they supersede, the federal law. The state law continues to apply to savings accounts and other non-transaction accounts not governed by Regulation CC disclosure requirements.

### Credit Unions and Industrial Loan Companies

Each credit union and federally insured industrial loan company that maintains an office in California for the acceptance of deposits must make funds deposited by check available for withdrawal in accordance with the following table:

	Availability	
	Credit Union	Industrial Loan Company
\$100 or less checks; U.S. Treasury checks; state/local government checks	1st day	1st day
On-us, cashier's, certified, teller's depository checks	2nd day	2nd day
In-state checks	6th day	6th day
Out-of-state checks	10th day	12th day

Note. These time periods are stated in terms of availability for withdrawal not later than the Xth business day following the banking day of deposit to facilitate comparison with Regulation CC. State regulations are stated in terms of availability at the start of the business day subsequent to the number of days specified in the regulation.

### Coverage

The California law and regulations govern the availability of funds to "demand deposits, ne-



gotiable order of withdrawal draft accounts, savings deposits subject to automatic transfers, share draft accounts, and all savings deposits and share accounts, other than time deposits" (California Financial Code § 886(b)). The federal preemption of state funds-availability laws only applies to "accounts" subject to Regulation CC, which generally includes transaction accounts. Thus, the California funds-availability regulations continue to apply to deposits in savings and other accounts (such as accounts in which the account holder is another bank) that are not "accounts" under Regulation CC. (Note, however, that under section 229.19(e) of Regulation CC, "Holds on Other Funds," the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC in certain circumstances.

The California law applies to any "item" (California Financial Code § 866.5 and California Commercial Code § 4213(4)(a)). The California Commercial Code defines "item" to mean "any instrument for the payment of money even though it is not negotiable . . ." (Cal. Com. Code § 4104(g)). This term is broader in scope than the definition of "check" in the act and Regulation CC. The commissioner's regulations, however, define the term "item" to include checks, negotiable orders of withdrawal, share drafts, warrants, and money orders. As limited by the state regulations, the state law applies only to instruments that are also "checks" as defined in section 229.2(k) of Regulation CC.

### *Availability Schedules*

*Temporary schedule.* The California regulations provide that in-state nonlocal checks must be made available for withdrawal not later than the sixth business day following deposit. This time period is shorter than the seventh-business-day availability required for nonlocal checks under section 229.11(c) of Regulation CC, although it is not shorter than the schedules for nonlocal checks set forth in section 229.11(c)(2) and appendix B-1 of Regulation CC. Thus, the state schedules for in-state nonlocal checks supersede the federal schedule to the extent that they apply to an item payable by a California institution that is

defined as a nonlocal check under Regulation CC, and is not subject to reduced schedules under section 229.11(c)(2) and appendix B-1.

Under the California regulations, credit unions and industrial loan companies must provide next-day availability to first-indorsed items issued by any federally insured institution. This regulatory requirement, however, has been superseded by section 867 of the California Financial Code, which requires depository institutions to make funds deposited by cashier's check, teller's check, certified checks, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. This requirement became effective January 1, 1988.

The Regulation CC next-day-availability requirement for cashier's checks and teller's checks applies only to those checks issued for remittance purposes. To the extent that the state second-business-day-availability requirement applies to cashier's and teller's checks issued for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

The California regulations do not specify whether they apply to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the start of the seventh business day after deposit. To the extent that the California schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in section 229.11(d).

*Permanent schedule.* Under the California regulations, credit unions and industrial loan companies must provide next-day availability to first-indorsed items issued by any federally insured institution. This regulatory requirement, however, has been superseded by section 867 of the California Financial Code, which requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain condi-

tions are met. This requirement became effective January 1, 1988.

The Regulation CC next-day-availability requirement for cashier's and teller's checks applies only to those checks issued for remittance purposes. To the extent that the state second-business-day-availability requirement applies to cashier's and teller's checks issued for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

*Next-day availability.* Credit unions and industrial loan companies in California are required to give next-day availability to items drawn by the state of California or any of its departments, agencies, or political subdivisions. California law supersedes the federal law in that the state law does not condition next-day availability on receipt at a staffed teller station or use of a special deposit slip.

California credit unions and industrial loan companies must provide second-business-day availability to checks drawn on the depository bank. Regulation CC requires next-day availability for checks deposited in a branch of the depository bank and drawn on the same or another branch of the same bank if both branches are located in the same state or the same check-processing region. Thus, generally, the Regulation CC rule for availability of on-us checks preempts the California regulations. To the extent, however, that an on-us check is (1) drawn on an out-of-state branch of the depository bank that is not in the same check-processing region as the branch in which it was deposited or (2) deposited at an off-premises ATM or another facility of the depository bank that is not considered a branch under federal law, the state regulation supersedes the Regulation CC availability requirements.

*Exceptions to the availability schedules.* California law provides exceptions to the state availability schedules for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state availability schedule (e.g., in-state nonlocal checks

under the temporary schedule; cashier's or teller's checks that are not deposited with a special deposit slip or at a staff teller station), the state exceptions may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability limit under a state exception, the depository bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depository bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with section 229.13(g) of Regulation CC.

*Business day/banking day.* The definitions of "business day" and "banking day" in the California regulations are preempted by the Regulation CC definition of those terms. Thus, for determining the permissible hold under the California schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of "business days" following the "banking day" of deposit.

#### *Disclosures*

California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires a depository institution to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal.

Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. California Financial Code section 866.2 requires disclosures that differ from those required by Regulation CC, and therefore is preempted to the extent that it applies to "accounts" as defined in Regulation CC. The state law continues to apply to savings



accounts not governed by Regulation CC disclosure requirements.

## Connecticut

### Background

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act ("the act") and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt provisions of Connecticut law relating to the availability of funds. This preemption determination specifies those provisions of the Connecticut funds-availability law that supersede the act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

In 1987, Connecticut amended its statute governing funds availability (Conn. Gen. Stat. § 36-9v), which requires Connecticut depository institutions to make funds deposited in a checking, time, interest, or savings account available for withdrawal within specified periods.

Generally, the Connecticut statute, as amended, provides that items deposited in a checking, time, interest, or savings account at a depository institution must be available for withdrawal in accordance with the following table:

	<i>Availability</i>
On-us checks	2nd day
In-state checks	4th day
Out-of-state checks	6th day

Exceptions to the schedules are provided for items received for deposit for the purpose of opening an account and for items that the depository bank has reason to believe will not clear. The Connecticut statute also requires availability-policy disclosures to depositors in the form of written notices and notices posted conspicuously at each branch.

### Coverage

The Connecticut statute governs the availability of funds deposited in savings and time

accounts, as well as "accounts" as defined in section 229.2(a) of Regulation CC. The federal preemption of state funds-availability requirements only applies to "accounts" subject to Regulation CC, which generally consist of transaction accounts. Regulation CC does not affect the Connecticut statute to the extent that the state law applies to deposits in savings and other accounts (including transaction accounts where the account holder is a bank, foreign bank, or the U.S. Treasury) that are not "accounts" under Regulation CC. (Note, however, that under section 229.19(e) of Regulation CC, "Holds on Other Funds," the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.)

The Connecticut statute applies to "items" deposited in accounts. This term encompasses instruments that are not defined as "checks" in Regulation CC (§ 229.2(k)), such as nonnegotiable instruments, and are therefore not subject to Regulation CC's provisions governing funds availability. Those items that are subject to Connecticut law but are not subject to Regulation CC will continue to be covered by the state availability schedules and exceptions.

### Availability Schedules

*Temporary schedule.* Connecticut law provides that certain checks that are nonlocal under Regulation CC must be available in a shorter time (sixth business day after deposit for checks payable by depository institutions not located in Connecticut) than under the federal regulation (seventh business day after deposit under the temporary schedule for nonlocal checks). Accordingly, the Connecticut law supersedes Regulation CC with respect to nonlocal checks (other than checks covered by appendix B-1) deposited in "accounts" until the federal permanent availability schedules take effect on September 1, 1990.

The Connecticut statute does not specify whether it applies to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the start of the seventh busi-

ness day after deposit. To the extent that the Connecticut schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in section 229.11(d).

*Exceptions to the availability schedule.* The Connecticut law provides exceptions for items received for deposit for the purpose of opening new accounts and for items that the depository bank has reason to believe will not clear. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state availability schedule (e.g., nonlocal out-of-state checks under the temporary schedule), the state exceptions may be used to extend the state availability schedule (of six business days) to meet the federal availability schedule (of seven business days). Once the deposit is held up to the federal availability schedule limit under a state exception, the depository bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depository bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer, in accordance with section 229.13(g) of Regulation CC.

### *Disclosures*

The Connecticut statute (Conn. Gen. Stat. § 36-9v(b)) requires written notice to depositors of an institution's check-hold policy and requires a notice of the policy to be posted in each branch.

Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts" that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal disclosure rules (§ 229.20(c)(2)). Thus, the Connecticut statute is preempted by Regulation CC to the extent that these disclosure provisions apply to "accounts" as defined by Regulation CC. The Connecticut disclosure rules would continue to apply to accounts, such as savings and time

accounts, not governed by the Regulation CC disclosure requirements.

## Illinois

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act and subpart B, and, in connection therewith, subpart A, of Regulation CC, preempt provisions of Illinois law relating to the availability of funds. Section 4-213(5) of the Uniform Commercial Code as adopted in Illinois (Illinois Revised Statutes chapter 26, paragraph 4-213(5), enacted July 26, 1988) provides that—

Time periods after which deposits must be available for withdrawal shall be determined by the provisions of the federal Expedited Funds Availability Act (Title VI of the Competitive Equality Banking Act of 1987) and the regulations promulgated by the Federal Reserve Board for the implementation of that Act.

Section 4-213(5) of the Illinois law does not supersede Regulation CC; and, because this provision of Illinois law does not permit funds to be made available for withdrawal in a longer period of time than required under the act and regulation, it is not preempted by Regulation CC.

## Maine

### *Background*

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act ("the act") and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt the provisions of Maine law concerning the availability of funds. This preemption determination addresses the relation of the act and Regulation CC to the Maine funds-availability law. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

In 1985, Maine adopted a statute governing funds availability (title 9-B MRSA § 241(5)), which requires Maine financial institutions to make funds deposited in a transaction account,

savings account, or time account available for withdrawal within a reasonable period. The Maine statute gives the superintendent of banking for the state of Maine the authority to promulgate rules setting forth time limitations and disclosure requirements governing funds availability.

The superintendent of banking issued regulations implementing the Maine funds-availability statute, effective July 1, 1987 (Regulation 18(IV)), and adopted amendments to this regulation, effective September 1, 1988. Under the revised regulation, funds deposited to any deposit account in a Maine financial institution must be made available for withdrawal in accordance with the act and Regulation CC (Regulation 18-IV(A)(1)). The state regulation provides that an institution's funds-availability policies for accounts subject to Regulation CC be disclosed in a manner consistent with the Regulation CC requirements. Funds-availability policies for accounts not subject to Regulation CC must be disclosed in accordance with the state regulation (Regulation 18-IV(A)(2)).

#### *Coverage*

The Maine law and regulation govern the availability of funds to any deposit account, as defined in the Board's Regulation D (12 CFR 204.2(a)). This coverage is broader than the "accounts" covered in Regulation CC. The Maine law continues to apply to all deposit accounts, including those that are not accounts under Regulation CC. (Note, however, that under section 229.19(e) of Regulation CC, "Holds on Other Funds," the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.

#### *Availability Schedules and Disclosures*

The Maine regulation incorporates the Regulation CC availability and disclosure requirements with respect to deposits to accounts covered by Regulation CC. Because the state requirements are consistent with the federal requirements, the Maine regulation is not preempted by, nor does it supersede, the federal law.

## Massachusetts

### *Background*

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act ("the act") and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt provisions of Massachusetts law relating to the availability of funds. This preemption determination addresses the relationship of the act and Regulation CC to the Massachusetts funds-availability law. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

In 1988, Massachusetts amended its statute governing funds availability (Mass. Gen. L. ch. 167D, § 35), to require Massachusetts banking institutions to make funds available for withdrawal and disclose their availability policies in accordance with the act and Regulation CC. The Massachusetts law, however, provides that "local originating depository institution" is to be defined as any originating depository institution located in the commonwealth.

### *Coverage*

The Massachusetts statute governs the availability of funds deposited in "any demand deposit, negotiable order of withdrawal account, savings deposit, share account or other asset account." Regulation CC applies only to "accounts" as defined in section 229.2(a). Regulation CC does not affect the Massachusetts statute to the extent that the state law applies to deposits in savings and other accounts (including transaction accounts where the account holder is a bank, foreign bank, or the U.S. Treasury) that are not "accounts" under Regulation CC. (Note, however, that under section 229.19(e) of Regulation CC, "Holds on Other Funds," the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.

### *Availability Schedules*

The Massachusetts definition of "local originating depository institution" (local paying bank in Regulation CC terminology) requires that in-state checks that are nonlocal checks under Regulation CC be made available in accordance with the Regulation CC local schedule. The Massachusetts law supersedes Regulation CC under the temporary and permanent schedule with respect to nonlocal checks payable by banks located in Massachusetts and deposited into "accounts." Regulation CC preempts the Massachusetts law, however, to the extent the state law does not define banks located outside of Massachusetts, but in the same check-processing region as the paying bank, as "local originating depository institutions."

### *Disclosures*

The Massachusetts regulation incorporates the Regulation CC disclosure requirements with respect to both accounts covered by Regulation CC and savings and other accounts not governed by the federal regulation. Because the state requirements are consistent with the federal requirements, the Massachusetts regulation is not preempted by, nor does it supersede, the federal law. The Massachusetts disclosure rules would continue to apply to accounts not governed by the Regulation CC disclosure requirements.

### *New Jersey*

#### *Background*

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act ("the act") and subpart B (and in connection therewith, subpart A) of Regulation CC preempt the provisions of New Jersey law concerning disclosure of a bank's funds-availability policy. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

New Jersey does not have a law or regulation establishing the maximum time periods

within which funds deposited by check or electronic payment must be made available for withdrawal. New Jersey does, however, have regulations concerning the disclosure of a banking institution's availability policy (N.J.A.C. §§ 3:1-15.1 et seq.).

### *Disclosures*

New Jersey law requires every banking institution (defined as any state or federally chartered commercial bank, savings bank, or savings and loan association) to provide written disclosure to all holders of and applicants for deposit accounts which describes the institution's funds-availability policy. Institutions must also disclose to their customers any significant changes to their availability policy.

Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts" that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal disclosure rules (§ 229.20(c)(2)). Thus, the New Jersey statute (N.J.A.C. §§ 3:1-15.1 et seq.) is preempted by Regulation CC to the extent that these disclosure provisions apply to "accounts" as defined by Regulation CC. The New Jersey disclosure rules would continue to apply to other "deposit accounts," as defined by New Jersey law, including money market accounts and savings accounts established by a natural person for personal or family purposes, which are not governed by the Regulation CC disclosure requirements.

### *New York*

#### *Background*

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act ("the act") and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt the provisions of New York law concerning the availability of funds. This preemption determination addresses the relation of the act and Regulation CC to the New York funds-availability law. (See also the Board's preemption determination regarding the Uniform

Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

In 1983, the New York State Banking Department, pursuant to section 14-d of the New York Banking Law, issued regulations requiring that funds deposited in an account be made available for withdrawal within specified time periods, and provided certain exceptions to those availability schedules. Part 34 of the New York State Banking Department's general regulations established time frames within which commercial banks, trust companies, and branches of foreign banks ("banks"); and savings banks, savings and loan associations, and credit unions ("savings institutions") must make funds deposited in customer accounts available for withdrawal.

The Banking Department amended part 34, effective September 1, 1988, generally to exclude accounts covered by Regulation CC from the scope of the state regulation. Part 34.4(a)(2) and (b)(2) of the revised New York rules, however, continue to apply to checks deposited to accounts, as defined in Regulation CC. These provisions require that the proceeds of nonlocal checks payable by a New York institution be made available for withdrawal not later than the start of the fourth business day following deposit, if deposited in a bank, or the fifth business day following deposit, if deposited in a savings institution. The revised regulation also provides that, with respect to savings accounts and time deposits, New York institutions could elect to comply with either the state or federal availability and disclosure requirements.

This preemption determination supersedes the determination issued by the Board on August 18, 1988 (53 Fed. Reg. 32357 (August 24, 1988)).

### Coverage

The New York law and regulation govern the availability of funds in savings accounts and time deposits, as well as "accounts" as defined in section 229.2(a) of Regulation CC. The New York law continues to apply to deposits to savings accounts and time deposits that are not accounts under Regulation CC. (Note, however, that under section 229.19(e) of Regulation CC, "Holds on Other Funds,"

the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.)

The New York law and regulation apply to "items" deposited to accounts. Part 34.3(e) defines "item" as "a check, negotiable order of withdrawal or money order deposited into an account." The Board interprets the definition of "item" in New York law to be consistent with the definition of "check" in Regulation CC (§ 229.2(k)).

### Availability Schedules

The provisions of New York law governing the availability of in-state nonlocal items provide for a shorter hold than is provided under Regulation CC, and supersede the federal availability requirements. With the exception of these provisions, the New York regulation does not apply to deposits to accounts covered by Regulation CC.

*Temporary schedule.* The time periods for the availability of in-state nonlocal checks, contained in part 34.4(a)(2) and (b)(2), are shorter than the seventh-business-day availability required for nonlocal checks under section 229.11(c) of Regulation CC, although they are not necessarily shorter than the schedules for nonlocal checks set forth in section 229.11(c)(2) and appendix B-1 of Regulation CC. Thus, these state schedules supersede the federal schedule to the extent that they apply to an item payable by a New York bank or savings institution that is defined as a nonlocal check under Regulation CC and the applicable state schedule is less than the applicable schedule specified in section 229.11(c) and appendix B-1.

*Permanent schedule.* The New York schedule for banks supersedes the Regulation CC requirement in the permanent schedule, effective September 1, 1990, that nonlocal checks be made available for withdrawal by the start of the fifth business day following deposit, to the extent that the in-state checks are defined as nonlocal under Regulation CC, and the Regulation CC schedule for nonlocal checks is not shortened under section 229.12(c)(2) and appendix B-2 of Regulation CC. In addition, the



New York schedule for savings institutions supersedes the Regulation CC time-period adjustment for withdrawal by cash or similar means in the permanent schedule, to the extent that the in-state checks are defined as nonlocal under Regulation CC, and the Regulation CC schedule for nonlocal checks is not shortened under section 229.12(c)(2) and appendix B-2.

*Exceptions to the availability schedules.* New York law provides exceptions to the state availability schedules for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions (part 34.4). The state exceptions apply only with respect to deposits of in-state nonlocal checks that are subject to the state availability schedule. For these deposits, the depository bank may invoke a state exception and place a hold on the deposit up to the federal availability-schedule limit for that type of deposit. Once the federal availability-schedule limit is reached, the depository bank may further extend the hold under any of the federal exceptions that apply to that deposit. Any time a depository bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with section 229.13(g) of Regulation CC.

#### *Disclosures*

The revised New York regulation does not contain funds-availability disclosure requirements applicable to accounts subject to Regulation CC.

### Rhode Island

#### *Background*

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act ("the act") and subpart B (and in connection therewith, subpart A) of Regulation CC, supersede provisions of Rhode Island law relating to the availability of funds. This preemption determination specifies those provisions in the Rhode

Island funds-availability law that supersede the act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

In 1986, Rhode Island adopted a statute governing funds availability (R.I. Gen. Laws tit. 6A, §§ 4-601 through 4-608), which requires Rhode Island depository institutions to make checks deposited in a personal transaction account available for withdrawal within certain specific periods. Commercial banks and thrift institutions (mutual savings banks, savings banks, savings and loan institutions, and credit unions) must make funds available for withdrawal in accordance with the following table:

	<i>Commercial Banks</i>	<i>Thrift Institutions</i>
Treasury checks, Rhode Island gov- ernment checks, first-indorsed	2nd	2nd
In-state, cashier's checks less than \$2,500	2nd	2nd
On-us checks	2nd	3rd
In-state clearinghouse checks	3rd	4th
In-state nonclearing- house checks	5th	6th
1st or 2nd Federal Reserve District checks (out-of- state)	7th	7th
Other checks	9th	10th

Note. These time periods are stated in terms of availability for withdrawal not later than the Xth business day following the banking day of deposit to facilitate comparison with Regulation CC. State regulations are stated in terms of availability at the start of the business day subsequent to the number of days specified in the regulation.

The Rhode Island statute also provides restrictions and exceptions to the schedules and requires institutions to make certain disclosures to their customers.

#### *Coverage*

The Rhode Island statute governs the availability of funds deposited in "personal transaction accounts," a term not defined in the statute. The federal law would continue to ap-

ply to "accounts," as defined in section 229.2(a), that are not "personal transaction accounts."

The Rhode Island statute applies to "items," defined as checks, negotiable orders of withdrawal, or money orders. The Board interprets the definition of "item" to be consistent with the definition of "check" in Regulation CC (§ 229.2(k)).

### *Availability Schedules*

*Temporary schedule.* Rhode Island law requires availability for certain checks in the same time as does Regulation CC. Thus, in these instances, the federal law does not preempt the state law. Rhode Island law requires commercial banks (but not thrift institutions) to make checks payable by a depository institution that uses the same in-state clearing facility as the depository bank available for withdrawal on the third business day following the day of the deposit. This is the same time period contained in Regulation CC for local checks payable by a bank that is a member of the same local clearinghouse as the depository bank. (The Board views the definition of "the same in-state clearing facility" as having the same meaning as the term "the same check clearinghouse association" in the federal law's provision that allows banks to limit the customer's ability to withdraw cash on the third business day if the local check being deposited is payable by a bank that is not a member of the same local clearinghouse as the depository bank.) Since the Rhode Island law and the federal law both require the funds to be made available no later than the third business day, the state law is not preempted by the federal law.

The Rhode Island law also requires commercial banks and savings institutions to make checks payable by a depository institution located in the First or Second Federal Reserve District (outside of Rhode Island) available on the seventh business day following deposit. To the extent that this provision applies to checks payable by institutions located outside the Boston check processing region, it provides for availability in the same time as required for nonlocal checks under the temporary fed-

eral schedule, and thus is not preempted by the federal law.

The Rhode Island statute does not specify whether it applies to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the opening of the seventh business day after deposit. To the extent that the Rhode Island schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule.

*Exceptions to the availability schedules.* The Rhode Island law contains exceptions for reason to doubt collectibility or ability of the depositor to reimburse the depository bank, for new accounts, for large checks, and for foreign checks. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state availability schedule, the state exceptions may be used to extend the state availability schedule to meet the federal availability schedule. Once the deposit is held up to the federal availability-schedule limit under a state exception, the depository bank may further extend the hold under any federal exception that can be applied to the deposit. Thus, if the state and federal availability schedules are the same for a particular deposit, both a state and a federal exception must be applicable to that deposit in order to extend the hold beyond the schedule. Any time a depository bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer, in accordance with section 229.13(g) of Regulation CC.

*Business day/banking day.* The Rhode Island statute defines "business day" as excluding Saturday, Sunday, and legal holidays. This definition is preempted by the Regulation CC definitions of "business day" and "banking day." Thus, for determining the permissible hold under the Rhode Island schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of "business days" following the "banking day" of deposit.



### *Disclosures*

The Rhode Island statute requires written notice to depositors of an institution's checkhold policy and requires a notice on deposit slips. Regulation CC preempts state disclosure requirements concerning funds availability that relate to accounts that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal rules (§ 229.20(c)(2)). Thus, Regulation CC preempts the Rhode Island disclosure requirements concerning funds availability.

### *Wisconsin*

#### *Background*

The Board has been requested, in accordance with section 229.20(d) of Regulation CC (12 CFR 229), to determine whether the Expedited Funds Availability Act (the act) and subpart B (and in connection therewith, subpart A) of Regulation CC preempt the provisions of Wisconsin law concerning availability of funds. This preemption determination specifies those provisions of the Wisconsin funds-availability law that are not preempted by the act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

Wisconsin Statutes sections 404.213(4m), 215.136, and 186.117 require Wisconsin banks, savings and loan associations, and credit unions, respectively, to make funds deposited in accounts available for withdrawal within specified time frames. Generally, checks drawn on the U.S. Treasury, the state of Wisconsin, or on a local government located in Wisconsin must be made available for withdrawal by the second day following deposit. (The law governing commercial banks determines availability based on banking day; the laws governing savings and loan associations and credit unions determine availability based on business days.) In-state and out-of-state checks must be made available for withdrawal within five days and eight days following deposit, respectively. Exceptions are provided for new accounts and reason to doubt collectibility. In addition, Wisconsin Statutes

section 404.103 permits commercial banks to vary these availability requirements by agreement.

#### *Coverage*

Wisconsin law defines "account," with respect to the rules governing commercial banks, as "any account with a bank and includes a checking, time, interest or savings account" (Wisconsin Statutes section 404.104(1)(a)). The statutes relating to the funds-availability requirements applicable to savings and loan associations and credit unions do not define the term "account." The federal preemption of state funds-availability requirements applies only to "accounts" subject to Regulation CC, which generally consist of transaction accounts. Regulation CC does not affect the Wisconsin law to the extent that the state law applies to deposits in savings, time, and other accounts (including transaction accounts where the account holder is a bank, foreign bank, or the U.S. Treasury) that are not "accounts" under Regulation CC. (Note, however, that under section 229.19(e) of Regulation CC, "Holds on Other Funds," the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC in certain circumstances.)

The Wisconsin statute applies to "items" deposited in accounts. This term encompasses instruments that are not defined as "checks" in Regulation CC (§ 229.2(k)), such as nonnegotiable instruments, and are therefore not subject to Regulation CC's provisions governing funds availability. Those items that are subject to Wisconsin law but are not subject to Regulation CC will continue to be covered by the state availability schedules and exceptions.

#### *Availability Schedules*

*Temporary schedule.* The Wisconsin statute requires that in-state nonlocal checks be made available for withdrawal not later than the fifth day following deposit (Wisconsin Statutes §§ 404.213(4m)(b)(2); 215.136(2)(b); 186.117(2)(b)). This time period is shorter than the seventh-business-day availability required for nonlocal checks under section

229.11(c) of Regulation CC, although it is not shorter than the schedules for nonlocal checks set forth in section 229.11(c)(2) and appendix B-1 of Regulation CC. Thus, the state schedule for in-state nonlocal checks supersedes the federal schedule to the extent that it applies to an item payable by a Wisconsin bank that is defined as a nonlocal check under Regulation CC and is not subject to reduced schedules under section 229.11(c)(2) and appendix B-1.

*Permanent schedule.* Under the federal permanent availability schedule, nonlocal checks must be made available for withdrawal not later than the fifth business day following deposit. The fifth-day availability requirement for in-state items in the Wisconsin statute supersedes the Regulation CC time-period adjustment for withdrawal by cash or similar means in the permanent schedule, to the extent that the in-state checks are defined as nonlocal under Regulation CC.

*Next-day availability.* Under the Wisconsin statute, the proceeds of state and local government checks must be made available for withdrawal by the second day following deposit, if the check is indorsed only by the person to whom it was issued (Wisconsin Statutes §§ 404.213(4m)(b)(1); 215.136(2)(b); and 186.117(2)(a)). Regulation CC requires next-day availability for these checks if they are (1) deposited in an account of a payee of the check, (2) deposited in a depository bank located in the same state as the state or local government that issued the check, (3) deposited in person to an employee of the depository bank, and (4) deposited with a special deposit slip, if the depository bank informed its customers that use of such a slip is a condition to next-day availability. Under the federal law, if a state or local government check is not deposited in person to an employee of the depository bank, but meets the other conditions set forth in section 229.10(c)(1)(iv), the funds must be made available for withdrawal not later than the second business day following deposit. The Wisconsin statute supersedes Regulation CC to the extent that the state law does not permit the use of a special deposit slip as a condition to receipt of second-day availability.

*Exceptions to the schedules.* Wisconsin law provides exceptions to the state availability schedules for new accounts (those opened less than 90 days) and reason to doubt collectibility (Wisconsin Statutes §§ 404.213(4m)(b); 215.136(2); and 186.117(2)). The state availability law also permits commercial banks to vary the funds-availability requirements by agreement (Wisconsin Statute § 404.103(1)). In all cases where the federal schedule preempts the state schedule, only the federal exceptions apply. For deposits that are covered by the state availability schedule (e.g., in-state nonlocal checks), a state exception must apply in order to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability limit under a state exception, the depository bank may further extend the hold only if a federal exception can be applied to the deposit. Any time a depository bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with § 229.13(g) of Regulation CC.

*Business day/banking day.* The definitions of "business day" and "banking day" in the Wisconsin statutes are preempted by the Regulation CC definition of those terms. For determining the permissible hold under the Wisconsin schedules that supersede the Regulation CC schedule, deposits are considered available for withdrawal on the specified number of "business days" following the "banking day" of deposit.

Wisconsin law considers funds to be deposited, for the purpose of determining when they must be made available for withdrawal, when an item is "received at the proof and transit facility of the depository." For the purposes of this preemption determination, funds are considered deposited under Wisconsin law in accordance with the rules set forth in section 229.19(a) of Regulation CC.

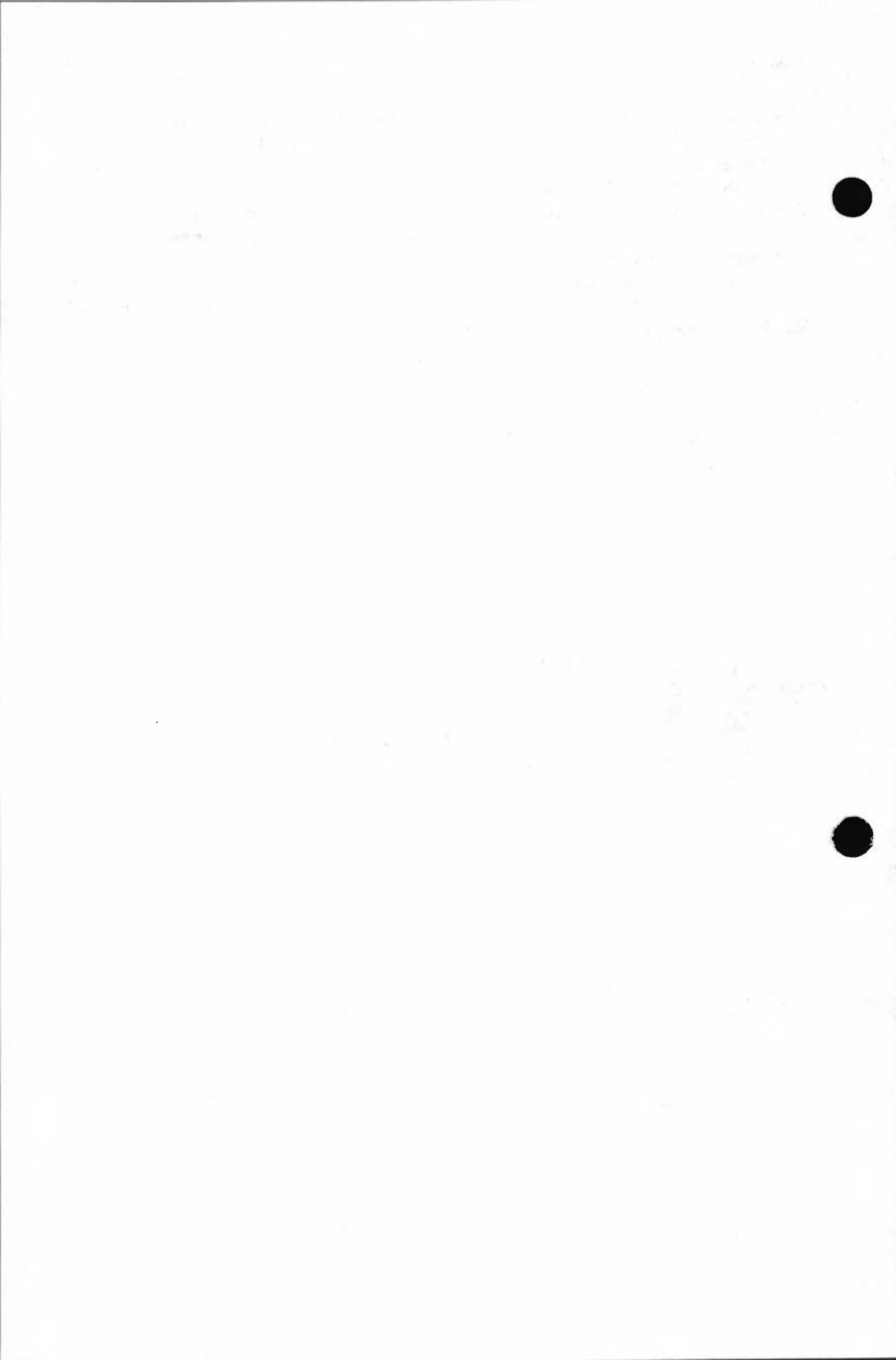
#### *Disclosures*

The Wisconsin statute does not require disclosure of a bank's funds-availability policy. The state law does require, however, that a bank

give notice to its customer if it extends the time within which funds will be available for withdrawal due to the bank's doubt as to the collectibility of the item (Wisconsin Statutes §§ 404.213(4m)(b); 215.136(2); and 186.117(2)).

Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts" that are inconsistent with the federal requirements. The state require-

ment is different from, and therefore inconsistent with, the federal disclosure rules (§ 229.20(c)(2)). Thus, the Wisconsin statute is preempted by Regulation CC to the extent that the state notice requirement applies to "accounts" as defined by Regulation CC. The Wisconsin requirement would continue to apply to accounts, such as savings and time accounts, not governed by the Regulation CC disclosure requirements.



# Expedited Funds Availability Act

12 USC 4001 et seq.; 101 Stat. 635; Pub. L. 100-86 (August 10, 1987)

## Competitive Equality Banking Act, Title VI

### Section

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### SECTION 601—Short Title

This title may be cited as the "Expedited Funds Availability Act".

[12 USC 4001 note.]

### SECTION 602—Definitions

For purposes of this title—

(1) The term "account" means a demand deposit account or other similar transaction account at a depository institution.

(2) The term "Board" means the Board of Governors of the Federal Reserve System.

(3) The term "business day" means any day other than a Saturday, Sunday, or legal holiday.

(4) The term "cash" means United States coins and currency, including Federal Reserve notes.

(5) The term "cashier's check" means any check which—

- (A) is drawn on a depository institution;
- (B) is signed by an officer or employee of such depository institution; and
- (C) is a direct obligation of such depository institution.

(6) The term "certified check" means any check with respect to which a depository institution certifies that—

- (A) the signature on the check is genuine; and
- (B) such depository institution has set aside funds which—
  - (i) are equal to the amount of the check; and
  - (ii) will be used only to pay such check.

(7) The term "check" means any negotiable demand draft drawn on or payable through an office of a depository institution located in the United States. Such term does not include noncash items.

(8) The term "check clearinghouse association" means any arrangement by which participant depository institutions exchange deposited checks on a local basis, including an entire metropolitan area, without using the check processing facilities of the Federal Reserve System.

(9) The term "check processing region" means the geographical area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations.

(10) The term "consumer account" means any account used primarily for personal, family, or household purposes.

(11) The term "depository check" means any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board.

(12) The term "depository institution" has the meaning given such term in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act. Such term also includes an office, branch, or agency of a foreign bank located in the United States.

(13) The term "local originating depository institution" means any originating depository institution which is located in the same check processing region as the receiving depository institution.

(14) The term "noncash item" means—

- (A) a check or other demand item to

which a passbook, certificate, or other document is attached;

(B) a check or other demand item which is accompanied by special instructions, such as a request for special advise of payment or dishonor; or

(C) any similar item which is otherwise classified as a noncash item in regulations of the Board.

(15) The term "nonlocal originating depository institution" means any originating depository institution which is not a local depository institution.

(16) The term "proprietary ATM" means an automated teller machine which is—

(A) located—

(i) at or adjacent to a branch of the receiving depository institution; or

(ii) in close proximity, as defined by the Board, to a branch of the receiving depository institution; or

(B) owned by, operated exclusively for, or operated by the receiving depository institution.

(17) The term "originating depository institution" means the branch of a depository institution on which a check is drawn.

(18) The term "nonproprietary ATM" means an automated teller machine which is not a proprietary ATM.

(19) The term "participant" means a depository institution which—

(A) is located in the same geographic area as that served by a check clearinghouse association; and

(B) exchanges checks through the check clearinghouse association, either directly or through an intermediary.

(20) The term "receiving depository institution" means the branch of a depository institution or the proprietary ATM in which a check is first deposited.

(21) The term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands.

(22) The term "teller's check" means any check issued by a depository institution and drawn on another depository institution.

(23) The term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(24) The term "unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

(25) The term "wire transfer" has such meaning as the Board shall prescribe by regulations.

[12 USC 4001.]

## SECTION 603—Expedited Funds Availability Schedules

(a) *Next business day availability for certain deposits.*

(1) Except as provided in subsection (e) and in section 604, in any case in which—

(A) any cash is deposited in an account at a receiving depository institution staffed by individuals employed by such institution, or

(B) funds are received by a depository institution by wire transfer for deposit in an account at such institution,

such cash or funds shall be available for withdrawal not later than the business day after the business day on which such cash is deposited or such funds are received for deposit.

(2) Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of—

(A) a check which—

(i) is drawn on the Treasury of the United States; and

(ii) is endorsed only by the person to whom it was issued;

(B) a check which—

(i) is drawn by a State;

(ii) is deposited in a receiving depository institution which is located in such State and is staffed by individuals employed by such institution;

(iii) is deposited with a special deposit slip which indicates it is a check drawn by a State; and

(iv) is endorsed only by the person to whom it was issued;

(C) a check which—

(i) is drawn by a unit of general local government;

(ii) is deposited in a receiving depository institution which is located in the same State as such unit of general local government and is staffed by individuals employed by such institution;

(iii) is deposited with a special deposit slip which indicates it is a check drawn by a unit of general local government; and

(iv) is endorsed only by the person to whom it was issued;

(D) the first \$100 deposited by check or checks on any one business day;

(E) a check deposited in a branch of a depository institution and drawn on the same or another branch of the same depository institution if both such branches are located in the same State or the same check processing region;

(F) a cashier's check, certified check, teller's check, or depository check which—

(i) is deposited in a receiving depository institution which is staffed by individuals employed by such institution;

(ii) is deposited with a special deposit slip which indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be; and

(iii) is endorsed only by the person to whom it was issued.

(b) *Permanent schedule.*

(1) Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 1 business day shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which the funds involved are available for withdrawal.

(2) Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 4 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by

a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) (A) Except as provided in subparagraph (B), funds deposited in an account in a depository institution by check (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under paragraph (1) or (2).

(B) Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this paragraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under paragraph (1) or (2). If funds deposited by checks described in both paragraph (1) and paragraph (2) become available for cash withdrawal under this paragraph on the same business day, the limitation contained in this subparagraph shall apply to the aggregate amount of such funds.

(C) Any amount available for withdrawal under this paragraph shall be in addition to the amount available under subsection (a)(2)(D).

(4) This subsection shall apply with respect to funds deposited by check in an account at a depository institution on or after September 1, 1990, except that the Board may, by regulation, make this subsection or any part of this subsection applicable earlier than September 1, 1990.

(c) *Temporary schedule.*

(1) (A) Subject to subparagraph (B) of this paragraph, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 2 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution



and the business day on which such funds are available for withdrawal.

(B) (i) Except as provided in clause (ii), funds deposited in an account in a depository institution by check drawn on a local depository institution that is not a participant in the same check clearinghouse association as the receiving depository institution (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under subparagraph (A).

(ii) Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this subparagraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under subparagraph (A).

(iii) Any amount available for withdrawal under this subparagraph shall be in addition to the amount available under subsection (a)(2)(D).

(2) Subject to subsections (a)(2), (d), and (e) of this section and section 604, not more than 6 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) This subsection shall apply with respect to funds deposited by check in an account at a depository institution after August 31, 1988, and before September 1, 1990, except as may be otherwise provided under subsection (b)(4).

(d) *Time period adjustments.*

(1) Notwithstanding any other provision of law, the Board shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) to as short a time as possible and equal to the period of time

achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks.

(2) Notwithstanding any other provision of law, any time period established under subsection (b), (c), or (e) shall be extended by 1 business day in the case of any deposit which is both—

(A) deposited in an account at a depository institution which is located in Alaska, Hawaii, Puerto Rico, or the Virgin Islands; and

(B) deposited by a check drawn on an originating depository institution which is not located in the same State, commonwealth, or territory as the receiving depository institution.

(e) *Deposits at an ATM.*

(1) (A) Not more than 4 business days shall intervene between the business day a deposit described in subparagraph (B) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(B) A deposit is described in this subparagraph if it is—

(i) a cash deposit;

(ii) a deposit made by a check described in subsection (a)(2);

(iii) a deposit made by a check drawn on a local originating depository institution (other than a check described in subsection (a)(2)); or

(iv) a deposit made by a check drawn on a nonlocal originating depository institution (other than a check described in subsection (a)(2)).

(2) The provisions of subsections (a), (b), and (c) shall apply with respect to any funds deposited at a proprietary automated teller machine for deposit in an account at a depository institution.

(3) The Board shall, either directly or through the Consumer Advisory Council, establish and maintain a dialogue with depository institutions and their suppliers on the computer software and hardware avail-

able for use by automated teller machines, and shall, not later than September 1 of each of the first 3 calendar years beginning after the date of the enactment of this title, report to the Congress regarding such software and hardware and regarding the potential for improving the processing of automated teller machine deposits.

(f) *Check return; notice of nonpayment.* No provision of this section shall be construed as requiring that, with respect to all checks deposited in a receiving depository institution—

- (1) such checks be physically returned to such depository institution; or
- (2) any notice of nonpayment of any such check be given to such depository institution within the times set forth in subsection (a), (b), (c), or (e) or in the regulations issued under any such subsection.

[12 USC 4002. As amended by acts of Nov. 28, 1990 (104 Stat. 4424) and Dec. 19, 1991 (105 Stat. 2307).]

#### SECTION 604—Safeguard Exceptions

(a) *New accounts.* Notwithstanding section 603, in the case of any account established at a depository institution by a new depositor, the following provisions shall apply with respect to any deposit in such account during the 30-day period (or such shorter period as the Board may establish) beginning on the date such account is established—

- (1) Except as provided in paragraph (3), in the case of—
  - (A) any cash deposited in such account;
  - (B) any funds received by such depository institution by wire transfer for deposit in such account;
  - (C) any funds deposited in such account by cashier's check, certified check, teller's check, depository check, or traveler's check; and
  - (D) any funds deposited by a government check which is described in subparagraph (A), (B), or (C) of section 603(a)(2),

such cash or funds shall be available for withdrawal on the business day after the business day on which such cash or funds are deposited or, in the case of a wire trans-

fer, on the business day after the business day on which such funds are received for deposit.

(2) In the case of any funds deposited in such account by a check (other than a check described in subparagraph (C) or (D) of paragraph (1)), the availability for withdrawal of such funds shall not be subject to the provisions of section 603(b), 603(c), or paragraph (1) of section 603(e).

(3) In the case of funds deposited in such account during such period by checks described in subparagraph (C) or (D) of paragraph (1) the aggregate amount of which exceeds \$5,000—

- (A) paragraph (1) shall apply only with respect to the first \$5,000 of such aggregate amount; and
- (B) not more than 8 business days shall intervene between the business day on which any such funds are deposited and the business day on which such excess amount shall be available for withdrawal.

(b) *Large or redeposited checks; repeated overdrafts.* The Board may, by regulation, establish reasonable exceptions to any time limitation established under subsection (a)(2), (b), (c), or (e) of section 603 for—

- (1) the amount of deposits by one or more checks that exceeds the amount of \$5,000 in any one day;
- (2) checks that have been returned unpaid and redeposited; and
- (3) deposit accounts which have been overdrawn repeatedly.

(c) *Reasonable cause exception.*

(1) In accordance with regulations which the Board shall prescribe, subsections (a)(2), (b), (c), and (e) of section 603 shall not apply with respect to any check deposited in an account at a depository institution if the receiving depository institution has reasonable cause to believe that the check is uncollectible from the originating depository institution. For purposes of the preceding sentence, reasonable cause to believe requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. Such reasons shall be included in the notice required under subsection (f).

(2) No determination under this subsection may be based on any class of checks or persons.

(3) If the receiving depository institution determines that a check deposited in an account is a check described in paragraph (1), the receiving depository institution shall not assess any fee for any subsequent overdraft with respect to such account, if—

(A) the depositor was not provided with the written notice required under subsection (f) (with respect to such determination) at the time the deposit was made;

(B) the overdraft would not have occurred but for the fact that the funds so deposited are not available; and

(C) the amount of the check is collected from the originating depository institution.

(4) Each agency referred to in section 610(a) shall monitor compliance with the requirements of this subsection in each regular examination of a depository institution and shall describe in each report to the Congress the extent to which this subsection is being complied with. For the purpose of this paragraph, each depository institution shall retain a record of each notice provided under subsection (f) as a result of the application of this subsection.

(d) *Emergency conditions.* Subject to such regulations as the Board may prescribe, subsections (a)(2), (b), (c), and (e) of section 603 shall not apply to funds deposited by check in any receiving depository institution in the case of—

(1) any interruption of communication facilities;

(2) suspension of payments by another depository institution;

(3) any war; or

(4) any emergency condition beyond the control of the receiving depository institution,

if the receiving depository institution exercises such diligence as the circumstances require.

(e) *Prevention of fraud losses.*

(1) The Board may, by regulation or order, suspend the applicability of this title, or any

portion thereof, to any classification of checks if the Board determines that—

(A) depository institutions are experiencing an unacceptable level of losses due to check-related fraud, and

(B) suspension of this title, or such portion of this title, with regard to the classification of checks involved in such fraud is necessary to diminish the volume of such fraud.

(2) No regulation prescribed or order issued under paragraph (1) shall remain in effect for more than 45 days (excluding Saturdays, Sundays, legal holidays, or any day either House of Congress is not in session).

(3) (A) Within 10 days of prescribing any regulation or issuing any order under paragraph (1), the Board shall transmit a report of such action to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) Each report under subparagraph (A) shall contain—

(i) the specific reason for prescribing the regulation or issuing the order;

(ii) evidence considered by the Board in making the determination under paragraph (1) with respect to such regulation or order; and

(iii) specific examples of the check-related fraud giving rise to such regulation or order.

(f) *Notice of exception; availability within reasonable time.*

(1) If any exception contained in this section (other than subsection (a)) applies with respect to funds deposited in an account at a depository institution—

(A) the depository institution shall provide notice in the manner provided in paragraph (2) of—

(i) the time period within which the funds shall be made available for withdrawal; and

(ii) the reason the exception was invoked; and

(B) except where other time periods are specifically provided in this title, the availability of the funds deposited shall

be governed by the policy of the receiving depository institution, but shall not exceed a reasonable period of time as determined by the Board.

(2) The notice required under paragraph (1)(A) with respect to a deposit to which an exception contained in this section applies shall be made by the time provided in the following subparagraphs:

(A) In the case of a deposit made in person by the depositor at the receiving depository institution, the depository institution shall immediately provide such notice in writing to the depositor.

(B) In the case of any other deposit (other than a deposit described in subparagraph (C)), the receiving depository institution shall mail the notice to the depositor not later than the close of the next business day following the business day on which the deposit is received.

(C) In the case of a deposit to which subsection (d) or (e) applies, notice shall be provided by the depository institution in accordance with regulations of the Board.

(D) In the case of a deposit to which subsection (b)(1) or (b)(2) applies, the depository institution may, for nonconsumer accounts and other classes of accounts, as defined by the Board, that generally have a large number of such deposits, provide notice at or before the time it first determines that the subsection applies.

(E) In the case of a deposit to which subsection (b)(3) applies, the depository institution may, subject to regulations of the Board, provide notice at the beginning of each time period it determines that the subsection applies. In addition to the requirements contained in paragraph (1)(A), the notice shall specify the time period for which the exception will apply.

(3) If the facts upon which the determination of the applicability of an exception contained in subsection (b) or (c) to any deposit only become known to the receiving depository institution after the time notice is required under paragraph (2) with respect to such deposit, the depository institution shall mail such notice to the depositor as soon as

practicable, but not later than the first business day following the day such facts become known to the depository institution.

[12 USC 4003. As amended by act of Dec. 19, 1991 (105 Stat. 2307). ]

## SECTION 605—Disclosure of Funds Availability Policies

(a) *Notice for new accounts.* Before an account is opened at a depository institution, the depository institution shall provide written notice to the potential customer of the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into the customer's account.

(b) *Preprinted deposit slips.* All preprinted deposit slips that a depository institution furnishes to its customers shall contain a summary notice, as prescribed by the Board in regulations, that deposited items may not be available for immediate withdrawal.

(c) *Mailing of notice.*

(1) In the first regularly scheduled mailing to customers occurring after the effective date of this section, but not more than 60 days after such effective date, each depository institution shall send a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account, unless the depository institution has provided a disclosure which meets the requirements of this section before such effective date.

(2) A depository institution shall send a written notice to customers at least 30 days before implementing any change to the depository institution's policy with respect to when customers may withdraw funds deposited into consumer accounts, except that any change which expedites the availability of such funds shall be disclosed not later than 30 days after implementation.

(3) Upon the request of any person, a depository institution shall provide or send such person a written notice containing the specific policy of such depository institution with respect to when a customer may with-

draw funds deposited into a customer's account.

(d) *Posting of notice.*

(1) Each depository institution shall post, in a conspicuous place in each location where deposits are accepted by individuals employed by such depository institution, a specific notice which describes the time periods applicable to the availability of funds deposited in a consumer account.

(2) In the case of any automated teller machine at which any funds are received for deposit in an account at any depository institution, the Board shall prescribe, by regulations, that the owner or operator of such automated teller machine shall post or provide a general notice that funds deposited in such machine may not be immediately available for withdrawal.

(e) *Notice of interest payment policy.* If a depository institution described in section 606(b) begins the accrual of interest or dividends at a later date than the date described in section 606(a) with respect to all funds, including cash, deposited in an interest-bearing account at such depository institution, any notice required to be provided under subsections (a) and (c) shall contain a written description of the time at which such depository institution begins to accrue interest or dividends on such funds.

(f) *Model disclosure forms.*

(1) The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language.

(2) A depository institution shall be deemed to be in compliance with the requirements of this section if such institution—

(A) uses any appropriate model form or clause as published by the Board, or

(B) uses any such model form or clause and changes such form or clause by—

(i) deleting any information which is not required by this title; or

(ii) rearranging the format.

(3) Nothing in this title requires the use of

any such model form or clause prescribed by the Board under this subsection.

(4) Model disclosure forms and clauses shall be adopted by the Board only after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

[12 USC 4004.]

### SECTION 606—Payment of Interest

(a) *In general.* Except as provided in subsection (b) or (c) and notwithstanding any other provision of law, interest shall accrue on funds deposited in an interest-bearing account at a depository institution beginning not later than the business day on which the depository institution receives provisional credit for such funds.

(b) *Special rule for credit unions.* Subsection (a) shall not apply to an account at a depository institution described in section 19(b)(1)(A)(iv) of the Federal Reserve Act if the depository institution—

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

(2) provides notice of the interest payment policy in the manner required under section 605(e).

(c) *Exception for checks returned unpaid.* No provision of this title shall be construed as requiring the payment of interest or dividends on funds deposited by a check which is returned unpaid.

[12 USC 4005.]

### SECTION 607—Miscellaneous Provisions

(a) *After-hours deposits.* For purposes of this title, any deposit which is made on a Saturday, Sunday, legal holiday, or after the close of business on any business day shall be deemed to have been made on the next business day.



(b) *Availability at start of business day.* Except as provided in subsections (b)(3) and (c)(1)(B) of section 603, if any provision of this title requires that funds be available for withdrawal on any business day, such funds shall be available for withdrawal at the start of such business day.

(c) *Effect on policies of depository institutions.* No provision of this title shall be construed as—

(1) prohibiting a depository institution from making funds available for withdrawal in a shorter period of time than the period of time required by this title; or

(2) affecting a depository institution's right—

(A) to accept or reject a check for deposit;

(B) to revoke any provisional settlement made by the depository institution with respect to a check accepted by such institution for deposit;

(C) to charge back the depositor's account for the amount of such check; or

(D) to claim a refund of such provisional credit.

(d) *Prohibition on freezing certain funds in an account.* In any case in which a check is deposited in an account at a depository institution and the funds represented by such check are not yet available for withdrawal pursuant to this title, the depository institution may not freeze any other funds in such account (which are otherwise available for withdrawal pursuant to this title) solely because the funds so deposited are not yet available for withdrawal.

(e) *Employee training on and compliance with the requirements of this title.* Each depository institution shall—

(1) take such actions as may be necessary fully to inform each employee (who performs duties subject to the requirements of this title) of the requirements of this title; and

(2) establish and maintain procedures reasonably designed to assure and monitor employee compliance with such requirements.

[12 USC 4006.]

## SECTION 608—Effect on State Law

(a) *In general.* Any law or regulation of any State in effect on September 1, 1989, which requires that funds deposited or received for deposit in an account at a depository institution chartered by such State be made available for withdrawal in a shorter period of time than the period of time provided in this title or in regulations prescribed by the Board under this title (as in effect on September 1, 1989) shall—

(1) supersede the provisions of this title and any regulations by the Board to the extent such provisions relate to the time by which funds deposited or received for deposit in an account shall be available for withdrawal; and

(2) apply to all federally insured depository institutions located within such State.

(b) *Override of certain state laws.* Except as provided in subsection (a), this title and regulations prescribed under this title shall supersede any provision of the law of any State, including the Uniform Commercial Code as in effect in such State, which is inconsistent with this title or such regulations.

[12 USC 4007.]

## SECTION 609—Regulations and Reports by Board

(a) *In general.* After notice and opportunity to submit comment in accordance with section 553(c) of title 5, United States Code, the Board shall prescribe regulations—

(1) to carry out the provisions of this title;

(2) to prevent the circumvention or evasion of such provisions; and

(3) to facilitate compliance with such provisions.

(b) *Regulation relating to improvement of check processing system.* In order to improve the check processing system, the Board shall consider (among other proposals) requiring, by regulation, that—

(1) depository institutions be charged based upon notification that a check or similar instrument will be presented for payment;

(2) the Federal Reserve banks and deposi-

tory institutions provide for check truncation;

(3) depository institutions be provided incentives to return items promptly to the depository institution of first deposit;

(4) the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks;

(5) each depository institution and Federal Reserve bank—

(A) place its endorsement, and other notations specified in regulations of the Board, on checks in the positions specified in such regulations; and

(B) take such actions as are necessary to—

(i) automate the process of reading endorsements; and

(ii) eliminate unnecessary endorsements;

(6) within one business day after an originating depository institution is presented a check (for more than such minimum amount as the Board may prescribe)—

(A) such originating depository institution determines whether it will pay such check; and

(B) if such originating depository institution determines that it will not pay such check, such originating depository institution directly notify the receiving depository institution of such determination;

(7) regardless of where a check is cleared initially, all returned checks be eligible to be returned through the Federal Reserve System;

(8) Federal Reserve banks and depository institutions participate in the development and implementation of an electronic clearinghouse process to the extent the Board determines, pursuant to the study under subsection (f), that such a process is feasible; and

(9) originating depository institutions be permitted to return unpaid checks directly to, and obtain reimbursement for such checks directly from, the receiving depository institution.

(c) *Regulatory responsibility of Board for payment system.*

(1) In order to carry out the provisions of this title, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—

(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and

(B) any related function of the payment system with respect to checks.

(2) The Board shall prescribe such regulations as it may determine to be appropriate to carry out its responsibility under paragraph (1).

(d) *Reports.*

(1) (A) The Board shall transmit a report to both Houses of the Congress not later than 18, 30, and 48 months after the date of the enactment of this title.

(B) Each such report shall describe—

(i) the actions taken and progress made by the Board to implement the schedules established in section 603, and

(ii) the impact of this title on consumers and depository institutions.

(2) (A) The Board shall transmit a report to both Houses of the Congress not later than 2 years after the date of the enactment of this title regarding the effects the temporary schedule established under section 603(c) have had on depository institutions and the public.

(B) Such report shall also assess the potential impact the implementation of the schedule established in section 603(b) will have on depository institutions and the public, including an estimate of the risks to and losses of depository institutions and the benefits to consumers. Such report shall also contain such recommendations for legislative or administrative action as the Board may determine to be necessary.

(3) Not later than 6 months after section 603(b) takes effect, the Comptroller General of the United States shall transmit a report to the Congress evaluating the implementation and administration of this title.

(e) *Consultation.* In prescribing regulations



under subsections (a) and (b), the Board shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board.

(f) *Electronic clearinghouse study.*

(1) The Board shall study the feasibility of modernizing and accelerating the check payment system through the development of an electronic clearinghouse process utilizing existing telecommunications technology to avoid the necessity of actual presentment of the paper instrument to a payor institution before such institution is charged for the item.

(2) In connection with the study required under paragraph (1), the Board shall—

(A) consult with appropriate experts in telecommunications technology; and

(B) consider all practical and legal impediments to the development of an electronic clearinghouse process.

(3) The Board shall report its conclusions to the Congress within 9 months of the date of the enactment of this title.

[12 USC 4008.]

## SECTION 610—Administrative Enforcement

(a) *Administrative enforcement.* Compliance with the requirements imposed under this title, including regulations prescribed by and orders issued by the Board of Governors of the Federal Reserve System under this title, shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act in the case of—

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

(B) member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of

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

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

(3) the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union or insured credit union.

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

(b) *Additional powers.*

(1) For purposes of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act.

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

(c) *Enforcement by the Board.*

(1) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) of this section, the Board of Governors of the Federal Reserve System shall enforce such requirements.

(2) If the Board determines that—

(A) any depository institution which is

not a depository institution described in subsection (a), or

(B) any other person subject to the authority of the Board under this title, including any person subject to the authority of the Board under section 605(d)(2) or 609(c),

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

(d) *Procedural rules.* The authority of the Board to prescribe regulations under this title does not impair the authority of any other agency designated in this section to make rules regarding its own procedures in enforcing compliance with requirements imposed under this title.

[12 USC 4009. As amended by acts of Aug. 9, 1989 (103 Stat. 438) and Dec. 19, 1991 (105 Stat. 2303).]

## SECTION 611—Civil Liability

(a) *Civil liability.* Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this title or any regulation prescribed under this title with respect to any person other than another depository institution is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2) (A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than \$100 nor greater than \$1,000; or

(B) in the case of a class action, such amount as the court may allow, except that—

(i) as to each member of the class, no minimum recovery shall be applicable; and

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

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

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

(1) the amount of any actual damages awarded;

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

(3) the resources of the depository institution;

(4) the number of persons adversely affected; and

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

(c) *Bona fide errors.*

(1) A depository institution may not be held liable in any action brought under this section for a violation of this title if the depository institution demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

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

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

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

(f) *Authority to establish rules regarding losses and liability among depository institutions.* The Board is authorized to impose on or allocate among depository institutions the risks of loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks. Liability under this subsection shall not exceed the amount of the check giving rise to the loss or liability, and, where there is bad faith, other damages, if any, suffered as a proximate consequence of any act or omission giving rise to the loss or liability.

[12 USC 4010.]

#### SECTION 612—Parity in Clearing

(a) *In general.* Section 11A of the Federal Reserve Act (12 U.S.C. 248a) is amended by adding at the end thereof the following:

“(e) All depository institutions, as defined in section 19(b)(1) (12 U.S.C. 461(b)(1)), may receive for deposit and as deposits any evidences of transaction accounts, as defined by section 19(b)(1) (12 U.S.C. 461(b)(1)) from other depository institutions, as defined in section 19(b)(1) (12 U.S.C. 461(b)(1)) or from any office of any Federal Reserve bank without regard to any Federal or State law restricting the number or the physical location or locations of such depository institutions.”.

(b) *Effective date.* The amendment made by subsection (a) shall take effect on the date of enactment of this title.

[12 USC 248a note.]

#### SECTION 613—Effective Dates

(a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this title.

(b) Sections 603, 604, 605, 606, 610, and 611 shall take effect on September 1, 1988.

[12 USC 4001 note.]

# Official Staff Commentary on Regulation M Consumer Leasing

12 CFR 213, supplement I; as amended effective April 1, 1997



Official Staff Commentary  
on Regulation M  
Consumer Lending

July 1997



Any inquiry relating to Regulation M should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

July 1997

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# Official Staff Commentary on Regulation M

12 CFR 213, supplement I; as amended effective April 1, 1997\*

## INTRODUCTION

1. *Official status.* The commentary in supplement I is the vehicle by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation M (12 CFR 213). Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act (15 USC 1640). Section 130(f) protects lessors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedures for requesting interpretations.* Under appendix C of Regulation M, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the *Federal Register*. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to section 213.4(f) are further divided by subparagraph, such as comment 4(f)(1)-1 and comment 4(f)(1)-2. In other cases, comments have more general application and are designated, for example, as comment 4(a)-1. This introduction may be cited as comments I-1 through I-4. An appendix may be cited as comment app. A-1.

4. *Illustrations.* Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. Illustrative lists are introduced by phrases such as "including," "such as," "to illustrate," and "for example."

## SECTION 213.1—Authority, Scope, Purpose, and Enforcement

1. *Foreign applicability.* Regulation M applies to all persons (including branches of foreign banks or leasing companies located in the United States) that offer consumer leases to residents of any state (including foreign nationals) as defined in section 213.2(p). The regulation does not apply to a foreign branch of a U.S. bank or to a leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

## SECTION 213.2—Definitions

### 2(b) Advertisement

1. *Coverage.* The term "advertisement" includes messages inviting, offering, or otherwise generally announcing to prospective customers the availability of consumer leases, whether in visual, oral, print or electronic media. Examples include:

- i. messages in newspapers, magazines, leaflets, catalogs, and fliers
- ii. messages on radio, television, and public address systems
- iii. direct mail literature
- iv. printed material on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag that is delivered or made available to a lessee or prospective lessee in any manner whatsoever
- v. telephone solicitations
- vi. on-line messages, such as those on the Internet

2. *Exclusions.* The term does not apply to the following:

- i. direct personal contacts, including follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a specific transaction

\* Compliance with revised commentary is optional until October 1, 1997.



- ii. informational material distributed only to businesses
- iii. notices required by federal or state law, if the law mandates that specific information be displayed and only the mandated information is included in the notice
- iv. news articles controlled by the news medium
- v. market research or educational materials that do not solicit business

3. *Persons covered.* See the commentary to section 213.7(a).

## 2(d) Closed-End Lease

1. *General.* In closed-end leases, sometimes referred to as “walk-away” leases, the lessee is not responsible for the residual value of the leased property at the end of the lease term.

## 2(e) Consumer Lease

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

- i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.
- ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit

for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under section 213.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

- i. residual value amounts or purchase-option prices
- ii. amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

- i. agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and
- ii. will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* “Agricultural purpose” means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an

organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for person, family, or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

- i. home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming
- ii. security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection
- iii. propane gas service where the consumer must lease a propane tank to receive the service

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under section 213.2(e).

#### 2(g) Lessee

1. *Guarantors.* Guarantors are not lessees for purposes of the regulation.

#### 2(h) Lessor

1. *Arranger of a lease.* To “arrange” for the lease of personal property means to provide or offer to provide a lease that is or will be extended by another person under a business or other relationship pursuant to which the person arranging the lease (a) receives or will receive a fee, compensation, or other consideration for the service or (b) has knowledge of the lease terms and participates in the preparation of the contract documents required in connection with the lease. To illustrate:

- i. An automobile dealer who, pursuant to a business relationship, completes the necessary lease agreement before forwarding it for execution to the leasing company (to whom the obligation is payable on its face) is “arranging” for the lease.

- ii. An automobile dealer who, without receiving a fee for the service, refers a customer to a leasing company that will prepare all relevant contract documents is not “arranging” for the lease.

2. *Consideration.* The term “other consideration” as used in comment 2(h)-1 refers to an actual payment corresponding to a fee or similar compensation and not to intangible benefits, such as the advantage of increased business, which may flow from the relationship between the parties.

3. *Assignees.* An assignee may be a lessor for purposes of the regulation in circumstances when the assignee has substantial involvement in the lease transaction. See cf. *Ford Motor Credit Co. v. Cenance*, 452 U.S. 155 (1981) (held that an assignee was a creditor for purposes of the pre-1980 Truth in Lending Act and Regulation Z because of its substantial involvement in the credit transaction).

4. *Multiple lessors.* See the commentary to section 213.3(c).

#### 2(j) Organization

1. *Coverage.* The term organization includes joint ventures and persons operating under a business name.

#### 2(l) Personal Property

1. *Coverage.* Whether property is personal property depends on state or other applicable law. For example, a mobile home or houseboat may be considered personal property in one state but real property in another.

#### 2(m) Realized Value

1. *General.* Realized value refers to either the retail or wholesale value of the leased property at early termination or at the end of the lease term. It is not a required disclosure. Realized value is relevant only to leases in which the lessee’s liability at early termination or at the end of the lease term typically is based on the difference between the residual value (or the adjusted lease balance) of the leased property and its realized value.

2. *Options.* Subject to the contract and to

state or other applicable law, the lessor may calculate the realized value in determining the lessee's liability at the end of the lease term or at early termination in one of the three ways stated in section 213.2(m). If the lessor sells the property prior to making the determination about liability, the price received for the property (or the fair market value) is the realized value. If the lessor does not sell the property prior to making that determination, the highest offer or the fair market value is the realized value.

3. *Determination of realized value.* Disposition charges are not subtracted in determining the realized value but amounts attributable to taxes may be subtracted.

4. *Offers.* In determining the highest offer for disposition, the lessor may disregard offers that an offeror has withdrawn or is unable or unwilling to perform.

5. *Lessor's appraisal.* See commentary to section 213.4(l).

## 2(o) Security Interest and Security

1. *Disclosable interests.* For purposes of disclosure, a security interest is an interest taken by the lessor to secure performance of the lessee's obligation. For example, if a bank that is not a lessor makes a loan to a leasing company and takes assignments of consumer leases generated by that company to secure the loan, the bank's security interest in the lessor's receivables is not a security interest for purposes of this regulation.

2. *General coverage.* An interest the lessor may have in leased property must be disclosed only if it is considered a security interest under state or other applicable law. The term includes, but is not limited to, security interests under the Uniform Commercial Code; real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded; mechanic's, materialman's, artisan's, and other similar liens; vendor's liens in both real and personal property; liens on property arising by operation of law; and any interest in a lease when used to secure payment or performance of an obligation.

3. *Insurance exception.* The lessor's right to

insurance proceeds or unearned insurance premiums is not a security interest for purposes of this regulation.

## SECTION 213.3—General Disclosure Requirements

### 3(a) General Requirements

1. *Basis of disclosures.* Disclosures must reflect the terms of the legal obligation between the parties. For example:

i. In a three-year lease with no penalty for termination after a one-year minimum term, disclosures are based on the full three-year term of the lease. The one-year minimum term is only relevant to the early termination provisions of section 213.4(g)(1), (k), and (l).

2. *Clear-and-conspicuous standard.* The clear-and-conspicuous standard requires that disclosures be reasonably understandable. For example, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other; appendix A of this part contains model forms that meet this standard. In addition, although no minimum typesize is required, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

3. *Multipurpose disclosure forms.* A lessor may use a multipurpose disclosure form provided the lessor is able to designate the specific disclosures applicable to a given transaction, consistent with the requirement that disclosures be clearly and conspicuously provided.

4. *Number of transactions.* Lessors have flexibility in handling lease transactions that may be viewed as multiple transactions. For example:

i. When a lessor leases two items to the same lessee on the same day, the lessor may disclose the leases as either one or two lease transactions.

ii. When a lessor sells insurance or other incidental services in connection with a lease, the lessor may disclose in one of two ways: as a single lease transaction (in

which case Regulation M, not Regulation Z, disclosures are required) or as a lease transaction and a credit transaction.

- iii. When a lessor includes an outstanding lease or credit balance in a lease transaction, the lessor may disclose the outstanding balance as part of a single lease transaction (in which case Regulation M, not Regulation Z, disclosures are required) or as a lease transaction and a credit transaction.

### 3(a)(1) Form of Disclosures

1. *Cross-references.* Lessors may include in the nonsegregated disclosures a cross-reference to items in the segregated disclosures rather than repeat those items. A lessor may include in the segregated disclosures numeric or alphabetic designations as cross-references to related information so long as such references do not obscure or detract from the segregated disclosures.

2. *Identification of parties.* While disclosures must be made clearly and conspicuously, lessors are not required to use the word "lessor" and "lessee" to identify the parties to the lease transaction.

3. *Lessor's address.* The lessor must be identified by name; an address (and telephone number) may be provided.

4. *Multiple lessors and lessees.* In transactions involving multiple lessors and multiple lessees, a single lessor may make all the disclosures to a single lessee as long as the disclosure statement identifies all the lessors and lessees.

5. *Lessee's signature.* The regulation does not require that the lessee sign the disclosure statement, whether disclosures are separately provided or are part of the lease contract. Nevertheless, to provide evidence that disclosures are given before a lessee becomes obligated on the lease transaction, the lessor may, for example, ask the lessee to sign the disclosure statement or an acknowledgment of receipt, may place disclosures that are included in the lease documents above the lessee's signature, or include instructions alerting a lessee to read the disclosures prior to signing the lease.

### 3(a)(2) Segregation of Certain Disclosures

1. *Location.* The segregated disclosures referred to in section 213.3(a)(2) may be provided on a separate document and the other required disclosures may be provided in the lease contract, so long as all disclosures are given at the same time. Alternatively, all disclosures may be provided in a separate document or in the lease contract.

2. *Additional information among segregated disclosures.* The disclosures required to be segregated may contain only the information required or permitted to be included among the segregated disclosures.

3. *Substantially similar.* See commentary to appendix A of this part.

### 3(a)(3) Timing of Disclosures

1. *Consummation.* When a contractual relationship is created between the lessor and the lessee is a matter to be determined under state or other applicable law.

### 3(b) Additional Information; Nonsegregated Disclosures

1. *State law disclosures.* A lessor may include in the nonsegregated disclosures any state law disclosures that are not inconsistent with the act and regulation under section 213.9 as long as, in accordance with the standard set forth in section 213.3(b) for additional information, the state law disclosures are not used or placed to mislead or confuse or detract from any disclosure required by the regulation.

### 3(c) Multiple Lessors or Lessees

1. *Multiple lessors.* If a single lessor provides disclosures to a lessee on behalf of several lessors, all disclosures for the transaction must be given, even if the lessor making the disclosures would not otherwise have been obligated to make a particular disclosure.

### 3(d) Use of Estimates

#### 3(d)(1) Standard

1. *Time of estimated disclosure.* The lessor may, after making a reasonable effort to ob-

tain information, use estimates to make disclosures if necessary information is unknown or unavailable at the time the disclosures are made. For example:

i. Section 213.4(n) requires the lessor to disclose the total amount payable by the lessee during the lease term for official and license fees, registration, certificate of title fees, or taxes. If these amounts are subject to increases or decreases over the course of the lease, the lessor may estimate the disclosures based on the rates or charges in effect at the time of the disclosure.

2. *Basis of estimates.* Estimates must be made on the basis of the best information reasonably available at the time disclosures are made. The "reasonably available" standard requires that the lessor, acting in good faith, exercise due diligence in obtaining information. The lessor may rely on the representations of other parties. For example, the lessor might look to the consumer to determine the purpose for which leased property will be used, to insurance companies for the cost of insurance, or to an automobile manufacturer or dealer for the date of delivery.

3. *Residual value of leased property at termination.* In an open-end lease where the lessee's liability at the end of the lease term is based on the residual value of the leased property as determined at consummation, the estimate of the residual value must be reasonable and based on the best information reasonably available to the lessor (see section 213.4(m)). A lessor should generally use an accepted trade publication listing estimated current or future market prices for the leased property unless other information or a reasonable belief based on its experience provides the better information. For example:

- i. An automobile lessor offering a three-year open-end lease assigns a wholesale value to the vehicle at the end of the lease term. The lessor may disclose as an estimate a wholesale value derived from a generally accepted trade publication listing current wholesale values.
- ii. Same facts as above, except that the lessor discloses an estimated value derived by adjusting the residual value quoted in the

trade publication because, in its experience, the trade publication values either understate or overstate the prices actually received in local used-vehicle markets. The lessor may adjust estimated values quoted in trade publications if the lessor reasonably believes based on its experience that the values are understated or overstated.

4. *Retail or wholesale value.* The lessor may choose either a retail or a wholesale value in estimating the value of leased property at termination of an open-end lease provided the choice is consistent with the lessor's general practice when determining the value of the property at the end of the lease term. The lessor should indicate whether the value disclosed is a retail or wholesale value.

5. *Labeling estimates.* Generally, only the disclosure for which the exact information is unknown is labeled as an estimate. Nevertheless, when several disclosures are affected because of the unknown information, the lessor has the option of labeling as an estimate every affected disclosure or only the disclosure primarily affected.

### 3(e) Effect of Subsequent Occurrence

1. *Subsequent occurrences.* Examples of subsequent occurrences include:

- i. an agreement between the lessee and lessor to change from a monthly to a weekly payment schedule
- ii. an increase in official fees or taxes
- iii. an increase in insurance premiums or coverage caused by a change in the law
- iv. late delivery of an automobile caused by a strike

2. *Rediscovery.* When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under section 213.5.

3. *Lessee's failure to perform.* The lessor does not violate the regulation if a previously given disclosure becomes inaccurate when a lessee fails to perform obligations under the contract and a lessor takes actions that are necessary and proper in such circumstances to protect its



interest. For example, the addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted for in the lease is not a violation of the regulation.

## SECTION 213.4—Content of Disclosures

### 4(a) Description of Property

1. *Placement of description.* Although the description of leased property may not be included among the segregated disclosures, a lessor may choose to place the description directly above the segregated disclosures.

### 4(b) Amount Due at Lease Signing or Delivery

1. *Consummation.* See commentary to section 213.3(a)(3).

2. *Capitalized cost reduction.* A capitalized cost reduction is a payment in the nature of a downpayment on the leased property that reduces the amount to be capitalized over the term of the lease. This amount does not include any amounts included in a periodic payment paid at lease signing or delivery.

3. *“Negative” equity trade-in allowance.* If an amount owed on a prior lease or credit balance exceeds the agreed-upon value of a trade-in, the difference is not reflected as a negative trade-in allowance under section 213.4(b). The lessor may disclose the trade-in allowance as zero or not applicable, or may leave a blank line.

4. *Rebates.* Only rebates applied toward an amount due at lease signing or delivery are required to be disclosed under section 213.4(b).

5. *Balance-sheet approach.* In motor vehicle leases, the total for the column labeled “total amount due at lease signing or delivery” must equal the total for the column labeled “how the amount due at lease signing or delivery will be paid.”

6. *Amounts to be paid in cash.* The term “cash” is intended to include payments by check or other payment methods in addition to

currency; however, a lessor may add a line item under the column “how the amount due at lease signing or delivery will be paid” for noncurrency payments such as credit cards.

### 4(c) Payment Schedule and Total Amount of Periodic Payments

1. *Periodic payments.* The phrase “number, amount, and due dates or periods of payments” requires the disclosure of all payments that are made at regular intervals and generally derived from rent, capitalized or amortized amounts such as depreciation, and other amounts that are collected by the lessor at the same interval(s), including, for example, taxes, maintenance, and insurance charges. Other periodic payments may, but need not, be disclosed under section 213.4(c).

### 4(d) Other Charges

1. *Coverage.* Section 213.4(d) requires the disclosure of charges that are anticipated by the parties incident to the normal operation of the lease agreement. If a lessor is unsure whether a particular fee is an “other charge,” the lessor may disclose the fee as such without violating section 213.4(d) or the segregation rule under section 213.3(a)(2).

2. *Excluded charges.* This section does not require disclosure of charges that are imposed when the lessee terminates early, fails to abide by, or modifies the terms of the existing lease agreement, such as charges for:

- i. late payment
- ii. default
- iii. early termination
- iv. deferral of payments
- v. extension of the lease

3. *Third-party fees and charges.* Third-party fees or charges collected by the lessor on behalf of third parties, such as taxes, are not disclosed under section 213.4(d).

4. *Relationship to other provisions.* The other charges mentioned in this paragraph are charges that are not required to be disclosed under some other provision of section 213.4. To illustrate:

- i. The price of a mechanical-breakdown pro-

tection (MBP) contract is sometimes disclosed as an "other charge." Nevertheless, the price of MBP is sometimes reflected in the periodic payment disclosure under section 213.4(c) or in states where MBP is regarded as insurance, the cost is to be disclosed in accordance with section 213.4(o).

5. *Lessee's liabilities in the end of the lease term.* Liabilities that the lessor imposes upon the lessee at the end of the scheduled lease term and that must be disclosed under section 213.4(d) include disposition and "pick-up" charges.

6. *Optional "disposition" charges.* Disposition and similar charges that are anticipated by the parties as an incident to the normal operation of the lease agreement must be disclosed under section 213.4(d). If, under a lease agreement, a lessee may return leased property to various locations, and the lessor charges a disposition fee depending upon the location chosen, under section 213.4(d), the lessor must disclose the highest amount charged. In such circumstances, the lessor may also include a brief explanation of the fee structure in the segregated disclosure. For example, if no fee or a lower fee is imposed for returning a leased vehicle to the originating dealer as opposed to another location, that fact may be disclosed. By contrast, if the terms of the lease treat the return of the leased property to a location outside the lessor's service area as a default, the fee imposed is not disclosed as an "other charge," although it may be required to be disclosed under section 213.4(q).

#### 4(e) Total of Payments

1. *Open-end lease.* The additional statement is required under section 213.4(e) for open-end leases because, with some limitations, a lessee is liable at the end of the lease term for the difference between the residual and realized values of the leased property.

#### 4(f) Payment Calculation

1. *Motor vehicle lease.* Whether leased prop-

erty is a motor vehicle is determined by state or other applicable law.

#### 4(f)(1) Gross Capitalized Cost

1. *Agreed-upon value of the vehicle.* The agreed-upon value of a motor vehicle includes the amount of capitalized items such as charges for vehicle accessories and options, and delivery or destination charges. The lessor may also include taxes and fees for title, licenses, and registration that are capitalized. Charges for service or maintenance contracts, insurance products, guaranteed automobile protection, or an outstanding balance on a prior lease or credit transaction are not included in the agreed-upon value.

2. *Itemization of the gross capitalized cost.* The lessor may choose to provide the itemization of the gross capitalized cost only on request or may provide the itemization as a matter of course. In the latter case, the lessor need not provide a statement of the lessee's option to receive an itemization. The gross capitalized cost must be itemized by type and amount. The lessor may include in the itemization an identification of the items and amounts of some or all of the items contained in the agreed-upon value of the vehicle. The itemization must be provided at the same time as the other disclosures required by section 213.4, but it may not be included among the segregated disclosures.

#### 4(f)(8) Lease Term

1. *Definition.* Under section 213.4(f)(8) the "lease term" refers to the number of periodic payments.

#### 4(g) Early Termination

##### 4(g)(1) Conditions and Disclosure of Charges

1. *Reasonableness of charges.* See the commentary to section 213.4(q).

2. *Description of the method.* Section 213.4(g)(1) requires a full description of the method of determining an early termination charge. The lessor should attempt to provide consumers with clear and understandable de-



descriptions of its early termination charges. Descriptions that are full, accurate, and not intended to be misleading will comply with section 213.4(g)(1), even if the descriptions are complex. In providing a full description of an early termination method, a lessor may use the name of a generally accepted method of computing the unamortized cost portion (also known as the "adjusted lease balance") of its early termination charges. For example, a lessor may state that the "constant-yield" method will be utilized in obtaining the adjusted lease balance, but must specify how that figure, and any other term or figure, is used in computing the total early termination charge imposed upon the consumer. Additionally, if a lessor refers to a named method in this manner, the lessor must provide a written explanation of that method if requested by the consumer. The lessor has the option of providing the explanation as a matter of course in the lease documents or on a separate document.

3. *Timing of written explanation of a named method.* While a lessor may provide an address or telephone number for the consumer to request a written explanation of the named method used to calculate the adjusted leased balance, if at consummation a consumer requests such as explanation, the lessor must provide a written explanation at that time. If a consumer requests an explanation after consummation, the lessor must provide a written explanation within a reasonable time after the request is made.

4. *Default.* When default is a condition for early termination of a lease, default charges must be disclosed under section 213.4(g)(1). See the commentary to section 213.4(q).

5. *Lessee's liability at early termination.* When the lessee is liable for the difference between the unamortized cost and the realized value at early termination, the method of determining the amount of the difference must be disclosed under section 213.4(g)(1).

#### 4(h) Maintenance Responsibilities

1. *Standards for wear and use.* No disclosure is required if a lessor does not set standards

or impose charges for wear and use (such as excess mileage).

#### 4(i) Purchase Option

1. *Mandatory disclosure of no purchase option.* Generally the lessor need only make the specific required disclosures that apply to a transaction. In the case of a purchase-option disclosure, however, a lessor must disclose affirmatively that the lessee has no option to purchase the leased property if the purchase option is inapplicable.

2. *Existence of purchase option.* Whether a purchase option exists under the lease is determined by state or other applicable law. The lessee's right to submit a bid to purchase property at termination of the lease is not an option to purchase under section 213.4(i) if the lessor is not required to accept the lessee's bid and the lessee does not receive preferential treatment.

3. *Purchase-option fee.* A purchase-option fee is disclosed under section 213.4(i), not section 213.4(d). The fee may be separately itemized or disclosed as part of the purchase-option price.

4. *Official fees and taxes.* Official fees such as those for taxes, licenses, and registration charged in connection with the exercise of a purchase option may be disclosed under section 213.4(i) as part of the purchase-option price (with or without a reference to their inclusion in that price) or may be separately disclosed and itemized by category. Alternatively, a lessor may provide a statement indicating that the purchase-option price does not include fees for tags, taxes, and registration.

5. *Purchase-option price.* Lessors must disclose the purchase-option price as a sum certain or as a sum certain to be determined at a future date by reference to a readily available independent source. The reference should provide sufficient information so that the lessee will be able to determine the actual price when the option becomes available. Statements of a purchase price as the "negotiated price" or the "fair market value" do not comply with the requirements of section 213.4(i).

#### 4(j) Statement Referencing Nonsegregated Disclosures

1. *Content.* A lessor may delete inapplicable items from the disclosure. For example, if a lease contract does not include a security interest, the reference to a security interest may be omitted.

#### 4(l) Right of Appraisal

1. *Disclosure inapplicable.* The lessee does not have the right to an independent appraisal merely because the lessee is liable at the end of the lease term or at early termination for unreasonable wear or use. Thus, the disclosure under section 213.4(l) does not apply. For example:

i. The automobile lessor might expect a lessee to return an undented car with four good tires at the end of the lease term. Even though it may hold the lessee liable for the difference between a dented car with bald tires and the value of a car in reasonably good repair, the disclosure under section 213.4(l) is not required.

2. *Lessor's appraisal.* If the lessor obtains an appraisal of the leased property to determine its realized value, that appraisal does not suffice for purposes of section 183(c) of the act; the lessor must disclose the lessee's right to an independent appraisal under section 213.4(l).

3. *Retail or wholesale.* In providing the disclosures in section 213.4(l), a lessor must indicate whether the wholesale or retail appraisal value will be used.

4. *Time restriction on appraisal.* The regulation does not specify a time period in which the lessee must exercise the appraisal right. The lessor may require a lessee to obtain the appraisal within a reasonable time after termination of the lease.

#### 4(m) Liability at End of Lease Term Based on Residual Value

1. *Open-end leases.* Section 213.4(m) applies only to open-end leases.

2. *Lessor's payment of attorney's fees.* Section 183(a) of the act requires that the lessor pay

the lessee's attorney's fees in all actions under section 213.4(m), whether successful or not.

#### 4(m)(1) Rent and Other Charges

1. *General.* This disclosure is intended to represent the cost of financing an open-end lease based on charges and fees that the lessor requires the lessee to pay. Examples of disclosable charges, in addition to the rent charge, include acquisition, disposition, or assignment fees. Charges imposed by a third party whose services are not required by the lessor (such as official fees and voluntary insurance) are not included in the section 213.4(m)(1) disclosure.

#### 4(m)(2) Excess Liability

1. *Coverage.* The disclosure limiting the lessee's liability for the value of the leased property does not apply in the case of early termination.

2. *Leases with a minimum term.* If a lease has an alternative minimum term, the disclosures governing the liability limitation are not applicable for the minimum term.

3. *Charges not subject to rebuttable presumption.* The limitation on liability applies only to liability at the end of the lease term that is based on the difference between the residual value of the leased property and its realized value. The regulation does not preclude a lessor from recovering other charges from the lessee at the end of the lease term. Examples of such charges include:

- i. disposition charges
- ii. excess mileage charges
- iii. late payment and default charges
- iv. in simple-interest accounting leases, amount by which the unamortized cost exceeds the residual value because the lessee has not made timely payments

#### 4(n) Fees and Taxes

1. *Treatment of certain taxes.* Taxes paid in connection with the lease are generally disclosed under section 213.4(n), but there are exceptions. To illustrate:

- i. Taxes paid by lease signing or delivery

- are disclosed under section 213.4(b) and section 213.4(n).
- ii. Taxes that are part of regularly scheduled payments are reflected in the disclosure under section 213.4(c) and itemized under section 213.4(f)(10).
  - iii. A tax payable by the lessor that is passed on to the consumer and is reflected in the lease documentation must be disclosed under section 213.4(n). A tax payable by the lessor and absorbed as a cost of doing business need not be disclosed.
  - iv. Taxes charged in connection with the exercise of a purchase option are disclosed under section 213.4(i), not section 213.4(n).

#### 4(o) Insurance

1. *Coverage.* If insurance is obtained through the lessor, information on the type and amount of insurance coverage (whether voluntary or required) as well as the cost, must be disclosed.

2. *Lessor's insurance.* Insurance purchased by the lessor primarily for its own benefit, and absorbed as a business expense and not separately charged to the lessee, need not be disclosed under section 213.4(o) even if it provides an incidental benefit to the lessee.

3. *Mechanical-breakdown protection and other products.* Whether products purchased in conjunction with a lease, such as mechanical-breakdown protection (MBP) or guaranteed automobile protection (GAP), should be treated as insurance is determined by state or other applicable law. In states that do not treat MBP or GAP as insurance, section 213.4(o) disclosures are not required. In such cases the lessor may, however, disclose this information in accordance with the additional information provision in section 213.3(b). For MBP insurance contracts not capped by a dollar amount, lessors may describe coverage by referring to a limitation by mileage or time period, for example, by indicating that the mechanical-breakdown contract insures parts of the automobile for up to 100,000 miles.

#### 4(p) Warranties or Guarantees

1. *Brief identification.* The statement identify-

ing warranties may be brief and need not describe or list all warranties applicable to specific parts such as for air conditioning, radio, or tires in an automobile. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty. If a lessor provides a comprehensive list of warranties that may not all apply, to comply with section 213.4(p) the lessor must indicate which warranties apply or, alternatively, which warranties do not apply.

2. *Warranty disclaimers.* Although a disclaimer of warranties is not required by the regulation, the lessor may give a disclaimer as additional information in accordance with section 213.3(b).

3. *State law.* Whether an express warranty or guaranty exists is determined by state or other law.

#### 4(q) Penalties and Other Charges for Delinquency

1. *Collection costs.* The automatic imposition of collection costs or attorney fees upon default must be disclosed under section 213.4(q). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditures in conjunction with a collection proceeding or upon the employment of an attorney to effect collection, need not be disclosed.

2. *Charges for early termination.* When default is a condition for early termination of a lease, default charges must also be disclosed under section 213.4(g)(1). The section 213.4(q) and (g)(1) disclosures may, but need not, be combined. Examples of combined disclosures are provided in the model lease disclosure forms in appendix A.

3. *Simple-interest leases.* In a simple-interest accounting lease, the additional rent charge that accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment. Similarly, continued accrual of the rent charge after termination of the lease because the lessee fails to return to the leased property does not constitute a default charge. But in either case, if the additional charge

accrues at a rate higher than the normal rent charge, the lessor must disclose the amount of or the method of determining the additional charge under section 213.4(q).

4. *Extension charges.* Extension charges that exceed the rent charge in a simple-interest accounting lease or that are added separately are disclosed under section 213.4(q).

5. *Reasonableness of charges.* Pursuant to section 183(b) of the act, penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

#### 4(r) Security Interest

1. *Disclosable security interests.* See section 213.2(o) and accompanying commentary to determine what security interests must be disclosed.

#### 4(s) Limitations on Rate Information

1. *Segregated disclosures.* A lease rate may not be included among the segregated disclosures referenced in section 213.3(a)(2).

### SECTION 213.5—Renegotiations, Extensions, and Assumptions

1. *Coverage.* Section 213.5 applies only to existing leases that are covered by the regulation. It does not apply to the renegotiation or extension of leases with an initial term of four months or less, because such leases are not covered by the definition of consumer lease in section 213.2(e). Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law.

#### 5(b) Extensions

1. *Time of extension disclosures.* If a consumer lease is extended for a specified term greater than six months, new disclosures are required at the time the extension is agreed upon. If the lease is extended on a month-to-

month basis and the cumulative extensions exceed six months, new disclosures are required at the commencement of the seventh month and at the commencement of each seventh month thereafter for as long as the extensions continue. If a consumer lease is extended for terms of varying durations, one of which will exceed six months beyond the originally scheduled termination date of the lease, new disclosures are required at the commencement of the term that will exceed six months beyond the originally scheduled termination date.

2. *Content of disclosures for month-to-month extensions.* The disclosures for a lease extended on a month-to-month basis for more than six months should reflect the month-to-month nature of the transaction.

### SECTION 213.7—Advertising

#### 7(a) General Rule

1. *Persons covered.* All “persons” must comply with the advertising provisions in this section, not just those that meet the definition of a lessor in section 213.2(h). Thus, automobile dealers, merchants, and others who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions. Pursuant to section 184(b) of the act, however, owners and personnel of the media in which an advertisement appears or through which it is disseminated are not subject to civil liability for violations under section 185(b) of the act.

2. *“Usually and customarily.”* Section 213.7(a) does not prohibit the advertising of a single item or the promotion of a new leasing program, but prohibits the advertising of terms that are not and will not be available. Thus, an advertisement may state terms that will be offered for only a limited period or terms that will become available at a future date.

#### 7(b) Clear-and-Conspicuous Standard

1. *Standard.* The disclosures in an advertisement in any media must be reasonably understandable. For example, very fine print in a television advertisement or detailed and very



rapidly stated information in a radio advertisement does not meet the clear-and-conspicuous standard if consumers cannot see and read or hear, and cannot comprehend, the information required to be disclosed.

#### *7(b)(1) Amount Due at Lease Signing or Delivery*

1. *Itemization not required.* Only a total of amounts due at lease signing or delivery is required to be disclosed, not an itemization of its component parts. Such an itemization is provided in any transaction-specific disclosures provided under section 213.4.

2. *Prominence rule.* Except for a periodic payment, oral or written references to components of the total due at lease signing or delivery (for example, a reference to a capitalized cost reduction, where permitted) may not be more prominent than the disclosure of the total amount due at lease signing or delivery.

#### *7(b)(2) Advertisement of a Lease Rate*

1. *Location of statement.* The notice required to accompany a percentage rate stated in an advertisement must be placed in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not place an asterisk next to the rate and place the notice elsewhere in the advertisement. In addition, with the exception of the notice required by section 213.4(s), the rate cannot be more prominent than any section 213.4 disclosure stated in the advertisement.

#### *7(c) Catalogs and Multipage Advertisements*

1. *General rule.* The multiple-page advertisements referred to in section 213.7(c) are advertisements consisting of a series of numbered pages—for example, a supplement to a newspaper. A mailing comprising several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

2. *Cross-references.* A multiple-page advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule with the disclosures

required under section 213.7(d)(2)(i) through (v). If one of the triggering terms listed in section 213.7(d)(1) appears in a catalog or other multiple-page advertisement, the page on which the triggering term is used must clearly refer to the specific page where the table, chart, or schedule begins.

#### *7(d)(1) Triggering Terms*

1. *Typical example.* When any triggering term appears in a lease advertisement, the additional terms enumerated in section 213.7(d)(2)(i) through (v) must also appear. In a multi-lease advertisement, an example of one or more typical leases with a statement of all the terms applicable to each may be used. The examples must be labeled as such and must reflect representative lease terms that are made available by the lessor to consumers.

#### *7(d)(2) Additional Terms*

1. *Third-party fees that vary by state or locality.* The disclosure of the total amount due at lease signing or delivery may:

- i. exclude third-party fees, such as taxes, licenses, and registration fees and disclose that fact; or
- ii. provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

#### *7(e) Alternative Disclosures—Merchandise Tags*

1. *Multiple-item leases.* Multiple-item leases that utilize merchandise tags requiring additional disclosures may use the alternative-disclosure rule.

#### *7(f) Alternative Disclosures—Television or Radio Advertisements*

##### *7(f)(1) Toll-Free Number or Print Advertisement*

1. *Publication in general circulation.* A reference to a written advertisement appearing in a newspaper circulated nationally, for example, *USA Today* or the *Wall Street Journal*, may

satisfy the general circulation requirement in section 213.7(f)(1)(ii).

2. *Toll-free number, local or collect calls.* In complying with the disclosure requirements of section 213.7(f)(1)(i), a lessor must provide a toll-free number for nonlocal calls made from an area code other than the one used in the lessor's dialing area. Alternatively, a lessor may provide any telephone number that allows a consumer to reverse the phone charges when calling for information.

3. *Multipurpose number.* When an advertised toll-free number responds with a recording, lease disclosures must be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several dialing options—such as providing directions to the lessor's place of business—the option allowing the consumer to request lease disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.

4. *Statement accompanying toll-free number.* Language must accompany a telephone and television number indicating that disclosures are available by calling the toll-free number, such as "call 1-800-000-0000 for details about costs and terms."

## SECTION 213.8—Record Retention

1. *Manner of retaining evidence.* A lessor must retain evidence of having performed required actions and of having made required disclosures. Such records may be retained in paper form, on microfilm, microfiche, or computer, or by any other method designed to reproduce records accurately. The lessor need retain only enough information to reconstruct the required disclosures or other records.

## SECTION 213.9—Relation to State Laws

1. *Exemptions granted.* Effective October 1, 1982, the Board granted the following exemptions from portions of the Consumer Leasing Act:

- i. *Maine.* Lease transactions subject to the Maine Consumer Credit Code and its implementing regulations are exempt from chapters 2, 4, and 5 of the federal act. (The exemption does not apply to transactions in which a federally chartered institution is a lessor.)
- ii. *Oklahoma.* Lease transactions subject to the Oklahoma Consumer Credit Code are exempt from chapters 2 and 5 of the federal act. (The exemption does not apply to sections 132 through 135 of the federal act, nor does it apply to transactions in which a federally chartered institution is a lessor.)

## APPENDIX A—Model Forms

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. For example, the model form based on monthly periodic payments may be modified for single-payment lease transactions or for quarterly or other periodic payments. The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms; therefore, any changes should be minimal. The changes to the model forms should not be so extensive as to affect the substance and the clarity of the disclosures.

### 2. *Examples of acceptable changes.*

- i. Using the first person, instead of the second person, in referring to the lessee
- ii. Using "lessee," "lessor," or names instead of pronouns
- iii. Rearranging the sequence of the nonsegregated disclosures
- iv. Incorporating certain state "plain-English" requirements
- v. Deleting inapplicable disclosures by blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable



items, or circling applicable items (this should facilitate use of multipurpose standard forms.)

- vi. Adding language or symbols to indicate estimates
- vii. Adding numeric or alphabetic designations
- viii. Rearranging the disclosures into vertical columns, except for section 213.4(b) through (e) disclosures
- ix. Using icons and other graphics

3. *Model closed-end or net vehicle lease disclosure.* Model A-2 is designed for a closed-end or net vehicle lease. Under the "Early Termination and Default" provision a reference to the lessee's right to an independent

appraisal of the leased vehicle under section 213.4(l) is included for those closed-end leases in which the lessee's liability at early termination is based on the vehicle's realized value.

4. *Model furniture-lease disclosures.* Model A-3 is a closed-end lease disclosure statement designed for a typical furniture lease. It does not include a disclosure of the appraisal right at early termination required under section 213.4(l) because few closed-end furniture leases base the lessee's liability at early termination on the realized value of the leased property. The disclosure should be added if it is applicable.