

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10245**]
June 29, 1988]

**AMENDMENTS TO REGULATION J IMPLEMENTING
PROVISIONS OF THE EXPEDITED FUNDS AVAILABILITY ACT**

*To All Depository Institutions, and Others Concerned,
in the Second Federal Reserve District:*

The Board of Governors of the Federal Reserve System has issued an amendment to its Regulation J, effective September 1, 1988, to conform that regulation to the new Regulation CC, "Availability of Funds and Collection of Checks," which was adopted by the Board on May 13 to implement the provisions of the Expedited Funds Availability Act.

Enclosed — for depository institutions and others who maintain sets of the Board's regulations — is the text of the amendment to Regulation J, which has been reprinted from the *Federal Register* of June 13; copies of the amendment will be furnished to others upon request directed to the Circulars Division of this Bank (Tel. No. 212-720-5215 or 5216). Questions regarding this matter may be directed to Raleigh M. Tozer, Counsel (Tel. No. 212-720-5033).

E. GERALD CORRIGAN,
President.

Board of Governors of the Federal Reserve System

COLLECTION OF CHECKS AND OTHER ITEMS
AND WIRE TRANSFERS OF FUNDS BY FEDERAL RESERVE BANKS

AMENDMENTS TO REGULATION J

(Effective September 1, 1988)

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Docket No. R-0620]

**Collection of Checks and Other Items
and Wire Transfers of Funds by
Federal Reserve Banks**

AGENCY: Board of Governors of the
Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Regulation J—Collection of Checks and Other Items and Wire Transfers of Funds by Federal Reserve Banks (12 CFR Part 210) to conform that regulation to the regulation the Board adopted on May 13, 1988, implementing the Expedited Funds Availability Act of 1987 (Regulation CC—Availability of Funds and Collection of Checks (12 CFR Part 229)).

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph R. Alexander, Senior Attorney, Legal Division (202/452-2489); for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: In August 1987, Congress enacted the Expedited Funds Availability Act (Title VI of Pub. L. 100-86). The Act seeks to ensure the prompt availability of funds

and the expedited return of checks. On May 13, 1988, the Board issued a new regulation (Regulation CC—Availability of Funds and Collection of Checks—12 CFR Part 229) to implement the Expedited Funds Availability Act (53 FR 19372 (May 27, 1988)). Subpart C of Regulation CC established new rules, applicable to depository institutions and certain other financial institutions, designed to speed the collection and return of checks. These rules cover the expeditious return responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment of large-dollar returns by the paying bank, check indorsement standards, and other related changes to the check collection system.

Prior to the passage of the Expedited Funds Availability Act, the Board had established, under the authority of the Federal Reserve Act, a regulation to govern the collection of checks and other items by Federal Reserve Banks (Subpart A of Regulation J (12 CFR Part 210)). When the Board published its proposed Regulation CC for comment (52 FR 47112 (Dec. 11, 1987)), it also proposed a number of amendments to Regulation J to conform that regulation to the new check collection and return rules proposed in Subpart C of Regulation CC. Although approximately 1,000 comments were received on the combined proposal, no comments

specifically addressed the proposed amendments to Regulation J.

The Board has adopted amendments to Subpart A of Regulation J. These changes generally conform Regulation J to the rules established in Subpart C of Regulation CC. The changes are therefore technical in nature; the substantive issues were considered during the rulemaking proceeding that resulted in the adoption of Regulation CC. The conforming amendments, *inter alia*:

1. Change the title of Regulation J from "Collection of Checks and Other Items and Wire Transfers of Funds" to "Collection of Checks and Other Items and Wire Transfers of Funds by Federal Reserve Banks" to distinguish Regulation J from Regulation CC ("Availability of Funds and Collection of Checks"), and make it clear that Regulation J covers only checks cleared or returned through a Federal Reserve Bank and wire transfers transmitted over the Federal Reserve Communications System, while Regulation CC covers all checks. A similar change is being made to the title of Subpart A.

2. Amend the authority citations to include the Expedited Funds Availability Act.

3. Conform the definitions of Regulation J to those adopted for Regulation CC where appropriate.

PRINTED IN NEW YORK, FROM *FEDERAL REGISTER*, VOL. 53, NO. 113, pp. 21983-21986.

For this Regulation to be complete, retain:

- 1) Regulation J pamphlet, effective January 1, 1987.
- 2) This slip sheet.

4. Provide for the handling by Reserve Banks of returned checks that the Reserve Banks did not handle during the forward collection process.

5. Conform the provisions regarding returned checks to the provisions of Regulation CC that eliminated the right of charge-back provided for in the Uniform Commercial Code and Regulation J prior to these amendments.

6. Remove the requirement that a paying bank give notice of nonpayment in the case of large-dollar returns. (This requirement is now in Regulation CC.)

In addition, the Board is eliminating footnote 2 to § 210.2(g) of Regulation J. Section 210.2(g) restricts the definition of "item" to instruments that can be collected at par. Footnote 2 states that "[t]he Board publishes a 'Memorandum on Exchange Charges,' listing the banks that would impose exchange charges on cash items and other checks forwarded by Reserve Banks and therefore would not pay at par." Since November 1980, no banks have imposed exchange charges on items forwarded by Reserve Banks, and the Board has discontinued publication of the "Memorandum." Consequently, footnote 2 no longer serves any purpose, and the Board is deleting it from Regulation J. Although the Board did not publish the removal of the footnote for comment along with the other proposed changes, the Board finds that publication is unnecessary under 5 U.S.C. 553(b).

The amendments the Board is adopting are technical in nature and are not expected to have any significant economic effect on small entities (see 5 U.S.C. 601 *et seq.*), nor do they impose any burdens on the public under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 210

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, effective September 1, 1988, Title 12, Chapter II, Part 210 of the Code of Federal Regulations is amended as set forth below:

1. The title of Part 210 is revised to read as follows:

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

2. The authority citation for Part 210 is revised to read as follows:

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

3. The title of Subpart A is revised to read as follows:

Subpart A—Collection of Checks and Other Items By Federal Reserve Banks

4. Section 210.1 is revised to read as follows:

§ 210.1 Authority, purpose, and scope.

The Board of Governors of the Federal Reserve System ("Board") has issued this subpart pursuant to the Federal Reserve Act, section 13 (12 U.S.C. 342), section 11(i) (12 U.S.C. 248(i)), section 16 (12 U.S.C. 248(o) and 360), and section 19(f) (12 U.S.C. 464); the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*); and other laws. This subpart governs the collection of checks and other cash and noncash items and the handling of returned checks by Federal Reserve Banks. Its purpose is to provide rules for collecting and returning items and settling balances.

5. In § 210.2, paragraph (e) and (f) and the undesignated paragraph at the end of paragraph (g) are revised, footnote 2 in paragraph (g) is deleted, paragraph (j) is revised, paragraphs (k) and (l) are redesignated as paragraphs (l) and (m), a new paragraph (k) is added, the introductory text of redesignated paragraph (l) is revised, and the undesignated paragraph at the end of § 210.2 is revised to read as follows:

§ 210.2 Definitions.

(e) "Cash items" means—

(1) A check other than one classified as a noncash item under this section; or

(2) Any other item payable on demand and collectible at par that the Reserve Bank of the District in which the item is payable is willing to accept as a cash item. "Cash item" does not include a returned check.

(f) "Check" means a draft, as defined in the Uniform Commercial Code, that is drawn on a bank and payable on demand. "Check as defined in 12 CFR 229.2(k)" means an item defined as a check in 12 CFR 229.2(k) for purposes of Subpart C of Part 229.

(g) * * *

Unless otherwise indicated, "item" includes both a cash and a noncash

item, and includes a returned check sent by a paying or returning bank. "Item" does not include a check that cannot be collected at par, or an "item" as defined in § 210.26 that is handled under Subpart B.

(j) "Paying bank" means—

(1) The bank by which an item is payable unless the item is payable or collectible at or through another bank and is sent to the other bank for payment or collection;

(2) The bank at or through which an item is payable or collectible and to which it sent for payment or collection; or

(3) The bank whose routing number appears on a check in magnetic characters or fractional form and to which the check is sent for payment or collection.

(k) "Returned check" means a cash item or a check as defined in 12 CFR 229.2(k) returned by a paying bank, including a notice of nonpayment in lieu of a returned check, whether or not a Reserve Bank handled the check for collection.

(l) "Sender" means any of the following that sends an item to a Reserve Bank for forward collection:

* * *

* * *

Unless the context otherwise requires, the terms not defined herein have the meanings set forth in 12 CFR 229.2 applicable to Subpart C of Part 229, and the terms not defined herein or in 12 CFR 229.2 have the meanings set forth in the Uniform Commercial Code.

6. Paragraph (b) of § 210.3 is revised to read as follows:

§ 210.3 General provisions.

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(b) *Binding effect.* This subpart, together with Subpart C of Part 229 and the operating circulars of the Reserve Banks, are binding on all parties interested in an item handled by any Reserve Bank.

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7. Paragraph (a)(1) of § 210.6 is revised to read as follows:

§ 210.6 Status, warranties, and liability of reserve bank.

(a)(1) *Status and Liability.* A Reserve Bank shall act only as agent or subagent of the owner with respect to an item. This agency terminates not later than the time the Reserve Bank receives payment for the item in actually and finally collected funds and makes the

proceeds available for use by the sender. A Reserve Bank may be liable to the owner, to the sender, to a prior collecting bank, or to the depository bank's customer with respect to a check as defined in 12 CFR 229.2(k). A Reserve Bank shall not have or assume any liability with respect to an item or its proceeds except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care, except as provided in paragraph (b) of this section and except as provided in Subpart C of Part 229.

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8. Paragraph (b) of § 210.7 is revised to read as follows:

§ 210.7 Presenting items for payment.

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(b) *Place of presentment.* A Reserve Bank or subsequent collecting bank may present an item—

(1) At a place requested by the paying bank;

(2) In the case of a check as defined in 12 CFR 229.2(k), in accordance with 12 CFR 229.36;

(3) At a place requested by the nonbank payor, if the item is payable by a nonbank payor other than through or at a paying bank;

(4) Under a special collection agreement consistent with this subpart; or

(5) Through a clearinghouse and subject to its rules and practices.

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9. Section 210.9 is revised by redesignating footnote 3 as footnote 2, and revising the first sentence of paragraph (e) to read as follows:

§ 210.9 Payment.

* * * * *

(e) *Liability of Reserve Bank.* Except as set forth in 12 CFR 229.35(b), a Reserve Bank shall not be liable for the failure of a collecting bank, paying bank, or nonbank payor to pay for an item, or for any loss resulting from the Reserve Bank's acceptance of any form of payment other than cash authorized in paragraph (a), (b), and (c) of this section.

* * *

10. Section 210.10 is revised to read as follows:

§ 210.10 Time schedule and availability of credits for cash items and returned checks.

(a) Each Reserve Bank shall include in its operating circulars a time schedule for each of its offices indicating when the amount of any cash item or returned

check received by it (or sent direct to another Reserve office for the account of that Reserve Bank) is counted as reserves for purposes of Part 204 of this chapter (Regulation D) and becomes available for use by the sender or paying or returning bank. The Reserve Bank shall give either immediate or deferred credit in accordance with its time schedule to a sender or paying or returning bank other than a foreign correspondent. A Reserve Bank ordinarily gives credit to a foreign correspondent only when the Reserve Bank receives payment of the item in actually and finally collected funds, but, in its discretion, a Reserve Bank may give immediate or deferred credit in accordance with its time schedule.

(b) Notwithstanding its time schedule, a Reserve Bank may refuse at any time to permit the use of credit given for any cash item or returned check, and may defer availability after credit is received by the Reserve Bank for a period of time that is reasonable under the circumstances.

11. Section 210.12 is revised to read as follows:

§ 210.12 Return of cash items and handling of returned checks.

(a) *Return of cash items.* A paying bank that receives a cash item directly or indirectly from a Reserve Bank, other than for immediate payment over the counter, and that pays for the item as provided in § 210.9(a) of this subpart, may, before it has finally paid the item, return the item in accordance with Subpart C of Part 229, the Uniform Commercial Code, and its Reserve Bank's operating circular. The rules or practices of a clearinghouse through which the item was presented, or a special collection agreement under which the item was presented, may not extend these return times, but may provide for a shorter return time.

(b) *Return of checks not handled by Reserve Banks.* A paying bank that receives a check as defined in 12 CFR 229.2(k), other than directly or indirectly from a Reserve Bank, and that determines not to pay the check, may send the returned check to its Reserve Bank in accordance with Subpart C of Part 229, the Uniform Commercial Code, and its Reserve Bank's operating Circular. A returning bank may send a returned check to its Reserve Bank in accordance with Subpart C of Part 229, the Uniform Commercial Code, and its

Reserve Bank's operating circular.

(c) *Paying bank's and returning bank's agreement.* By sending a returned check to a Reserve Bank, the paying bank or returning bank—

(1) Authorizes the receiving Reserve Bank (and any other Reserve Bank or returning bank to which the returned check is sent) to handle the returned check subject to this subpart and to the Reserve Banks' operating circulars;

(2) Makes the warranties set forth in 12 CFR 229.34; and

(3) Agrees to indemnify each Reserve Bank for any loss or expense (including attorneys' fees and expenses of litigation) resulting from—

(i) The paying or returning bank's lack of authority to give the authorization in paragraph (c)(1) of this section;

(ii) Any action taken by a Reserve Bank within the scope of its authority in handling the returned check; or

(iii) Any warranty made by the Reserve Bank under 12 CFR 229.34.

(d) *Recovery by Reserve Bank.* If an action or proceeding is brought against (or if defense is tendered to) a Reserve Bank that has handled a returned Check based on—

(1) The alleged failure of the paying or returning bank to have the authority to give the authorization in paragraph (c)(1) of this section;

(2) Any action by the Reserve Bank within the scope of its authority in handling the returned check; or

(3) Any warranty made by the Reserve Bank under 12 CFR 229.34, the Reserve Bank may, upon the entry of a final judgment or decree, recover from the paying bank or returning bank the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay under the judgment or decree, together with interest thereon.

(e) *Methods of recovery.* The Reserve Bank may recover the amount stated in paragraph (d) of this section by charging any account on its books that is maintained or used by the paying or returning bank (or, if the returning bank is another Reserve Bank, by entering a charge against the other Reserve Bank through the Interdistrict Settlement Fund), if—

(1) The Reserve Bank made seasonable written demand on the paying or returning bank to assume defense of the action or proceeding; and

(2) The paying or returning bank has

not made any other arrangement for payment that is acceptable to the Reserve Bank.

The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged through the Interdistrict Settlement Fund may recover from the paying or returning bank in the manner and under the circumstances set forth in this paragraph. A Reserve Bank's failure to avail itself of the remedy provided in this paragraph does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (c)(3) of this section.

(f) *Reserve Bank's responsibility.* A Reserve Bank shall handle a returned check, or a notice of nonpayment, in accordance with Subpart C of Part 229

and its operating circular. A Reserve Bank may permit or require the paying or returning bank to send direct to another Reserve Bank a returned check with respect to which the depository bank is located within the other Reserve Bank's District, in accordance with § 210.4(b).

(g) *Settlement.* A subsequent returning bank or depository bank shall settle for returned checks in the same manner as for cash items presented for payment.

12. Paragraph (a) of § 210.13 is revised to read as follows:

§ 210.13 Unpaid Items.

(a) *Right of charge-back.* If a Reserve Bank does not receive payment in actually and finally collected fund for an item, the Reserve Bank shall recover by charge-back or otherwise the amount of

the item from the sender, paying bank, or returning bank from which it was received, whether or not the item itself can be sent back. In the event of recovery, neither the owner or holder of the item, nor the sender, paying bank, or returning bank from which it was received, shall have any interest in any reserve balance or other funds in the Reserve Bank's possession of the bank failing to make payment in actually and finally collected funds.

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By order of the Board of Governors of the Federal Reserve System, June 7, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88-13181 Filed 6-10-88; 8:45 am]
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