AT CIRCULAR NO. 10637

May 14, 1993

To All Depository Institutions in the Second Federal Reserve District, and Others Maintaining Sets of Board Regulations:

The following documents from the Board of Governors of the Federal Reserve System are enclosed:

1. New Regulation CC pamphlet, "Availability of Funds and Collection of Checks," effective January 5, 1993; and

2. New Regulation Y pamphlet, "Bank Holding Companies and Change in Bank Control," effective February 4, 1993.

The pamphlets supersede the previous printing of these regulations, and all subsequent amendments thereto.

Because of the thickness of the Regulation CC pamphlet and the method by which it has been bound, that pamphlet has not been 3-hole punched.

Circulars Division
FEDERAL RESERVE BANK OF NEW YORK

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Board of Governors of the Federal Reserve System

Regulation CC
Availability of Funds and Collection of Checks

12CFR 229; as amended effective January 5, 1993

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

March 1993

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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the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.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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Regulation CC
Availability of Funds and Collection of Checks

12 CFR 229; as amended effective January 5, 1993

Subpart A—General

Section
229.1 Authority and purpose; organization
229.2 Definitions
229.3 Administrative enforcement

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

Section
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Appendix A—Routing Number Guide to Next-Day-Availability Checks and Local Checks
Appendix B—Reduction of Schedules for Certain Nonlocal Checks
Appendix C—Model Forms, Clauses, and Notices
Appendix D—Indorsement Standards
Appendix E—Commentary †
Appendix F—Preemption Determinations

SUBPART A—GENERAL

SECTION 229.1—Authority and Purpose; Organizatior

(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-Gonzales 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 both temporary and permanent 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

† In this publication, the commentary is interwoven with the regulation rather than set out as a separate appendix. The commentary for each section of the regulation immediately follows that section.

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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 depositary bank, notification of nonpayment by the paying bank, rules regarding indorsement and presentment, the liability of banks for failure to comply with subpart C of this part, and other matters.

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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) An "insured institution" as defined in section 401 of the National Housing Act (12 USC 1724) or an institution that is eligible to make application to become an insured institution under section 403 of that act (12 USC 1726); 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, subpart A, the term "bank" also includes any person engaged in the business of banking, including 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

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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*) "Check clearinghouse association" means any arrangement by which three or more participants exchange checks on a local basis, including an entire metropolitan area. The term "check clearinghouse association" may include arrangements using the premises of a Federal Reserve Bank, but it does not include the handling of checks for forward collection or return by a Federal Reserve Bank.

(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) "Depositary 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.

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(s) "Local paying bank" means a paying bank that is located in the same check-processing region as the physical location of—

(1) The branch or proprietary ATM of the depositary bank in which that check was deposited; or

(2) Both the branch of the depositary bank at which the account is held and the nonproprietary ATM at which the check is 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 postencoded 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 depositary bank.

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

(y) "Participant" means a bank that—

(1) Is located in the geographic area served by a check clearinghouse association; and

(2) Both collects and receives for payment checks through the check clearinghouse association either directly or through another participant.

(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 depositary bank;

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

(3) Located within 50 feet of the premises of the depositary 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 depositary 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 depositary bank, such as the name of the depositary bank.

(cc) "Returning bank" means a bank (other

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than the paying or depositary 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 the Federal Reserve Communications System, the New York 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 902(f) of the Electronic Fund Transfer Act (15 USC 1693a(6)).

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

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COMMENTARY

SECTION 229.2—Definitions

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 has also incorporated by reference the definitions of the Uniform Commercial Code where appropriate. Some of the Regulation CC definitions are self-explanatory and therefore are not discussed in this commentary.

2(a) Account

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.

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.

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.

2(b) Automated Clearinghouse (ACH)

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."

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.

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

2(c) Automated Teller Machine

"Automated teller machine (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 transactions. A lobby deposit box or similar receptacle in

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which written payment orders or deposits may be placed is not an ATM.

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.

2(d) Available for Withdrawal

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).

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, funds are available for withdrawal even though they are being held by a bank 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.

2(e) Bank

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.

"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 25(a) 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 section 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.

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.

2(f) and (g) Banking Day and Business Day

The act defines "business day" as any day excluding Saturdays, Sundays, and legal holidays. "Legal holiday," however, is not defined, and the variety of local holidays, to-

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gether 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 depositary 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.

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.

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 depositary bank at which the account is maintained, a deposit received at an ATM before the ATM's cut-off hour is considered deposited on that banking day, and a deposit received at an ATM after the ATM's cut-off hour is considered deposited on the next banking day of the branch or other location where the account is maintained. On a calendar day that is not a banking day for the account-holding location, all ATM deposits are considered 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.

2(h) Cash

"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.)

2(i) Cashier's Check

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

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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.

2(j) Certified Check

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.

2(k) Check

"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.

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.

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.")

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.

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."[1] 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 drawn on the U.S. Treasury and drafts or

[1] 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."

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warrants drawn by a state or a unit of general local government on itself.

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.

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.

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.

2(*l*) Check Clearinghouse Association

The act defines a clearinghouse association as any arrangement by which participants exchange deposited checks on a local basis, including an entire metropolitan area. The definition includes informal arrangements where the participants have not formally constituted themselves as an association. The definition of check clearinghouse association excludes direct exchanges involving only two banks.

The act defines "clearinghouses" as local arrangements, which may cover an entire metropolitan area. In some cases, most notably California, a single clearinghouse association sponsors separate exchanges in different metropolitan areas. For purposes of this regulation, each of those exchanges would be regarded as a separate clearinghouse.

Using the premises of a Federal Reserve Bank to exchange checks does not constitute the handling of checks for collection by the Reserve Bank. Several clearinghouses meet at Reserve Banks to exchange checks among their members.

2(m) Check-Processing Region

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.

2(n) Consumer Account

"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.

2(o) Depositary Bank

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

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A depositary 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 depositary bank since foreign offices of banks are not included in the definition of "bank."

If a customer deposits a check in its account at a bank, the customer's bank is the depositary 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 depositary bank even though another bank may service the nonproprietary ATM and send the check for collection. (Under section 229.35 the depositary bank may agree with the bank servicing the nonproprietary ATM to have the servicing bank place its own indorsement on the check as the depositary bank. For the purposes of subpart C, the bank applying its indorsement as the depositary-bank indorsement on the check is the depositary bank.)

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.

2(p) Electronic Payment

"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.

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.

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.

2(q) Forward Collection

"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."

2(r) Local Check

"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

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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. Until the labelling requirements in section 229.36(e) for payable-through checks become effective on February 1, 1991, there may be cases where the payable-through bank will be designated only by routing number and will not be named on the check. In such cases also, the routing number may not be relied on to determine whether the check is local or nonlocal. For payable-through checks that meet the labelling 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.

2(s) Local Paying Bank

"Local paying bank" is defined as a paying bank located in the same check-processing region as the branch or proprietary ATM of the depositary bank.

Examples

1. If a check that is payable by a bank that is located in the same check-processing region as the depositary 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.

2. The location of the depositary bank is determined by the physical location of the branch or proprietary ATM at which a check is deposited. If the branch of the depositary bank located in one check-processing region sends a check to the depositary 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.")

For deposits at nonproprietary ATMs, a paying bank is a local paying bank only if the paying bank is located in the same check-processing region as the location of both the branch of the depositary bank at which the account is held and the nonproprietary ATM at which the check is deposited.

2(t) Merger Transaction

"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) or section 408 of the National Housing Act (12 USC 1730a) where an acquired bank maintains its separate corporate existence.

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.)

2(u) Noncash Item

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 depositary bank.

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 instruc-

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tions. (In the context of this definition, "paying bank" refers to the paying bank as defined for purposes of subpart C.)

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 document or adding a strip to the check.

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 depositary bank to send a check for collection as a noncash item with an instruction to the paying bank to notify the depositary bank promptly when the check is paid or dishonored.

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).)

2(y) Participant

"Participant" means a bank that is located in the geographic area served by a clearinghouse and that both collects checks drawn on other clearinghouse participants and receives for payment checks from other clearinghouse participants through the clearinghouse either directly or through another participant. The phrase "through a participant" covers associate members of the clearinghouse, but a bank is not a participant merely because it sends a check to a correspondent that in turn presents the check through a clearinghouse exchange.

2(z) Paying bank

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.

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 depositary 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.

If a check is sent for forward collection based on the routing number, the bank associated with the routing number is a paying bank for the purposes of 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.

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.

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.

2(aa) Proprietary ATM

Under the temporary schedule, all deposits at nonproprietary ATMs are treated as deposits of nonlocal checks and deposits at proprietary ATMs are generally treated as deposits at

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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, during the temporary schedule, 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 depositary 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.

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.

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.

2(bb) Qualified Returned Check

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 depositary bank by the same general means used for forward collection of a check from the depositary 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 depositary 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.")

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 depositary 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.

A qualified returned check need not contain the elements of a check drawn on the depositary bank, such as the name of the depositary bank. Because indorsements and other information on carrier envelopes or strips will not appear on a returned check itself, banks will

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wish to retain carrier envelopes and/or microfilm or other records of carrier envelopes or strips with their check records.

2(cc) Returning Bank

"Returning bank" is defined to mean any bank (excluding the paying bank and the depositary 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 depositary bank under section 229.31(a). A returning bank is also a collecting bank for the purpose of a collecting bank's duty to act seasonably 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).)

2(dd) Routing Number

Each bank is assigned a routing number by Rand McNally & Co. 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 depositary banks and subsequent collecting banks to place their routing numbers in nine-digit form in their indorsements.

2(gg) Teller's Check

"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.")

2(hh) Traveler's Check

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.

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

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 depositary bank may rely on the designation of the paying bank by the routing number to determine whether local or nonlocal treatment is required.

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2(ii) Uniform Commercial Code

"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.

2(kk) Unit of Local Government

"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.

2(*ll*) Wire Transfer

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.

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

(c) *Enforcement by the Board.*

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

(2) If the Board determines that—

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

(ii) Any other person subject to the authority of the Board under the 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.)

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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 depositary 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 depositary 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 depositary 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 depositary 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 depositary 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 depositary 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 depositary bank; and

(D) With a special deposit slip or deposit envelope, if such slip or envelope is required by the depositary 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 depositary bank; and

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

(vi) A check deposited in a branch of the depositary 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 depositary bank shall make funds deposited in

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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 depositary bank.

(3) *Special deposit slip.*

(i) As a condition to making the funds available for withdrawal in accordance with this section, a depositary 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 depositary bank requires the use of a special deposit slip or deposit envelope, the bank must either provide the special deposit slip or deposit envelope to its customers or inform its customers how the slip or envelope may be prepared or obtained and make the slip or envelope reasonably available.

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COMMENTARY

SECTION 229.10—Next-Day Availability

10(a) Cash Deposits

This paragraph implements the act's requirement for next-day availability for cash deposits to accounts at a depositary bank "staffed by individuals employed by such institution."[2] This paragraph, 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 only considered made 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.

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 under the temporary schedule, which requires that funds be available for withdrawal on the third business day after deposit, funds must be made available on Thursday regardless of whether the bank was closed on Wednesday for other than a standard legal holiday as specified in the definition of "business day."

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 at a nonproprietary ATM under the permanent schedule), or by other means other than at a staffed teller station.

[2] 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).)

10(b) Electronic Payments

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 the discussion of definitions of "automated clearinghouse," "electronic payment," and "wire transfer" in section 229.2.)

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 210.36.) 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.

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.

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

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

10(c) Certain Check Deposits

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, certified, and 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 must also be made available on the next business day following 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 depositary 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).)

Deposit in Account of Payee

One statutory condition to receipt of next-day availability of Treasury checks; state and local government checks; and cashier's, certified, 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 to 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.

Deposits Made to an Employee of the Depositary Bank

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 depositary bank. If the deposit is not made to an employee of the depositary 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 (and at a nonproprietary ATM under the permanent schedule), night depository, through the mail or a lock box, or at a teller station staffed by a person that is not an employee of the depositary bank. Second-day availability may also be allowed for deposits picked up by an employee of the depositary bank at the customer's premises; such deposits would be considered made upon receipt at the branch or other location of the depositary bank.

The act and regulation do not condition the receipt of next-day availability to deposits at staffed teller stations in the case of Treasury checks. 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.

On-Us Checks

The act and regulation require next-day availability for on-us checks, i.e., checks deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank, if both branches are located in the same

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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 depositary bank.

First $100

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 depositary 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.

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

A depositary 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 depositary 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.

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.

Special Deposit Slips

Under the act, a depositary 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 a number of 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 depositary 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.

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

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

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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.

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 must also 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.

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 only provides the special deposit slips 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.

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SECTION 229.11—Temporary Availability Schedule

(a) *Effective date.* The temporary availability schedule contained in this section is effective from September 1, 1988, through August 31, 1990. For the permanent availability schedule, which is effective September 1, 1990, see section 229.12.

(b) *Local checks and certain other checks.*

(1) *In general.* A depositary bank shall make funds deposited in an account by a check available for withdrawal not later than the third business day following the banking day on which funds are deposited, in the case of—

(i) A local check;

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

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

(iv) 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)(1)(iv) of this section is a local check that is not governed by the availability requirements of section 229.10(c).

(2) *Time period adjustment for withdrawal by cash or similar means.* A depositary bank may extend by one business day the time that funds deposited in an account by one or more local checks are available for withdrawal by cash or similar means unless the checks are drawn on or payable at or through a local paying bank that is a participant in the same check clearinghouse association as the depositary bank. Similar means include electronic payment, issuance of a cashier's or teller's check, certification of a check, or other irrevocable commitment to pay, but do not include the granting of credit to a bank, Federal Reserve Bank, or Federal Home Loan Bank that presents a check to the depositary bank for payment. A depositary 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 third business day following the banking day on which the funds are deposited. This $400 is in addition to the $100 available under section 229.10(c)(1)(vii).

(c) *Nonlocal checks.*

(1) *In general.* A depositary bank shall make funds deposited in an account by a check available for withdrawal not later than the seventh 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 depositary 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) *Reduction in schedule for certain check deposits.* Nonlocal checks specified in appendix B–1 to this part must be made available for withdrawal not later than the times prescribed in that appendix.

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

(e) *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The depositary 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 depositary 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 depositary bank.

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COMMENTARY

SECTION 229.11—Temporary Availability Schedule

11(a) Effective Date

Checks, other than those that must be accorded next-day availability, are categorized as either local or nonlocal, with different availability schedules attached to each. These schedules are effective on September 1, 1988, and will be superseded by more stringent schedules on September 1, 1990.

11(b) Local Checks and Certain Other Checks

This paragraph sets forth the maximum hold period that can be placed on local checks during the temporary schedule. The regulation refers to the day on which funds must be available for withdrawal as within a specified number of business days after deposit, rather than after a specified number of intervening business days, as provided in the act. A depositary bank must make funds from the deposit of a local check available on the third business day following the banking day on which the check is deposited. This requirement corresponds to the two intervening business days specified in the act. Thus, under the temporary schedule, a local check deposited on a Monday must be available for withdrawal on Thursday, except in the case of deposits at nonproprietary ATMs and deposits to accounts in banks located outside the 48 contiguous states.

The regulation provides that Treasury checks and U.S. Postal Service money orders be treated as local checks, where the conditions to receiving next-day (or second-day) availability in section 229.10(c) are not met. These checks are treated as local checks because they are payable at any Federal Reserve office. Thus, a Treasury check or a postal money order that is indorsed and deposited in an account not held by the payee must be made available in accordance with the schedule for local checks.

Other types of checks described in section 229.10(c), such as checks drawn on a Federal Reserve Bank or Federal Home Loan Bank; state and local government checks; and cashier's, certified, and teller's checks for which next-day availability does not apply (e.g., because they were not deposited in an account of a payee of the check), are treated as either local or nonlocal checks, depending on the check-processing region in which they are payable.

Time Period Adjustment for Withdrawal by Cash

The act provides an adjustment to the available rules for cash withdrawals. During the temporary schedule, the act provides that funds from local checks that are drawn on or payable at or through a paying bank that is not a participant in the same check clearinghouse association as the depositary bank 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 next business day following the banking day of deposit. 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. This special rule does not, under the temporary schedule, apply to deposits of local checks cleared through a check clearinghouse association or to nonlocal checks.

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.

The Board believes that the Congress included this special cash withdrawal rule to

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provide a depositary 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 depositary bank may receive the returned check on Thursday (the day funds must be made available under the temporary schedule), but may not receive the returned check by the start of business on Thursday. Checks written by the customer that are presented to the depositary bank on Thursday are typically not posted to the customer's account until late Thursay night. Any returned checks that have been received on that day are debited to the customer's account before the checks being presented are posted. Thus, for the purpose of checks written by the customer, the fact that a return is not received until sometime during the day on which funds must be made available does not increase the bank's risk.

Nonetheless, the depositary bank's risk does increase significantly if the customer withdraws the funds in cash, because the withdrawal may occur before the return is received and posted. The intent of the special cash withdrawal rule is to minimize this risk to the depositary bank.

For this rule to minimize the depositary 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 would also 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 became available for cash withdrawal under this rule; however, payment of such checks would be subject to the bank's cut-off hour established under UCC 4-108. The cash withdrawal rule does not apply to checks and other provisional debits presented to the bank for repayment that the bank has the right to return.

11(c) Nonlocal Checks

Under the temporary schedule, funds deposited by nonlocal checks must be made available for withdrawal not later than the seventh business day following the banking day the funds are deposited, except in the case of deposits in accounts of banks located outside the 48 contiguous states. Thus, funds from a nonlocal check deposited on a Monday must be available for withdrawal by Wednesday of the following week. The act does not establish a special rule for cash withdrawals for nonlocal checks under the temporary schedule. Therefore, subject to section 229.19(c), the full amount of the deposit becomes available for withdrawal at the start of business on the business day specified in the schedule.

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 which 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.

Reduction in Schedules

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. 179 (1987)).

Reduced schedules are provided for certain nonlocal checks where significant improvements can be made to the act's schedules. Spe-

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cifically, shorter schedules are provided for checks deposited in banks located in certain Federal Reserve cities and drawn on or payable at or through banks located in certain other Federal Reserve cities, where transportation arrangements allow for faster collection and return. In addition, shorter shedules are provided for checks drawn on or payable at or through certain banks that are served by two Federal Reserve offices, and for certain checks deposited in and drawn on or payable at or through banks in the New York City metropolitan area, where the proximity of the Federal Reserve offices facilitates faster clearing and return of these checks.

Appendix B-1 sets forth the specific reduction of schedules applicable to banks located in each check-processing region.

11(d) Deposits at Nonproprietary ATMs

The act and regulation provide a special rule for deposits made at nonproprietary ATMs. Notwithstanding other provisions of the regulation concerning availability requirements, during the temporary schedule, a depositary bank may treat all deposits made by its customers at a nonproprietary ATM as though the deposits were nonlocal checks. A deposit at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day availability, must be made available for withdrawal not later than Wednesday of the following week. This rule does not apply to deposits made at proprietary ATMs.

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

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 depositary 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 fourth business day following deposit. This extension does not apply to deposits that must be made available for withdrawal on the next business day.

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 depositary 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 third rather than the fourth business day following deposit.

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SECTION 229.12—Permanent Availability Schedule

(a) *Effective date.* The permanent 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 depositary 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 depositary 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 depositary 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 depositary 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 depositary bank for payment. A depositary 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 depositary 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 depositary 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 depositary bank.

(f) *Deposits at nonproprietary ATMs.* A depositary 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.

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SECTION 229.12—Permanent Availability Schedule

12(a) Effective Date

The permanent schedule supersedes the temporary schedule on September 1, 1990.

12(b) Local Checks and Certain Other Checks

Under the permanent schedule, 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.

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; and cashier's, certified, 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 depositary bank, must be made available for withdrawal by the second business day following deposit.

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.

12(c) Nonlocal Checks

Under the permanent schedule, the time period for availability of nonlocal checks is also reduced. 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.

As described in the discussion of section 229.11(c), the Board is required to shorten the schedules for any category of check where most of these checks can be returned to the depositary bank in a shorter period of time than provided in the schedule. Appendix B–2 sets forth the reductions to the schedule for certain nonlocal checks under the permanent schedule.

12(d) Time-Period Adjustment for Withdrawal by Cash or Similar Means

Unlike the temporary schedule, the act applies the special cash withdrawal rule to all local and nonlocal checks under the permanent schedule. The regulation implementing this rule is described in the discussion of the temporary schedule at section 229.11(b). Under the permanent schedule, 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.

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

The extension of the availability schedules provided to check deposits at a branch of a bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands under the temporary schedule also applies when the permanent schedule becomes effective. Explanation of this provision is provided in the discussion of section 229.11(d).

12(f) Deposits at Nonproprietary ATMs

The act and regulation provide a special rule for deposits made at nonproprietary ATMs. This paragraph does not apply to deposits made at proprietary ATMs. All deposits at a nonproprietary ATM must be made available for withdrawal by the fifth business day following the banking day of deposit. For example, a deposit made at a nonproprietary ATM

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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 depositary bank to make up to $100 of an aggregate daily deposit available for withdrawal on the next business day after the banking day of deposit do not apply to deposits at a nonproprietary ATM.

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SECTION 229.13—Exceptions

(a) *New accounts.*

(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), 229.11, 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 depositary 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 depositary 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 depositary 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 depositary 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 depositary 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 depositary bank if the depositary 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 depositary bank that extends the time when funds will be available for withdrawal as de-

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scribed 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 depositary 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 depositary 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 depositary bank,

if the depositary 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 depositary bank extends the time when funds will be available for withdrawal based on the application of an exception contained in paragraphs (b) through (f) 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 and amount 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, unless the emergency-conditions exception in paragraph (f) of this section has been invoked, and the depositary bank, in good faith, does not know the duration of the emergency and, consequently, when the funds must be made available at the time the notice must be given.

(ii) *Timing of notice.*

(A) 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 depositary bank, or, if the facts upon which a determination to invoke one of the exceptions in paragraphs (b) through (f) of this section to delay a deposit only become known to the depositary bank after the time of the deposit. If the notice is not given at the time of the deposit, the depositary 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 depositary bank, or the deposit is made, whichever is later.

(B) If the availability of funds is delayed under the emergency-conditions exception provided in paragraph (f) of this section, the depositary bank is not required to provide a notice if the funds subject to the exception become available before the notice must be sent under paragraph (g)(1)(ii)(A) of this section.

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

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tained 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 depositary bank that extends the time when funds deposited in an account will be available for withdrawal based on the exception contained in paragraph (d) of this section may provide a notice to the customer for each time period during which the exception will be in effect. The notice shall include the following information—

(i) 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) *Record retention.* A depositary 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 depositary bank may extend the time periods established under sections 229.10(c) and 229.12 by a reasonable period of time.

(2) If a depositary 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 depositary bank invokes an exception under paragraph (f) of this section based on an emergency condition, the depositary 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 paragraphs (h)(1), (h)(2), and (h)(3) of this section, a reasonable period is an extension of up to one business day for checks subject to section 229.10(c)(1)(vi), five business days for checks subject to section 229.12(b) and checks that would be subject to section 229.12(b) under paragraph (h)(2) of this section, and six business days for checks subject to section 229.12(c) and checks that would be subject to section 229.12(c) under paragraph (h)(2) of this section. A longer extension may be reasonable, but the bank has the burden of so establishing.

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SECTION 229.13—Exceptions

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).

Many checks will not be returned to the depositary 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 depositary banks, the Board has exercised its statutory authority to adopt these exceptions to the schedules in the regulation to allow the depositary bank to extend the time within which it is required to make funds available.

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.

13(a) New Accounts

Definition of New Account

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 open when the first deposit is made to the account. An account is not considered a new account, however, if each customer on the account has a transaction-account relationship with the depositary bank, including a dormant account, that is at least 30 calendar days old on September 1, 1988, or at any time thereafter (i.e., an established account), or has had an established account with the depositary bank within the 30 calendar days prior to opening the account.

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

1. 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.
2. 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 closed an established account and opens a separate account within 30 days, the new account is not subject to the new-account exception.
3. 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 may be subject to the new-account exception.
4. 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.
5. 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.
6. 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.

Rules Applicable to New Accounts

During the new-account exception period, the

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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.

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, certified, and 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 next business day following deposit, if the deposit is made in person to an employee of the depositary 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 next business day after deposit, even if the check is not deposited in person to an employee of the depositary 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.

Representation by Customer

The depositary 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.

13(b) Large Deposits

Under the large-deposit exception, a depositary 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 would otherwise 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 depositary 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.

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.

Where a customer has multiple accounts with a depositary 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 depositary bank may aggregate the deposits made to two individual accounts in the same

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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 depositary bank associated with large deposits is similar regardless of how the deposits are allocated among the customer's accounts.

13(c) Redeposited Checks

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 depositary 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).

This exception addresses the increased risk to the depositary 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.

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 depositary 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.

13(d) Repeated Overdrafts

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.

The second test addresses substantial overdrafts. Such overdrafts increase the risk to the depositary 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.

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

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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.

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).

13(e) Reasonable Cause to Doubt Collectibility

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.

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

If a bank received a notice from the paying bank that a check was not paid and is being returned to the depositary bank, the depositary 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.

The depositary 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 depositary 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.

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 is not properly payable under UCC section 4–401. The bank, in its notice, should specify that the check is stale date or postdated.

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 may also 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.

The Board has included a reasonable-cause exception notice as a model form in appendix C (C–13A). The model notice includes a number of 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

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invoking this exception. A depositary 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.

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 depositary bank cannot invoke this exception simply because the check is drawn on a paying bank in a rural area and the depositary 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 depositary bank cannot invoke the reasonable-cause exception based on the race or national origin of the depositor.

If a depositary 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 depositary 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.

13(f) Emergency Conditions

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 depositary 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 depositary 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.

13(g) Notice of Exception

If a depositary bank invokes any of the safeguard exceptions to the schedules listed above, other than the new-account 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 the regulation, 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.

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

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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–13) contains a model form of this exception notice.

For deposits made in person to an employee of the depositary 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.

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 depositary 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 depositary 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.

If the depositary bank extends the hold placed on a deposit due to an emergency condition, the notice requirement generally applies; however, the regulation provides that 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 depositary 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.

In those cases described in paragraphs (g)(2) and (g)(3), the depositary 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.

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 depositary 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-13B). A depositary 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 depositary 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 depositary bank may apply the redeposited-check exception only to checks that were redeposited automatically by the depositary bank in accordance with an agreement with the customer, rather than to all redeposited checks. In lieu of sending the one-time notice, a depositary 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 depositary 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-13).

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In the case of a deposit of multiple checks, the depositary 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 depositary bank may make funds available in the amount of (1) $100 on the 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.

Under paragraph (g)(3), if an account is subject to the repeated-overdraft exception, the depositary 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 form C-13C). A depositary 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.

A depositary 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 depositary 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.

13(h) Availability of Deposits Subject to Exceptions

If a depositary 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 is reasonable. Under certain circumstances, however, a longer extension of the schedules may be reasonable. In these cases, the burden is placed on the depositary bank to establish that a longer period is reasonable.

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.

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, and cashier's, certified, and teller's checks subject to the next-day or (second-day) availability requirement, the depositary 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 regula-

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tion 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.

One business day for on-us checks, five business days for local checks, and six business days for nonlocal checks, in addition to the time period provided in the schedule, should provide adequate time for the depositary 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 depositary bank applies the large-deposit exception to that check, $5,000 must be available for withdrawal on the next 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 depositary bank establishes that a longer hold is reasonable.

In the case of the application of the emergency-conditions exception, the depositary 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.

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.

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SECTION 229.14—Payment of Interest

(a) *In general.* A depositary 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 depositary bank receives credit for the funds. For the purposes of this section, the depositary 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 depositary bank sends to paying banks or subsequent collecting banks for payment or collection based on the availability of funds the depositary 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.

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COMMENTARY

SECTION 229.14—Payment of Interest

14(a) In General

This section requires that a depositary bank begin accruing interest on interest-bearing accounts not later than the day on which the depositary bank receives credit for the funds deposited.[3] A depositary 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 depositary bank itself on the day the cash, electronic payment, or check is received. In the case of a deposit at a nonproprietary ATM, credit is generally received on the day the bank that operates the ATM credits the depositary bank for the amount of the deposit.

Because "account" includes only transaction accounts, other interest-bearing accounts of the depositary bank, such as money market deposit accounts, savings deposits, and time deposits, are not subject to this requirement; however, a bank may accrue interest on such deposits in the same way that it accrues interest under this paragraph for simplicity of operation. The Board intends the term "interest" to refer to payments to or for the account of any customer as compensation for the use of funds, but to exclude the absorption of expenses incident to providing a normal banking function or a bank's forbearance from charging a fee in connection with such a service. (See 12 CFR 217.2(d).) Thus, earnings credits often applied to corporate accounts are not interest payments for the purposes of this section.

It may be difficult for a depositary bank to track which day the depositary 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 depositary 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.

This paragraph also permits a depositary 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.

This section is not intended to limit a policy of a depositary bank that provides that interest only accrues 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 depositary bank receives credit for the funds. This section is also not intended to limit any policy providing that interest accrues sooner than required by this paragraph.

[3] This section implements section 606 of the act (12 USC 4005). The act keys the requirement to pay interest to the time the depositary 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.

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14(b) Special Rule for Credit Unions

This provision implements a requirement in section 606(b) 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.

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.

14(c) Exception for Checks Returned Unpaid

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.

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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.

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COMMENTARY

SECTION 229.15—General Disclosure Requirements

15(a) Form of Disclosures

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. 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.

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.

The regulation does not require that the disclosures be segregated from other account terms and conditions. For example, banks may include the disclosure of their specific availability policy in a booklet or pamphlet that sets out all of the terms and conditions of the bank's accounts. The required disclosures must, however, be grouped together and highlighted or identified in some manner, for example, by use of a separate heading for the disclosures, such as "When Deposits are Available for Withdrawal."

15(b) Uniform Reference to Day of Availability

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.

15(c) Multiple Accounts and Multiple Account Holders

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.

15(d) Dormant or Inactive Accounts

This paragraph makes clear that banks need not provide disclosure of their specific availability policies to customers that hold accounts that are either dormant or inactive. The determination that certain accounts are dormant or inactive must be made by the bank. If a bank considers an account dormant or inactive for purposes other than this regulation and no longer provides statements and other mailings to an account for this reason, such an account is considered dormant or inactive for purposes of this regulation.

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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); [3a]

(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 depositary bank extends the time when funds will be available for withdrawal on a case-by-case basis, it must provide the depositor

[3a] No later than December 31, 1988, 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 229.11, 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 statement may be in the form of an attachment or insert to the bank's existing specific policy disclosures. In addition, banks subject to this disclosure requirement must provide a similar notice concerning the payable-through checks to existing account customers no later than December 31, 1988. (Even though a bank need not make a disclosure concerning payable-through checks until December 31, 1988, the bank must characterize these checks correctly as local or nonlocal checks under amended section 229.2, and provide availability in accordance with sections 229.11, 229.12, and 229.13, effective September 1, 1988.)

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with a written notice. The notice shall include the following information—

(A) The account number of the customer;

(B) The date and amount of the deposit;

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

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

(ii) *Timing of notice.* The notice shall be provided to the depositor at the time of the deposit, unless the deposit is not made in person to an employee of the depositary 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 depositary 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 depositary 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 depositary 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.

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COMMENTARY

SECTION 229.16—Specific Availability-Policy Disclosure

16(a) General

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.

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 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).)

16(b) Content of Specific Policy Disclosure

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.

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.

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.

Because many banks' availability policies may be complex, banks 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

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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.

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 229.11, 229.12, and 229.13.

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

A bank taking advantage of the extended time period for making deposits at nonproprietary ATMs available for withdrawal under section 229.12 (f)(1) 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 sections 229.11(b)(2) and 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.

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).

16(c) Longer Delays on a Case-by-Case Basis

16(c)(1) Notice in Specific Policy Disclosure

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.

In addition to stating what their specific

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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.

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.

(16)(c)(2) Notice at Time of Case-by-Case Delay

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 and amount of the deposit, and the amount of the deposit being delayed.

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).)

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.

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

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(16)(c)(3) Overdraft and Returned-Check Fees

If a depositary 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 depositary 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 fees 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.

16(d) Credit-Union Notice of Interest-Payment Policy

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.

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SECTION 229.17—Initial Disclosures

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

(b) *Existing accounts.*

(1) In the first regularly scheduled mailing to customers after September 1, 1988, but not later than October 31, 1988, a bank shall send to existing customers the specific availability-policy disclosure described in section 229.16, unless the bank has previously given disclosures that meet the requirements of that section.

(2) If the disclosure required by paragraph (b)(1) of this section is included with a disclosure of other account terms and conditions, the bank must direct the customer's attention to the availability disclosures by, for example, the use of an insert or a letter.

(3) The disclosure required by paragraph (b)(1) of this section may not be included in a mailing of promotional material, such as a solicitation for a new product or service, unless the mailing also includes the customer's account statement.

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COMMENTARY

SECTION 229.17—Initial Disclosures

17(a) New Accounts

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.

17(b) Existing Accounts

This section requires banks to send a notice of their specific policy with respect to the availability of deposited funds to all existing account holders in the first scheduled mailing to such customers occurring after September 1, 1988. The notice must be sent not later than October 31, 1988. Thus, banks must include a notice in the first statement mailed to customers after September 1, 1988, unless, prior to the mailing of this statement, the bank has provided a notice to its customers of its availability policy that meets the requirements of section 229.16. A bank that has provided availability-policy disclosures to its customers, either under a state law or as a matter of bank practices or policy, need not provide disclosures under this section if the disclosures that were previously given comply with the requirements of this regulation. A bank may disclose both its present policy and its policy for September 1, 1990, and beyond in a single notice.

The notice of specific policy may be sent alone in a separate mailing, instead of with an account statement, provided the mailing is made prior to the first statement mailing on the account after September 1, 1988. Banks may not furnish the required notice to customers by including the notice with promotional material, such as a solicitation for health or hospitalization insurance, unless that material is included with the account statement. A bank is permitted to provide the notice by furnishing the customer with a booklet or pamphlet that describes the terms and conditions of the bank's accounts generally. The bank, however, must then direct the customer's attention to the disclosures required by this section by, for example, use of a special insert or a letter.

If a customer has requested that the bank not mail any information regarding the account, the bank need not make a special mailing that includes the disclosure of the bank's specific availability policy. The disclosure should be made available to the customer in accordance with the customer's instructions to the bank for statements and other account information.

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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 depositary 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 depositary 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.

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COMMENTARY

SECTION 229.18—Additional Disclosure Requirements

18(a) Deposit Slips

This paragraph requires banks to include a notice on all preprinted deposit slips. The deposit-slip notice need only state, somewhere on the front of the deposit slip, that deposits may not be available for immediate withdrawal. The notice is required only on preprinted deposit slips—those printed with the customer's account number and name and furnished by the bank in response to a customer's order to the bank. A bank need not include the notice on deposit slips that are not preprinted and supplied to the customer—such as counter deposit slips—or on those special deposit slips provided to the customer under 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. A bank need not mail deposit slips to customers to replace the customers' existing supply, and customers may continue to use any slips they were sent prior to September 1, 1988. In addition, a bank may mail or deliver to its customers after September 1, 1988, preprinted deposit slips requested by the customers prior to September 1, 1988, even though the deposit slips do not include the required notice.

18(b) Locations Where Employees Accept Consumer Deposits

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.

18(c) Automated Teller Machines

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

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.

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

18(d) Upon Request

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.

18(e) Changes in Policy

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

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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.

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).

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.

In disclosing changes due to the implementation of the permanent schedule, a bank may provide notice in any form that is clear and conspicuous. For example, in disclosing the change in the maximum period for case-by-case holds, banks that used the previous version of Form C–3 could use language such as the following on account statements or inserts: "Our disclosure on funds availability indicated that, in certain circumstances, funds from deposits would not be available until the seventh business day following the day of your deposit. Effective September 1, 1990, that period [was/will be] reduced to five business days." A bank reserving the right to apply the cash-withdrawal limitation in section 229.12(d) when invoking a case-by-case hold should indicate that the period is reduced to six, rather than five, business days.

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SECTION 229.19—Miscellaneous

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

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

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

(4) Funds deposited at an ATM that is not on, or within 50 feet of, the premises of the depositary 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 depositary bank; or

(ii) After a cut-off hour set by the depositary bank for the receipt of deposits of 2:00 p.m. or later, or, for the receipt of deposits at ATMs or off-premise facilities, of 12:00 noon or later. Different cut-off 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 sections 229.11(b)(2) and 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 depositary bank); or

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

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

(1) Prohibit a depositary 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 depositary bank's right—

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

(ii) To revoke any settlement made by the depositary 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 depositary 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 depositary 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, 229.11, 229.12, or 229.13; and—

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

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

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

(d) *Use of calculated availability.* A depositary 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 depositary bank that receives a

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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, 229.11, 229.12, and 229.13.

(2) A depositary bank that cashes a check for a customer over the counter, other than a check drawn on the depositary 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, 229.11, 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.

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COMMENTARY

SECTION 229.19—Miscellaneous

19(a) When Funds Are Considered Deposited

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. Funds received at a staffed teller station or ATM are considered deposited when received by the teller or placed in the ATM. Funds deposited to a deposit box in a bank lobby that is accessible to customers only during regular business hours are generally 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 deposits will be considered received. Funds mailed to the depositary bank are considered deposited on the banking day they are received by the depositary bank. The funds are received by the depositary 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.

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 depositary 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.

A lock box is a post office box used by a corporation for the collection of bill payments or other check receipts. The depositary 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 depositary bank for processing.

A special provision is made for certain off-premises 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 depositary 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 received on the day of deposit, in accordance with section 229.18.

This paragraph also provides that a deposit received on a day that the depositary bank is closed, or after the bank's cut-off hour, may be considered made on the next banking day. Generally, for purposes of the availability schedules of this subpart, a bank may establish a cut-off hour of 2:00 p.m. or later for receipt of deposits at its head office or branch offices. For receipt of deposits at ATMs or off-premise facilities, such as night depositories or lock boxes, the depositary bank may establish a cut-off hour of 12:00 noon or later (either local time of the branch or other location of the depositary bank at which the account is maintained or local time of the ATM or off-premise facility). The depositary bank must use the same method for establishing the cut-off hour for all ATMs and off-premise facilities used by its customers. The choice of cut-off hour must be reflected in the bank's internal procedures, and the bank must inform its customers of the cut-off hour upon request. This earlier cut-off for ATM or off-premises deposits is intended to provide greater flexibility in the servicing of ATMs and other off-premises facilities.

Different cut-off hours may be established

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

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.

19(b) Availability at Start of Business Day

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 depositary bank's teller facilities, including ATMs, are available for customer account withdrawals, except under the special rule for cash withdrawals set forth in sections 229.11(b)(2) and 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.

The start of business is determined by the local time of the branch or other location of the depositary 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 depositary bank is not required to make the funds available until 9:00 a.m. West Coast time (12:00 noon East Coast time).

19(c) Effect on Policies of Depositary Bank

This subpart establishes the maximum hold that may be placed on customer deposits. A depositary bank may provide availability to its customers in a shorter time than prescribed in this subpart. A depositary bank may also 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.

This regulation does not affect a depositary 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 depositary bank may charge back the customer's ac-

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count for the full amount of the check. (See section 229.33(d) and commentary.)

Nothing in the regulation requires a depositary 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 sections 229.11(b)(2) and 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 depositary 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.

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.

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 depositary 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.

A number of 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.

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 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.

19(d) Use of Calculated Availability

A depositary 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.

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19(e) Holds on Other Funds

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.

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.

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)).

19(f) Employee Training and Compliance

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.

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.

19(g) Effect of Merger Transaction

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).

This rule affects the status of the combined entity in a number of areas. For example:

1. When the resulting bank is a "participant" in a check clearinghouse association (section 229.2(y) and (*l*) and section 229.11(b)(2)
2. When an ATM is a "proprietary ATM" (section 229.2(aa), section 229.11(d), and section 229.12(b))
3. When a check is drawn on a branch of the depositary bank (section 229.10(c)(1)(vi))

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

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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 depositary 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.

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COMMENTARY

SECTION 229.20—Relation to State Law

20(a) In General

A number of 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)).

Thus, if a state wishes to adopt a law governing funds availability, it must do so, effective on or before September 1, 1989. Laws adopted after that date will 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, amends its law after that date, the amendment will not supersede federal law, but an amendment deleting a state requirement will be effective.

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.

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.

20(b) Preemption of Inconsistent Law

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.

20(c) Standards for Preemption

This section describes the standards the Board will use 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 depositary 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.

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

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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.

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.

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.

Generally, state rules governing the disclosure or notice of availability policies applicable to accounts are also 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.

20(d) Preemption Determinations

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.

20(e) Procedures for Preemption Determinations

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

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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 depositary 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.

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COMMENTARY

SECTION 229.21—Civil Liability

21(a) Civil Liability

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.)

21(b) Class-Action Awards

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.

21(c) Bona Fide Errors

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.

21(d) Jurisdiction

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

21(e) Reliance on Board Rulings

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

21(f) Exclusions

This provision clarifies that liability under this section 229.21 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.

21(g) Record Retention

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.

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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 depositary bank not later than 4:00 p.m. (local time of the depositary bank) of—

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

If the last business day on which the paying bank may deliver a returned check to the depositary bank is not a banking day for the depositary bank, the paying bank meets the two-day/four-day test if the returned check is received by the depositary bank on or before the depositary 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 depositary 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 depositary 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 depositary 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 depositary bank.* A paying bank that is unable to identify the depositary 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 depositary 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) is extended—

(1) if a paying bank, in an effort to expedite delivery of a returned check to a bank, uses a means of delivery that would ordinarily result in the returned check's being received by the bank to which it is sent on or before the receiving bank's next banking day following the otherwise applicable deadline; 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) if the deadline falls on a Saturday that

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is a banking day, as defined in the applicable UCC, for the paying bank, and the paying bank uses a means of delivery that would ordinarily result in the returned check's being received by the bank to which it is sent prior to the cut-off hour for the next processing cycle, in the case of a returning bank, or on the next banking day, in the case of a depositary bank, after midnight Saturday night.

(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) *Depositary bank without accounts.* The expeditious-return requirements of paragraph (a) of this section do not apply to checks deposited in a depositary 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 depositary bank appearing on the returned check in the depositary bank's indorsement.

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COMMENTARY

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

30(a) Return of Checks

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.

Under the two-day/four-day test, if a check is returned such that it would normally be received by the depositary bank two business days after presentment where both the paying and depositary banks are located in the same check-processing region or four business days after presentment where the paying and depositary banks are not located in the same check-processing region, the check is considered returned expeditiously. In certain limited cases, however, these times are shorter than the time it would normally take a forward-collection check deposited in the paying bank and payable by the depositary 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 depositary bank within the two-day or four-day period.

30(a)(1) Two-Day/Four-Day Test

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

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

This two-day/four-day test does not necessarily require actual receipt of the check by the depositary bank within these times. Rather, the paying bank must send the check so that the check would normally be received by the depositary 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.

Often, returned checks will be delivered to the depositary bank together with forward-collection checks. Where the last day on which a check could be delivered to a depositary bank under this two-day/four-day test is not a banking day for the depositary bank, a returning bank might not schedule delivery of forward-collection checks to the depositary bank on that day. Further, the depositary bank may not process checks on that day. Consequently, if the last day of the time limit is not a banking day for the depositary bank, the check may be delivered to the depositary bank before the close of the depositary 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 depositary bank.

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

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checks before the proceeds of local and nonlocal checks, other than those covered by section 229.10(c), must be made available for withdrawal under the temporary schedules in section 229.11.

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 depositary 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.

30(a)(2) Forward-Collection Test

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 depositary bank.

Generally, the paying bank would satisfy the forward-collection test if it uses a transportation method and collection path for return comparable to those 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.

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.

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 depositary 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.

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.

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 depositary bank.

Examples

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

2. If a check is presented to a paying bank on Monday and the paying bank would normally collect checks drawn on the depositary 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

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229.31(a). (All Federal Reserve Banks agree to handle returned checks expeditiously.)

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

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

3. 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.

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

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 depositary bank directly to the depositary 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 depositary 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.

In meeting the requirements of the forward-collection test, the paying bank is responsible for its own actions, but not for those of the depositary bank or returning banks.[4] 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 depositary bank as quickly as the forward collection of a check drawn on the depositary 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 paying for the check, as permitted under UCC section 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.

Although paying banks may wish to prepare qualified returned checks because they

[4] This is analogous to the responsibility of collecting banks under UCC 4-202(c).

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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.

In effect, under either test, the paying bank acts as an agent or subagent of the depositary 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:

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

If the paying bank elects to return the check directly to the depositary bank, it is not necessarily required to return the check to the branch of first deposit. The check may be returned to the depositary bank at any location permitted under section 229.32(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 sections 4-301 and 4-302, which continue to apply. Under section 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.

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 section 4-301. (See discussion of section 229.36(a).) 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 section 4-208, notwithstanding that the paying bank has returned the check. (See the commentary to section 229.33(a).) 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 commentary to section 229.33(a).)

This paragraph directly affects the following provisions of the UCC, and may affect other sections or provisions:

1. 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 depositary bank or to a returning bank.
2. Section 4-301(a), in that time limits specified in that section may be affected by the additional requirement to make an expeditious return and in that settlement for returned checks is made under section 229.31(c), not by revocation of settlement.

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30(b) Unidentifiable Depositary Bank

In some cases, a paying bank will be unable to identify the depositary 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 depositary bank from the depositary-bank indorsement required under section 229.35 and appendix D. In cases where the paying bank is unable to identify the depositary 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 depositary bank under section 229.31(a). The returning bank may be better able to identify the depositary bank.

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 will normally 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 depositary 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 depositary bank. This advice must be conspicuous, such as a stamp on each check for which the depositary 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. This information will warn the bank that this check will require special research and handling in accordance with section 229.31(b). 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.

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 depositary bank, in many cases the inability to identify the depositary bank will be due to the depositary bank's, or a collecting bank's, failure to use the indorsement required by section 229.35(a) and appendix D. If the depositary bank failed to use the proper indorsement, it should bear the risks of less than expeditious return. Similarly, where the inability to identify the depositary bank is due to indorsements or other information placed on the back of the check by the depositary bank's customer or other prior indorser, the depositary bank should bear the risk that it cannot charge a returned check back to that customer. Where the inability to identify the depositary bank is due to subsequent indorsements of collecting banks, these collecting banks may be liable for a loss incurred by the depositary 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.

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 depositary 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 depositary bank's indorsement, making the indorsement unreadable. (See section 229.38(d).)

A paying bank's return under this paragraph is also subject to its midnight deadline under UCC section 4-301, Regulation J, 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 depositary 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 section 4-208.

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30(c) Extension of Deadline

This paragraph permits extension of the midnight deadline, but not of the duty of expeditious return, in two circumstances:

1. A paying bank may have a courier that leaves after midnight 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 depositary bank or the returning bank to which it is sent on that bank's banking day following the expiration of the midnight deadline or other applicable time for return. 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 depositary bank even if the check arrives after the close of the depositary bank's banking day.
2. 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 midnight deadline for checks received on Friday 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 depositary bank to which the returned checks were sent might not be open until Sunday night or Monday morning to receive and process the checks. This paragraph extends the midnight deadline if the returned checks reach the returning bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during its next processing cycle or reach the depositary bank by the cut-off hour on its next banking day following the Saturday midnight deadline.

The time limits that are extended in each case are the paying bank's midnight deadline in UCC sections 4-301 and 4-302 and section 210.12 of Regulation J (12 CFR 210.12). 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.

The paying bank satisfies its midnight deadline under the UCC by dispatching returned checks to another bank by courier, including a courier under contract with the paying bank, prior to expiration of the midnight deadline.

This paragraph directly affects UCC sections 4-301 and 4-302 and section 210.12 of Regulation J (12 CFR 210.12) to the extent that this paragraph applies by its terms, and may affect other provisions.

30(d) Identification of Returned Check

Most paying banks currently use some form of stamp 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.

30(e) Depositary Bank Without Accounts

Subpart B of this regulation applies only to "checks" deposited in transaction-type "accounts." Thus, a depositary 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 depositary bank may not be justified. Thus, the expedited-return requirement of section 229.30(a) and the no-

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tice-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 sections 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 would also 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 depositary 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.

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 are therefore 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 depositary bank, in accordance with the requirements of this section.

30(f) Notice in Lieu of Return

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 depositary 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.

The requirement of this paragraph supersedes the requirement of UCC 4-301(a) as to the form and information required of a notice of dishonor or nonpayment. Reference in the regulation and this commentary to a returned check includes a notice in lieu of return unless the context indicates otherwise.

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.

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).

30(g) Reliance on Routing Number

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

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bank's indorsement) when it is received by the paying bank.

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).

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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 depositary bank not later than 4:00 p.m. (local time) of—

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

If the last business day on which the returning bank may deliver a returned check to the depositary bank is not a banking day for the depositary bank, the returning bank meets this requirement if the returned check is received by the depositary bank on or before the depositary 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 depositary bank; and

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

Subject to the requirement for expeditious return, the returning bank may send the returned check to the depositary 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 depositary 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 depositary bank.

(b) *Unidentifiable depositary bank.* A returning bank that is unable to identify the depositary 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 depositary 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 depositary bank, must thereafter return the check expeditiously to the depositary bank.

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(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 depositary 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) *Depositary bank without accounts.* The expeditious-return requirements of paragraph (a) of this section do not apply to checks deposited with a depositary 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 depositary bank appearing on the returned check in the depositary bank's indorsement or in magnetic ink on a qualified returned check.

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COMMENTARY

SECTION 229.31—Returning Bank's Responsibility for Return of Checks

31(a) Return of Checks

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 depositary bank for the purposes of returning the check. A returning bank agrees to handle a returned check for expeditious return to the depositary bank if it—

1. publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return;
2. handles a returned check for return that it did not handle for forward collection; or
3. otherwise agrees to handle a returned check for expeditious return.

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 depositary 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 depositary 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.

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 depositary 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.

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.

A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward-collection checks, but the cut-off hour for returned checks may not be earlier than 2:00 p.m. The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returns than for forward-collection checks. All returned checks received by a cut-off hour for returned checks must be processed and dispatched by the returning bank by the time that it would dispatch forward-collection checks received at a corresponding forward-collection cut-off hour that provides for the same or faster availability for checks destined for the same depositary banks.

Examples

1. If a returning bank receives a returned check by its cut-off hour for returned checks on Monday and the depositary bank and the returning bank are participants in the same

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clearinghouse, the returning bank should arrange to have the returned check received by the depositary bank by Tuesday. This would be the same day that it would deliver a forward-collection check drawn on the depositary bank and received by the returning bank at a corresponding forward-collection cut-off hour on Monday.

2. If a returning bank receives a returned check, and the returning bank would normally collect a forward-collection check drawn on the depositary 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 depositary 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.

A returning bank must return a check to the depositary 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 depositary bank.

For some depositary banks, no community practice exists as to delivery of checks. For example, a credit union whose customers use payable-through drafts does not normally 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 depositary bank, and the location of the depositary bank, and determining whether similarly situated banks would normally deliver forward-collection checks to the depositary bank, taking into account the particular risks associated with returned checks. Where the community standard does not require courier delivery, other means of delivery, including mail, are acceptable.

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 act seasonably under UCC section 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 section 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 depositary 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 depositary bank, this extra day is not available because preparing a qualified returned check will not expedite handling by other banks.

If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under section 229.38 for losses caused by any negligence. The returning bank would not lose the one-day extension available to it for creating a qualified returned check because of an encoding error.

Under section 229.31(a), the returning bank is authorized to route the returned check in a variety of ways:

1. It may send the returned check directly to the depositary bank by courier or other expeditious means of delivery; or
2. It may send the returned check to any returning bank agreeing to handle the returned check for expeditious return to the depositary bank under this section regardless of whether or not the returning bank handled the check for forward collection.

If the returning bank elects to send the re-

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turned check directly to the depositary bank, it is not required to send the check to the branch of the depositary bank that first handled the check. The returned check may be sent to the depositary bank at any location permitted under section 229.32(a).

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 depositary 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 depositary bank. (See section 229.38.) A returning bank must handle a notice in lieu of return as expeditiously as a returned check.

This paragraph directly affects the following provisions of the UCC and may affect other sections or provisions:

1. Section 4-202(b), in that time limits required by that section may be affected by the additional requirement to make an expeditious return.
2. 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.

31(b) Unidentifiable Depositary Bank

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 depositary bank with respect to a check. Returning banks agreeing to handle checks for return to depositary banks under section 229.31(a) are expected to be expert in identifying depositary-bank indorsements. In the limited cases where the returning bank cannot identify the depositary 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).

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 depositary bank. If there are no prior collecting banks, the returning bank must research the collection of the check and identify the depositary 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).

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).)

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 depositary bank, the returning bank must thereafter return the check expeditiously to the depositary 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 depositary bank or by other reasonably prompt means.

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 depositary bank. This advice must be conspicuous, such as a stamp on each check for which the depositary 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.

31(c) Settlement

Under the UCC, a collecting bank receives

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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 depositary 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.

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).)

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 depositary 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).

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 depositary bank's customer under the UCC.

31(d) Charges

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.

31(e) Depositary Bank Without Accounts

This paragraph is similar to section 229.30(e) and relieves a returning bank of its obligation to make expeditious return to a depositary bank that does not maintain any accounts. (See the commentary to section 229.30(e).)

31(f) Notice in Lieu of Return

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).)

31(g) Reliance on Routing Number

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 depositary bank's indorsement or on qualified returned checks. (See the commentary to section 229.30(g).)

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SECTION 229.32—Depositary Bank's Responsibility for Returned Checks

(a) *Acceptance of returned checks.* A depositary 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 depositary 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 depositary bank may require that returned checks be separated from forward-collection checks.

(b) *Payment.* A depositary 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 depositary 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 depositary 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 depositary bank, and the bank determines that it is not the depositary bank with respect to the check or notice, it shall either promptly send the returned check or notice to the depositary 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 depositary bank may not impose a charge for accepting and paying checks being returned to it.

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COMMENTARY

SECTION 229.32—Depositary Bank's Responsibility for Returned Checks

32(a) Acceptance of Returned Checks

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.

The paragraph specifies four locations at which the depositary bank must accept returned checks:

1. 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.
2. (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 a publication of Rand McNally, *Key to Routing Numbers,* 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.

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.

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.

32(b) Payment

As discussed in the comment to section 229.31(c), under this regulation a paying or returning bank does not obtain credit for a

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returned check by charge-back but by, in effect, presenting the returned check to the depositary 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 depositary bank may not return a returned check for which it is the depositary bank. Also, certain means of payment, such as remittance drafts, may only be used with the agreement of the returning bank.

The depositary bank must pay for a returned check by the close of the banking day on which it received the returned check. The day on which a returned check is received is determined pursuant to UCC 4-108, which permits the bank to establish a cut-off hour, generally not earlier than 2:00 p.m., and treat checks received after that hour as being received on the next banking day. If the depositary 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 depositary bank received the check is after the close of Fedwire (e.g., West Coast banks with late cut-off hours), payment may be made on the next banking day of the bank receiving payment.

Payment must be made so that the funds are available for use by the bank returning the check to the depositary bank on the day the check is received by the depositary bank. For example, a depositary 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.

The depositary bank may use a net-settlement arrangement. Banks with net-settlement agreements could net the appropriate credits and debits for returned checks with the accounting entries for forward-collection checks if they so desired. If, for purposes of establishing additional controls or for other reasons, the banks involved desired a separate settlement for returned checks, a separate net-settlement agreement could be established.

The bank sending the returned check to the depositary 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.

This paragraph and this subpart do not affect the depositary bank's right to recover a provisional settlement with its nonbank customer for a check that is returned. (See also sections 229.33(d) and 229.35(d).)

32(c) Misrouted Returned Checks

This paragraph permits a bank receiving a check on the basis that it is the depositary bank to send the misrouted returned check to the correct depositary bank, if it can identify the correct depositary 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 depositary 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 midnight deadline. This paragraph does not affect a bank's duties under section 229.35(b).

32(d) Charges

This paragraph prohibits a depositary bank

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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 depositary 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 depositary bank, however, no fee may be charged.

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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 depositary 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 depositary bank, receipt of notice on the depositary 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 depositary bank;
(5) Account number of the customer(s) of the depositary bank;
(6) Branch name or number of the depositary bank from its indorsement;
(7) Trace number associated with the indorsement of the depositary 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 depositary 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 depositary bank shall accept notices during its banking day—

(1) Either at the telephone or telegraph number of its return-check unit indicated in the indorsement, or, if no such number appears in the indorsement or if the number is illegible, at the general-purpose telephone or telegraph number of its head office or the branch indicated in the indorsement; and
(2) At any other number held out by the bank for receipt of notice of nonpayment, and, in the case of written notice, as specified in section 229.32(a).

(d) *Notification to customer.* If the depositary 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) *Depositary bank without accounts.* The requirements of this section do not apply to checks deposited in a depositary bank that does not maintain accounts.

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COMMENTARY

SECTION 229.33—Notice of Nonpayment

33(a) Requirement

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 depositary 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).)

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 depositary bank that the check has been paid.

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 will not normally be received by the depositary 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 depositary bank, unless the paying bank has reason to know the availability schedules are inaccurate.

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.)

33(b) Content of Notices

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 depositary bank are also required.

If the paying bank cannot identify the depositary 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 depositary bank. The collecting bank may be able to identify the depositary bank and forward the notice, but is under no duty to do so. In addition, the collecting bank may actually be the depositary bank.

33(c) Acceptance of Notice

In the case of a written notice, the depositary 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

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refuse to accept notices at the telephone numbers identified in this section, but may transfer calls or use a recording device. Banks may vary by agreement the location and manner in which notices are received.

33(d) Notification to Customer

This paragraph requires a depositary 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 depositary 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 must also be given if a depositary bank receives a notice of recovery under section 229.35(b). The notice to the customer required under this paragraph may also satisfy the notice requirement of section 229.13(g) if the depositary 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).

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SECTION 229.34—Warranties by Paying Bank and Returning Bank

(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 depositary 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 depositary 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) *Damages.* Damages for breach of these warranties shall not exceed the consideration received by the paying or returning bank, plus finance charges and expenses related to the returned check, if any.

(d) *Tender of defense.* If a returning bank is sued for breach of a warranty under this section, it may give a prior returning bank or the paying bank written notice of the litigation, and the bank notified may then give similar notice to any other prior returning bank or the paying bank. If the notice states that the paying or returning bank notified may come in and defend, and that if the paying or returning bank notified does not do so, it will in any action against it by the paying or returning bank giving the notice be bound by any determination of fact common to the two litigations, then unless after seasonable receipt of the notice the paying or returning bank notified does come in and defend, it is so bound.

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COMMENTARY

SECTION 229.34—Warranties by Paying Bank and Returning Bank

34(a) Warranty of Returned Check

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, Regulation J, 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 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).

34(b) Warranty of Notice of Nonpayment

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).)

34(c) Damages

This paragraph adopts for the new warranties in section 229.34(a) and (b) the warranty damages of UCC section 4–207(3).

34(d) Tender of Defense

This paragraph adopts for this regulation the vouching-in provisions of UCC section 3–803.

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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.

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COMMENTARY

SECTION 229.35—Indorsements

35(a) Indorsement Standards

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.

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.

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. 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.

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.

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.

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

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depositary bank. Subsequent collecting-bank indorsements may not include this language.

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 depositary-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 may also 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.

If the bank maintaining the account into which a check is deposited agrees with another bank (a correspondent, ATM operator, or lock box operator) to have the other bank accept returns and notices of nonpayment for the bank of account, the indorsement placed on the check as the depositary-bank indorsement may be the indorsement of the bank that acts as correspondent, ATM operator, or lock box operator as provided in paragraph (d) of this section.

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 depositary-bank indorsement, thus making the depositary-bank indorsement unreadable.

The indorsement standard does not prohibit the use of a carbon band or other printed or written matter on the backs of checks and does not require banks to avoid placing their indorsements in these areas. Nevertheless, checks will be handled more efficiently if depositary banks design indorsement stamps so that the nine-digit routing number avoids the carbon band area. Indorsing parties other than banks, e.g., corporations, will benefit from the faster return of checks if they protect the identifiability and legibility of the depositary-bank indorsement by staying clear of the area reserved for the depositary-bank indorsement.

Section 229.38(d) allocates responsibility for loss resulting from a delay in return of a check due to indorsements that are unreadable because of material on the back of the check. The depositary bank is responsible for a loss resulting from a delay in return caused by the condition of the check arising after its issuance until its acceptance by the depositary bank that made the depositary bank's indorsement illegible. The paying bank is responsible for loss resulting from a delay in return caused by indorsements that are not readable because of other material on the back of the check at the time that it was issued. Depositary and paying banks may shift these risks to their customers by agreement.

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.

35(b) Liability of Bank Handling Check

When a check is sent for forward collection, the collection process results in a chain of indorsements extending from the depositary 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 depositary 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

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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 depositary 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 depositary bank's customer or from the other parties on the check.

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.

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 could then either continue the return to the depositary bank or recover based on this paragraph. Where the paying bank is insolvent, and fails to pay the collecting bank, the collecting bank could also 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 depositary bank (which could recover from its customer).

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 is also 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.

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 may also 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.)

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.

This paragraph affects the following provisions of the UCC and may affect other provisions:

1. 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 depositary bank to recover a provisional settlement from its customer. (See section 229.33(d).)
2. 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 depositary bank and its customer.

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35(c) Indorsement by Bank

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 depositary bank's indorsement will make it more difficult for other banks to identify the depositary 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.

35(d) Indorsement for Depositary Bank

This section permits a depositary 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 depositary bank. If the indorsing bank applies the depositary bank's indorsement, checks will be returned to the depositary bank. If the indorsing bank does not apply the depositary bank's indorsement, by agreement with the depositary bank it may apply its own indorsement as the depositary-bank indorsement. In that case, the depositary bank's own indorsement on the check (if any) should avoid the location reserved for the depositary bank. The actual depositary bank remains responsible for the availability and other requirements of subpart B, but the bank indorsing as depositary bank is considered the depositary bank for purposes of subpart C. The check will be returned, and notice of nonpayment will be given, to the bank indorsing as depositary bank.

Because the depositary 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 depositary bank may require the depositary bank to agree to take up the check if the check is not paid even if the depositary bank's indorsement does not appear on the check and it did not handle the check. The arrangement between the banks may constitute an agreement varying the effect of provisions of subpart C under section 229.37.

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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) *Truncation.* 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. A truncation 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 depositary bank, and the depositary bank's customer.

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

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

(2) the words "payable through" followed by the name and location of the payable through bank.

This provision shall be effective February 1, 1991, and after that date banks that use payable-through arrangements must require their customers to use checks that meet the requirements of this provision. A bank is responsible for damages under section 229.38 of this part to the extent that a check payable by it and not payable through another bank is labelled as provided in this section.

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COMMENTARY

SECTION 229.36—Presentment and Issuance of Checks

36(a) Payable-Through and Payable-at Checks

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 depositary bank.

36(b) Receipt at Bank Office or Processing Center

This paragraph seeks to facilitate efficient presentment of checks to promote early return or notice of nonpayment to the depositary bank, and clarifies the law as to the effect of presentment by routing number. This paragraph differs from section 229.32(b) because presentment of checks differs from delivery of returned checks.

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.

1. 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 locations for the presentment of forward-collection checks bearing different routing numbers, for purposes of this paragraph it only requests presentment of checks bearing a particular routing number at the location designated for receipt of forward-collection checks bearing that routing number.

2. 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 a publication of Rand McNally, *Key to Routing Numbers,* which lists a city and state address for each routing number. Checks are generally 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.

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.

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 would normally deliver all checks to one location. In cases where

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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.

3. 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.

4. 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 is generally in the control of the paying bank.

This paragraph may affect UCC 3-111 to the extent that the UCC requires presentment to occur at a place specified in the instrument.

36(c) Truncation

Truncation includes a variety of procedures in which the physical check is held or delayed by the depositary or collecting bank, and the information from the check is transmitted to the paying bank electronically. Presentment takes place when the paying bank receives the electronic transmission. This process has the potential to improve the efficiency of check processing, and express provision for truncation and electronic presentment is made in UCC 4-110 and 4-406(b). This paragraph allows truncation by agreement with the paying bank; however, such agreement may not prejudice the interests of prior parties to the check. For example, a truncation agreement may not extend the paying bank's time for return. Such an extension could damage the depositary bank, which must make funds available to its customers under mandatory availability schedules.

36(d) Liability of Bank During Forward Collection

This paragraph makes settlement between banks during forward collection final when made, subject to any deferrment 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 section 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 depositary 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 depositary 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).)

36(e) Issuance of Payable-Through Checks

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

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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 and location 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.

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 depositary 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 depositary 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 labelled 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 labelled 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 depositary bank that suffers a loss, such as lost interest or liability under subpart B, due to the mislabelled check. The bank by which the check is payable may be liable for additional damages if it fails to act in good faith.

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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.

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COMMENTARY

SECTION 229.37—Variation by Agreement

This section is similar to UCC section 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 section 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).

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 Uniform Commercial Code.

The following are examples of situations where variation by agreement is permissible, subject to the limitations of this section:

a. A depositary bank may authorize another bank to apply the other bank's indorsement to a check as the "depositary bank." (See section 229.35(d).)
b. A depositary bank may authorize returning banks to commingle qualified returned checks with forward-collection checks. (See section 229.32(a).)
c. A depositary 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 depositary bank's customer or prior indorser in the area of the depositary bank indorsement. (See section 229.38(d).)
d. A paying bank may require its customer to assume the paying bank's liability for delayed or missent checks where the delay or missending is caused by markings placed on the check by the paying bank's customer that obscured a properly placed indorsement of the depositary bank. (See section 229.38(d).)
e. 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).)
f. A bank may agree to accept returned checks without the indorsement of a prior bank. (See section 229.35(a).)

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.

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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 depositary bank, the depositary 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 depositary 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 depositary 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 depositary 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

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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.

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COMMENTARY

SECTION 229.38—Liability

38(a) Standard of Care; Liability; Measure of Damages

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 sections 1-203 and 4-103(a).

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 stated derives from UCC 4-103(e) and 4-202(c). This subpart does not absolve a collecting bank of liability to prior collecting banks under UCC section 4-201.

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.

This paragraph also states that it does not affect a paying bank's liability to its customer. Under UCC section 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.

38(b) Paying Bank's Failure to Make Timely Return

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.

38(c) Comparative Negligence

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).

1. If a depositary 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 depositary bank or find its routing number, the paying or returning bank's lia-

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bility to the depositary bank would be reduced or eliminated.

2. If the depositary 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 depositary bank or find its routing number, the paying or returning bank may not be liable to the depositary bank because the delay was not due to its negligence. Nonetheless, the collecting bank may be liable to the depositary bank to the extent that its negligence in indorsing the check caused the paying or returning bank's delay.
3. If a depositary 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 depositary 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 depositary bank, the returning bank may not be liable to the depositary bank because the delay was not due to its negligence. Nonetheless, the paying bank may be liable to the depositary bank to the extent that the printing, carbon band, or other material caused the delay.

38(d) Responsibility for Certain Aspects of Checks

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 indorsements are usually applied by automated equipment, it is not possible to avoid pre-existing matter on the back of the check. For example, bank indorsements are not required to avoid a carbon band or printed, stamped, or written terms or notations on the back of the check. Accordingly, this provision places responsibility on the paying bank or depositary bank, as appropriate, for keeping the back of the check clear for bank indorsements during forward collection and return.

The 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 the condition of the check when it is issued by it or its customer. (It would not be responsible for a check issued by a person other than such a bank or customer.) Thus, the paying bank would be responsible for the adverse effect (if any) of a carbon band or other material placed on the back of a check before issuance. The paying bank may contract with its customers with respect to such responsibility.

The depositary bank is responsible for the condition of the check arising after it is issued and before it is accepted by the depositary bank, as well as any condition of the check arising during its handling of the check. The depositary bank would be responsible for the adverse effect (if any) of a stamp placed on the check by its customer or a prior indorser. The depositary bank may refuse to accept a check whose back is unreasonably obscured or contract with its customers with respect to such responsibility.

Paragraph (d)(2) 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.

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 deposi-

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tary 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 depositary 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.

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.

38(e) Timeliness of Action

This paragraph excuses certain delays. It adopts the standard of UCC 4-109(b).

38(f) Exclusion

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.

38(g) Jurisdiction

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

38(h) Reliance on Board Rulings

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.

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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, depositary, 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 depositary bank.* If a paying or depositary bank finally pays a check or returned check and suspends payment 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 paying or depositary 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) *Finality of settlement.* If a paying or depositary 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.

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COMMENTARY

SECTION 229.39—Insolvency of Bank

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.

39(a) Duty of Receiver

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.

39(b) Preference Against Paying or Depositary Bank

This paragraph gives a bank a preferred claim against a closed paying or depositary bank that finally pays a 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.

39(c) Preference Against Paying, Collecting, or Depositary Bank

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.

39(d) Finality of Settlement

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.

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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.

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COMMENTARY

SECTION 229.40—Effect on Merger Transaction

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 depositary bank that has merged with the returning bank (§ 229.31(a)).
4. Where the depositary bank must accept returned checks (§ 229.32(a)).
5. Where the depositary bank must accept notice of nonpayment (§ 229.33(c)).
6. Where a paying bank must accept presentment of checks (§ 229.36(b)).

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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.

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COMMENTARY

SECTION 229.41—Relation to State Law

This section specifies that state law relating to the collection of checks is only preempted 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.

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SECTION 229.42—Exclusions

The expeditious return (§§ 229.30(a) and 229.31(a)) and notice of nonpayment (§ 229.33) 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.

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COMMENTARY

SECTION 229.42—Exclusions

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 and notice-of-nonpayment requirements of subpart C of this regulation. 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.

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APPENDIX A—Routing Number Guide to Next-Day-Availability Checks and Local Checks

Each bank is assigned a routing number by Rand McNally & Co., 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.

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[1]	0111
0113	0116
0114	0117
0115	0118
2110[2]	0119
2113	0211[3]
2114	2111
2115	2116
	2117
	2118
	2119
	2211[3]

Lewiston Office
0112
2112

Second Federal Reserve District
(Federal Reserve Bank of New York)

Buffalo Branch	Cranford Office
0220	0212
0223	0270
2220	2212
2223	

Jericho Office	Utica Office
0210	0213
0214	2213
0215	
0216	
0219	
0260	
2214	
2215	
2216	
2219	
2260	
2280	

[1] 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).

[2] 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.

[3] 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 depositary banks.

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Third Federal Reserve District
(Federal Reserve Bank of Philadelphia)

Head Office
0310
0311
0312
0313
0319
0360
2310
2311
2312
2313
2319
2360

Fourth Federal Reserve District
(Federal Reserve Bank of Cleveland)

Head Office
0410
0412
2410
2412

Cincinnati Branch
0420
0421
0422
0423
2420
2421
2422
2423

Pittsburgh Branch
0430
0432
0434
0433
2430
2432
2433
2434

Columbus Office
0440
0441
0442
2440
2441
2442

Fifth Federal Reserve District
(Federal Reserve Bank of Richmond)

Head Office
0510
0514
2510
2514

Baltimore Branch
0520
0521
0522
0540
0550
0560
0570
2520
2521
2522
2540
2550
2560
2570

Charlotte Branch
0530
0531
2530
2531

Columbia Office
0532
0539
2532
2539

Charleston Office
0515
0519
2515
2519

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
0650
0651
0652
0653
0654
0655
2650
2651
2652
2653
2654
2655

Miami Branch
0660
0670
2660
2670

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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	
2910	
2911	
2912	
0960	
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

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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	0810 0091 9
0212 0639 1	0820 0125 0
0215 0212 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
0530 1174 5	1040 0019 7
0610 0876 6	1110 1083 7
0640 0091 0	1119 1083 0
0654 0348 0	1130 1750 8
0710 0450 1	1210 0070 1
0724 1338 2	1211 3994 4
0730 0091 4	1222 4014 6
0740 0101 9	1250 0050 3

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APPENDIX B-1—Reduction of Schedules for Certain Nonlocal Checks Under the Temporary Schedule

A depositary 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.

Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Boston				
Depositary banks (0110, 2110) to:				5 business days
0210	0310	2260	2710	
0260	0360	2310		
0280	0710	2360		
Windsor Locks				
None				
Lewiston				
None				
New York				
Depositary banks (0210, 0260, 2260, 0215, 2215, 0216, 2216) to:				4 business days
0214	0280	2214	2219	
0219				
Depositary banks (0210, 0260, 2260, 0215, 2215, 0216, 2216) to:				5 business days
0110	0730	2110	2750	
0212	0740	2212	2810	
0213	0750	2213	2820	
0220	0810	2220	2830	
0270	0820	2360	2840	
0310	0830	2410	2910	
0360	0840	2420	2920	
0410	0910	2430	2960	
0420	0920	2440	3010	
0430	0960	2510	3020	
0440	1010	2519	3030	
0510	1020	2520	3040	
0519	1030	2530	3110	
0520	1040	2539	3120	
0530	1110	2610	3130	
0539	1120	2620	3140	
0610	1130	2630	3210	
0620	1140	2640	3220	
0630	1210	2650	3223	
0640	1220	2660	3230	
0650	1223	2710	3240	
0660	1230	2720	3250	
0710	1240	2730		
0720	1250	2740		

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Jericho				
Depositary banks (0214, 2214, 0219, 2219, 0280) to:				4 business days
0210	0260	2260		
Depositary banks (0214, 2214, 0219, 2219, 0280) to:				5 business days
0110	0720	2110	2740	
0212	0730	2212	2750	
0213	0740	2213	2810	
0215	0750	2215	2820	
0216	0810	2216	2830	
0220	0820	2220	2840	
0270	0830	2360	2910	
0310	0840	2410	2920	
0360	0910	2420	2960	
0410	0920	2430	3010	
0420	0960	2440	3020	
0430	1010	2510	3030	
0440	1020	2519	3040	
0510	1030	2520	3110	
0519	1040	2530	3120	
0520	1110	2539	3130	
0530	1120	2610	3140	
0539	1130	2620	3210	
0610	1140	2630	3220	
0620	1210	2640	3223	
0630	1220	2650	3230	
0640	1223	2660	3240	
0650	1230	2710	3250	
0660	1240	2720		
0710	1250	2730		

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Cranford				
Depositary banks (0212, 0270, 2212) to:				4 business days
0210	0260	0280	2260	
Depositary banks (0212, 2212, 0270) to:				5 business days
0110	0720	2110	2730	
0213	0730	2213	2740	
0214	0740	2214	2750	
0215	0750	2215	2810	
0216	0810	2216	2820	
0219	0820	2219	2830	
0220	0830	2220	2840	
0310	0840	2360	2910	
0360	0910	2410	2920	
0410	0920	2420	2960	
0420	0960	2430	3010	
0430	1010	2440	3020	
0440	1020	2510	3030	
0510	1030	2519	3040	
0519	1040	2520	3110	
0520	1110	2530	3120	
0530	1120	2539	3130	
0539	1130	2610	3140	
0610	1140	2620	3210	
0620	1210	2630	3220	
0630	1220	2640	3223	
0640	1223	2650	3230	
0650	1230	2660	3240	
0660	1240	2710	3250	
0710	1250	2720		

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Buffalo				
Depositary banks (0220, 2220, 0223, 2223) to:				4 business days
0210	0260	0280	2260	
0212	0270	2212		
Depositary banks (0220, 2220, 0223, 2223) to:				5 business days
0110	0730	2213	2750	
0213	0740	2214	2810	
0214	0750	2215	2820	
0215	0810	2216	2830	
0216	0820	2219	2840	
0219	0830	2360	2910	
0310	0840	2410	2920	
0360	0910	2420	2960	
0410	0920	2430	3010	
0420	0960	2440	3020	
0430	1010	2510	3030	
0440	1020	2519	3040	
0510	1030	2520	3110	
0519	1040	2530	3120	
0520	1110	2539	3130	
0530	1120	2610	3140	
0539	1130	2620	3210	
0610	1140	2630	3220	
0620	1210	2640	3223	
0630	1220	2650	3230	
0640	1223	2660	3240	
0650	1230	2710	3250	
0660	1240	2720		
0710	1250	2730		
0720	2110	2740		

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Utica				
Depositary banks (0213, 2213) to:				4 business days
0210	0260	0280	2260	
0212	0270	2212		
Depositary banks (0213, 2213) to:				5 business days
0110	0730	2214	2750	
0214	0740	2215	2810	
0215	0750	2216	2820	
0216	0810	2219	2830	
0219	0820	2220	2840	
0220	0830	2360	2910	
0310	0840	2410	2920	
0360	0910	2420	2960	
0410	0920	2430	3010	
0420	0960	2440	3020	
0430	1010	2510	3030	
0440	1020	2519	3040	
0510	1030	2520	3110	
0519	1040	2530	3120	
0520	1110	2539	3130	
0530	1120	2610	3140	
0539	1130	2620	3210	
0610	1140	2630	3220	
0620	1210	2640	3223	
0630	1220	2650	3230	
0640	1223	2660	3240	
0650	1230	2710	3250	
0660	1240	2720		
0710	1250	2730		
0720	2110	2740		
Philadelphia				
Depositary banks (0310, 2310, 0360, 2360) to:				5 business days
0110	0640	2110	2650	
0210	0650	2220	2660	
0220	0660	2260	2710	
0260	0710	2410	2720	
0410	0720	2420	2730	
0420	0730	2430	2740	
0430	0740	2440	2750	
0440	0750	2510	2810	
0510	0810	2519	2830	
0519	0830	2520	2840	
0520	0840	2530	2910	
0530	0910	2539	2960	
0539	0960	2610	3010	
0610	1010	2620	3020	
0620	1020	2630	3040	
0630	1040	2640		

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Cleveland				
Depositary banks (0410, 2410) to:				5 business days
0110	0740	2220	2820	
0210	0750	2260	2830	
0220	0810	2310	2840	
0260	0820	2360	2910	
0280	0830	2420	2920	
0310	0840	2430	2960	
0360	0910	2440	3010	
0420	0920	2510	3020	
0430	0960	2519	3030	
0440	1010	2520	3040	
0510	1020	2530	3110	
0519	1030	2539	3120	
0520	1040	2610	3130	
0530	1110	2620	3140	
0539	1120	2630	3210	
0610	1130	2640	3220	
0620	1140	2650	3223	
0630	1210	2660	3230	
0640	1220	2710	3240	
0650	1223	2720	3250	
0660	1230	2730		
0710	1240	2740		
0720	1250	2750		
0730	2110	2810		
Cincinnati				
Depositary banks (0420, 2420) to:				5 business days
0110	0730	2110	2749	
0210	0740	2220	2750	
0220	0749	2260	2810	
0260	0750	2310	2813	
0280	0810	2360	2830	
0310	0813	2410	2839	
0360	0830	2430	2840	
0410	0839	2440	2863	
0430	0840	2441	2910	
0440	0863	2442	2960	
0441	0910	2510	3010	
0442	0960	2519	3020	
0510	1010	2520	3030	
0519	1020	2530	3040	
0520	1030	2539	3110	
0530	1040	2610	3130	
0539	1110	2620	3140	
0610	1130	2630	3210	
0620	1140	2640	3220	
0630	1210	2650	3223	
0640	1220	2660	3230	
0650	1223	2710	3240	
0660	1230	2720	3250	
0710	1240	2730		
0720	1250	2740		

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Columbus				
Depositary banks (0440, 2440) to:				5 business days
0110	0730	1250	2740	
0210	0740	2110	2750	
0220	0750	2220	2810	
0260	0810	2260	2820	
0280	0820	2310	2830	
0310	0830	2360	2840	
0360	0840	2410	2910	
0410	0910	2420	2920	
0420	0920	2430	2960	
0430	0960	2510	3010	
0510	1010	2519	3020	
0519	1020	2520	3030	
0520	1030	2530	3040	
0530	1040	2539	3110	
0539	1110	2610	3120	
0610	1120	2620	3130	
0620	1130	2630	3140	
0630	1140	2640	3210	
0640	1210	2650	3220	
0650	1220	2660	3223	
0660	1223	2710	3230	
0710	1230	2720	3240	
0720	1240	2730	3250	
Pittsburgh				
Depositary banks (0430, 2430) to:				5 business days
0110	0730	1250	2740	
0210	0740	2110	2750	
0220	0750	2220	2810	
0260	0810	2260	2820	
0280	0820	2310	2830	
0310	0830	2360	2840	
0360	0840	2410	2910	
0410	0910	2420	2920	
0420	0920	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3020	
0519	1020	2520	3030	
0520	1030	2530	3040	
0530	1040	2539	3110	
0539	1110	2620	3120	
0610	1120	2610	3130	
0620	1130	2630	3140	
0630	1140	2640	3210	
0640	1210	2650	3220	
0650	1220	2660	3223	
0660	1223	2710	3230	
0710	1230	2720	3240	
0720	1240	2730	3250	

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Richmond				
Depositary banks (0510, 2510) to:				**5 business days**
0110	0620	1140	2630	
0210	0630	2110	2640	
0220	0640	2220	2650	
0260	0650	2260	2660	
0280	0660	2310	2710	
0310	0710	2360	2720	
0360	0720	2410	2730	
0410	0730	2420	2740	
0420	0740	2430	2750	
0430	0750	2440	2810	
0440	0810	2515	2820	
0515	0820	2519	2830	
0519	0830	2520	2840	
0520	0840	2521	2910	
0521	0910	2522	2960	
0522	0960	2530	3010	
0530	1010	2531	3020	
0531	1020	2539	3030	
0539	1030	2550	3040	
0550	1040	2560	3110	
0560	1110	2570	3120	
0570	1120	2610	3130	
0610	1130	2620	3140	
Baltimore				
Depositary banks (0520, 2520) to:				**5 business days**
0110	0640	2110	2660	
0210	0650	2220	2710	
0220	0660	2260	2720	
0260	0710	2310	2730	
0280	0720	2360	2740	
0310	0730	2410	2750	
0360	0740	2420	2810	
0410	0750	2430	2830	
0420	0810	2440	2840	
0430	0830	2510	2910	
0440	0840	2530	2960	
0510	0910	2539	3010	
0530	0960	2610	3020	
0539	1010	2620	3040	
0610	1020	2630	3240	
0620	1040	2640		
0630	1240	2650		

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Charlotte				
Depositary banks (0530, 2530) to:				5 business days
0110	0660	1140	2710	
0210	0710	2110	2720	
0220	0720	2220	2730	
0260	0730	2260	2740	
0280	0740	2310	2750	
0310	0750	2360	2810	
0360	0810	2410	2820	
0410	0820	2420	2830	
0420	0830	2430	2840	
0430	0840	2440	2910	
0440	0910	2510	2960	
0510	0960	2520	3010	
0520	1010	2539	3020	
0539	1020	2610	3030	
0610	1030	2620	3040	
0620	1040	2630	3110	
0630	1110	2640	3120	
0640	1120	2650	3130	
0650	1130	2660	3140	
Columbia				
Depositary banks (0539, 2539) to:				5 business days
0110	0660	2110	2720	
0210	0710	2220	2730	
0220	0720	2260	2740	
0260	0730	2310	2750	
0280	0740	2360	2810	
0310	0750	2410	2820	
0360	0810	2420	2830	
0410	0820	2430	2840	
0420	0830	2440	2910	
0430	0840	2510	2960	
0440	0910	2519	3010	
0510	0960	2520	3020	
0519	1010	2530	3030	
0520	1020	2610	3040	
0530	1030	2620	3110	
0610	1040	2630	3120	
0620	1110	2640	3130	
0630	1120	2650	3140	
0640	1130	2660		
0650	1140	2710		

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Charleston				
Depositary banks (0519, 2519) to:				5 business days
0110	0630	1240	2640	
0210	0640	2110	2650	
0220	0650	2220	2660	
0260	0660	2260	2710	
0280	0710	2310	2720	
0310	0720	2360	2730	
0360	0730	2410	2740	
0410	0740	2420	2750	
0420	0750	2430	2810	
0430	0810	2440	2830	
0440	0830	2510	2840	
0510	0840	2520	2910	
0520	0910	2530	2960	
0530	0960	2539	3010	
0539	1010	2610	3020	
0610	1020	2620	3040	
0620	1040	2630	3240	
Atlanta				
Depositary banks (0610, 2610) to:				5 business days
0110	0720	2110	2740	
0210	0730	2220	2750	
0220	0740	2260	2810	
0260	0750	2310	2820	
0280	0810	2360	2830	
0310	0820	2410	2840	
0360	0830	2420	2910	
0410	0840	2430	2960	
0420	0910	2440	3010	
0430	0960	2510	3020	
0440	1010	2519	3030	
0510	1020	2520	3040	
0519	1030	2530	3110	
0520	1040	2539	3120	
0530	1110	2620	3130	
0539	1120	2630	3140	
0620	1130	2640	3210	
0630	1140	2650	3220	
0640	1210	2660	3223	
0650	1220	2710	3240	
0660	1223	2720		
0710	1240	2730		

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Birmingham				
Depositary banks (0620, 2620) to:				4 business days
0651	2651			
Depositary banks (0620, 2620) to:				5 business days
0110	0730	1250	2740	
0210	0740	2110	2750	
0220	0750	2220	2810	
0260	0810	2260	2820	
0280	0820	2310	2830	
0310	0830	2360	2840	
0360	0840	2410	2910	
0410	0910	2420	2920	
0420	0920	2430	2960	
0430	0960	2440	3010	
0440	1010	2510	3020	
0510	1020	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2630	3140	
0630	1140	2640	3210	
0640	1210	2650	3220	
0650	1220	2660	3223	
0660	1223	2710	3230	
0710	1230	2720	3240	
0720	1240	2730	3250	
Jacksonville				
Depositary banks (0630, 2630) to:				5 business days
0110	0660	1140	2710	
0210	0710	2110	2720	
0220	0720	2220	2730	
0260	0730	2260	2740	
0280	0740	2310	2750	
0310	0750	2360	2810	
0360	0810	2410	2820	
0410	0820	2420	2830	
0420	0830	2430	2840	
0430	0840	2440	2910	
0440	0910	2510	2920	
0510	0920	2519	2960	
0519	0960	2520	3010	
0520	1010	2530	3020	
0530	1020	2539	3030	
0539	1030	2610	3040	
0610	1040	2620	3110	
0620	1110	2640	3120	
0640	1120	2650	3130	
0650	1130	2660	3140	

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Miami				
Depositary banks (0660, 2660) to:				5 business days
0110	0710	2110	2730	
0210	0720	2220	2740	
0220	0730	2260	2750	
0260	0740	2310	2810	
0280	0750	2360	2820	
0310	0810	2410	2830	
0360	0820	2420	2840	
0410	0830	2430	2910	
0420	0840	2440	2920	
0430	0910	2510	2960	
0440	0920	2519	3010	
0510	0960	2520	3020	
0519	1010	2530	3030	
0520	1020	2610	3040	
0530	1030	2620	3110	
0610	1040	2630	3120	
0620	1110	2640	3130	
0630	1120	2650	3140	
0640	1130	2710		
0650	1140	2720		
Nashville				4 business days
0613	2613			
Depositary banks (0640, 2640) to:				5 business days
0530	0630	2530	2630	
0539	0650	2539	2650	
0610	0660	2610	2660	
0620	0840	2620	2840	

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
New Orleans				
Depositary banks (0650, 2650) to:				5 business days
0110	0740	2110	2810	
0210	0750	2220	2820	
0220	0810	2260	2830	
0260	0820	2310	2840	
0280	0830	2360	2910	
0310	0840	2410	2920	
0360	0910	2420	2960	
0410	0920	2430	3010	
0420	0960	2440	3020	
0430	1010	2510	3030	
0440	1020	2519	3040	
0510	1030	2520	3110	
0519	1040	2530	3120	
0520	1110	2539	3130	
0530	1120	2610	3140	
0539	1130	2620	3210	
0610	1140	2630	3220	
0620	1210	2640	3223	
0630	1220	2710	3230	
0640	1223	2720	3240	
0710	1230	2730	3250	
0720	1240	2740		
0730	1250	2750		
Chicago				
Depositary banks (0710, 2710) to:				5 business days
0110	0730	1250	2740	
0210	0740	2110	2750	
0220	0750	2220	2810	
0260	0810	2260	2820	
0280	0820	2310	2830	
0310	0830	2360	2840	
0360	0840	2410	2910	
0410	0910	2420	2920	
0420	0920	2430	2960	
0430	0960	2440	3010	
0440	1010	2510	3020	
0510	1020	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3223	
0640	1220	2650	3230	
0650	1223	2660	3240	
0660	1230	2720	3250	
0720	1240	2730		

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Detroit				
Depositary banks (0720, 2720) to:				5 business days
0110	0730	1250	2740	
0210	0740	2110	2750	
0220	0750	2220	2810	
0260	0810	2260	2820	
0280	0820	2310	2830	
0310	0830	2360	2840	
0360	0840	2410	2910	
0410	0910	2420	2920	
0420	0920	2430	2960	
0430	0960	2440	3010	
0440	1010	2510	3020	
0510	1020	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2730	3250	
Des Moines				
Depositary banks (0730, 2730) to:				5 business days
0110	0720	1250	2740	
0210	0740	2110	2750	
0220	0750	2220	2810	
0260	0810	2260	2820	
0280	0820	2310	2830	
0310	0830	2360	2840	
0360	0840	2410	2910	
0410	0910	2420	2920	
0420	0920	2430	2960	
0430	0960	2440	3010	
0440	1010	2510	3020	
0510	1020	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Indianapolis				
Depositary banks (0740, 2740) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2750	
0220	0750	2220	2810	
0260	0810	2260	2820	
0280	0820	2310	2830	
0310	0830	2360	2840	
0360	0840	2410	2910	
0410	0910	2420	2920	
0420	0920	2430	2960	
0430	0960	2440	3010	
0440	1010	2510	3020	
0510	1020	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	
Milwaukee				
Depositary banks (0750, 2750) to:				5 business days
0110	0720	2110	2740	
0210	0730	2220	2810	
0220	0740	2260	2820	
0260	0810	2310	2830	
0280	0820	2360	2840	
0310	0830	2410	2910	
0360	0840	2420	2920	
0410	0910	2430	2960	
0420	0920	2440	3010	
0430	0960	2510	3020	
0440	1010	2519	3030	
0510	1020	2520	3040	
0519	1030	2530	3110	
0520	1040	2539	3120	
0530	1110	2610	3130	
0539	1120	2620	3140	
0610	1130	2630	3210	
0620	1140	2640	3220	
0630	1210	2650	3223	
0640	1220	2660	3230	
0650	1223	2710	3240	
0660	1240	2720	3250	
0710	1250	2730		

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
St. Louis				
Depositary banks (0810, 2810) to:				5 business days
0110	0660	1240	2710	
0210	0710	2110	2720	
0220	0720	2220	2730	
0260	0730	2260	2740	
0280	0740	2310	2750	
0310	0750	2360	2820	
0360	0820	2410	2830	
0410	0830	2420	2840	
0420	0840	2430	2910	
0430	0910	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3020	
0519	1020	2520	3030	
0520	1030	2530	3040	
0530	1040	2539	3110	
0539	1110	2610	3120	
0610	1120	2620	3130	
0620	1130	2630	3140	
0630	1140	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3240	
Little Rock				
Depositary banks (0820, 2820) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2830	
0310	0830	2360	2840	
0360	0840	2410	2910	
0410	0910	2420	2920	
0420	0920	2430	2960	
0430	0960	2440	3010	
0440	1010	2510	3020	
0510	1020	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Louisville				
Depositary banks (0830, 2830) to:				5 business days
0110	0620	1240	2630	
0210	0630	2110	2640	
0220	0640	2220	2650	
0260	0650	2260	2660	
0280	0660	2310	2710	
0310	0710	2360	2720	
0360	0720	2410	2730	
0410	0730	2420	2740	
0420	0740	2430	2750	
0430	0750	2440	2810	
0440	0810	2510	2840	
0510	0840	2519	2910	
0519	0910	2520	2960	
0520	0960	2530	3010	
0530	1010	2539	3020	
0539	1020	2610	3040	
0610	1040	2620	3240	
Memphis				
Depositary banks (0840, 2840)				5 business days
0110	0650	2110	2710	
0210	0660	2220	2720	
0220	0710	2260	2730	
0260	0720	2310	2740	
0280	0730	2360	2750	
0310	0740	2410	2810	
0360	0750	2420	2820	
0410	0810	2430	2910	
0420	0820	2440	2960	
0430	0910	2510	3010	
0440	0960	2519	3020	
0510	1010	2520	3030	
0519	1020	2530	3040	
0520	1030	2539	3110	
0530	1040	2610	3120	
0539	1110	2620	3130	
0610	1120	2630	3140	
0620	1130	2640	3240	
0630	1140	2650		
0640	1240	2660		

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Minneapolis				
Depositary banks (0910, 2910, 0960, 2960) to:				5 business days
0110	0650	1240	2660	
0210	0660	2110	2710	
0220	0710	2220	2720	
0260	0720	2260	2730	
0280	0730	2310	2740	
0310	0740	2360	2750	
0360	0750	2410	2810	
0410	0810	2420	2820	
0420	0820	2430	2830	
0430	0830	2440	2840	
0440	0840	2510	3010	
0510	1010	2520	3020	
0520	1020	2530	3030	
0530	1030	2539	3040	
0539	1040	2610	3110	
0610	1110	2620	3120	
0620	1120	2630	3130	
0630	1130	2640	3140	
0640	1140	2650	3240	
Helena				
None				
Kansas City				4 business days
0865	2865			
Depositary banks (1010, 3010) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2820	
0310	0820	2360	2830	
0360	0830	2410	2840	
0410	0840	2420	2910	
0420	0910	2430	2920	
0430	0920	2440	2960	
0440	0960	2510	3020	
0510	1020	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Denver				
Depositary banks (1020, 3020) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2820	
0310	0820	2360	2830	
0360	0830	2410	2840	
0410	0840	2420	2910	
0420	0910	2430	2920	
0430	0920	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3030	
0519	1030	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	
Oklahoma City				
Depositary banks (1030, 3030) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2820	
0310	0820	2360	2830	
0360	0830	2410	2840	
0410	0840	2420	2910	
0420	0910	2430	2920	
0430	0920	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3020	
0519	1020	2520	3040	
0520	1040	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Omaha				
Depositary banks (1040, 3040) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2820	
0310	0820	2360	2830	
0360	0830	2410	2840	
0410	0840	2420	2910	
0420	0910	2430	2920	
0430	0920	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3020	
0519	1020	2520	3030	
0520	1030	2530	3110	
0530	1110	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	
Dallas				
Depositary banks (1110, 3110) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2820	
0310	0820	2360	2830	
0360	0830	2410	2840	
0410	0840	2420	2910	
0420	0910	2430	2920	
0430	0920	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3020	
0519	1020	2520	3030	
0520	1030	2530	3040	
0530	1040	2539	3120	
0539	1120	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Houston				
Depositary banks (1130, 3130) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2820	
0310	0820	2360	2830	
0360	0830	2410	2840	
0410	0840	2420	2910	
0420	0910	2430	2920	
0430	0920	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3020	
0519	1020	2520	3030	
0520	1030	2530	3040	
0530	1040	2539	3110	
0539	1110	2610	3120	
0610	1120	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	
San Antonio				
Depositary banks (1140, 3140) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2820	
0310	0820	2360	2830	
0360	0830	2410	2840	
0410	0840	2420	2910	
0420	0910	2430	2920	
0430	0920	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3020	
0519	1020	2520	3030	
0520	1030	2530	3040	
0530	1040	2539	3110	
0539	1110	2610	3120	
0610	1120	2620	3130	
0620	1130	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	

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Federal Reserve Office				*Number of business days following the banking day funds are deposited*
El Paso				
Depositary banks (1120, 3120) to:				5 business days
0110	0720	1250	2730	
0210	0730	2110	2740	
0220	0740	2220	2750	
0260	0750	2260	2810	
0280	0810	2310	2820	
0310	0820	2360	2830	
0360	0830	2410	2840	
0410	0840	2420	2910	
0420	0910	2430	2920	
0430	0920	2440	2960	
0440	0960	2510	3010	
0510	1010	2519	3020	
0519	1020	2520	3030	
0520	1030	2530	3040	
0530	1040	2539	3110	
0539	1110	2610	3130	
0610	1130	2620	3140	
0620	1140	2630	3210	
0630	1210	2640	3220	
0640	1220	2650	3223	
0650	1223	2660	3230	
0660	1230	2710	3240	
0710	1240	2720	3250	
San Francisco				
Depositary banks (1210, 3210) to:				5 business days
1220	1223	3220	3223	
Los Angeles				
Depositary banks (1220, 1223, 3220, 3223) to:				5 business days
1210	3210			
Portland				
Depositary banks (1230, 3220) to:				5 business days
1250	3250			
Salt Lake City				
None				
Seattle				
Depositary banks (1250, 3250) to:				5 business days
1230	3230			

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APPENDIX B-2—Reduction of Schedules for Certain Nonlocal Checks Under the Permanent Schedule

A depositary 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.

Federal Reserve Office				*Number of business days following the banking day funds are deposited*
Cranford				3 business days
0210	0260	0280	2260	
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 Forms, Clauses, and Notices

This appendix contains model disclosure forms, clauses, and notices to facilitate compliance with the disclosure requirements of the regulation. Although use of these forms, clauses, and notices is not required, banks using them properly to make disclosures required by the regulation are deemed to be in compliance.

Model Specific-Policy Disclosure Forms

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 (temporary schedule)
C–4 Holds to statutory limits on all deposits (temporary schedule)
C–5 Holds to statutory limits on all deposits (temporary schedule, includes chart)
C–6 Holds on all deposits, but for less time than the statutory limits, and case-by-case holds to the statutory limits (temporary schedule)
C–7 Holds to statutory limits on all deposits (permanent schedule)

Model Clauses

C–8 Holds on other funds (check cashing)
C–8A Holds on other funds (other account)
C–9 Appendix B availability (nonlocal checks)
C–10 Automated teller machine deposits (permanent schedule, extended hold)
C–11 Cash-withdrawal limitation (temporary schedule)
C–11A Cash-withdrawal limitation (temporary schedule, clearinghouse member)
C–11B Cash-withdrawal limitation (permanent schedule)
C–12 Credit union interest-payment policy

Model Notices

C–13 Exception hold notice
C–13A Reasonable-cause hold notice
C–13B One-time notice for large-deposit and redeposited-check exception holds
C–13C One-time notice for repeated-overdraft exception holds
C–14 Case-by-case hold notice
C–15 Notice at locations where employees accept consumer deposits
C–15A Notice at locations where employees accept consumer deposits (case-by-case holds)
C–16 Notice at automated teller machines
C–17 Notice at automated teller machines (delayed receipt)
C–18 Deposit-slip notice
C–19 Payable-through checks
C–19A Payable-through checks

C–1—Next-Day Availability

YOUR ABILITY TO WITHDRAW FUNDS
at [*bank name and location*]

Our policy is to make funds from your 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.

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

YOUR ABILITY TO WITHDRAW FUNDS
at [*bank name and location*]

Our policy is to make funds from your deposits available to you on the first business day after the day we receive your deposit. Elec-

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tronic 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 communications or computer 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 (Permanent Schedule)

YOUR ABILITY TO WITHDRAW FUNDS
at [*bank name and location*]

Our policy is to make funds from your 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. However, the first $100 of your deposits will be available on the first business day.

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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 communications or computer 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 (Temporary Schedule)

YOUR ABILITY TO WITHDRAW FUNDS

at [*bank name and location*]

Our policy is to delay the availability of funds that you deposit in your account. 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*])

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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:

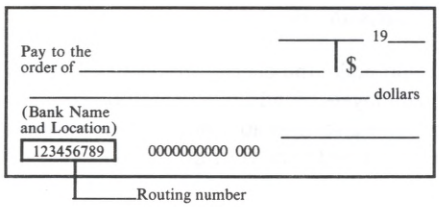
- cash
- state and local government checks that are payable to you (*if* you use a special deposit slip available from [*where deposit slip may be obtained*])
- cashier's, certified, and teller's checks that are payable to you (*if* you use a special deposit slip available from [*where deposit slip may 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.

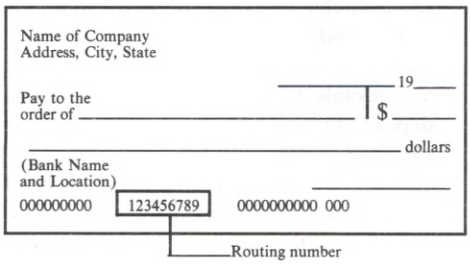
Other Check Deposits

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



Business Check



If the first four digits of the routing number (1234 in the examples above) are [*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 third 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 Thursday.

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 seventh 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 Wednesday of the following week. If you deposit both categories of checks, $100 from the checks will be available on the first business day after the day of your deposit, not $100 from each category of check.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than $5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.

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- There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the [*number*] business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the [*number*] business day after the day of your deposit.

C–5—Holds to Statutory Limits on All Deposits (Permanent Schedule, Includes Chart)

YOUR ABILITY TO WITHDRAW FUNDS
at [*bank name and location*]

Our policy is to delay the availability of funds that you deposit in your account. 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

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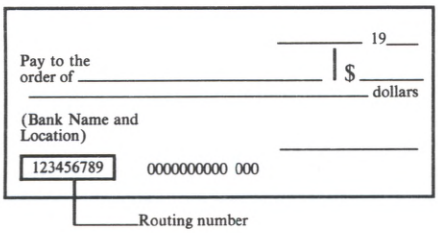
If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day of your deposit.

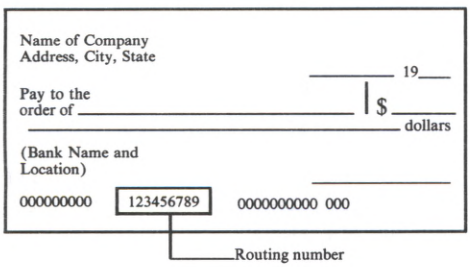
Other Check Deposits

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



Business Check



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 the 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 communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the [*number*] business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the [*number*] business day after the day of your deposit.

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

C–6—Holds on All Deposits, but for Less Time Than the Statutory Limits, and Case-by-Case Holds to the Statutory Limits (Temporary Schedule)

YOUR ABILITY TO WITHDRAW FUNDS
at [*bank name and location*]

Our policy is to delay the availability of funds that you deposit in your account. 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.

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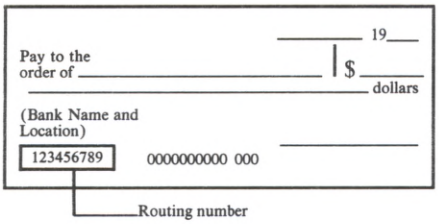
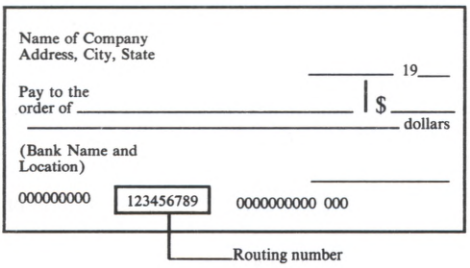
Other Check Deposits

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



Business Check



If the first four digits of the routing number (1234 in the examples above) are [*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 [*number*] 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 [*day*].

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 [*number*] 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 [*day*].

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

In some cases, we will not make all of the funds that you deposit by check available at the times shown above. Depending on the type of check that you deposit, funds may not be available until the seventh business day after the day of your deposit. However, the first $100 of your deposits will be available on the first business day after the day of your deposit.

If we are not going to make all funds from your deposit available at the times shown above, 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 a bank employee, 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 communications or computer equipment.

We will notify you if we delay your ability

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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–7—Holds to Statutory Limits on All Deposits (Permanent Schedule)

YOUR ABILITY TO WITHDRAW FUNDS
at [*bank name and location*]

Our policy is to delay the availability of funds that you deposit in your account. 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

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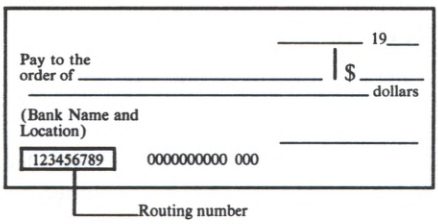
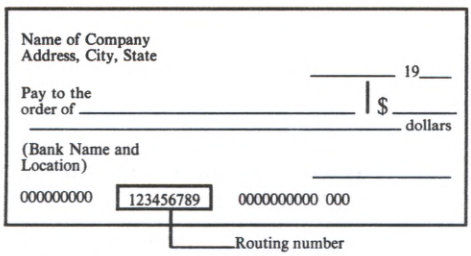
nonlocal check, look at the routing number on the check:

Personal Check



Business Check



If the first four digits of the routing number (1234 in the examples above) are [*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. 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 communications or computer 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

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$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–8—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–8A—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–9—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–10—Automated Teller Machine Deposits (Permanent Schedule, 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–11—Cash-Withdrawal Limitation (Temporary Schedule)

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 to pay checks you have written to others. All of the remaining funds will be available on the third business day after the day of your deposit to pay checks you have written to others.

The first $100 will also be available for withdrawal in cash on the first business day after the day of your deposit. An additional $400 of the deposit may be withdrawn in cash at or after [*time no later than 5:00 p.m.*] on the third business day after the day of your deposit. All of the remaining funds will be available for cash withdrawal on the fourth 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 to pay checks to others and to withdraw in cash. The rest is available to pay checks on Thursday. At or after [*time no later than 5:00 p.m.*] on Thursday you may withdraw another $400 of the deposit in cash, and you may withdraw the rest in cash on Friday.

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 for cash withdrawal and to pay checks you have written to others. The remainder will be available on the seventh business day

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after the day of your deposit for both of these purposes.

For example, if you deposit a nonlocal check on a Monday, $100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The remaining funds from the deposit are available on Wednesday of the following week for cash withdrawal and to pay checks written to others.

C–11A—Cash-Withdrawal Limitation (Temporary Schedule, Clearinghouse Member)

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 for cash withdrawal and to pay checks you have written to others. The remainder generally will be available on the third business day after the day of your deposit for both of these purposes.

For example, if you deposit a local check of $700 on a Monday, $100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The remaining $600 is available on Thursday for cash withdrawal and to pay checks you have written to others.

In some cases, however, depending on the bank on which the check is drawn, special limitations apply to withdrawals in cash. The first $100 will be available for cash withdrawal on the first business day after the day of your deposit. An additional $400 of the deposit may be withdrawn in cash at or after [*time no later than 5:00 p.m.*] on the third business day after the day of your deposit. All of the remaining funds will be available for cash withdrawal on the fourth business day after the day of your deposit.

In these cases, for example, if you deposit a local check of $700 on a Monday, $100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The rest is available to pay checks on Thursday. At or after [*time no later than 5:00 p.m.*] on Thursday you may withdraw another $400 of the deposit in cash, and you may withdraw the rest in cash on Friday.

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 for cash withdrawal and to pay checks you have written to others. The remainder will be available on the seventh business day after the day of your deposit for both of these purposes.

For example, if you deposit a nonlocal check on a Monday, $100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The remaining funds from the deposit are available on Wednesday of the following week for cash withdrawal and to pay checks written to others.

C–11B—Cash-Withdrawal Limitation (Permanent Schedule)

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 to pay checks you have written to others. All of the remaining funds will be available on the second business day after the day of your deposit to pay checks you have written to others.

The first $100 will also be available for withdrawal in cash on the first business day after the day of your deposit. An additional $400 of the deposit may be withdrawn in cash at or after [*time no later than 5:00 p.m.*] on the second business day after the day of your deposit. All of the remaining funds will be available for cash withdrawal on the third 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 to pay checks to others and to withdraw in cash. The rest is available to pay checks on Wednesday. At or after [*time no later than 5:00 p.m.*] on Wednesday you may withdraw another $400 of the deposit in cash, and you may withdraw the rest in cash on Thursday.

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 to pay checks you have written to others. All of the remaining funds will be available on the fifth business day after the day of your deposit to pay checks you have written to others.

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The first $100 will also be available for withdrawal in cash on the first business day after the day of your deposit. An additional $400 of the deposit may be withdrawn in cash at or after [*time no later than 5:00 p.m.*] on the fifth business day after the day of your deposit. All of the remaining funds will be available for cash withdrawal on the sixth business day after the day of your deposit.

For example, if you deposit a nonlocal check of $700 on a Monday, $100 of the deposit is available on Tuesday to pay checks to others and to withdraw in cash. The rest is available to pay checks on Monday of the following week. At or after [*time no later than 5:00 p.m.*] on that Monday, you may withdraw another $400 of the deposit in cash. The rest may be withdrawn in cash on Tuesday of that following week.

C–12—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–13—Exception Hold Notice

NOTICE OF HOLD

Account number: [*number*] Date of deposit: [*date*]

Amount of deposit: [*amount*]

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 communications or computer equipment, has occurred.

____ We believe a check you deposited will not be paid for the following reasons:

_____

_____

_____

(If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, [*description of procedure for obtaining refund*].)

C–13A—Reasonable-Cause Hold Notice

NOTICE OF HOLD

Account number: [*number*] Date of deposit: [*date*]

Amount of deposit: [*amount*]

We are delaying the availability of the funds you deposited by the following check:

[*description of check, such as amount and drawer*]

These funds will be available on the [*number*] business day after the day of your deposit. The reason for the delay is explained below:

____ We received notice that the check is being returned unpaid.

____ We have confidential information that indicates that the check may not be paid.

____ The check is drawn on an account with repeated overdrafts.

____ We are unable to verify the indorsement of a joint payee.

____ Some information on the check is not consistent with other information on the check.

____ There are erasures or other apparent alterations on the check.

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____ 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–13B—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 for checks drawn on [*bank*], the [*number*] business day for local checks and [*number*] business day 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*], or checks that generally receive next-day availability, the excess will be calculated by first adding together the [ ], then the [ ], then the [ ], then the [ ].
- A check that has been returned unpaid, the funds will generally be available on the [*number*] business day for checks drawn on [*bank*], the [*number*] business day for local checks and the [*number*] business day for nonlocal checks after the day of your deposit. 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–13C—One-Time Notice for Repeated-Overdraft Exception Hold

NOTICE OF HOLD

Account Number: [*Number*] Date of Notice: [*Date*]

We are delaying the availability of checks deposited into your account due to repeated overdrafts of your account. For the next six months, deposits will generally be available on the [*number*] business day for checks drawn on [*bank*], the [*number*] business day for local checks, the [*number*] business day for nonlocal checks after the day of your deposit. 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–14—Case-by-Case Hold Notice

NOTICE OF HOLD

Account number: [*number*] Date of deposit: [*date*]

Amount of deposit: [*amount*]

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.

(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*].)

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C–15—Notice at Locations Where Employees Accept Consumer Deposits (Permanent Schedule)

FUNDS-AVAILABILITY POLICY

Description of Deposit	*When Funds Can Be Withdrawn by Cash or Check*
Direct deposits	The day we receive the deposit
Cash; wire transfers; cashier's, certified, teller's, or government checks; checks on [*bank name*] (unless [*any limitation related to branches in different check-processing regions*]), and the first $100 of a day's deposits of other checks	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–15A—Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds) (Permanent Schedule)

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–16—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–17—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–18—Deposit-Slip Notice

Deposits may not be available for immediate withdrawal.

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COMMENTARY

APPENDIX C

Appendix C contains model forms and clauses that may be used by banks to meet their disclosure responsibilities under the regulation. Banks using the model forms and clauses properly will be in compliance with the disclosure requirements of the regulation.

Certain information that must be inserted by a bank using the forms is within brackets in the text of the forms. Some forms contain alternative clauses, and these are set forth in brackets and separated by the word "or." Banks may make certain changes in the format or content of the model forms and delete 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 take advantage of the section 229.13 exceptions, it may delete the material relating to those exceptions. The rearrangement of the model forms may not be so extensive, however, as to affect the substance, clarity, or meaningful sequence of the forms. Acceptable changes include, for example—

- using "customer" and "bank" instead of pronouns
- not using bold type for headings
- incorporating certain state-law plain-English requirements

Shorter time periods for availability may always be substituted for time periods used in the model forms.

Banks may also add information related to their availability policies. For example, a bank might 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 provide in its disclosure a telephone number to be used if a customer has an inquiry regarding a deposit.

Banks are cautioned against using the forms 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 a model form will be in compliance with the act and the regulation only if its disclosures correspond to the bank's availability policy.

Models C–1 Through C–7 Generally

These forms are models for the specific availability-policy disclosure described in section 229.16 of the regulation. The forms accommodate a variety of availability policies, ranging from policies of next-day availability to holds on a blanket basis up to the maximum time allowed in the regulation. Models C–3 and C–6 reflect 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.

As already noted, there are several places in the forms where information must be inserted. This information includes the bank's name and cut-off times, limitations relating to next-day availability, and the first four digits of routing numbers for local banks. In disclosing when funds will be available for withdrawal, the bank must insert the ordinal number (such as first, second, etc.) of the business day the funds will become available.

Models C–1 through C–7 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 the model clauses (models C–8 through C–12). A bank using one of the model forms should also consider whether it must incorporate one or more of the model clauses.

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. Model Forms C–1 through C–7 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.

Banks that have used earlier versions of the model forms or clauses (such as those forms that gave Social Security benefits and payroll payments as examples of preauthorized cred-

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its available the day after deposit) are protected from civil liability under section 229.21(e). Banks are encouraged, however, to use current versions of the forms when reordering or reprinting supplies of forms.

Model C–1

A bank may use this form when its policy is to make funds from all deposits available on the first business day after a deposit is made. This form 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."

Model C–2

A bank may use this form 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 of the regulation.

Model C–3

A bank may use this form 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 form also reserves the right to invoke the exceptions listed in section 229.13 of the regulation. A bank reserving the right to impose the cash-withdrawal limitation in section 229.12(d) 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."

Model C–4

A bank may use this form when its policy is to impose delays to the full extent allowed under the temporary schedule in section 229.11 and to reserve the right to invoke the section 229.13 exceptions.

Model C–5

A bank may use this form when its policy is the same as that outlined in model C–7. The only difference between model C–7 and model C–5 is that in the latter a chart showing the bank's availability policy for local and nonlocal checks is substituted for the narrative description in the former.

Model C–6

A bank may use this form when its policy is to delay availability based on the deposit categories (next-day availability items and local and nonlocal checks) in the regulation, but to make funds available more quickly than is required by the regulation. A bank using this form would also reserve the right to place holds on a case-by-case basis up to the statutory limits and to invoke the section 229.13 exceptions.

Model C–7

A bank may use this form when its policy is to impose delays to the full extent allowed by the permanent schedule in section 229.12 and to reserve the right to invoke the section 229.13 exceptions.

Models C–8 Through C–12 Generally

These model clauses must be incorporated into a bank's specific availability-policy disclosure under certain circumstances. The commentary to each clause indicates when the clause is required.

Model C–8

This clause must be incorporated in the specific availability-policy disclosure by banks that reserve the right to place a hold on funds already on deposit when they cash a check for the customer, as discussed under section 229.19(e).

Model C–8A

This clause must be incorporated in the specific availability-policy disclosure by banks that reserve 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 discussed in section 229.19(e).

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Model C–9

This clause must be incorporated in the specific availability-policy disclosure by banks in check-processing regions where the availability schedules for certain nonlocal checks have been reduced, as described in appendix B of the regulation. Banks using model C–4, C–6, or C–7 may insert this clause at the conclusion of the discussion titled "Nonlocal Checks."

Model C–10

This clause must be incorporated in the specific availability-policy disclosure by banks that reserve the right to delay availability of deposits at nonproprietary ATMs until the fifth business day following the day of deposit, as permitted by section 229.12(f)(1). 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).

Model C–11

This clause must be incorporated in the specific availability-policy disclosure by banks that are not members of a local clearinghouse and that choose to limit their customers' ability to withdraw cash on the third business day following the deposit of a local check, as allowed during the temporary schedule under section 229.11. Banks using model C–4 or C–6 may substitute this clause for the sections titled "Local Checks" and "Nonlocal Checks."

Model C–11A

This clause serves the same purpose as model C–11 except that it reflects the section 229.11 rule for banks that are members of local clearinghouses. Banks using models C–4 or C–6 may substitute this clause for the sections titled "Local Checks" and "Nonlocal Checks."

Model C–11B

This clause may be used to disclose cash-withdrawal limitations under the permanent schedule in section 229.12. Banks using model C–7 to disclose availability under the permanent schedule may substitute this clause for the sections titled "Local Checks" and "Nonlocal Checks." This clause should not be used in making disclosures under the temporary schedule in section 229.11.

Model C–12

This clause must be incorporated in the specific availability-policy disclosure by credit unions seeking to satisfy the notice requirement of section 229.14(b). 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.

Models C–13 Through C–18 Generally

These forms are models for various notices required by the regulation.

Model C–13

This form satisfies the written notice required under section 229.13(g) of the regulation 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. The bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a section 229.13 exception.

Model C–13A

This form satisfies the same requirements as model C–13, and the same instructions apply, except that model C–13A is for use by a bank that invokes the reasonable-cause exception in section 229.13. The form 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. Banks may disclose of the reason for their doubting collectability by checking the appropriate reason on the form.

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If the "Other" category is checked, the reason must be given.

Model C–13B

This form satisfies the notice requirements of section 229.13(g)(2).

Model C–13C

This form satisfies the notice requirements of section 229.13(g)(3).

Model C–14

This form satisfies the notice required under section 229.16(b)(2) when a bank with a case-by-case hold policy imposes a delay 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. The bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a case-by-case hold.

Model C–15 and C–15A

Either of these forms satisfies the notice requirements of section 229.18(b) (notice at locations where employees accept consumer deposits). Model C–15 is based on an availability policy that is the same as the permanent schedule in the regulation and the policy reflected in models C–5 and C–7. Model C–15A may be used by a bank with a case-by-case availability policy.

Model C–16

This form satisfies the ATM notice requirement of section 229.18(c)(1).

Model C–17

This form 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.

Model C–18

This form satisfies the notice requirements of section 229.18(a) for deposit slips.

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APPENDIX D—Indorsement Standards

1. The depositary 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.[1]

2. Each subsequent collecting bank indorser shall protect the identifiability and legibility of the depositary 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 depositary 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.

[1] 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, X 9.13.*

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APPENDIX F—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 depositary 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 depositary 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 section 4–213(5) supersedes the Regulation CC provision in section 229.10(a)(2), but a depositary 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 (at 9–660).)

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 depositary bank shall make funds deposited into a deposit account available for withdrawal as provided in Regulation CC with certain exceptions. The funds-avail-

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ability 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 depositary 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[1] 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 depositary banks must make deposited checks drawn on a nonlocal in-state commercial bank or foreign bank branch available by the fifth business day after deposit and checks drawn on nonlocal in-state thrifts available by the sixth business day after deposit. To the extent that these schedules provide for shorter holds than Regulation CC and its appendix B-1, the state schedules supersede the federal schedules.[2] For example, the California four-day schedule that applies to checks drawn on in-state nonlocal commercial banks or foreign bank branches and deposited in a 1210 or 1220 bank would be shorter than and would supersede the federal schedules.

The California regulations do not specify whether the state schedules apply to deposits of checks at nonproprietary ATMs. Under the temporary schedules in Regulation CC, deposits at nonproprietary ATMs must be 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 depositary 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.

[1] 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.

[2] 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 depositary bank bearing a 1210 routing number receiving for-deposit checks bearing a 3220 or a 3223 routing number, and a depositary 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.

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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 depositary 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 depositary 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.)

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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 (generally, transaction accounts), the California law is preempted by Regulation CC.

The Department of Savings and Loan regulations provide that for those non–transaction accounts covered by state law but not by federal law, disclosures in accordance with Regulation CC will be deemed to comply with the state-law disclosure requirements. To the extent that the Department of Savings and Loan regulations permit reliance on Regulation CC disclosures for transaction accounts and to the extent the state regulations survive the preemption of California Financial Code 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.

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Coverage

The California law and regulations govern the availability of funds to "demand deposits, negotiable order of withdrawal draft accounts, savings deposits subject to automatic transfers, share draft accounts, and all savings deposits and share accounts, other than time deposits" (California Financial Code § 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

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check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. This requirement became effective January 1, 1988.

The Regulation CC next-day-availability requirement for cashier's and teller's checks applies only to those checks issued for remittance purposes. To the extent that the state second-business-day-availability requirement applies to cashier's and teller's checks issued for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

Next-day availability. Credit unions and industrial loan companies in California are required to give next-day availability to items drawn by the state of California or any of its departments, agencies, or political subdivisions. California law supersedes the federal law in that the state law does not condition next-day availability on receipt at a staffed teller station or use of a special deposit slip.

California credit unions and industrial loan companies must provide second-business-day availability to checks drawn on the depositary bank. Regulation CC requires next-day availability for checks deposited in a branch of the depositary 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 depositary 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 depositary 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 depositary bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depositary 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 there-

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fore 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 (at 9–660).)

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:

	Availability
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 depositary 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

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schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the start of the seventh business day after deposit. To the extent that the Connecticut schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in 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 depositary 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 depositary bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depositary 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 (at 9–660).)

In 1985, Maine adopted a statute governing funds availability (title 9–B MRSA

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§ 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 (at 9–660).)

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.

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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 (at 9–660).)

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 Mexico

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 New Mexico law relating to the availability of funds. This preemption determination specifies those provisions in the New Mexico funds-availability law that supersede the act and Regulation CC. (See also the Board's preemption determination regarding the Uniform

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Commercial Code, section 4–213(5), pertaining to availability of cash deposits (at 9–660).)

In 1987, New Mexico adopted a statute governing funds availability (N.M. Stat. Ann. § 58–3–4 (1978, Supp. 1987)), which requires New Mexico financial institutions to make funds deposited into retail accounts available for withdrawal after a reasonable period of time. Section 4A of the New Mexico statute establishes the time frames within which financial institutions must make funds deposited by checks or share drafts available for withdrawal if the checks or share drafts are drawn and payable on demand at other financial institutions located in the continental United States. Section 4B of the statute defines terms and specifies availability for checks deposited in branch offices of certain financial institutions, section 4C specifies exceptions to the availability schedules, and section 4D specifies damages recoverable for a violation of this statute.

Generally, the New Mexico law provides that checks and share drafts, other than on-us checks, drawn and payable on demand at a financial institution and deposited into an individual or household account must be made available for withdrawal at the beginning of the third business day after deposit for checks or share drafts drawn and payable on demand at financial institutions located within the same municipality as the depositary bank, and for checks or share drafts deposited in a branch office of a financial institution if the main office of that financial institution is located in the same municipality as the depositary bank. Other in-state checks or share drafts must be made available at the opening of the fifth business day after deposit. Checks or share drafts drawn and payable on demand at any other financial institution located within continental United States must be made available at the beginning of the seventh business day after deposit.

Exceptions to the schedules are provided for documentary drafts, accounts which have been open less than 60 days, checks or share drafts with two-party indorsements, checks or share drafts in an amount greater than the average balance in the account over the last 12 months or the average balance since the account was opened, whichever is less, and checks or share drafts deposited in an account on which six or more nonsufficient fund checks or share drafts were presented in the prior six-month period.

Coverage

The New Mexico statute is limited to retail accounts and does not apply to business accounts. No portion of the New Mexico statute supersedes Regulation CC for any "account" as that term is defined in Regulation CC that is not held by an individual or household. Regulation CC does not affect the New Mexico statute to the extent that the state law applies to time, savings, and other deposits that are not defined as "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 Mexico statute is limited to checks and share drafts payable by financial institutions. The term "financial institution" corresponds generally to the term "bank" in Regulation CC. The terms "check" and "share draft" are narrower than the term "check" in Regulation CC because they do not appear to apply to Treasury checks, checks payable by state or local governments (i.e., warrants), checks payable by Federal Reserve Banks or Federal Home Loan Banks, or U.S. Postal Service money orders. No portion of the New Mexico statute supersedes Regulation CC with respect to these instruments.

Availability Schedules

Temporary schedules. The New Mexico statute requires checks and share drafts drawn and payable on demand at an office of a financial institution located in the same municipality as the depositary bank and checks and share drafts drawn and payable on demand at offices of financial institutions located in New Mexico whose main office is located in the same municipality as the depositary bank to be made available at the opening of the third business day after deposit. (N.M. Stat. Ann.

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§ 58–3–4A(1)).[1] New Mexico is served by two Federal Reserve check-processing regions, and, therefore, while most checks and share drafts subject to this schedule will be local under Regulation CC, some checks and share drafts covered by this schedule may be nonlocal under Regulation CC. Under the temporary schedule in Regulation CC, the proceeds of local checks must be available for withdrawal at the start of the third business day after deposit, but Regulation CC permits a time-period adjustment for withdrawals by cash and similar means that permits a depositary bank to delay the time it must make funds available for deposits of local checks cleared outside a check-clearinghouse arrangement. Under the temporary schedule in Regulation CC, the proceeds of nonlocal checks must be made available for withdrawal at the opening of the seventh business day following deposit. No time-period adjustment is provided. New Mexico law supersedes this time-period adjustment for local checks under the temporary schedule and for nonlocal checks coming within the portion of the New Mexico schedule calling for availability on the third banking day after deposit.

The New Mexico statute calls for the proceeds of checks and share drafts to be made available at the opening of the fifth day after deposit for checks and share drafts drawn and payable on demand at other offices of financial institutions located in New Mexico (N.M. Stat. Ann. § 58–3–4A(2)). To the extent that this schedule applies to nonlocal checks as defined by Regulation CC, it supersedes the temporary schedules in Regulation CC. The New Mexico statute also provides for availability of checks and share drafts drawn and payable on demand at financial institutions located in the continental United States, excluding Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands, at the opening of the seventh banking day after deposit (N.M. Stat. Ann. § 58–3–4A(3)). This schedule is the same as Regulation CC with respect to nonlocal checks.

[1] It is not clear from the New Mexico statute whether days stated in the schedules include the day of deposit. For the purposes of this interpretation, it is assumed that the stated days do include the day of deposit. References to days included in the New Mexico schedules have also been revised to reflect Regulation CC terminology.

The New Mexico 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 New Mexico schedules described above 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 schedules. Under the permanent schedule in Regulation CC, the proceeds of checks must be made available at the opening of the second business day after deposit for local checks and the fifth business day after deposit for nonlocal checks. Both of these schedules are subject to time-period adjustments for withdrawal by cash or similar means. The New Mexico statute supersedes the permanent schedules in Regulation CC for nonlocal checks subject to the third-day-withdrawal requirement (N.M. Stat. Ann. § 58–3–4A(1)) and the time-period adjustment for nonlocal checks subject to the fifth-day-withdrawal requirement (N.M. Stat. Ann. § 58–3–4A(2)) of the New Mexico statute.

Exceptions to availability schedules. The New Mexico statute provides for exceptions to the state schedules for (1) documentary drafts; (2) accounts opened less than 60 days; (3) checks or share drafts with two-party indorsements; (4) a check or share draft in a face amount greater than the average balance of the depositor's account for the prior 12 months or the average balance since the account was opened, whichever is less; and (5) a check or share draft deposited in an account on which six or more insufficient-fund checks or share drafts were presented for payment in the prior six-month period.

The state exceptions will continue to apply when the state schedules are not preempted by Regulation CC, but holds may be placed under the state schedules only up to the limits permitted by the Regulation CC schedules. Where the Regulation CC schedules are subject to exceptions, holds placed on checks

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under the state schedules that would also be permissible under Regulation CC may be continued up to the limit on holds under Regulation CC. Notice of holds as required by Regulation CC (§ 229.13(g)) must be given whenever a hold is placed so that availability is extended beyond the applicable state or federal schedule.

Business day/banking day. Under New Mexico law a bank is authorized to establish its own banking days except that it must observe certain holidays (N.M. Stat. Ann. §§ 58–5–6 and 58–5–7). This definition is preempted by the Regulation CC definitions of "business day" and "banking day." Thus, for determining the permissible hold under the New Mexico 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 New Mexico law does not contain funds-availability disclosure requirements applicable to accounts subject to Regulation CC.

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 (at 9–660).)

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

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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 depositary 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 depositary bank may further extend the hold under any of the federal exceptions that apply to that deposit. Any time a depositary 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 (at 9–660).)

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

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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:

	Commercial Banks	*Thrift Institutions*
Treasury checks, Rhode Island government checks, first-indorsed	2nd	2nd
In-state, cashier's checks less than $2,500	2nd	2nd
On-us checks	2nd	3rd
In-state clearinghouse checks	3rd	4th
In-state 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 apply 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 depositary 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 depositary 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 depositary bank.) Since the Rhode Island law and the federal law both require the funds to be made available no later than the third business day, the state law is not preempted by the federal law.

The Rhode Island law also requires commercial banks and savings institutions to make checks payable by a depository institution located in the First or Second Federal Reserve District (outside of Rhode Island) available on the seventh business day following deposit. To the extent that this provision applies to checks payable by institutions located outside the Boston check processing region, it provides for availability in the same time as required for nonlocal checks under the temporary federal schedule, and thus is not preempted by the federal law.

The Rhode Island statute does not specify whether it applies to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the opening of the seventh business day after deposit. To the extent that the Rhode Island schedules provide for shorter availability for deposits at nonproprietary

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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 depositary 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 depositary 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 depositary 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 check-hold policy and requires a notice on deposit slips. Regulation CC preempts state disclosure requirements concerning funds availability that relate to accounts that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal rules (§ 229.20(c)(2)). Thus, Regulation CC preempts the Rhode Island disclosure requirements concerning funds availability.

Wisconsin

Background

The Board has been requested, in accordance with 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 [at the beginning of this appendix].)

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

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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 depositary 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 depositary bank, and (4) deposited with a special deposit slip, if the depositary 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 depositary 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

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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 depositary bank may further extend the hold only if a federal exception can be applied to the deposit. Any time a depositary 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 requirement is different from, and therefore inconsistent with, the federal disclosure rules (§ 229.20(c)(2)). Thus, the Wisconsin statute is preempted by Regulation CC to the extent that the state notice requirement applies to "accounts" as defined by Regulation CC. The Wisconsin requirement would continue to apply to accounts, such as savings and time accounts, not governed by the Regulation CC disclosure requirements.

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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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602 Definitions
603 Expedited funds availability schedules
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605 Disclosure of funds availability policies
606 Payment of interest
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608 Effect on state law
609 Regulations and reports by Board
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612 Parity in clearing

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;

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(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 deposi-

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tory 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

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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 available 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 po-

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tential 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 transfer, 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 ac-

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count 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

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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 withdraw funds deposited into a customer's account.

(d) *Posting of notice.* (1) Each depository institution shall post, in a conspicuous place

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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

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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 depository institutions provide for check truncation;

(3) depository institutions be provided in-

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centives 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

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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, in-

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cluding 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

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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.]

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Board of Governors of the Federal Reserve System

Regulation Y
Bank Holding Companies and Change in Bank Control

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

March 1993

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SUBPART A—GENERAL PROVISIONS

SECTION 225.1—Authority, Purpose, and Scope

(a) *Authority.* This part* (Regulation Y) is issued by the Board of Governors of the Federal Reserve System ("Board") under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 USC 1844(b)) ("BHC Act"); sections 8 and 13(a) of the International Banking Act of 1978 (12 USC 3106 and 3108); section 7(j)(13) of the Federal Deposit Insurance Act, as amended by the Change in Bank Control Act of 1978 (12 USC 1817(j)(13)) ("Bank Control Act"); section 8(b) of the Federal Deposit Insurance Act (12 USC 1818(b)); and the International Lending Supervision Act of 1983 (Pub. L. 98-181, title IX). The BHC Act is codified at 12 USC 1841, et seq.

(b) *Purpose.* The principal purposes of this part are to regulate the acquisition of control of banks by companies and individuals, to define and regulate the nonbanking activities in which bank holding companies and foreign banking organizations with United States operations may engage, and to set forth the procedures for securing approval for such transactions and activities.

(c) *Scope.* (1) Subpart A contains general provisions and definitions of terms used in this regulation.

(2) Subpart B governs acquisitions of bank or bank holding company securities and assets by bank holding companies or by any company that will become a bank holding company as a result of the acquisition.

(3) Subpart C defines and regulates the nonbanking activities in which bank holding companies and foreign banking organizations may engage directly or through a subsidiary. In addition, certain nonbanking activities conducted by foreign banking organizations and certain foreign activities conducted by bank holding companies are governed by the Board's Regulation K (12 CFR 211, International Banking Operations).

(4) Subpart D specifies situations in which a company is presumed to control voting securities or to have the power to exercise a controlling influence over the management or policies of a bank or other company, sets forth the procedures for making a control determination, and provides rules governing the effectiveness of divestitures by bank holding companies.

(5) Subpart E governs changes in bank control resulting from the acquisition by individuals or companies (other than bank holding companies) of voting securities of a bank holding company or state member bank of the Federal Reserve System.

(6) Appendix A to the regulation contains the Board's capital adequacy guidelines for bank holding companies and for state member banks.

(7) Appendix B to the regulation contains the Board's policy statement for formation of small one-bank holding companies.

SECTION 225.2—Definitions

Except as modified in this section or unless the context otherwise requires, the terms used in this regulation have the same meanings as set forth in the relevant statutes.

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with, a bank or nonbank bank.

(b)(1) *Bank* means—

(i) an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 USC 1813(h)); or

(ii) an institution organized under the laws of the United States which both—

(A) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

(B) is engaged in the business of making commercial loans.

(2) "Bank" does not include those institutions qualifying under the exceptions listed in section 2(c)(2) of the BHC Act (12 USC 1841(c)(2)).

* Code of Federal Regulations, title 12, chapter II, part 225.

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(c)(1) *Bank holding company* means any company (including a bank) that has direct or indirect control of a bank, other than control that results from the ownership or control of—

(i) voting securities held in good faith in a fiduciary capacity (other than as provided in paragraphs (d)(2)(ii) and (iii) of this section) without sole discretionary voting authority, or as otherwise exempted under section 2(a)(5)(A) of the BHC Act;

(ii) voting securities acquired and held only for a reasonable period of time in connection with the underwriting of securities, as provided in section 2(a)(5)(B) of the BHC Act;

(iii) voting rights to voting securities acquired for the sole purpose and in the course of participating in a proxy solicitation, as provided in section 2(a)(5)(C) of the BHC Act;

(iv) voting securities acquired in satisfaction of debts previously contracted in good faith, as provided in section 2(a)(5)(D) of the BHC Act, if the securities are divested within two years of acquisition (or such later period as the Board may permit by order); or

(v) voting securities of certain institutions owned by a thrift institution or a trust company, as provided in sections 2(a)(5)(E) and (F) of the BHC Act.

(2) Except for the purposes of section 225.4(b) of this subpart and subpart E of this regulation or as otherwise provided in this regulation, the term "bank holding company" includes a foreign banking organization. For the purposes of subpart B, the term "bank holding company" includes a foreign banking organization only if it owns or controls a bank in the United States.

(d)(1) *Company* includes any bank, corporation, general or limited partnership, association or similar organization, business trust, or any other trust unless by its terms it must terminate either within 25 years, or within 21 years and 10 months after the death of individuals living on the effective date of the trust.

(2) *Company* does not include any organization, the majority of the voting securities of which are owned by the United States or any state.

(e)(1) *Control* of a bank or other company means (except for the purposes of subpart E):

(i) ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the bank or other company, directly or indirectly or acting through one or more other persons;

(ii) control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the bank or other company;

(iii) the power to exercise, directly or indirectly, a controlling influence over the management or policies of the bank or other company, as determined by the Board after notice and opportunity for hearing in accordance with section 225.31 of subpart D of this regulation; or

(iv) conditioning in any manner the transfer of 25 percent or more of the outstanding shares of any class of voting securities of a bank or other company upon the transfer of 25 percent or more of the outstanding shares of any class of voting securities of another bank or other company.

(2) A bank or other company is deemed to control voting securities or assets owned, controlled, or held, directly or indirectly—

(i) by any subsidiary of the bank or other company;

(ii) in a fiduciary capacity (including by pension and profit-sharing trusts) for the benefit of the shareholders, members, or employees (or individuals serving in similar capacities) of the bank or other company or of any of its subsidiaries; or

(iii) in a fiduciary capacity for the benefit of the bank or other company or any of its subsidiaries.

(f) *Foreign banking organization* and *qualifying foreign banking organization* shall have the same meanings as provided in section 211.23 of the Board's Regulation K (12 CFR 211.23).

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(g) *Institutional customer* means—

(1) a bank (acting in an individual or fiduciary capacity); a savings and loan association; an insurance company; an investment company registered under the Investment Company Act of 1940; or a corporation, partnership, proprietorship, organization, or institutional entity, with net worth exceeding $1,000,000;

(2) an employee benefit plan with assets exceeding $1,000,000, or whose investment decisions are made by a bank, insurance company, or investment advisor registered under the Investment Advisors Act of 1940;

(3) a natural person whose individual net worth (or joint net worth with a spouse) at the time of receipt of the brokerage, advisory, or other relevant service exceeds $1,000,000;

(4) a broker-dealer or option trader registered under the Securities Exchange Act of 1934, or other securities, investment or banking professional; or

(5) an entity all of the equity owners of which are institutional customers.

(h) *Management official* means any officer, director (including honorary or advisory directors), partner, or trustee of a bank or other company, or any employee of the bank or other company with policy-making functions.

(i) *Nonbank bank* means any institution that—

(1) became a bank as a result of enactment of the Competitive Equality Amendments of 1987 (Pub. L. No. 100-86), on the date of such enactment (August 10, 1987); and

(2) was not controlled by a bank holding company on the day before the enactment of the Competitive Equality Amendments of 1987 (August 9, 1987).

(j) *Outstanding shares* means any voting securities, but does not include securities owned by the United States or by a company wholly owned by the United States.

(k) *Person* includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(*l*)(1) *Controlling shareholder* means a person that owns or controls, directly or indirectly, 25 percent or more of any class of voting securities of a bank or other company.

(2) *Principal shareholder* means a person that owns or controls, directly or indirectly, 10 percent or more of any class of voting securities of a bank or other company, or any person that the Board determines has the power, directly or indirectly, to exercise a controlling influence over the management or policies of a bank or other company.

(m) *Savings association* means—

(1) any federal savings association or federal savings bank;

(2) any building and loan association, savings and loan association, homestead association, or cooperative bank if such association or cooperative bank is a member of the Savings Association Insurance Fund; and

(3) any savings bank or cooperative which is deemed by the director of the Office of Thrift Supervision to be a savings association under section 10(*l*) of the Home Owners Loan Act.

(n) *Subsidiary* means a bank or other company that is controlled by another company, and refers to a direct or indirect subsidiary of a bank holding company. An indirect subsidiary is a bank or other company that is controlled by a subsidiary of the bank holding company.

(o) *United States* means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(p)(1) *Voting securities* means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder—

(i) to vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(ii) to vote on or to direct the conduct of the operations or other significant policies of the issuing company.

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(2) Preferred shares, limited partnership shares or interests, or similar interests are not "voting securities" if—

(i) any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) the shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) the shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

SECTION 225.3—Administration

(a) *Delegation of authority.* Designated Board members and officers and the Federal Reserve Banks are authorized by the Board to exercise various functions prescribed in this regulation and in the Board's Rules Regarding Delegation of Authority (12 CFR 265) and the Board's Rules of Procedure (12 CFR 262).

(b) *Appropriate Federal Reserve Bank.* In administering this regulation, the appropriate Federal Reserve Bank is as follows:

(1) For a bank holding company (or a company applying to become a bank holding company): the Reserve Bank of the Federal Reserve District in which the company's banking operations are principally conducted, as measured by total domestic deposits in its subsidiary banks on the date it became (or will become) a bank holding company;

(2) For a foreign banking organization that has no subsidiary bank and is not subject to paragraph (b)(1) of this section: the Reserve Bank of the Federal Reserve District in which the total assets of the organization's United States branches, agencies, and commercial lending companies are the largest as of the later of January 1, 1980, or the date it becomes a foreign banking organization;

(3) For an individual or company submitting a notice under subpart E of this regulation: the Reserve Bank of the Federal Reserve District in which the banking operations of the bank holding company or state member bank to be acquired are principally conducted, as measured by total domestic deposits on the date the notice is filed.

SECTION 225.4—Corporate Practices

(a) *Bank holding company policy and operations.* (1) A bank holding company shall serve as a source of financial and managerial strength to its subsidiary banks and shall not conduct its operations in an unsafe or unsound manner.

(2) Whenever the Board believes an activity of a bank holding company or control of a nonbank subsidiary (other than a nonbank subsidiary of a bank) constitutes a serious risk to the financial safety, soundness, or stability of a subsidiary bank of the bank holding company and is inconsistent with sound banking principles or the purposes of the BHC Act or the Financial Institutions Supervisory Act of 1966, as amended (12 USC 1818(b) et seq.), the Board may require the bank holding company to terminate the activity or to terminate control of the subsidiary, as provided in section 5(e) of the BHC Act.

(b) *Purchase or redemption by a bank holding company of its own securities.*

(1) *Filing notice.* A bank holding company shall give the Board prior written notice before purchasing or redeeming its equity securities, if the gross consideration for the purchase or redemption, when aggregated with the net consideration paid by the company for all such purchases or redemptions during the preceding 12 months, is equal to

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10 percent or more of the company's consolidated net worth. For the purposes of this section, "net consideration" is the gross consideration paid by the company for all of its equity securities purchased or redeemed during the period minus the gross consideration received for all of its equity securities sold during the period other than as part of a new issue.

(2) *Content of notice.* Any notice under this section shall be filed with the appropriate Reserve Bank and shall contain the following information:

(i) the purpose of the transaction, a description of the securities to be purchased or redeemed, the total number of each class outstanding, the gross consideration to be paid, and the terms of any debt incurred in connection with the transaction;

(ii) a description of all equity securities redeemed within the preceding 12 months, the net consideration paid, and the terms of any debt incurred in connection with those transactions; and

(iii) a current and pro forma consolidated balance sheet if the bank holding company has total assets of over $150 million, or a current and pro forma parent-company-only balance sheet if the bank holding company has total assets of $150 million or less.

(3) *Acting on notice.* Within 30 calendar days of receipt of a notice under this section, the appropriate Reserve Bank shall either approve the transaction proposed in the notice or refer the notice to the Board for decision. If the notice is referred to the Board for decision, the Board shall act on the notice within 60 calendar days after the Reserve Bank receives the notice.

(4) *Factors considered in acting on notice.* The Board may disapprove a proposed purchase or redemption if it finds that the proposal would constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or any condition imposed by, or written agreement with, the Board. In determining whether a proposal constitutes an unsafe or unsound practice, the Board will consider whether the bank holding company's financial condition, after giving effect to the proposed purchase or redemption, meets the financial standards applied by the Board under section 3 of the BHC Act, including the Board's capital adequacy guidelines (appendix A) and the Board's policy statement for formation of small one-bank holding companies (appendix B).

(5) *Disapproval and hearing.* The Board shall notify the bank holding company in writing of the reasons for a decision to disapprove any proposed purchase or redemption. Within 10 calendar days of receipt of a notice of disapproval by the Board, the bank holding company may submit a written request for a hearing. The Board will order a hearing within 10 calendar days of receipt of that request if it finds that material facts are in dispute or if it otherwise appears appropriate. Any hearing conducted under this paragraph shall be held in accordance with the Board's Rules of Practice for Formal Hearings (12 CFR 263). At the conclusion of the hearing, the Board shall by order approve or disapprove the proposed purchase or redemption on the basis of the record of the hearing.

(c) *Deposit insurance.* Every bank that is a bank holding company or a subsidiary of a bank holding company shall obtain Federal Deposit Insurance and shall remain an "insured bank" as defined in section 3(h) of the Federal Deposit Insurance Act (12 USC 1813(h)).

(d)(1) *Limitation on tie-in arrangements.* A bank holding company and any nonbanking subsidiary conducting an activity authorized under section 225.23 of this regulation may not in any manner extend credit, lease or sell property of any kind, provide any service, or fix or vary the consideration for any of these transactions subject to any condition or requirement that, if imposed by a bank, would constitute an unlawful tie-in arrangement under section 106 of the Bank Holding Company Act Amendments of 1970 (12 USC 1971, 1972(1)).

(2) *Exemption for credit cards.* A bank (including a credit card bank) owned by a bank holding company may vary the consideration (including interest rates and

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fees) charged on extensions of credit made pursuant to a credit card offered by the bank on the basis of the condition or requirement that a customer also obtain a loan, discount, deposit, or trust service (but no other products) from another subsidiary of the card-issuing bank's parent holding company, if the credit card and the loan, discount, deposit, or trust service offered in the arrangement are also separately available for purchase by a customer. The exemption granted pursuant to this paragraph shall terminate upon a finding by the Board that the arrangement is resulting in anticompetitive practices.

(e) *Acting as transfer agent, municipal securities dealer, or clearing agent.* A bank holding company or any nonbanking subsidiary that is a "bank," as defined in section 3(a)(6) of the Securities Exchange Act of 1934 (15 USC 78c(a)(6)), and that is a transfer agent of securities, a municipal securities dealer, a clearing agency, or a participant in a clearing agency (as those terms are defined in section 3(a) of the Securities Exchange Act (12 USC 78c(a)), shall be subject to sections 208.8(f)–(j) of the Board's Regulation H (12 CFR 208.8(f)–(j)) as if it were a state member bank.

(f) *Reporting requirement for credit secured by certain bank holding company stock.* Each executive officer or director of a bank holding company the shares of which are not publicly traded shall report annually to the board of directors of the bank holding company the outstanding amount of any credit that was extended to the executive officer or director and that is secured by shares of the bank holding company. For purposes of this paragraph, the terms "executive officer" and "director" shall have the meaning given in section 215.2 of Regulation O, 12 CFR 215.2.

SECTION 225.5—Registration, Reports, and Inspections

(a) *Registration of bank holding companies.* Each company shall register within 180 days after becoming a bank holding company by furnishing information in the manner and form prescribed by the Board. A company that receives the Board's prior approval under subpart B of this regulation to become a bank holding company may complete this registration requirement through submission of its first annual report to the Board as required by paragraph (b) of this section.

(b) *Reports of bank holding companies.* Each bank holding company shall furnish, in the manner and form prescribed by the Board, an annual report of the company's operations for the fiscal year in which it becomes a bank holding company, and for each fiscal year during which it remains a bank holding company. Additional information and reports shall be furnished as the Board may require.

(c) *Examinations and inspections.* The Board may examine or inspect any bank holding company and each of its subsidiaries and prepare a report of their operations and activities. With respect to a foreign banking organization, the Board may also examine any branch or agency of a foreign bank in any state of the United States and may examine or inspect each of the organization's subsidiaries in the United States and prepare reports of their operations and activities. The Board will rely as far as possible on the reports of examination made by the primary federal or state supervisor of the subsidiary bank of a bank holding company or of the branch or agency of the foreign bank.

SECTION 225.6—Penalties for Violations

(a) *Criminal and civil penalties.* Section 8 of the BHC Act provides criminal penalties for willful violation, and civil penalties for violation, by any company or individual of the BHC Act or any regulation or order issued under it, or for making a false entry in any book, report, or statement of a bank holding company. Civil money penalty assessments for violations of the BHC Act shall be made in accordance with subpart C of the Board's Rules of Practice for Hearings (12 CFR 263, subpart C). For any willful violation of the Bank Control Act or any regulation or order

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issued under it, the Board may assess a civil penalty as provided in 12 USC 1817(j)(15).

(b) *Cease-and-desist proceedings.* For any violation of the BHC Act, the Bank Control Act, this regulation, or any order or notice issued thereunder, the Board may institute a cease-and-desist proceeding in accordance with the Financial Institutions Supervisory Act of 1966, as amended (12 USC 1818(b) et seq.).

SUBPART B—ACQUISITION OF BANK SECURITIES OR ASSETS

SECTION 225.11—Transactions Requiring Board Approval

The following transactions require an application for the Board's prior approval under section 3 of the BHC Act unless otherwise exempted under section 225.12 of this subpart:

(a) *Formation of bank holding company.* Any action that causes a bank or other company to become a bank holding company.

(b) *Acquisition of subsidiary bank.* Any action that causes a bank to become a subsidiary of a bank holding company.

(c) *Acquisition of control of bank or bank holding company securities.* The acquisition by a bank holding company of direct or indirect ownership or control of any voting securities of a bank or bank holding company, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities of the bank or bank holding company. An acquisition includes the purchase of additional securities through the exercise of preemptive rights, but does not include securities received in a stock dividend or stock split that does not alter the bank holding company's proportional share of any class of voting securities.

(d) *Acquisition of bank assets.* The acquisition by a bank holding company or by a subsidiary thereof (other than a bank) of all or substantially all of the assets of a bank.

(e) *Merger of bank holding companies.* The merger or consolidation of bank holding companies, including a merger through the purchase of assets and assumption of liabilities.

(f) *Transactions by a foreign banking organization.* Any transaction described in paragraphs (a) through (e) of this section by a foreign banking organization that involves the acquisition of an interest in a U.S. bank or bank holding company for which application would be required if the foreign banking organization were a bank holding company.

SECTION 225.12 —Transactions Not Requiring Board Approval

The following transactions do not require the Board's approval under section 225.11 of this subpart:

(a) *Acquisition of securities in fiduciary capacity.* The acquisition by a bank or other company (other than a trust that is a company) of control of voting securities of a bank or bank holding company in good faith in a fiduciary capacity, unless—

(1) the acquiring bank or other company has sole discretionary authority to vote the securities and retains the authority for more than two years; or

(2) the acquisition is for the benefit of the acquiring bank or other company, or its shareholders, employees, or subsidiaries.

(b) *Acquisition of securities in satisfaction of debts previously contracted.* The acquisition by a bank or other company of control of voting securities of a bank or bank holding company in the regular course of securing or collecting a debt previously contracted in good faith, if the acquiring bank or other company divests the securities within two years of acquisition. The Board or Reserve Bank may grant requests for up to three one-year extensions.

(c) *Acquisition of securities by a bank holding company with majority control.* The acquisition by a bank holding company of additional voting securities of a bank or bank holding company if more than 50 percent of the outstanding voting securities of the bank or bank holding company is lawfully controlled by the

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acquiring bank holding company prior to the acquisition.

(d)(1) *Transactions subject to Bank Merger Act.* The merger or consolidation of a subsidiary bank of a bank holding company with another bank, or the purchase of assets by such a subsidiary bank, or a similar transaction involving subsidiary banks of a bank holding company, if the transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act (12 USC 1828(c)). This exception does not include—

(i) the merger of a nonsubsidiary bank and a nonoperating subsidiary bank formed by a company for the purpose of acquiring the nonsubsidiary bank; and

(ii) any transaction requiring the Board's prior approval under section 225.11(e) of this subpart. The Board may require an application under this subpart if it determines that the merger or consolidation would have a significant adverse impact on the financial condition of the bank holding company or otherwise requires approval under section 3 of the BHC Act.

(2) *Certain acquisitions subject to the Bank Merger Act.* The acquisition by a bank holding company of shares of a bank or company controlling a bank as part of the merger or consolidation of the bank with a subsidiary bank (other than a nonoperating subsidiary bank) of the acquiring bank holding company, or the purchase of substantially all of the assets of the bank by a subsidiary bank (other than a nonoperating subsidiary bank) of the acquiring bank holding company, if—

(i) the bank merger, consolidation, or asset purchase occurs simultaneously with the acquisition of the shares of the bank or bank holding company, and the bank is not operated by the acquiring bank holding company as a separate entity other than as the survivor of the merger, consolidation or asset purchase;

(ii) the transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act (12 USC 1828(c));

(iii) the transaction does not involve the acquisition of any nonbank company that would require prior approval under section 4 of the Bank Holding Company Act (12 USC 1843);

(iv) both before and after the transaction, the acquiring bank holding company meets the Board's capital adequacy guidelines (appendixes A and B); and

(v) the acquiring bank holding company has provided written notice of the transaction to the Reserve Bank at least 30 days prior to the transaction, and during that period, the Reserve Bank has not informed the bank holding company that an application under section 225.11 is required.

(e) *Holding securities in escrow.* The holding of any voting securities of a bank or bank holding company in an escrow arrangement for the benefit of an applicant pending the Board's action on an application for approval of the proposed acquisition, if title to the securities and the voting rights remain with the seller and payment for the securities has not been made to the seller.

(f) *Acquisition of foreign banking organization.* The acquisition of a foreign banking organization (as defined in 12 CFR 211.21(n)) where the foreign banking organization does not directly or indirectly own or control a bank in the United States, unless the acquisition is also by a foreign banking organization and otherwise subject to section 225.11(f) of this subpart.

SECTION 225.13—Factors Considered in Acting on Bank Applications

(a) *Prohibited anticompetitive transactions.* As specified in section 3(c) of the BHC Act, the Board may not approve any application under this subpart if—

(1) the transaction would result in a monopoly or would further any combination or conspiracy to monopolize, or to attempt to monopolize, the business of banking in any part of the United States;

(2) the effect of the transaction may be substantially to lessen competition in any section of the country, tend to create a mo-

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nopoly, or in any other manner be in restraint of trade, unless the Board finds that the transaction's anticompetitive effects are clearly outweighed by its probable effect in meeting the convenience and needs of the community;

(3) the applicant has failed to provide the Board with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the applicant, that the Board deems appropriate to determine and enforce compliance with the BHC Act and other applicable federal banking statutes, and any regulations thereunder; or

(4) in the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, as provided in section 211.24(c)(1)(ii) of the Board's Regulation K (12 CFR 211.24(c)(1)(ii)).

(b) *Other factors.* In deciding applications under this subpart, the Board also considers the following factors with respect to the applicant, its subsidiaries, any banks related to the applicant through common ownership or management, and the bank or banks to be acquired:

(1) *Financial condition.* Their financial condition and future prospects, including whether current and projected capital positions and levels of indebtedness conform to standards and policies established by the Board.

(2) *Managerial resources.* The competence, experience, and integrity of the officers, directors, and principal shareholders of the applicant, its subsidiaries and the banks and bank holding companies concerned; their record of compliance with laws and regulations; and the record of the applicant and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.

(3) *Convenience and needs of the community.* The convenience and needs of the communities to be served, including the record of performance under the Community Reinvestment Act of 1977 (12 USC 2901 et seq.) and regulations issued thereunder, including the Board's Regulation BB (12 CFR 228.)

(4) *Availability of appropriate information.* Whether the applicant has provided the Board with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the applicant, that the Board deems appropriate to determine and enforce compliance with the BHC Act and other applicable federal banking statutes, and any regulations thereunder.

(5) *Comprehensive supervision of foreign banks.* Whether, in the case of an application involving a foreign bank, the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, as provided in section 211.25(c)(1) of the Board's Regulation K (12 CFR 211.25(c)(1)).

(c)(1) *Interstate transactions.* The Board may not approve any application under this subpart that would permit—

(i) the formation of a bank holding company that controls more than 5 percent of the outstanding shares of any class of voting securities of two or more banks located in different states; or

(ii) the acquisition by a bank holding company or by any of its subsidiaries of any voting securities of, any interest in, or substantially all of the assets of, an additional bank located in a state other than the state in which the operations of the banking subsidiaries of the bank holding company were principally conducted (as measured by total deposits) on July 1, 1966, or on the date on which the company became a bank holding company, whichever date is later.

(2) *Exceptions.* The prohibitions of this paragraph do not apply if—

(i) the bank is located in a state that by statute expressly authorizes the acquisition of securities of, an interest in, or substantially all of the assets of, a bank within the state by an out-of-state bank holding company; or

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(ii) the acquisition involves a closed or failing bank with assets of at least $500,000,000, and has been authorized under section 13(f) of the Federal Deposit Insurance Act (12 USC 1823(f)).

SECTION 225.14—Procedures for Applications, Notices, and Hearings

(a) *Filing application.* An application for the Board's prior approval under this subpart shall be filed with the appropriate Reserve Bank on the designated form and shall comply with section 262.3 of the Rules of Procedure (12 CFR 262.3), which requires the applicant to publish newspaper notice of the application.

(b) *Notice.*

(1) *Notice to primary banking supervisor.* Upon receipt of an application under this subpart, the Reserve Bank shall promptly furnish notice and a copy of the application to the primary banking supervisor of the bank to be acquired. The primary supervisor shall have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

(2) *Federal Register notice.* Upon receipt by the Reserve Bank of an application under this section, notice of the application shall be promptly sent to the *Federal Register* for publication. The *Federal Register* notice shall invite comment on the application for a period of no more than 30 days.

(3) *Newspaper notice.* The applicant shall cause to be published in a newspaper of general circulation in the affected community, in the form prescribed by the Board in 12 CFR 262.3(b), at least one notice soliciting public comment on the proposed acquisition.

(c) *Accepting application for processing.* Within 10 business days after the Reserve Bank receives an application under this section, the Reserve Bank shall accept it for processing, request additional information to complete the application, or return the application if it is substantially incomplete. If additional information is requested, the Reserve Bank shall, within 5 business days of receipt of the requested information, either accept the application for processing or return it to the applicant if it is still incomplete. Upon accepting an application, the Reserve Bank shall immediately send copies to the Board.

(d) *Action on applications.*

(1) *Action under delegated authority.* The Reserve Bank shall approve an application under this section within 30 calendar days after it has accepted the application, unless the Reserve Bank, upon notice to the applicant, refers the application to the Board for decision because action under delegated authority is not appropriate. Upon written notice to the applicant, the Reserve Bank may extend the 30-day period for 15 days. If the extension of time is to request necessary additional information, the 15-day period does not commence until after the Reserve Bank receives the requested information.

(2) *Board action.* The Board shall act on an application under this subpart that is referred to it for decision within 60 calendar days after the Reserve Bank has accepted the application, unless the Board notifies the applicant that the 60-day period is being extended for a specified period and states the reasons for the extension. In no event may the extension exceed the 91-day period provided in paragraph (g) of this section. The Board may request additional information that it believes is necessary for its decision.

(e) *Notice to attorney general.* The Board or Reserve Bank shall immediately notify the attorney general of approval of any application under this section.

(f) *Hearings.* As provided in section 3(b) of the BHC Act, the Board shall order a hearing if it receives from the primary supervisor of the bank to be acquired, within the 30-day period specified in paragraph (b)(1) of this section, a written recommendation of disapproval of an application. The Board may order a formal or informal hearing or other proceeding on the application, as provided in section 262.3(i)(2) of the Board's Rules of Procedure. Any request for a hearing (other than from the primary supervisor) shall comply

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with section 262.3(e) of the Rules of Procedure (12 CFR 262.3(e)).

(g) *Approval through failure to act.*

(1) *Ninety-one day rule.* An application under this subpart shall be deemed approved if the Board fails to act on the application within 91 calendar days after the date of submission to the Board of the complete record on the application. For this purpose, the Board acts when it issues an order stating that the Board has approved or denied the application, reflecting the votes of the members of the Board, and indicating that a statement of the reasons for the decision will follow promptly.

(2) *Complete record.* For the purpose of computing the commencement of the 91-day period, the record is complete on the latest of—

(i) the date of receipt by the Board of an application that has been accepted by the Reserve Bank;

(ii) the last day provided in any notice for receipt of comments and hearing requests on the application;

(iii) the date of receipt by the Board of the last relevant material regarding the application that is needed for the Board's decision, if the material is received from a source outside of the Federal Reserve System; or

(iv) the date of completion of any hearing or other proceeding.

(h) *Exceptions to notice and hearing requirements.*

(1) *Probable bank failure.* If the Board finds it must act immediately on an application in order to prevent the probable failure of a bank or bank holding company, the Board may modify or dispense with the notice and hearing requirements provided in this section.

(2) *Emergency.* If the Board finds that, although immediate action on an application is not necessary, an emergency exists requiring expeditious action, the Board shall provide the primary supervisor 10 days to submit its recommendation. The Board may act on such an application without a hearing and may modify or dispense with the other notice and hearing requirements provided in this section.

(i) *Waiting period.* A transaction approved under this subpart shall not be consummated until 30 days after the date of approval of the application, unless the Board has determined under paragraph (h) of this section that—

(1) the application involves a probable bank failure, in which case the transaction may be consummated immediately upon approval; or

(2) an emergency exists requiring expeditious action, in which case the transaction may be consummated on or after the fifth calendar day following approval.

SUBPART C—NONBANKING ACTIVITIES AND ACQUISITIONS BY BANK HOLDING COMPANIES

SECTION 225.21—Prohibited Nonbanking Activities and Acquisitions; Exempt Bank Holding Companies

(a) *Prohibited nonbanking activities and acquisitions.* Except as provided in section 225.22 of this subpart, a bank holding company or a subsidiary may not engage in, or acquire or control, directly or indirectly, voting securities or assets of a company engaged in, any activity other than—

(1) banking or managing or controlling banks and other subsidiaries authorized under the BHC Act; and

(2) an activity that the Board determines to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, including any incidental activities that are necessary to carry on such an activity, if the bank holding company has obtained the prior approval of the Board for that activity in accordance with and subject to the requirements of this regulation.

(b) *Exempt bank holding companies.* The following bank holding companies are exempt from the provisions of this subpart:

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(1) *Family-owned companies.* Any company that is a "company covered in 1970," as defined in section 2(b) of the BHC Act, more than 85 percent of the voting securities of which was collectively owned on June 30, 1968, and continuously thereafter, by members of the same family (or their spouses) who are lineal descendants of common ancestors.

(2) *Labor, agricultural, and horticultural organizations.* Any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code (26 USC 501(c)).

(3) *Companies granted hardship exemption.* Any bank holding company that has controlled only one bank since before July 1, 1968, and that has been granted an exemption by the Board under section 4(d) of the BHC Act, subject to any conditions imposed by the Board.

(4) *Companies granted exemption on other grounds.* Any company that acquired control of a bank before December 10, 1982, without the Board's prior approval under section 3 of the BHC Act, on the basis of a narrow interpretation of the term "demand deposit" or "commercial loan" if the Board has determined that (i) coverage of the company as a bank holding company under this subpart would be unfair or represent an unreasonable hardship; and (ii) exclusion of the company from coverage under this regulation is consistent with the purposes of the BHC Act and section 106 of the Bank Holding Company Act Amendments of 1970 (12 USC 1971, 1972(1)). The provisions of section 225.4 of subpart A of this regulation are not applicable to a company exempt under this paragraph.

SECTION 225.22—Exempt Nonbanking Activities and Acquisitions

(a) *Servicing activities.* A bank holding company may, without the Board's prior approval under this subpart, furnish services to or perform services for, or establish or acquire a company that engages solely in furnishing services to or performing services for—

(1) the bank holding company or its subsidiaries in connection with their activities as authorized by law, including services that are necessary to fulfill commitments entered into by the subsidiaries with third parties, if the bank holding company or servicing company complies with the Board's published interpretations and does not act as principal in dealing with third parties; and

(2) the internal operations of the bank holding company or its subsidiaries. Services for the internal operations of the bank holding company or its subsidiaries include, but are not limited to—

(i) accounting, auditing, and appraising;

(ii) advertising and public relations;

(iii) data processing and data transmission services, data bases or facilities;

(iv) personnel services;

(v) courier services;

(vi) holding or operating property used wholly or substantially by a subsidiary in its operations or for its future use;

(vii) liquidating property acquired from a subsidiary;

(viii) liquidating property acquired from any sources either prior to May 9, 1956, or the date on which the company became a bank holding company, whichever is later; and

(ix) selling, purchasing, or underwriting insurance such as blanket bond insurance, group insurance for employees, and property and casualty insurance.

(b) *Safe deposit business.* A bank holding company or nonbank subsidiary may, without the Board's prior approval, conduct a safe deposit business, or acquire voting securities of a company that conducts such a business.

(c) *Nonbanking acquisitions not requiring prior Board approval.* The Board's prior approval is not required under this subpart for the following acquisitions:

(1) *DPC acquisitions.* (i) Voting securities or assets, acquired by foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted ("DPC property") in good faith, if the DPC

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property is divested within two years of acquisition.

(ii) The Board may, upon request, extend this two-year period for up to three additional one-year periods. The Board may permit additional extensions for up to 5 years (for a total of 10 years), for real estate or other assets that are demonstrated by the bank holding company to have value and marketability characteristics similar to real estate.

(iii) Transfers of DPC property within the bank holding company system do not extend any period for divestiture of the property.

(2) *Securities or assets required to be divested by subsidiary.* Voting securities or assets required to be divested by a subsidiary at the request of an examining federal or state authority (except by the Board under the BHC Act or this regulation), if the bank holding company divests the securities or assets within two years from the date acquired from the subsidiary.

(3) *Fiduciary investments.* Voting securities or assets acquired by a bank or other company (other than a trust that is a company) in good faith in a fiduciary capacity, if the voting securities or assets are—

(i) held in the ordinary course of business; and

(ii) not acquired for the benefit of the company or its shareholders, employees, or subsidiaries.

(4) *Securities eligible for investment by a national bank.* Voting securities of the kinds and amounts explicitly eligible by federal statute (other than section 4 of the Bank Service Corporation Act, 12 USC 1864) for invesment by a national bank, and voting securities acquired prior to June 30, 1971, in reliance on section 4(c)(5) of the BHC Act and interpretations of the Comptroller of the Currency under section 5136 of the Revised Statutes (12 USC 24(7)).

(5) *Securities or property representing 5 percent or less of a company.* Voting securities of a company or property that, in the aggregate, represent 5 percent or less of the outstanding shares of any class of voting securities of a company or a 5 percent interest or less in the property, subject to the provisions of 12 CFR 225.137.

(6) *Securities of investment company.* Voting securities of an investment company that is solely engaged in investing in securities and that does not own or control more than 5 percent of the outstanding shares of any class of voting securities of any company.

(7) *Assets acquired in the ordinary course of business.* Assets of a company acquired in the ordinary course of business, subject to the provisions of 12 CFR 225.132, if the assets relate to activities in which the acquiring company has previously received Board approval under this regulation to engage in the geographic areas to be served.

(8) *Asset acquisitions by consumer finance or mortgage company or industrial bank.* Assets of an office(s) of a company, all or substantially all of which relate to making, acquiring, or servicing loans for personal, family, or household purposes, if—

(i) the acquiring company has previously received Board approval under this regulation to engage in consumer finance, residential mortgage banking, or industrial banking activities in the geographic areas to be served by the acquired office(s);

(ii) the assets acquired during any 12-month period do not represent more than 25 percent of the assets (on a consolidated basis) of the acquiring consumer finance company, mortgage company or industrial bank, or more than $25 million, whichever amount is less;

(iii) the assets acquired do not represent more than 50 percent of the selling company's consolidated assets that are devoted to the consumer finance, residential mortgage banking, or industrial banking business;

(iv) the acquiring company notifies the Reserve Bank of the acquisition within 30 days after the acquisition; and

(v) the acquiring company, after giving effect to the transaction, meets the Board's capital adequacy guidelines (appendix A) and the Board has not previously notified the acquiring company

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that it may not acquire assets under the exemption in this paragraph.

(d) *Acquisition of securities by subsidiary banks.*

(1) *National bank.* A national bank or its subsidiary may, without the Board's approval under this subpart, acquire or retain securities on the basis of section 4(c)(5) of the BHC Act in accordance with the regulations of the Comptroller of the Currency.

(2) *State bank.* A state-chartered bank or its subsidiary may, insofar as federal law is concerned and without the Board's prior approval under this subpart—

(i) acquire or retain securities, on the basis of section 4(c)(5) of the BHC Act, of the kinds and amounts explicitly eligible by federal statute for investment by a national bank; or

(ii) acquire or retain all (but, except for directors' qualifying shares, not less than all) of the securities of a company that engages solely in activities in which the parent bank may engage, at locations at which the bank may engage in the activity, and subject to the same limitations as if the bank were engaging in the activity directly.

(e) *Activities and securities of new bank holding companies.* A company that becomes a bank holding company may, for a period of two years, engage in nonbanking activities and control voting securities or assets of a nonbank subsidiary, if the bank holding company engaged in such activities or controlled such voting securities or assets on the date it became a bank holding company. The Board may grant requests for up to three one-year extensions of the two-year period.

(f) *Grandfathered activities and securities.* Unless the Board orders divestiture or termination under section 4(a)(2) of the BHC Act, a "company covered in 1970," as defined in section 2(b) of the BHC Act, may—

(1) retain voting securities or assets and engage in activities that it has lawfully held or engaged in continuously since June 30, 1968; and

(2) acquire voting securities of any newly formed company to engage in such activities.

(g) *Securities or activities exempt under Regulation K.* A bank holding company may acquire voting securities or assets and engage in activities as authorized in Regulation K (12 CFR 211).

SECTION 225.23—Procedures for Applications, Notices, and Hearings

(a) *Application or notice required for nonbanking activities.* An application or notice for the Board's prior approval under section 225.21(a) of this subpart for the following transactions shall be filed by a bank holding company with the appropriate Reserve Bank on the designated form in accordance with the Board's Rules of Procedure (12 CFR 262.2):

(1) *Engaging de novo in listed nonbanking activities.* A notice is required to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity listed in section 225.25 of this subpart. The applicant may commence the activity 30 days after receipt by the Reserve Bank of the notice unless the Reserve Bank within the 30-day period—

(i) returns the notice because it is incomplete or requires an application under paragraph (a)(2) or (3) of this section;

(ii) notifies the company that it may consummate the transaction at an earlier date;

(iii) extends the 30-day period for an additional 15 days; or

(iv) refers the notice to the Board for decision because substantive adverse comment is received or it otherwise appears appropriate.

If the 30-day period is extended by the Reserve Bank to request necessary additional information, the 15-day period does not commence until after the Reserve Bank receives the requested information. The Reserve Bank shall promptly send a copy of any notice received under this paragraph to the Board.

(2) *Acquiring a company engaged in listed*

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nonbanking activities. An application is required to acquire or control voting securities or assets of a company engaged in a permissible nonbanking activity listed in section 225.25 of this subpart.

(3) *Engaging in or acquiring a company to engage in unlisted nonbanking activities.* An application is required to commence or to engage de novo, or to acquire or control voting securities or assets of a company engaged in, any activity not listed in section 225.25 of this subpart. The application shall contain evidence that the proposed activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

(b) *Notice to expand or alter nonbanking activities.*

(1) *De novo expansion.* A notice under paragraph (a)(1) of this section is required to open a new office or to form a subsidiary to engage in, or to relocate an existing office engaged in, a nonbanking activity that the Board has previously approved for the bank holding company under this regulation, only if—

(i) the Board's prior approval was limited geographically;

(ii) the activity is to be conducted in a country outside of the United States and the bank holding company has not previously received prior Board approval under this regulation to engage in the activity in that country; or

(iii) the Board or appropriate Reserve Bank has notified the company that a notice under paragraph (a)(1) of this section is required.

The Board may require an application under paragraph (a)(2) or (a)(3) of this section instead of a notice.

(2) *Activities outside United States.* With respect to activities to be engaged in outside the United States that require approval under this subpart, the procedures of this section apply only to activities to be engaged in directly by a bank holding company that is not a qualifying foreign banking organization or by a nonbank subsidiary of a bank holding company approved under this subpart. Regulation K (12 CFR 211) governs other international operations of bank holding companies.

(3) *Alteration of nonbanking activity.* A notice under paragraph (a)(1) of this section is required to alter a nonbanking activity in any material respect from that considered by the Board in acting on the application or notice to engage in the activity. The Board may require an application under paragraph (a)(2) or (3) of this section instead of a notice.

(c) *Accepting application for processing.* Within 10 business days after the Reserve Bank receives an application under this section, the Reserve Bank shall accept it for processing, request additional information to complete the application, or return the application to the applicant if it is substantially incomplete. If additional information is requested, the Reserve Bank shall, within five business days of receipt of the requested information, either accept the application for processing or return the application to the applicant if it is still incomplete. Upon accepting an application, the Reserve Bank shall immediately send copies to the Board.

(d) *Federal Register notice.*

(1) *Listed activities.* Upon receipt by the Reserve Bank of an application or notice involving an activity listed in section 225.25 of this subpart, notice of the application or proposal shall be promptly sent to the *Federal Register* for publication. The *Federal Register* notice shall invite comment for a period of not more than 30 days.

(2) *Unlisted activities.* In the case of an application under this section involving an activity not listed in section 225.25 of this subpart, the Board shall, within 10 business days of acceptance by the Reserve Bank, send notice of the application to the *Federal Register* for publication, unless the Board determines that the applicant has not demonstrated that the activity is so closely related to banking or to managing or controlling banks as to be a proper incident thereto. The Board may extend the 10-day period for an additional 30 calendar days upon notice to the applicant. In the event notice of an application is not published for comment, the Board shall inform the appli-

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cant of the reasons for the decision. The *Federal Register* notice shall invite comment on the proposal for a reasonable period of time, generally for 30 days.

(e) *Action on applications.*

(1) *Action under delegated authority.* The Reserve Bank shall approve an application under paragraph (a)(2) of this section within 30 calendar days after it has accepted the application, unless the Reserve Bank, upon notice to the applicant, refers the application to the Board for decision because action under delegated authority is not appropriate. Upon written notice to the applicant, the Reserve Bank may extend the 30-day period for 15 days. If the extension of time is to request necessary additional information, the 15-day period does not commence until the Reserve Bank receives the requested information.

(2) *Board action.* The Board shall act on an application or notice under this section that is referred to it for decision within 60 calendar days after the Reserve Bank has accepted the application or received the notice, unless the Board notifies the applicant that the 60-day period is being extended for a specified period and explains the reasons for the extension. In no event may the extension exceed the 91-day period specified in paragraph (h) of this section. The Board may request additional information that it believes is necessary for its decision.

(f) *Expedited procedure for small acquisitions.*

(1) *Filing notice.* As an alternative to the application procedure of paragraph (a)(2) of this section, a bank holding company may apply to acquire voting securities or assets of a company engaged in an activity listed in section 225.25 of this subpart by (i) providing the appropriate Reserve Bank with a description of the transaction; and either (ii) submitting a copy of a newspaper notice in the form prescribed by the Board; or (iii) requesting the Board to publish notice of the application in the *Federal Register.* The newspaper notice shall be published in a newspaper of general circulation in the areas to be served as a result of the acquisition and shall provide an opportunity for interested persons to comment on the application for a period of at least 10 calendar days. If the applicant elects *Federal Register* notice, the notice shall provide an opportunity for interested persons to comment for a period of at least 15 calendar days.

(2) *Criteria for use of expedited procedure.* The procedure in this paragraph is available only if—

(i) neither the book value of the assets to be acquired nor the gross consideration to be paid for the securities or assets exceeds the greater of—

(A) $15 million; or

(B) 5 percent of the consolidated assets of the acquiring company up to a maximum of $100 million;

(ii) the bank holding company has previously received Board approval to engage in the activity involved in the acquisition; and

(iii) the bank holding company meets the Board's capital adequacy guidelines (appendix A).

(3) *Action on application.* Within 5 business days after the close of the comment period specified in the *Federal Register* notice or within 15 calendar days after receipt by the Reserve Bank of the newspaper notice, the Reserve Bank shall either approve the application or refer it to the Board for decision if action under delegated authority is not appropriate. The Board shall act on an application under this paragraph that is referred to it for decision in accordance with paragraph (e)(2) of this section. The Reserve Bank, upon written notice to the applicant, may extend the time period for approval under this paragraph for a reasonable period of time not to exceed 30 days. The Reserve Bank or the Board may require an application under paragraph (a)(2) of this section.

(g) *Hearing.* Any request for a hearing on an application or notice under this section shall comply with the provisions of section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)). The Board may order a formal or informal hearing or other proceeding on an application, as provided in section

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262.3(i)(2) of the Rules of Procedure (12 CFR 262.3(i)(2)). The Board shall order a hearing only if there are disputed issues of material fact that cannot be resolved in some other manner.

(h) *Approval through failure to act; 91-day rule.* An application or notice under this subpart shall be deemed approved if the Board fails to act on the application or notice within 91 calendar days after the date of submission to the Board of the complete record on the application or notice. The procedures for computation of the 91-day rule as set forth in section 225.14(g) of subpart B of this regulation apply to applications and notices under this subpart.

(i) *Emergency thrift-institution acquisitions.* In the case of an application to acquire a thrift institution, the Board may modify or dispense with the notice and hearing requirements of this section if the Board finds that an emergency exists that requires the Board to act immediately and the primary federal regulator of the institution concurs.

SECTION 225.24—Factors Considered in Acting on Nonbanking Applications

In evaluating an application or notice under section 225.23 of this subpart, the Board shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, and gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, and unsound banking practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and any company to be acquired, and the effect of the proposed transaction on those resources. Unless the record demonstrates otherwise, the commencement or expansion of a nonbanking activity de novo is presumed to result in benefits to the public through increased competition.

SECTION 225.25—List of Permissible Nonbanking Activities

(a) *Closely related nonbanking activities.* The activities listed below are so closely related to banking or managing or controlling banks as to be a proper incident thereto and may be engaged in by a bank holding company or a subsidiary thereof in accordance with and subject to the requirements of this regulation.

(b) (1) *Making and servicing loans.* Making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made, for example, by the following types of companies:

(i) consumer finance;
(ii) credit card;
(iii) mortgage;
(iv) commercial finance; and
(v) factoring.

(2) *Industrial banking.* Operating an industrial bank, Morris Plan bank, or industrial loan company, as authorized under state law, so long as the institution is not a bank.

(3) *Trust company functions.* Performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law, so long as the institution is not a bank and does not make loans or investments or accept deposits other than—

(i) deposits that are generated from trust funds not currently invested and that are properly secured to the extent required by law;

(ii) deposits representing funds received for a special use in the capacity of managing agent or custodian for an owner of, or investor in, real property, securities, or other personal property; or for such owner or investor as agent or custodian of funds held for investment or as escrow agent; or for an issuer of, or broker or dealer in securities, in a capacity such as a paying agent, dividend disbursing agent, or securities clearing agent; provided such deposits are not employed by or for the account of the customer in the

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manner of a general-purpose checking account or interest-bearing account; or

(iii) making call loans to securities dealers or purchasing money market instruments such as certificates of deposit, commercial paper, government or municipal securities, and bankers acceptances. (Such authorized loans and investments, however, may not be used as a method of channeling funds to nonbanking affiliates of the trust company.)

(4) *Investment or financial advice.* Acting as investment or financial advisor to the extent of—

(i) serving as the advisory company for a mortgage or a real estate investment trust;

(ii) serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 USC 80a-2(a)(20)), to an investment company registered under that act, including sponsoring, organizing, and managing a closed-end investment company;

(iii) providing portfolio investment advice[1] to any other person;

(iv) furnishing general economic information and advice, general economic statistical forecasting services and industry studies;[2]

(v) providing financial advice to state and local governments (including foreign municipalities and agencies of foreign governments), such as with respect to the issuance of their securities; and

(vi)(A)(*1*) Providing advice, including rendering fairness opinions and providing valuation services, in connection with mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, and financing transactions (including private and public financings and loan syndications); and conducting financial feasibility studies;[3] and,

(*2*) Providing financial and transaction advice regarding the structuring and arranging of swaps, caps, and similar transactions relating to interest rates, currency exchange rates or prices, and economic and financial indices, and similar transactions.

(B) The financial advisory services described in this subparagraph may be provided only to corporations, to financial and nonfinancial institutions, and to natural persons whose individual net worth (or joint net worth with a spouse) at the time the service is provided exceeds $1,000,000.

(C) Financial advisory activities under this subparagraph may not encompass the performance of routine tasks or operations for a customer on a daily or continuous basis, and the financial advisor shall not make available to any of its affiliates confidential information regarding a party obtained in the course of providing any financial advisory services except as authorized by the party.

(5) *Leasing.*

(i) *Leasing personal or real property.* Leasing personal or real property or act-

[1] The term "portfolio investment" is intended to refer generally to the investment of funds in a "security" as defined in section 2(1) of the Securities Act of 1933 (15 USC 77b) or in real property interests, except where the real property is to be used in the trade or business of the person being advised. In furnishing portfolio investment advice, bank holding companies and their subsidiaries shall observe the standards of care and conduct applicable to fiduciaries.

[2] This is to be contrasted with "management consulting," which the Board views as including, but not limited to, the provision of analysis or advice as to a firm's (A) purchasing operations, such as inventory control, sources of supply, and cost minimization subject to constraints; (B) production operations, such as quality control, work measurement, product methods, scheduling shifts, time and motion studies, and safety standards; (C) marketing operations, such as market testing, advertising programs, market development, packaging, and brand development; (D) planning operations, such as demand and cost projections, plant location, program planning, corporate acquisitions and mergers, and determination of long-term and short-term goals; (E) personnel operations, such as recruitment, training, incentive programs, employee compensation, and management-personnel relations; (F) internal operations, such as taxes, corporate organization, budgeting systems, budget control, data processing systems evaluation, and efficiency evaluation; or (G) research operations, such as product development, basic research, and product design and innovation. The Board has determined that "management consulting" is not an activity that is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

[3] Feasibility studies do not include assisting management with the planning or marketing for a given project or providing general operational or management advice.

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ing as agent, broker, or adviser in leasing such property if—

(A) the lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;

(B) the property to be leased is acquired specifically for the leasing transaction under consideration or was acquired specifically for an earlier leasing transaction;

(C) the lease is on a nonoperating basis;[4]

(D) at the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonably anticipated future transactions[5]) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease,[6] from—

(*1*) rentals;

(*2*) estimated tax benefits (investment tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect);

(*3*) the estimated residual value of the property at the expiration of the initial term of the lease, which in no case shall exceed 25 percent of the acquisition cost of the property to the lessor; and

(*4*) in the case of a lease of personal property of not more than seven years in duration, such additional amount, which shall not exceed 60 percent of the acquisition cost of the property, as may be provided by an unconditional guarantee by a lessee, independent third party, or manufacturer, which has been determined by the lessor to have the financial resources to meet such obligation, that will assure the lessor of recovery of its investment and cost of financing;

(E) the maximum lease term during which the lessor must recover the lessor's full investment in the property, plus the estimated total cost of financing the property, shall be 40 years; and

(F) at the expiration of the lease (including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or released on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease;[7] however, in no case shall the lessor retain any interest in the property beyond 50 years after its acquisition of the property.

(ii) *Certain higher-residual-value leasing.* Leasing tangible personal property

[4] For purposes of the leasing of automobiles, the requirement that the lease be on a nonoperating basis means that the bank holding company may not, directly or indirectly (A) provide for the servicing, repair, or maintenance of the leased vehicle during the lease term; (B) purchase parts and accessories in bulk or for an individual vehicle after the lessee has taken delivery of the vehicle; (C) provide for the loan of an automobile during servicing of the leased vehicle; (D) purchase insurance for the lessee; or (E) provide for the renewal of the vehicle's license merely as a service to the lessee where the lessee could renew the license without authorization from the lessor.

[5] The Board understands that some federal, state, and local governmental entities may not enter into a lease for a period in excess of one year. Such an impediment does not prohibit a company authorized to conduct leasing activities under this paragraph from entering into a lease with such governmental entities if the company reasonably anticipates that the governmental entities will renew the lease annually until such time as the company is fully compensated for its investment in the leased property plus its costs of financing the property. Further, a company authorized to conduct personal-property leasing activities under this paragraph may also engage in so-called "bridge" lease financing of personal property, but not real property, if the lease is short-term pending completion of long-term financing, by the same or another lender.

[6] The estimate by the lessor of the total cost of financing the property over the term of the lease should reflect, among other factors, the term of the lease, the modes of financing available to the lessor, the credit rating of the lessor and/or the lessee, if a factor in the financing, and prevailing rates in the money and capital markets.

[7] In the event of a default on, or early termination of, a lease agreement prior to the expiration of the lease term, the lessor shall either release the property, subject to all the conditions of this paragraph, or liquidate the property as soon as practicable but in no event later than two years from the date of default on the lease agreement (in the event of a default) or termination of the lease (in the event of termination), or such additional time as the Board may permit under section 225.22(c)(1) of this regulation, as if the property were DPC property. During the period following default on, or expiration or termination of, a lease, the lessor may lease the property on a short-term basis in a lease that does not conform to the requirements of this paragraph provided that the property is liquidated or released in a conforming lease prior to the expiration of this period.

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or acting as agent, broker, or adviser in leasing such property, in which the lessor relies on an estimated residual value of the property in excess of the 25 percent limitation described in paragraph (5)(i)(D)(3), if—

(A) the activity otherwise meets the requirements of paragraph (5)(i);

(B) the lessor in no case relies on an estimated residual value of the property in excess of 100 percent of the acquisition cost of the property to the lessor;

(C)(*1*) the aggregate book value of all personal property described in subclause (*2*) does not exceed 10 percent of the bank holding company's consolidated domestic and foreign assets;

(*2*) for purposes of calculating the limit provided in subclause (*1*), the bank holding company shall include all tangible personal property held for lease in transactions in which the bank holding company or any of its nonbank subsidiaries acting under authority of this paragraph, or any domestic subsidiary bank of such holding company, relies on an estimated residual value in excess of 25 percent of the acquisition cost of the property;

(D) the initial term of the lease is at least 90 days;[8]

(E) each company that conducts leasing transactions under this subparagraph (ii) maintains capitalization fully adequate to meet its obligations and support its activities, and commensurate with industry standards for companies engaged in comparable leasing activities; and

(F) the bank holding company maintains separately identifiable records of the leasing activities conducted under subparagraphs (i) and (ii), where it conducts leasing activities under the authority of both subparagraphs.

(6) *Community development.* Making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents.

(7) *Data processing.* Providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means, if—

(i) the data to be processed or furnished are financial, banking, or economic, and the services are provided pursuant to a written agreement so describing and limiting the services;

(ii) the facilities are designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and

(iii) the hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

(8) *Insurance agency and underwriting.*

(i) *Credit insurance.* Acting as principal, agent, or broker for insurance (including home mortgage redemption insurance) that is—

(A) directly related to an extension of credit by the bank holding company or any of its subsidiaries; and

(B) limited to ensuring the repayment of the outstanding balance due on the extension of credit[9] in the event of the death, disability, or involuntary unemployment of the debtor.

[8] This minimum-lease-term requirement is not intended to prohibit a bank holding company from acquiring personal property subject to an existing lease with a remaining maturity of less than 90 days, provided that, at the inception of the lease, such lease conformed with all of the requirements of this paragraph.

[9] "Extension of credit" includes direct loans to borrowers, loans purchased from other lenders, and leases of real or personal property so long as the leases are nonoperating and full-payout leases that meet the requirements of paragraph (b)(5) of this section.

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(ii) *Finance company subsidiary.* Acting as agent or broker for insurance directly related to an extension of credit by a finance company[10] that is a subsidiary of a bank holding company, if—

(A) the insurance is limited to ensuring repayment of the outstanding balance on such extension of credit in the event of loss or damage to any property used as collateral for the extension of credit; and

(B) the extension of credit is not more than $10,000, or $25,000 if it is to finance the purchase of a residential manufactured home[11] and the credit is secured by the home; and

(C) the applicant commits to notify borrowers in writing that—

(*1*) they are not required to purchase such insurance from the applicant;

(*2*) such insurance does not insure any interest of the borrower in the collateral; and

(*3*) the applicant will accept more comprehensive property insurance in place of such single-interest insurance.

(iii) *Insurance in small towns.* Engaging in any insurance agency activity in a place where the bank holding company or a subsidiary of the bank holding company has a lending office and that—

(A) has a population not exceeding 5,000 (as shown in the preceding decennial census); or

(B) has inadequate insurance agency facilities, as determined by the Board, after notice and opportunity for hearing.

(iv) *Insurance-agency activities conducted on May 1, 1982.* Engaging in any specific insurance-agency activity[12] if the bank holding company, or subsidiary conducting the specific activity, conducted such activity on May 1, 1982, or received Board approval to conduct such activity on or before May 1, 1982.[13] A bank holding company or subsidiary engaging in a specific insurance-agency activity under this clause may—

(A) engage in such specific insurance-agency activity only at locations—

(*1*) in the state in which the bank holding company has its principal place of business (as defined in 12 USC 1842(d));

(*2*) in any state or states immediately adjacent to such state; and

(*3*) in any state in which the specific insurance-agency activity was conducted (or was approved to be conducted) by such bank holding company or subsidiary thereof or by any other subsidiary of such bank holding company on May 1, 1982; and

(B) provide other insurance coverages that may become available after May 1, 1982, so long as those coverages insure against the types of risks as (or are otherwise functionally equivalent to) coverages sold or approved to be sold on May 1, 1982, by such bank holding company or subsidiary.

(v) *Supervision of retail insurance agents.* Supervising on behalf of insurance underwriters the activities of retail insurance agents who sell—

(A) fidelity insurance and property and casualty insurance on the real and

[10] "Finance company" includes all non-deposit-taking financial institutions that engage in a significant degree of consumer lending (excluding lending secured by first mortgages) and all financial institutions specifically defined by individual states as finance companies and that engage in a significant degree of consumer lending.

[11] These limitations increase at the end of each calendar year, beginning with 1982, by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

[12] Nothing contained in this provision shall preclude a bank holding company subsidiary that is authorized to engage in a specific insurance-agency activity under this clause from continuing to engage in the particular activity after merger with an affiliate, if the merger is for legitimate business purposes and prior notice has been provided to the Board.

[13] For the purposes of this paragraph, activities engaged in on May 1, 1982, include activities carried on subsequently as the result of an application to engage in such activities pending before the Board on May 1, 1982, and approved subsequently by the Board or as the result of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition.

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personal property used in the operations of the bank holding company or its subsidiaries; and

(B) group insurance that protects the employees of the bank holding company or its subsidiaries.

(vi) *Small bank holding companies.* Engaging in any insurance-agency activity if the bank holding company has total consolidated assets of $50 million or less. A bank holding company performing insurance-agency activities under this paragraph may not engage in the sale of life insurance or annuities except as provided in paragraphs (i) and (iii) of this section, and it may not continue to engage in insurance-agency activities pursuant to this provision more than 90 days after the end of the quarterly reporting period in which total assets of the holding company and its subsidiaries exceed $50 million.

(vii) *Insurance-agency activities conducted before 1971.* Engaging in any insurance-agency activity performed at any location in the United States directly or indirectly by a bank holding company that was engaged in insurance-agency activities prior to January 1, 1971, as a consequence of approval by the Board prior to January 1, 1971.

(9) *Operating savings association.* Owning, controlling or operating a savings association, if the savings association engages only in deposit-taking activities and lending and other activities that are permissible for bank holding companies under this subpart C.

(10) *Courier services.* Providing courier services for—

(i) checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) that are exchanged among banks and financial institutions; and

(ii) audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.[14]

(11) *Management consulting to depository institutions.* Providing management consulting advice[15] to nonaffiliated bank and nonbank depository institutions, including commercial banks, savings and loan associations, mutual savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, and industrial loan companies, if—

(i) neither the bank holding company nor any of its subsidiaries own or control, directly or indirectly, any equity securities in the client institution;

(ii) no management official, as defined in 12 CFR 212.2(h), of the bank holding company or any of its subsidiaries serves as a management official of the client institution, except where such interlocking relationships are permitted pursuant to an exemption granted under 12 CFR 212.4(b);

(iii) the advice is rendered on an explicit fee basis without regard to correspondent balances maintained by the client institution at any depository institution subsidiary of the bank holding company; and

(iv) disclosure is made to each potential client institution of—

(A) the names of all depository institutions that are affiliates of the consulting company, and

(B) the names of all existing client institutions located in the same county(ies), metropolitan statistical area, or primary metropolitan statistical area as the client institution.[16]

(12) *Money orders, savings bonds, and traveler's checks.* The issuance and sale at retail of money orders and similar consumer-type payment instruments having a face

[14] See also the Board's interpretation on courier activities (12 CFR 225.129), which sets forth conditions for bank holding company entry into the activity.

[15] A bank holding company that has received the Board's prior approval to engage in offering management consulting advice to nonaffiliated commercial banks as of April 20, 1982, may offer such advice on a de novo basis to nonbank depository institutions pursuant to this paragraph without filing an application under section 225.23 of this subpart.

[16] In performing this activity, bank holding companies are not authorized to perform tasks or operations or provide services to client institutions either on a daily or continuing basis, except as necessary to instruct the client institution on how to perform such services for itself. See also the Board's interpretation of bank management consulting advice (12 CFR 225.131). This interpretation shall apply to the performance of management consulting services for commercial banks and any other type of depository institution.

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value of not more than $1,000; the sale of U.S. savings bonds; and the issuance and sale of traveler's checks.

(13) *Real estate and personal property appraising.* Performing appraisals of real estate and tangible and intangible personal property, including securities.

(14) *Arranging commercial real estate equity financing.* Acting as intermediary for the financing of commercial or industrial income-producing real estate by arranging for the transfer of the title, control and risk of such a real estate project to one or more investors, if—

(i) the financing arranged exceeds $1 million;

(ii) the bank holding company and its affiliates do not provide financing to the investors to acquire a real estate project for which the bank holding company arranges equity financing;

(iii) the bank holding company and its affiliates do not have an interest in or participate in managing, developing, or syndicating a real estate project for which it arranges equity financing, and do not promote or sponsor the development or syndication of such property; and

(iv) the fee received for arranging equity financing for a real estate project is not based on profits to be derived from the project and is not larger than the fee that would be charged by an unaffiliated intermediary.

(15) *Securities brokerage.*

(i) Providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T (12 CFR 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash-management services, if the securities brokerage services are restricted to buying and selling securities solely as agent for the account of customers and do not include securities underwriting or dealing; and

(ii) Providing securities brokerage services under paragraph (b)(15)(i) of this section in combination with investment advisory services permissible under paragraph (b)(4) of this section[17] subject to the following requirements:

(A) The company must prominently disclose in writing[18] to each customer before providing any brokerage or advisory services, and, in the case of disclosures required under clause (1), again in each customer-account statement, that—

(*1*) the company is solely responsible for its contractual obligations and commitments;

(*2*) the company is not a bank and is separate from any affiliated bank; and

(*3*) the securities sold, offered, or recommended by the company are not insured by the Federal Deposit Insurance Corporation, and are not obligations of, or endorsed or guaranteed in any way by, any bank, unless this is the case; and

(B) The company and its affiliates may not share any confidential information concerning their respective customers without the consent of the customer.

(16) *Underwriting and dealing in government obligations and money market instruments.* Underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 USC 24 and 335, including banker's acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by the bank holding company's subsidiary

[17] Investment advisory services authorized under paragraph (b)(4) include the exercise of discretion in buying and selling securities on behalf of a customer provided that investment discretion is exercised only on behalf of institutional customers and only at the request of the customer. A bank holding company or its subsidiary providing these discretionary investment-management services must comply with applicable law, including fiduciary principles, and obtain the consent of its customer before engaging, as principal or as agent in a transaction in which an affiliate acts as principal, in securities transactions on the customer's behalf.

[18] These disclosures may be made orally provided that a written disclosure is provided to the customer immediately thereafter.

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member banks or its subsidiary nonmember banks as if they were member banks.

(17) *Foreign exchange advisory and transactional services.* Providing, by any means, general information and statistical forecasting with respect to foreign exchange markets; advisory services designed to assist customers in monitoring, evaluating, and managing their foreign exchange exposures; and transactional services with respect to foreign exchange by arranging for "swaps" among customers with complementary foreign exchange exposures and for the execution of foreign exchange transactions; provided the activity is conducted through a separately incorporated subsidiary of the bank holding company that—

(i) does not take positions in foreign exchange for its own account;

(ii) observes the standards of care and conduct applicable to fiduciaries with respect to its foreign exchange advisory and transactional services; and

(iii) does not itself execute foreign exchange transactions.

(18) *Futures commission merchant.* Acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit, and other money market instruments that a bank may buy or sell in the cash market for its own account, if the activity is conducted through a separately incorporated subsidiary of the bank holding company that—

(i) does not become a clearing member of any exchange or clearing association that requires the parent corporation of the clearing member to also become a member of that exchange or clearing association unless a waiver of the requirement is obtained;

(ii) does not trade for its own account except for the purpose of hedging a cash position in the related government security, bullion, foreign currency, or money market instrument;

(iii) time stamps orders of all customers to the nearest minute, executes all orders strictly in chronological sequence to the extent consistent with the customers' specifications, and executes all orders with reasonable promptness with due regard to market conditions;

(iv) does not extend credit to customers for the purpose of meeting initial or maintenance margins required of customers except for posting margin on behalf of customers in advance of prompt reimbursement; and

(v) has and maintains capitalization fully adequate to meet its own commitments and those of its customers, including affiliates.

(19) *Investment advice on financial futures and options on futures.* Providing investment advice, including counsel, publications, written analyses and reports, as a futures commission merchant (FCM) authorized pursuant to paragraph (18) of this subsection or as a commodity trading advisor (CTA) registered with the Commodity Futures Trading Commission, with respect to the purchase and sale of futures contracts and options on futures contracts for the commodities and instruments referred to in paragraph (18), provided that the FCM or CTA—

(i) does not trade for its own account except for the purpose of hedging a cash position in the related government security, bullion, foreign currency, or money market instrument; and

(ii) limits its advice to financial institutions and other financially sophisticated customers that have significant dealings or holdings in the underlying commodities, securities, or instruments.

(20) *Consumer financial counseling.* Providing advice, educational courses, and instructional materials to consumers on individual financial management matters, including debt consolidation, applying for a mortgage, bankruptcy, budget management, tax planning, retirement and estate planning, insurance and general investment management, provided—

(i) educational materials and presentations used by the counselor may not promote specific products and services;

(ii) the counselor advises each customer

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that the customer is not required to purchase any services from affiliates; and

(iii) the counselor does not obtain or disclose confidential information concerning its customers without the customer's written consent or pursuant to legal process.

This paragraph does not authorize the provision of advice on specific products or investments or the provision of portfolio investment advice or portfolio management, which are authorized under paragraphs (3) and (4)(iii) of this subsection subject to certain fiduciary standards. If consumer financial counseling is offered by a company that also offers securities-brokerage services pursuant to paragraph (15) of this subsection, the brokerage and counseling services must be provided by different personnel and in separate offices or in separate and distinctly marked areas.

(21) *Tax planning and preparation.* Providing individuals, businesses, and nonprofit organizations tax-planning and tax-preparation services, including advice and strategies to minimize tax liabilities, and the preparation of tax forms, provided—

(i) the materials used by the tax planner or preparer do not promote other specific products and services; and

(ii) the tax planner or preparer does not obtain or disclose confidential information concerning its customers without the customer's written consent or pursuant to legal process.

(22) *Check-guaranty services.* Authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services and purchasing from the merchant validly authorized checks that are subsequently dishonored, provided that the check guarantor does not discriminate against checks drawn on unaffiliated banks.

(23) *Operating collection agency.* Collecting overdue accounts receivable, either retail or commercial, provided the collection agency—

(i) does not obtain the names of customers of competing collection agencies from an affiliated depository institution that maintains trust accounts for those agencies; and

(ii) does not provide preferential treatment to an affiliate or a customer of such affiliate seeking collection of an outstanding debt.

(24) *Operating credit bureau.* Maintaining files on the past credit history of consumers and providing that information to a credit grantor who is considering a borrower's application for credit, provided that the credit bureau does not provide preferential treatment to a customer of an affiliated financial institution.

SUBPART D—CONTROL AND DIVESTITURE PROCEEDINGS

SECTION 225.31—Control Proceedings

(a) *Preliminary determination of control.* (1) The Board may issue a preliminary determination of control under the procedures set forth in this section in any case in which—

(i) any of the presumptions of control set forth in paragraph (d) of this section is present; or

(ii) it otherwise appears that a company has the power to exercise a controlling influence over the management or policies of a bank or other company.

(2) If the Board makes a preliminary determination of control under this section, the Board shall send notice to the controlling company containing a statement of the facts upon which the preliminary determination is based.

(b) *Response to preliminary determination of control.* Within 30 calendar days of issuance by the Board of a preliminary determination of control or such longer period permitted by the Board, the company against whom the determination has been made shall—

(1) submit for the Board's approval a specific plan for the prompt termination of the control relationship;

(2) file an application under subpart B or C of this regulation to retain the control relationship; or

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(3) contest the preliminary determination by filing a response, setting forth the facts and circumstances in support of its position that no control exists, and, if desired, requesting a hearing or other proceeding.

(c) *Hearing and final determination.* (1) The Board shall order a formal hearing or other appropriate proceeding upon the request of a company that contests a preliminary determination that the company has the power to exercise a controlling influence over the management or policies of a bank or other company, if the Board finds that material facts are in dispute. The Board may also in its discretion order a formal hearing or other proceeding with respect to a preliminary determination that the company controls voting securities of the bank or other company under the presumptions in paragraph (d)(1) of this section.

(2) At a hearing or other proceeding, any applicable presumptions established by paragraph (d) of this section shall be considered in accordance with the Federal Rules of Evidence and the Board's Rules of Practice for Formal Hearings (12 CFR 263).

(3) After considering the submissions of the company and other evidence, including the record of any hearing or other proceeding, the Board shall issue a final order determining whether the company controls voting securities, or has the power to exercise a controlling influence over the management or policies, of the bank or other company. If a control relationship is found, the Board may direct the company to terminate the control relationship or to file an application for the Board's approval to retain the control relationship under subpart B or C of this regulation.

(d) *Rebuttable presumptions of control.* The following rebuttable presumptions shall be used in any proceeding under this section:

(1) *Control of voting securities.*

(i) *Securities convertible into voting securities.* A company that owns, controls, or holds securities that are immediately convertible, at the option of the holder or owner, into voting securities of a bank or other company, controls the voting securities.

(ii) *Option or restriction on voting securities.* A company that enters into an agreement or understanding under which the rights of a holder of voting securities of a bank or other company are restricted in any manner controls the securities. This presumption does not apply where the agreement or understanding—

(A) is a mutual agreement among shareholders granting to each other a right of first refusal with respect to their shares;

(B) is incident to a bona fide loan transaction; or

(C) relates to restrictions on transferability and continues only for the time necessary to obtain approval from the appropriate federal supervisory authority with respect to acquisition by the company of the securities.

(2) *Control over company.*

(i) *Management agreement.* A company that enters into any agreement or understanding with a bank or other company (other than an investment advisory agreement), such as a management contract, under which the first company or any of its subsidiaries directs or exercises significant influence over the general management or overall operations of the bank or other company controls the bank or other company.

(ii) *Shares controlled by company and associated individuals.* A company that, together with its management officials or controlling shareholders (including members of the immediate families of either as defined in 12 CFR 206.2(k)), owns, controls, or holds with power to vote 25 percent or more of the outstanding shares of any class of voting securities of a bank or other company controls the bank or other company, if the first company owns, controls, or holds with power to vote more than 5 percent of the outstanding shares of any class of voting securities of the bank or other company.

(iii) *Common management officials.* A company that has one or more management officials in common with a bank or other company controls the bank or other company, if the first company owns,

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controls, or holds with power to vote more than 5 percent of the outstanding shares of any class of voting securities of the bank or other company, and no other person controls as much as 5 percent of the outstanding shares of any class of voting securities of the bank or other company.

(iv) *Shares held as fiduciary.* The presumptions in paragraphs (d)(2)(ii) and (iii) of this section do not apply if the securities are held by the company in a fiduciary capacity without sole discretionary authority to exercise the voting rights.

(e) *Presumptions of noncontrol.* (1) In any proceeding under this section, there is a presumption that any company that directly or indirectly owns, controls, or has power to vote less than 5 percent of the outstanding shares of any class of voting securities of a bank or other company does not have control over that bank or other company.

(2) In any proceeding under this section, or judicial proceeding under the BHC Act, other than a proceeding in which the Board has made a preliminary determination that a company has the power to exercise a controlling influence over the management or policies of the bank or other company, a company may not be held to have had control over the bank or other company at any given time, unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 percent or more of the outstanding shares of any class of voting securities of the bank or other company, or had already been found to have control on the basis of the existence of a controlling influence relationship.

SECTION 225.32—Divestiture Proceedings

(a) *Ineffective divestitures.* (1) The divestiture of assets or voting securities by a bank holding company (or a company that would be a bank holding company but for the divestiture) is ineffective, and the divesting company shall be presumed to control the acquiring person or the divested assets or securities, if—

(i) the acquiring person is indebted in any manner to the divesting company; or

(ii) the divesting company has any management official in common with the acquiring person.

(2) For the purposes of this section—

(i) "indebtedness" does not include routine business or personal credit that is unrelated to the divestiture transaction and that is extended by the divesting company in the ordinary course of its lending business; and

(ii) "divesting company" and "acquiring person" include their parent companies, subsidiaries, and, if the acquiring person is an individual, companies controlled by the individual.

(b) *Request for divestiture determination.* For any divestiture that is deemed ineffective under paragraph (a) of this section, the divesting company may request the Board to determine that the divestiture is in fact effective by submitting a letter that includes—

(1) a description of the divestiture transaction and the existing and prospective relationship between the divesting company and the acquiring person;

(2) evidence and argument demonstrating that the divesting company is not capable of controlling the acquiring person or the divested assets or securities; and

(3) a request for a hearing, if desired.

(c) *Hearing.* The Board shall order a formal hearing or other appropriate proceeding upon the request of a divesting company under paragraph (b) of this section, if the Board finds that material facts are in dispute. The Board may also order a formal hearing or other proceeding if, in the Board's judgment, such a proceeding would be appropriate.

(d) *Standards for making divestiture determination.* In acting on the request of a divesting company under paragraph (b) of this section, the Board shall consider the following factors, among others, in determining whether the divesting company is capable of controlling the

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acquiring person or the divested assets or securities:

(1) *Indebtedness of acquiring person to divesting company.*

(i) the terms of the indebtedness, including the amount of the indebtedness in relation to the total purchase price;

(ii) the ability of the acquiring person to repay the indebtedness; and

(iii) the manner in which the divesting company would dispose of the divested assets in the event it reacquires the assets as a result of default on the indebtedness.

(2) *Management official interlocks.* The extent of the involvement of the interlocking management official in the operations of the divesting company and the acquiring person, and the management official's relationship to the assets or securities being divested.

(e) *Final determination.* After considering the submission of the divesting company and other evidence, including the record of any hearing or other proceeding, the Board shall issue an order determining whether the company controls or is capable of controlling the acquiring person or the divested assets or securities.

(f) *Review of other divestitures.* In any divestiture of assets or securities by a company that is not covered under paragraph (a) of this section, the Board may review the divestiture to assure that the divesting company is not capable of controlling the acquiring person or the divested assets or securities.

SUBPART E—CHANGE IN BANK CONTROL

SECTION 225.41—Transactions Requiring Prior Notice

(a) *Prior-notice requirement.* (1) Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the Board 60 days' written notice, as specified in section 225.43 of this subpart, before acquiring control of a state member bank or bank holding company, unless the acquisition is exempt under section 225.42 of this subpart.

(2) For the purposes of this subpart, "acquisition" includes a purchase, assignment, transfer, or pledge of voting securities, or an increase in percentage ownership of a bank or other company resulting from a redemption of voting securities.

(b) *Acquisitions requiring prior notice.* The following transactions constitute, or are presumed to constitute, the acquisition of control under the Bank Control Act,* requiring prior notice to the Board:

(1) the acquisition of any voting securities of a state member bank or bank holding company if, after the transaction, the acquiring person (or persons acting in concert) owns, controls, or holds with power to vote 25 percent or more of any class of voting securities of the institution; or

(2) the acquisition of any voting securities of a state member bank or bank holding company if, after the transaction, the acquiring person (or persons acting in concert) owns, controls, or holds with power to vote 10 percent or more (but less than 25 percent) of any class of voting securities of the institution, and if—

(i) the institution has registered securities under section 12 of the Securities Exchange Act of 1934 (15 USC 78*l*); or

(ii) no other person will own a greater percentage of that class of voting securities immediately after the transaction.

(c) *Rebuttal of presumption of control.* Prior notice to the Board is not required for any acquisition of voting securities under the presumption set forth in paragraph (b)(2) of this section, if the Board finds that the acquisition will not result in control. The Board will afford the person seeking to rebut the presumption an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal conference.

(d) *Other transactions.* Transactions other than those set forth in paragraph (b)(2) resulting in a person's control of less than 25

* The Change in Bank Control Act amended section 7(j) of the Federal Deposit Insurance Act (12 USC 1817(j).

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percent of a class of voting securities of a state member bank or bank holding company do not result in control for purposes of the Bank Control Act.

SECTION 225.42—Transactions Not Requiring Prior Notice

The following transactions do not require prior notice to the Board under this subpart:

(a)(1) *Increase of previously authorized acquisitions above 25 percent.* The acquisition of additional shares of a class of voting securities of a state member bank or bank holding company by any person who has lawfully acquired and maintained control of 25 percent or more of that class of voting securities after filing the notice required under section 225.41(b)(1) of this subpart.

(2) *Increase of previously authorized acquisitions between 10 percent and 25 percent.* Unless the Board or Reserve Bank otherwise provides by order, the acquisition of additional shares of a class of voting securities of a state member bank or bank holding company by any person (or persons acting in concert) who has lawfully acquired and maintained control of 10 percent or more of that class of voting securities either after filing the notice required under section 225.41(b)(2) of this subpart to acquire voting securities of the bank or bank holding company or in connection with an application approved under section 3 of the Bank Holding Company Act or section 18(c) of the Federal Deposit Insurance Act, if the aggregate amount of voting securities held following the acquisition is less than 25 percent of any class of voting securities of the institution.

(b) *Acquisitions subject to approval under BHC Act or Bank Merger Act.* Any acquisition of voting securities subject to approval under section 3 of the BHC Act (section 225.11 of subpart B), or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 USC 1828(c)).

(c) *Transactions exempt under BHC Act.* Any acquisition described in sections 2(a)(5) or 3(a)(A) or (B) of the BHC Act (12 USC 1841(a)(5), 1842(a)(A) and (B)) by a person described in those provisions.

(d) *Grandfathered control relationships.* (1) The acquisition of additional voting securities of a state member bank or bank holding company by a person who continuously since March 9, 1979 (or since that institution commenced business, if later) held power to vote 25 percent or more of any class of voting securities of that institution; or

(2) the acquisition of additional voting securities of a state member bank or bank holding company by a person who is presumed under section 225.41(b)(2) of this subpart to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting securities held does not exceed 25 percent of any class of voting securities of the institution.

(e) *Acquisition in satisfaction of debts previously contracted or through inheritance or gift.* Any acquisition of voting securities, which would otherwise require a notice under this subpart, in satisfaction of a debt previously contracted in good faith, or through inheritance or a bona fide gift, if the acquiring person notifies the appropriate Reserve Bank within 30 calendar days after the acquisition and provides any relevant information requested by the Reserve Bank.

(f) *Proxy solicitation.* The acquisition of the power to vote securities of a state member bank holding company through receipt of a revocable proxy in connection with a proxy solicitation for the purpose of conducting business at a regular or special meeting of the institution, if the proxy terminates within a reasonable period after the meeting.

(g) *Stock dividends.* The receipt of voting securities of a state member bank or bank holding company through a stock dividend or stock split if the proportional interest of the recipient in the institution remains substantially the same.

(h) *Acquisition of foreign banking organization.* The acquisition of voting securities of a qualifying foreign banking organization. (This exemption does not extend to the re-

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ports and information required under paragraphs 9, 10, and 12 of the Bank Control Act (12 USC 1817(j)(9), (10), and (12)).

SECTION 225.43—Procedures for Filing, Processing, and Acting on Notices

(a)(1) *Filing notice.* A notice required under this subpart shall be filed with the appropriate Reserve Bank and shall contain the information required by paragraph 6 of the Change in Bank Control Act (12 USC 1817(j)(6)), or prescribed in the designated Board form. With respect to personal financial statements required by paragraph 6(B) of the Change in Bank Control Act, an individual may include a statement of assets and liabilities as of a date within 90 days of filing the notice, a brief income summary, and a description of any subsequent material changes, subject to the authority of the Reserve Bank or the Board to require additional information.

(2) *Acceptance of notice.* The 60-day notice period specified in section 225.41 of this subpart shall commence on the date all required information is received by the appropriate Reserve Bank or the Board. The Reserve Bank shall notify the person or persons submitting a notice under this subpart of the date all such required information is received and the notice is accepted for processing.

(3) *Publication.* (i) *Newspaper announcement.* A person(s) filing a notice under this subpart shall publish, in a form prescribed by the Board, an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the head office of the state member bank to be acquired is located or, in the case of a proposed acquisition of a bank holding company, in the community in which its head office is located and in the community in which the head office of each of its subsidiary banks is located. The announcement shall be published no earlier than 10 calendar days prior to the filing of the notice with the appropriate Reserve Bank and no later than 10 calendar days after acceptance of the notice by the Reserve Bank. A copy of the announcement and the publisher's affidavit of publication shall be provided to the appropriate Reserve Bank.

(ii) *Contents of newspaper announcement.* The newspaper announcement shall state—

(A) the name of each person identified in the notice as a proposed acquiror of the bank or bank holding company and the percentage of shares proposed to be acquired;

(B) the name of the bank or bank holding company to be acquired, including, in the case of a bank holding company, the name of each of its subsidiary banks; and

(C) a statement that interested persons may submit comments on the notice to the Board or the appropriate Reserve Bank for a period of 20 days or such shorter period as may be provided pursuant to paragraph (a)(3)(v) of this section.

(iii) *Federal Register announcement.* The Board will, upon filing of a notice under this subpart, publish announcement in the *Federal Register* of receipt of the notice. The *Federal Register* announcement will contain the information required under paragraph (a)(3)(ii)(A) and (a)(3)(ii)(B) of this section and a statement that interested persons may submit comments on the proposed acquisition for a period of 15 days or such shorter period as may be provided pursuant to paragraph (a)(3)(v) of this section. The Board may waive publication in the *Federal Register* if the Board determines that such action is appropriate.

(iv) *Delay of publication.* The Board may permit delay in the publication required under paragraphs (a)(3)(i) and (a)(3)(iii) if the Board determines, for good cause shown, that it is in the public interest to grant such a delay. Requests for delay of publication may be submitted to the appropriate Reserve Bank.

(v) *Shortening or waiving notice.* In circumstances requiring prompt action, the

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Board may shorten the public-comment period required under this paragraph. The Board may also waive the newspaper-publication and solicitation-of-public-comment requirements of this paragraph, or it may act on a notice before the expiration of a public-comment period, if it certifies in writing that disclosure of the notice, solicitation of public comment, or delay until expiration of the public-comment period would seriously threaten the safety or soundness of the bank or bank holding company to be acquired.

(4) *Consideration of public comments.* In acting upon a notice filed under this subpart, the Board shall consider all public comments received in writing within the period specified in the newspaper or *Federal Register* announcement, whichever is later. At the Board's option, comments received after this period may, but need not, be considered.

(5) *Standing.* No person (other than the acquiring person) who submits comments or information on a notice filed under this subpart shall thereby become a party to the proceeding or acquire any standing or right to participate in the Board's consideration of the notice or to appeal or otherwise contest the notice or the Board's action regarding the notice.

(b) *Advice to bank supervisory agencies.*

(1) Upon accepting a notice relating to acquisition of securities of a state member bank, the Reserve Bank shall send a copy of the notice to the appropriate state bank supervisor, which shall have 30 calender days from the date the notice is sent in which to submit its views and recommendations to the Board. The Reserve Bank shall also send a copy of any notice it accepts to the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

(2) If the Board finds that it must act immediately in order to prevent the probable failure of the bank or bank holding company involved, the Board may dispense with or modify the requirements for notice to the state supervisor.

(c) *Time period for Board action.*

(1) *Consummation of acquisition.* (i) A proposed acquisition may be consummated 60 days after submission to the Reserve Bank of a complete notice under paragraph (a) of this section, unless within that period the Board disapproves the proposed acquisition or extends the 60-day period as provided under paragraph (c)(2) of this section.

(ii) A proposed acquisition for which notice has been filed under paragraph (a) of this section may be consummated before the expiration of the 60-day period if the Board notifies the acquiring person in writing of the Board's intention not to disapprove the acquisition.

(2) *Extensions of time period.* (i) The Board may extend the 60-day period in paragraph (c)(1) of this section for an additional 30 days by notifying the acquiring persons.

(ii) The Board may further extend the period during which it may disapprove a notice for two additional periods of not more than 45 days each if the Board determines that—

(A) any acquiring person has not furnished all the information required under paragraph (a) of this section;

(B) any material information submitted is substantially inaccurate;

(C) it is unable to complete the investigation of any acquiring person because of inadequate cooperation or delay by that person; or

(D) additional time is needed to investigate and determine that no acquiring person has a record of failing to comply with the requirements of the Bank Secrecy Act, subchapter II of chapter 53 of title 31, United States Code.

(iii) If the Board extends the time period under this paragraph, it shall notify the acquiring person(s) of the reasons therefor and shall include a statement of the information, if any, deemed incomplete or inaccurate.

(d)(1) *Investigation and report.* After receiving a notice under this subpart, the Board or the appropriate Reserve Bank shall conduct an investigation of the competence, ex-

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perience, integrity, and financial ability of each person by and for whom an acquisition is to be made. The Board shall also make an independent determination of the accuracy and completeness of any information required to be contained in a notice under paragraph (a) of this section. In investigating any notice accepted under this subpart, the Board or Reserve Bank may solicit information or views from any person, including any bank or bank holding company involved in the notice, and any appropriate state, federal, or foreign governmental authority.

(2) The Board or the appropriate Reserve Bank shall prepare a written report of its investigation, which shall contain, at a minimum, a summary of the results of the investigation.

(e) *Factors considered in acting on notices.* In reviewing a notice filed under this subpart, the Board shall consider the information in the record, the views and recommendations of the appropriate bank supervisor, and any other relevant information obtained during any investigation of the notice. The Board may disapprove an acquisition if it finds adverse effects with respect to any of the factors set forth in paragraph 7 of the Bank Control Act (12 USC 1817(j)(7)) (i.e., competitive, financial, managerial, banking, or incompleteness of information).

(f) *Disapproval and hearing.* Within three days after its decision to issue a notice of intent to disapprove any proposed acquisition, the Board shall notify the acquiring person in writing of the reasons for the action. Within 10 calendar days of receipt of the notice of the Board's intent to disapprove, the acquiring person may submit a written request for a hearing. Any hearing conducted under this paragraph shall be in accordance with the Rules of Practice for Formal Hearings (12 CFR 263). At the conclusion of the hearing, the Board shall, by order, approve or disapprove the proposed acquisition on the basis of the record of the hearing. If the acquiring person does not request a hearing, the notice of intent to disapprove becomes final and unappealable.

SUBPART F—LIMITATIONS ON NONBANK BANKS

SECTION 225.51—Seven Percent Growth Limit for Nonbank Banks

(a) *Period for determining compliance.* A nonbank bank's annual rate of asset growth for purposes of paragraph (b) shall be determined for 12-month periods that begin on October 1 of each year and end on September 30 of the following year, unless the bank elects to use the al-ternative method described in paragraph (c). The initial 12-month period shall commence on October 1, 1988, and expire on September 30, 1989, unless the Board establishes a different period pursuant to paragraph (d).

(b) *Computing annual rate of asset growth.*

(1) *Initial 12-month period.* For the initial 12-month period beginning on October 1, 1988, the average of the nonbank bank's total assets as reported on Schedule RC-K of its Report of Condition for the four quarters during this period may not increase by more than 7 percent of the nonbank bank's initial base. The nonbank bank may determine its initial base under any of the following methods:

(i) its total assets as reported on Schedule RC-K of its Report of Condition for the quarter ending September 30, 1988, divided by 1.601; or

(ii) its total assets on August 10, 1988, divided by 1.567, unless the Board determines pursuant to paragraph (d) that such amount may not be used; or

(iii) the average of its total assets as reported on Schedule RC-K of its Report of Condition for the fourth quarter of 1987 and the first three quarters of 1988.

(2) *Succeeding 12-month periods.* For each 12-month period after the initial period, the average of the nonbank bank's total assets as reported on Schedule RC-K of its Report of Condition for the four quarters during that period may not increase by more than 7 percent of the average of its total assets as reported on Schedule RC-K of its Report of Condition for the four quarters in the preceding 12-month period.

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(c) *Alternative method to compute annual rate of asset growth.*

(1) *Quarterly measurement permitted.* In lieu of the methods for measuring compliance with the asset-growth rate described in paragraph (b), a nonbank bank may elect to have its compliance with the growth rate determined in the following manner: its total assets as reported on Schedule RC-K of its Report of Condition for each quarter ending after August 10, 1989, may not increase by more than 7 percent of its total assets as reported on Schedule RC-K of its Report of Condition for the same quarter of the previous year.

(2) *Initial quarter.* In measuring compliance with the growth rate under paragraph (c)(1) for the third quarter of 1989, the nonbank bank may elect to use its assets on August 10, 1988, as the base rather than the total assets for the third quarter of 1988 as reported on Schedule RC-K of its Report of Condition.

(3) *Notice required.* A nonbank bank electing to compute its asset growth pursuant to this paragraph shall notify the Board by October 15, 1988, of this election. The nonbank bank may not thereafter alter its election.

(d) *Determination of total assets on August 10, 1988.* If the Board determines that a nonbank bank has engaged in transactions that have artificially inflated its total assets on August 10, 1988, and that are unrelated to its normal business activities, the Board may require that—

(1) the nonbank exclude such amounts in calculating its total assets on August 10, 1988, for purposes of paragraph (b)(1)(ii); or

(2) the initial 12-month period for determining compliance with the 7 percent growth rate shall commence on a date later than August 10, 1988, and the institution's total assets on that later date shall be used instead of the bank's total assets on August 10, 1988, for purposes of measuring compliance with the 7 percent growth rate under paragraph (b)(1).

(e) *Required reports.* (1) A nonbank bank shall file with the Board by October 15, 1988, a statement indicating the method it has elected to compute its initial base for purposes of paragraph (b)(1).

(2) A nonbank bank electing to use its actual total assets on August 10, 1988, as its initial base for purposes of paragraph (b)(1), shall report that figure to the Board by October 15, 1988, and the nonbank bank's total assets for the third calendar quarter of 1988 as required to be reported on Schedule RC-K of its Report of Condition for that quarter.

SECTION 225.52—Limitation on Overdrafts

(a) *Definitions.* For purposes of this section—

(1) "Account" means a reserve account, clearing account, or deposit account as defined in the Board's Regulation D (12 CFR 204.2(a)(1)(i)), that is maintained at a Federal Reserve Bank or nonbank bank.

(2) "Cash item" means (i) a check other than a check classified as a noncash item; or (ii) any other item payable on demand and collectible at par that the Federal Reserve Bank of the District in which the item is payable is willing to accept as a cash item.

(3) "Discount-window loan" means any credit extended by a Federal Reserve Bank to a nonbank bank or industrial bank pursuant to the provisions of the Board's Regulation A (12 CFR 201).

(4) "Industrial bank" means an institution as defined in section 2(c)(2)(H) of the BHC Act (12 USC 1841(c)(2)(H)).

(5) "Noncash item" means an item handled by a Reserve Bank as a noncash item under the Reserve Bank's "Collection of Noncash Items Operating Circular" (e.g., a maturing banker's acceptance or a maturing security, or a demand item, such as a check, with special instructions or an item that has not been prepinted or post-encoded).

(6) "Other nonelectronic transactions" include all other transactions not included as funds transfers, book-entry securities transfers, cash items, noncash items, automated clearinghouse transactions, net-settlement

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entries, and discount-window loans (e.g., original issue of securities or redemption of securities).

(7) An "overdraft" in an account occurs whenever the Federal Reserve Bank, nonbank bank, or industrial bank holding an account posts a transaction to the account of the nonbank bank, industrial bank, or affiliate that exceeds the aggregate balance of the accounts of the nonbank bank, industrial bank, or affiliate, as determined by the posting rules set forth in paragraphs (d) and (e) of this section and continues until the aggregate balance of the account is zero or greater.

(8) "Transfer item" means an item as defined in subpart B of Regualtion J (12 CFR 210.25 et seq.).

(b) *Restriction on overdrafts.* (1) *Affiliates.* Neither a nonbank bank nor an industrial bank shall permit any affiliate to incur any overdraft in its account with the nonbank bank or industrial bank.

(2) *Nonbank banks or industrial banks.*

(i) No nonbank bank or industrial bank shall incur any overdraft in its account at a Federal Reserve Bank on behalf of an affiliate.

(ii) An overdraft by a nonbank bank or industrial bank in its account at a Federal Reserve Bank shall be deemed to be on behalf of an affiliate whenever—

(A) a nonbank bank or industrial bank holds an account for an affiliate from which third-party payments can be made; and

(B) when the posting of an affiliate's transaction to the nonbank bank's or industrial bank's account at a Reserve Bank creates an overdraft in its account at a Federal Reserve Bank or increases the amount of an existing overdraft in its account at a Federal Reserve Bank.

(c) *Permissible overdrafts.* The following are permissible overdrafts not subject to paragraph (b):

(1) *Inadvertent error.* An overdraft in its account by a nonbank bank or its affiliate, or an industrial bank or its affiliate, that results from an inadvertent computer error or inadvertent accounting error, that was not reasonably foreseeable or could not have been prevented through the maintenance of procedures reasonably adopted by the nonbank bank or affiliate to avoid such overdraft; and

(2) *Fully secured primary-dealer affiliate overdrafts.* (i) An overdraft incurred by an affiliate of a nonbank bank, which affiliate is recognized as a primary dealer by the Federal Reserve Bank of New York, in the affiliate's account at the nonbank bank, or an overdraft incurred by a nonbank bank on behalf of its primary-dealer affiliate in the nonbank bank's account at a Federal Reserve Bank; *provided* the overdraft is fully secured by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book-entry system.

(ii) An overdraft by a nonbank bank in its account at a Federal Reserve Bank that is on behalf of a primary-dealer affiliate is fully secured when that portion of its overdraft at the Federal Reserve Bank that corresponds to the transaction posted for an affiliate that caused or increased the nonbank bank's overdraft is fully secured in accordance with paragraph (c)(2)(iii).

(iii) An overdraft is fully secured under paragraph (c)(2)(i) when the nonbank bank can demonstrate that the overdraft is secured, at all times, by a perfected security interest in specific, identified obligations described in paragraph (c)(2)(i) with a market value that, in the judgment of the Reserve Bank holding the nonbank bank's account, is sufficiently in excess of the amount of the overdraft to provide a margin of protection in a volatile market or in the event the securities need to be liquidated quickly.

(d) *Posting by Federal Reserve Banks.* For purposes of determining the balance of an account under this section, payments and transfers by nonbank banks and industrial banks processed by the Federal Reserve Banks shall

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be considered posted to their accounts at Federal Reserve Banks as follows:

(1) *Funds transfers.* Transfer items shall be posted—

(i) to the transferor's account at the time the transfer is actually made by the transferor's Federal Reserve Bank; and

(ii) to the transferee's account at the time the transferee's Reserve Bank sends the transfer item or sends or telephones the advice of credit for the item to the transferee, whichever occurs first.

(2) *Book-entry securities transfers against payment.* A book-entry securities transfer against payment shall be posted—

(i) to the transferor's account at the time the entry is made by the transferor's Reserve Bank; and

(ii) to the transferee's account at the time the entry is made by the transferee's Reserve Bank.

(3) *Discount-window loans.* Credit for a discount-window loan shall be posted to the account of a nonbank bank or industrial bank at the close of business on the day that it is made or such earlier time as may be specifically agreed to by the Federal Reserve Bank and the nonbank bank under the terms of the loan. Debit for repayment of a discount-window loan shall be posted to the account of the nonbank bank or industrial bank as of the close of business on the day of maturity of the loan or such earlier time as may be agreed to by the Federal Reserve Bank and the nonbank bank or required by the Federal Reserve Bank under the terms of the loan.

(4) *Other transactions.* Total aggregate credits for automated clearinghouse transfers, cash items, noncash items, net-settlement entries, and other nonelectronic transactions shall be posted to the account of a nonbank bank or industrial bank as of the opening of business on settlement day. Total aggregate debits for these transactions and entries shall be posted to the account of a nonbank or industrial bank as of the close of business on settlement day.

(e) *Posting by nonbank banks and industrial banks.* For purposes of determining the balance of an affiliate's account under this section, payments and transfers through an affiliate's account at a nonbank bank or industrial bank shall by posted as follows:

(1) *Funds transfers.* (i) Fedwire transfer items shall be posted—

(A) to the transferor affiliate's account no later than the time the transfer is actually made by the transferor's Federal Reserve Bank; and

(B) to the transferee affiliate's account no earlier than the time the transferee's Reserve Bank sends the transfer item, or sends or telephones the advice of credit for the item to the transferee, whichever occurs first.

(ii) For funds transfers not sent or received through Federal Reserve Banks, debits shall be posted to the transferor affiliate's account not later than the time the nonbank bank or industrial bank becomes obligated on the transfer. Credits shall not be posted to the transferee affiliate's account before the nonbank bank or industrial bank has received actually and finally collected funds for the transfer.

(2) *Book-entry securities transfers against payment.*

(i) A book-entry securities transfer against payment shall be posted—

(A) to the transferor affiliate's account not earlier than the time the entry is made by the transferor's Reserve Bank; and

(B) to the transferee affiliate's account not later than the time the entry is made by the transferee's Reserve Bank.

(ii) For book-entry securities transfers against payment that are not sent or received through Federal Reserve Banks, enteries shall be posted—

(A) to the buyer-affiliate's account not later than the time the nonbank bank or industrial bank becomes obligated on the transfer; and

(B) to the seller-affiliate's account not before the nonbank bank or industrial bank has received actually and finally collected funds for the transfer.

(3) *Other transactions.* (i) *Credits.* Except as otherwise provided in this paragraph, credits for cash items, noncash items,

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ACH transfers, net-settlement entries, and all other nonelectronic transactions shall be posted to an affiliate's account on the day of the transaction (i.e., settlement day for ACH transactions or the day of credit for check transactions), but no earlier than the Federal Reserve Bank's opening of business on that day. Credit for cash items that are required by federal or state statute or regulation to be made available to the depositor for withdrawal prior to the posting time set forth in the preceding paragraph shall be posted as of the required availability time.

(ii) *Debits.* Debits for cash items, noncash items, ACH transfers, net-settlement entries, and all other nonelectronic transactions shall be posted to an affiliate's account on the day of the transaction (e.g., settlement day for ACH transactions or the day of presentment for check transactions), but no later than the Federal Reserve Bank's close of business on that day. If a check drawn on an affiliate's account or an ACH debit transfer received by an affiliate is returned timely by the nonbank bank or industrial bank in accordance with applicable law and agreements, no entry need be posted to the affiliate's account for such item.

SUBPART G—APPRAISAL STANDARDS FOR FEDERALLY RELATED TRANSACTIONS

SECTION 225.61—Authority, Purpose, and Scope

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (the "Board") under title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (Pub. L. No. 101-73, 103 Stat. 183 (1989)), 12 USC 3310, 3331–3351, and section 5(b) of the Bank Holding Company Act, 12 USC 1844(b).

(b) *Purpose and scope.* (1) Title XI provides protection for federal financial and public-policy interests in real estate–related transactions by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. This subpart implements the requirements of title XI, and applies to all federally related transactions entered into by the Board or by institutions regulated by the Board ("regulated institutions").

(2) This subpart—

(i) identifies which real estate–related financial transactions require the services of an appraiser;

(ii) prescribes which categories of federally related transactions shall be appraised by a state-certified appraiser and which by a state-licensed appraiser; and

(iii) prescribes minimum standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of the Board.

SECTION 225.62—Definitions

(a) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

(b) "Appraisal Foundation" means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(c) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(d) "Complex one- to four-family residential property appraisal" means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

(e) "Federally related transaction" means any real estate–related financial transaction

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entered into on or after August 9, 1990, that—

(1) the Board or any regulated institution engages in or contracts for; and

(2) requires the services of an appraiser.

(f) "Market value" means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby—

(1) buyer and seller are typically motivated;

(2) both parties are well informed or well advised, and acting in what they consider their own best interests;

(3) a reasonable time is allowed for exposure in the open market;

(4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(g) "Real estate–related financial transaction" means any transaction involving—

(1) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; or

(2) the refinancing of real property or interests in real property; or

(3) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(h) "State-certified appraiser" means any individual who has satisfied the requirements for certification in a state or territory whose criteria for certification as a real estate appraiser currently meet or exceed the minimum criteria for certification issued by the Appraiser Qualifications Board of the Appraisal Foundation. No individual shall be a state-certified appraiser unless such individual has achieved a passing grade upon a suitable examination administered by a state or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. In addition, the Appraisal Subcommittee must not have issued a finding that the policies, practices, or procedures of the state or territory are inconsistent with title XI of FIRREA. The Board may, from time to time, impose additional qualification criteria for certified appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

(i) "State-licensed appraiser" means any individual who has satisfied the requirements for licensing in a state or territory where the licensing procedures comply with title XI of FIRREA and where the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the state or territory are inconsistent with title XI. The Board may, from time to time, impose additional qualification criteria for licensed appraisers performing appraisals in connection with federally related transactions within the Board's jurisdiction.

(j) "Tract development" means a project of five units or more that is constructed or is to be constructed as a single development.

(k) "Transaction value" means—

(1) for loans or other extensions of credit, the amount of the loan or extension of credit;

(2) for sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

(3) for the pooling of loans or interests in real property for resale or purchase, the amount of the loan or the market value of the real property calculated with respect to each such loan or interest in real property.

SECTION 225.63—Appraisals Not Required; Transactions Requiring a State-Certified or -Licensed Appraiser

(a) *Appraisals not required.* An appraisal per-

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formed by a state-certified or -licensed appraiser is not required for any real estate–related financial transaction in which—

(1) the transaction value is $100,000 or less;

(2) a lien on real property has been taken as collateral solely through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien;

(3) a lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(4) there is a subsequent transaction resulting from a maturing extension of credit, provided that—

(i) the borrower has performed satisfactorily according to the original terms;

(ii) no new monies have been advanced other than as previously agreed;

(iii) the credit standing of the borrower has not deteriorated; and

(iv) there has been no obvious and material deterioration in market conditions or physical aspects of the property which would threaten the institution's collateral protection; or

(5) a regulated institution purchases a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities, provided that the appraisal prepared for each pooled loan or real property interest met the requirements of this regulation, if applicable.

Any transaction for which a state-certified or -licensed appraiser is not required nevertheless must have an appropriate evaluation of real property collateral that is consistent with the Board's Guidelines for Real Estate Appraisal and Evaluation Programs.*

(b) *Transactions requiring a state-certified appraiser.*

(1) *All transactions of $1,000,000 or more.* All federally related transactions having a transaction value of $1,000,000 or more shall require an appraisal prepared by a state-certified appraiser.

(2) *Nonresidential transactions of $250,000 or more.* All federally related transactions having a transaction value of $250,000 or more, other than those involving appraisals of one- to four-family residential properties, shall require an appraisal prepared by a state-certified appraiser.

(3) *Complex residential transactions of $250,000 or more.* All complex one- to four-family residential property appraisals rendered in connection with federally related transactions shall require a state-certified appraiser if the transaction value is $250,000 or more. A regulated institution may presume that appraisals of one- to four-family residential properties are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If during the course of the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either—

(i) the regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and cosign the appraisal; or

(ii) the institution may engage a certified appraiser to complete the appraisal.

(c) *Transactions requiring either a state-certified or -licensed appraiser.* All appraisals for federally related transactions not requiring the services of a state-certified appraiser shall be prepared by either a state-certified appraiser or a state-licensed appraiser.

SECTION 225.64—Appraisal Standards

(a) *Minimum standards.* For federally related transactions, all appraisals shall, at a minimum—

(1) conform to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation, except that the departure provision of the USPAP shall not apply to federally related transactions;

(2) disclose any steps taken that were nec-

* See *Federal Reserve Regulatory Service* 3–1577.

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essary or appropriate to comply with the competency provision of the USPAP;

(3) be based upon the definition of market value as set forth in section 225.62(f);

(4)(i) be written and presented in a narrative format or on forms that satisfy all the requirements of this section;

(ii) be sufficiently descriptive to enable the reader to ascertain the estimated market value and the rationale for the estimate; and

(iii) provide detail and depth of analysis that reflect the complexity of the real estate appraised;

(5) analyze and report in reasonable detail any prior sales of the property being appraised that occurred within the following time periods:

(i) for one- to four-family residential property, one year preceding the date when the appraisal was prepared; and

(ii) for all other property, three years preceding the date when the appraisal was prepared;

(6) analyze and report data on current revenues, expenses, and vacancies for the property if it is and will continue to be income-producing;

(7) analyze and report a reasonable marketing period for the subject property;

(8) analyze and report on current market conditions and trends that will affect projected income or the absorption period, to the extent they affect the value of the subject property;

(9) analyze and report appropriate deductions and discounts for any proposed construction, or any completed properties that are partially leased or leased at other than market rents as of the date of the appraisal, or any tract developments with unsold units;

(10) include in the certification required by the USPAP an additional statement that the appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan;

(11) contain sufficient supporting documentation with all pertinent information reported so that the appraiser's logic, reasoning, judgment, and analysis in arriving at a conclusion indicate to the reader the reasonableness of the market value reported;

(12) include a legal description of the real estate being appraised, in addition to the description required by the USPAP;

(13) identify and separately value any personal property, fixtures, or intangible items that are not real property but are included in the appraisal, and discuss the impact of their inclusion or exclusion on the estimate of market value; and

(14) follow a reasonable valuation method that addresses the direct sales comparison, income, and cost approaches to market value, reconciles those approaches, and explains the elimination of each approach not used.

(b) *Unavailability of information.* If information required or deemed pertinent to the completion of an appraisal is unavailable, that fact shall be disclosed and explained in the appraisal.

(c) *Additional standards.* Nothing contained herein shall prevent a regulated institution from requiring additional appraisal standards if deemed appropriate.

SECTION 225.65—Appraiser Independence

(a) *Staff appraisers.* If an appraisal is prepared by a staff appraiser, that appraiser must be independent of the lending, investment, and collection functions and not involved, except as an appraiser, in the federally related transaction, and have no direct or indirect interest, financial or otherwise, in the property. If the only qualified persons available to perform an appraisal are involved in the lending, investment, or collection functions of the regulated institution, the regulated institution shall take appropriate steps to ensure that the appraisers exercise independent judgment and that the appraisal is adequate. Such steps include, but are not limited to, prohibiting an individual from performing appraisals in connection with federally related transactions in which the appraiser is otherwise involved and prohibiting directors and officers from partici-

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pating in any vote or approval involving assets on which they performed an appraisal.

(b) *Fee appraisers.* If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or transaction. A regulated institution may accept an appraisal that was prepared by an appraiser engaged directly by another institution subject to title XI of FIRREA, if the regulated institution that accepts the appraisal has—

(1) established procedures for review of real estate appraisals;

(2) reviewed the appraisal under the established review procedures, finding the appraisal acceptable; and

(3) documented the review in writing.

SECTION 225.66—Professional Association Membership; Competency

(a) *Membership in appraisal organizations.* A state-certified appraiser or a state-licensed appraiser may not be excluded from consideration for an assignment for a federally related transaction solely by virtue of membership or lack of membership in any particular appraisal organization.

(b) *Competency.* All staff and fee appraisers performing appraisals in connection with federally related transactions must be state-certified or -licensed, as appropriate. However, a state-certified or -licensed appraiser may not be considered competent solely by virtue of being certified or licensed. Any determination of competency shall be based upon the individual's experience and educational background as they relate to the particular appraisal assignment for which he or she is being considered.

SECTION 225.67—Enforcement

Institutions and institution-affiliated parties, including staff appraisers and fee appraisers, may be subject to removal and/or prohibition orders, cease-and-desist orders, and the imposition of civil money penalties pursuant to the Federal Deposit Insurance Act, 12 USC 1811 et seq., as amended, or other applicable law.

APPENDIX A TO SUBPART G—Excerpts from the Uniform Standards of Professional Appraisal Practice Applicable to Federally Related Transactions

See page 47.

SUBPART H—NOTICE OF ADDITION OR CHANGE OF DIRECTORS AND SENIOR EXECUTIVE OFFICERS

SECTION 225.71—Definitions

(a) "Senior executive officer" means a person who, without regard to title, exercises the authority of one or more of the following positions: chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. "Senior executive officer" also includes any other person with significant influence over major policy-making decisions of a state member bank or bank holding company.

(b) "Bank or bank holding company in troubled condition" means any state member bank or bank holding company that—

(1) Has a composite rating, as determined in the most recent report of examination or inspection, of 4 or 5 under the commercial bank Uniform Interagency Bank Rating System or under the Federal Reserve bank holding company rating system;

(2) Is subject to a cease-and-desist order or formal written agreement that requires action to improve the financial condition of the institution, unless otherwise informed in writing by the Board or the appropriate Reserve Bank; or,

(3) Is expressly informed by the Board or Reserve Bank that it is in troubled condition for purposes of the requirements of this subpart on the basis of the institution's most recent examination, report of condition, or inspection, or other information available to the Board.

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SECTION 225.72—Director and Officer Appointments; Prior-Notice Requirement

(a) *Prior notice.* A state member bank or bank holding company shall give the Board 30 days' written notice, as specified in section 225.73 of this subpart, before adding or replacing any member of the board of directors or employing or changing the responsibilities of any individual to a position as a senior executive officer of the bank or bank holding company, if—

(1) The bank has been chartered less than two years;

(2) Within the preceding two years, the bank or bank holding company has undergone a change in control that required a notice to be filed pursuant to the Change in Bank Control Act or subpart E of this regulation;

(3) Within the preceding two years, the bank holding company became a registered bank holding company, unless the bank holding company is owned or controlled by a registered bank holding company, or the bank holding company was established in a reorganization in which substantially all of the shareholders of the bank holding company were shareholders of the bank prior to the bank holding company's formation; or

(4) The bank or bank holding company is not in compliance with all minimum capital requirements applicable to the institution as determined on the basis of the institution's most recent report of condition, examination, or inspection, or is otherwise in troubled condition.

(b) *Advisory directors.* (1) For purposes of this subpart, except as provided in paragraph (b)(2) of this section, the term "member of the board of directors" does not include an advisory director who—

(i) Is not elected by the shareholders of the bank or bank holding company;

(ii) Is not authorized to vote on any matters before the board of directors; and

(iii) Provides solely general policy advice to the board of directors.

(2) The Board or Reserve Bank may otherwise determine that an advisory director is in fact functioning as a director or senior executive officer for purposes of this subpart.

SECTION 225.73—Procedures for Filing, Processing, and Acting on Notices; Standards for Disapproval; Waiver of Notice

(a)(1) *Filing notice.* The notice required in section 225.72 of this subpart shall be filed with the appropriate Reserve Bank and shall contain the information required by paragraph 6(A) of the Change in Bank Control Act (12 USC 1817(j)(6)(A)) or prescribed in the designated Board form, subject, in either case, to the authority of the Reserve Bank or the Board to modify these requirements or require additional information.

(2) *Acceptance of notice.* The 30-day notice period specified in section 225.72 of this subpart shall begin on the date all required information is received by the appropriate Reserve Bank or the Board. The Reserve Bank shall notify the bank or bank holding company submitting the notice of the date all such required information is received and the notice is accepted for processing, and of the date on which the 30-day notice period will expire.

(b) *Commencement of service.* (1) *At expiration of period.* A proposed director or senior executive officer may begin service 30 days after a complete notice under paragraph (a) of this section has been accepted by the Reserve Bank unless the Board or Reserve Bank issues a notice of disapproval of the proposed addition or employment before the end of the 30-day period.

(2) *Prior to expiration of period.* A proposed director or senior executive officer may begin service before the expiration of the 30-day period if the Board or the Reserve Bank notifies the bank or bank holding company in writing of the Board's intention not to disapprove the addition or employment.

(c) *Notice of disapproval.* The Board or Reserve Bank must disapprove a notice under section 225.72 of this subpart if the Board or

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Reserve Bank finds that the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted indicates that it would not be in the best interests of the depositors of the bank or in the best interests of the public to permit the individual to be employed by, or associated with, the bank or bank holding company. The notice of disapproval shall contain a statement of the basis for disapproval.

(d) *Appeal.* (1) The disapproved individual or the state member bank or bank holding company may appeal to the Board the disapproval of a notice under this subpart within 15 calendar days of the effective date of the notice of disapproval. An appeal shall be in writing and explain the reasons for the appeal and include all facts, documents, and arguments that the appealing party wishes to be considered in the appeal.

(2) The Board may, in its sole discretion, order an informal hearing if the hearing is requested in writing by the disapproved individual or the notificant at the time of an appeal, and the Board finds that oral argument is appropriate or that a hearing is necessary to resolve disputes regarding material issues of fact.

(3) The disapproved individual may not serve as a director or senior executive officer while the appeal is pending. Written notice of the final decision of the Board shall be sent to the appealing party.

(e)(1) *Waiver of notice.* The Board or the Reserve Bank may waive the prior notice required under this subpart if it finds that—

(i) Delay would threaten the safety or soundness of the state member bank or the bank holding company or any of its bank subsidiaries;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) *Effect on disapproval authority.* Any waiver issued by the Board or Reserve Bank shall not affect the authority of the Board or Reserve Bank to issue a notice of disapproval within 30 days after such waiver.

APPENDIX A—Capital Adequacy Guidelines: Risk-Based Measure

See the Board pamphlet "Capital Adequacy Guidelines."

APPENDIX B—Capital Adequacy Guidelines: Leverage Measure

See the Board pamphlet "Capital Adequacy Guidelines."

APPENDIX C—Policy Statement on Formation of Small One-Bank Holding Companies

In acting on applications filed under the Bank Holding Company Act, the Board has adopted, and continues to follow, the principle that bank holding companies should serve as a source of strength for their subsidiary banks. When bank holding companies incur debt and rely upon the earnings of their subsidiary banks as the means of repaying such debt, a question arises as to the probable effect upon the financial condition of the company and its subsidiary bank or banks.

The Board believes that a high level of debt at the parent holding company level impairs the ability of a bank holding company to provide financial assistance to its subsidiary bank and in some cases the servicing requirements on such debt may be a significant drain on the bank's resources. For these reasons the Board has not favored the use of acquisition debt in the formation of bank holding companies. Nevertheless, the Board has recognized that the transfer of ownership of small banks often requires the use of acquisition debt. The Board therefore has permitted the formation of small one-bank holding companies with debt levels higher than would be permitted for larger or multibank holding companies. Approval of these applications has been given on the condition that the small one-bank holding companies demonstrate the ability to service the acquisition debt without straining the capital of their subsidiary bank and, further, that such companies restore their ability to serve as a source of strength for their subsidiary bank within a relatively short period of time.

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In the interest of furthering its policy of facilitating the transfer of ownership in banks without diluting bank safety and soundness, the Board has reexamined the analytical framework and financial criteria it applies when considering the formation of small one-bank holding companies and has adopted certain revisions in its procedures and standards as described below.

The revised criteria shift the focus from debt repayment to the relationship between debt and equity at the parent holding company. The holding company will have the option of improving the relationship of debt to equity by repaying the principal amount of its debt or through the retention of earnings, or both. Under these procedures, newly organized small one-bank holding companies will be expected to reduce the relationship of their debt to equity over a reasonable period of time to a level comparable to that maintained by many large and multibank holding companies.

In general, this policy is intended to apply only to one-bank holding companies that would not have significant leveraged nonbank activities and whose subsidiary bank would have total assets of approximately $150 million or less at the time the application is filed. Small one-bank holding companies formed before the effective date of this policy may switch to a plan that adheres to the intent of this policy provided they comply with criteria 2, 3, and 4 set forth below.

General

In evaluating applications filed pursuant to section 3(a)(1) of the Bank Holding Company Act, as amended, when the applicant intends to incur debt to finance the acquisition of a small bank, the Board will take into account a full range of financial and other information, including the recent trend and stability of earnings of the bank, the past and prospective growth of the bank, the quality of the bank's assets, the ability of the applicant to meet debt servicing requirements without placing an undue strain on the bank's resources, and the record and competency of management of the applicant and the bank. In addition, the Board will require applicants to meet the minimum requirements set forth below. As a general rule, failure to meet any of these requirements will result in denial of the application; however, the Board reserves the right to make exceptions if the circumstances warrant.

1. *Minimum downpayment.* The amount of acquisition debt should not exceed 75 percent of the purchase price of the bank to be acquired. When the owner(s) of the holding company incur debt to finance the purchase of the bank, such debt will be considered acquisition debt even though it does not represent an obligation of the bank holding company, unless the owner(s) can demonstrate that such debt can be serviced without reliance on the resources of the bank or bank holding company.

2. *Maintenance of adequate capital.* An applicant proposing to use acquisition debt must demonstrate to the satisfaction of the Board that any debt servicing requirements to which the bank holding company may be subject would not cause the subsidiary bank's ratio of gross capital to assets to fall below 8 percent during the 12-year period following consummation of the acquisition. Gross capital is defined as the sum of total stockholders' equity, the allowance for possible loan losses, and subordinated capital notes and debentures.

3. *Reduction in parent company leverage.* The applicant must demonstrate to the satisfaction of the Board that the parent holding company's ratio of debt to equity will decline to 30 percent within 12 years after consummation of the acquisition. The holding company must also demonstrate that it will be able to safely meet debt servicing and other requirements imposed by its creditors.

The term "debt," as used in the ratio of debt to equity, means any borrowed funds (exclusive of short-term borrowings that arise out of current transactions, the proceeds of which are used for current transactions), and any securities issued by, or obligations of, the holding company that are the functional equivalent of borrowed funds.

The term "equity," as used in the ratio of debt to equity, means the total stockholders' equity of the bank holding company adjusted to reflect the periodic amortization of "good-

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will" (defined as the excess of cost of any acquired company over the sum of the amounts assigned to identifiable assets acquired, less liabilities assumed) in accordance with generally accepted accounting principles. In determining the total amount of stockholders' equity, the bank holding company should account for its investments in the common stock of subsidiaries by the equity method of accounting.

Ordinarily the Board does not view redeemable preferred stock as a substitute for common stock in a one-bank holding company formation. Nevertheless, to a limited degree and under certain circumstances the Board will consider redeemable preferred stock as equity in the capital accounts of the holding company if the following conditions are met: (1) the preferred stock is redeemable only at the option of the issuer and (2) the debt to equity ratio of the holding company would be at or remain below 30 percent following the redemption or retirement of any preferred stock. Preferred stock that is convertible into common stock of the holding company may be treated as equity.

4. *Dividend restrictions.* The bank holding company is not expected to pay any corporate dividends on common stock until such time as its debt to equity ratio is below 30 percent. However, some dividends may be permitted provided all of the following conditions are met: (a) the applicant has begun making scheduled repayments of principal on the acquisition debt; (b) such scheduled repayments of principal are reasonable in amount, will be made at least annually, and will allow for the retirement of the acquisition debt over a period not to exceed 25 years; and (c) the applicant can clearly demonstrate at the time the application is filed that such dividends will not jeopardize the ability of the holding company to reduce its debt to equity ratio to 30 percent within 12 years of consummation of the proposal or cause the gross capital to assets of the subsidiary bank to fall below 8 percent over the same period. Also, it is expected that dividends will be eliminated if the holding company is not meeting the projections made at the time the application was filed regarding the ability of the holding company to reduce the debt to equity ratio to 30 percent within 12 years of consummation of the proposal.

APPENDIX D—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

See the Board pamphlet "Capital Adequacy Guidelines."

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Excerpts from the Uniform Standards of Professional Appraisal Practice Applicable to Federally Related Transactions

12 CFR 225, appendix A to subpart G

Based upon the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation, this document excludes portions of the Uniform Standards of Professional Appraisal Practice (USPAP) that are not applicable to federally related transactions. In addition, cross-references to excluded provisions have been removed and additional text added for clarification only. The complete text of the USPAP is available from the Appraisal Foundation, 1029 Vermont Ave., N.W., Suite 900, Washington, DC 20005.

Section I—Introduction
- Preamble
- Ethics Provision
- Competency Provision
- Jurisdictional Exception
- Supplemental Standards
- Definitions

Section II—Real Property Appraisals
- Standard 1
- Standard 2

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SECTION I—Introduction

Preamble

It is essential that a professional appraiser arrive at and communicate his or her analyses, opinions, and advice in a manner that will be meaningful to the client and will not be misleading in the marketplace. These Uniform Standards of Professional Appraisal Practice reflect the current standards of the appraisal profession.

The importance of the role of the appraiser places ethical obligations on those who serve in this capacity. These standards include explanatory comments and begin with an Ethics Provision setting forth the requirements for integrity, objectivity, independent judgment, and ethical conduct. In addition, these standards include a Competency Provision which places an immediate responsibility on the appraiser prior to acceptance of an assignment. The standards contain binding requirements, as well as specific guidelines. Definitions applicable to these standards are also included.

These standards deal with the procedures to be followed in performing an appraisal or review and the manner in which an appraisal or review is communicated. Standards 1 and 2 relate to the development and communication of a real property appraisal. Standard 3 establishes guidelines for reviewing an appraisal and reporting on that review.

These standards are for appraisers and the users of appraisal services. To maintain the highest level of professional practice, appraisers must observe these standards. The users of appraisal services should demand work performed in conformance with these standards.

Comment: *Explanatory comments are an integral part of the Uniform Standards and should be viewed as extensions of the provisions, definitions, and standards rules. Comments provide interpretation from the Appraisal Standards Board concerning the background or application of certain provisions, definitions, or standards rules. There are no comments for provisions, definitions, and standards rules that are axiomatic or have not yet required further explanation; however, additional comments will be developed and others supplemented or revised as the need arises.*

Ethics Provision

Because of the fiduciary responsibilities inherent in professional appraisal practice, the appraiser must observe the highest standards of professional ethics. This Ethics Provision is divided into four sections: conduct, management, confidentiality, and record keeping.

Comment: *This provision emphasizes the personal obligations and responsibilities of the individual appraiser. However, it should also be emphasized that groups and organizations en-*

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gaged in appraisal practice share the same ethical obligations.

Conduct

An appraiser must perform ethically and competently in accordance with these standards and not engage in conduct that is unlawful, unethical, or improper. An appraiser who could reasonably be perceived to act as a disinterested third party in rendering an unbiased appraisal, review, or consulting service must perform assignments with impartiality, objectivity, and independence and without accommodation of personal interests.

Comment: *An appraiser is required to avoid any action that could be considered misleading or fraudulent. In particular, it is unethical for an appraiser to use or communicate a misleading or fraudulent report or to knowingly permit an employee or other person to communicate a misleading or fraudulent report.*

The development of an appraisal, review, or consulting service based on a hypothetical condition is unethical unless: 1) the use of the hypothesis is clearly disclosed; 2) the assumption of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison and would not be misleading; and 3) the report clearly describes the rationale for this assumption, the nature of the hypothetical condition, and its effect on the result of the appraisal, review or consulting service.

An individual appraiser employed by a group or organization which conducts itself in a manner that does not conform to these standards should take steps that are appropriate under the circumstances to ensure compliance with the standards.

Management

The acceptance of compensation that is contingent upon the reporting of a predetermined value or a direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event is unethical.

The payment of undisclosed fees, commissions, or things of value in connection with the procurement of appraisal, review, or consulting assignments is unethical.

Comment: *Disclosure of fees, commissions, or things of value connected to the procurement of an assignment should appear in the certification of a written report and in any transmittal letter in which conclusions are stated. In groups or organizations engaged in appraisal practice, intracompany payments to employees for business development are not considered to be unethical. Competency, rather than financial incentives, should be the primary basis for awarding an assignment.*

Advertising for or soliciting appraisal assignments in a manner which is false, misleading or exaggerated is unethical.

Comment: *In groups or organizations engaged in appraisal practice, decisions concerning finder or referral fees, contingent compensation, and advertising may not be the responsibility of an individual appraiser, but for a particular assignment, it is the responsibility of the individual appraiser to ascertain that there has been no breach of ethics, that the appraisal is prepared in accordance with these standards, and that the report can be properly certified as required by Standards Rules 2-3 or 3-2.*

The restriction on contingent compensation in the first paragraph of this section does not apply to consulting assignments where the appraiser is not acting in a disinterested manner and would not reasonably be perceived as performing a service that requires impartiality. This permitted contingent compensation must be properly disclosed in the report.

Comment: *The preparer of the written report of an assignment where the appraiser is not acting in a disinterested manner must certify that the compensation is contingent and must explain the basis for the contingency in the report, certification, executive summary and in any transmittal letter in which conclusions are stated.*

Confidentiality

An appraiser must protect the confidential nature of the appraiser-client relationship.

Comment: *An appraiser must not disclose con-*

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fidential factual data obtained from a client or the results of an assignment prepared for a client to anyone other than: 1) the client and persons specifically authorized by the client; 2) such third parties as may be authorized by due process of law; and 3) a duly authorized professional peer review committee. As a corollary, it is unethical for a member of a duly authorized professional peer review committee to disclose confidential information or factual data presented to the committee.

Record Keeping

An appraiser must prepare written records of appraisal, review, and consulting assignments—including oral testimony and reports—and retain such records for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

Comment: *Written records of assignments include true copies of written reports, written summaries of oral testimony and reports (or a transcript of testimony), all data and statements required by these standards, and other information as may be required to support the findings and conclusions of the appraiser. The term written records also includes information stored on electronic, magnetic, or other media. Such records must be made available by the appraiser when required by due process of law or by a duly authorized professional peer review committee.*

Competency Provision

Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently; or alternatively:

1. disclose the lack of knowledge and/or experience to the client before accepting the assignment; and
2. take all steps necessary or appropriate to complete the assignment competently; and
3. describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report.

Comment: *The background and experience of appraisers varies widely and a lack of knowledge or experience can lead to inaccurate or inappropriate appraisal practice. The competency provision requires an appraiser to have both the knowledge and the experience required to perform a specific appraisal service competently. If an appraiser is offered the opportunity to perform an appraisal service but lacks the necessary knowledge or experience to complete it competently, the appraiser must disclose his or her lack of knowledge or experience to the client before accepting the assignment and then take the necessary or appropriate steps to complete the appraisal service competently. This may be accomplished in various ways including, but not limited to, personal study by the appraiser; association with an appraiser reasonably believed to have the necessary knowledge or experience; or retention of others who possess the required knowledge or experience.*

Although this provision requires an appraiser to identify the problem and disclose any deficiency in competence prior to accepting an assignment, facts or conditions uncovered during the course of an assignment could cause an appraiser to discover that he or she lacks the required knowledge or experience to complete the assignment competently. At the point of such discovery, the appraiser is obligated to notify the client and comply with items 2 and 3 of the provision.

The concept of competency also extends to appraisers who are requested or required to travel to geographic areas wherein they have no recent appraisal experience. An appraiser preparing an appraisal in an unfamiliar location must spend sufficient time to understand the nuances of the local market and the supply and demand factors relating to the specific property type and the location involved. Such understanding will not be imparted solely from a consideration of specific data such as demographics, costs, sales and rentals. The necessary understanding of local market conditions provides the bridge between a sale and a comparable sale or a rental and a comparable rental. If an appraiser is not in a position to spend the necessary amount of time in a market area to obtain this understanding, affiliation with a qualified local appraiser may be the appropri-

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ate response to ensure the development of a competent appraisal.

Jurisdictional Exception*

If any part of these standards is contrary to the law or public policy of any jurisdiction, only that part shall be void and of no force or effect in that jurisdiction.

Supplemental Standards

These Uniform Standards provide the common basis for all appraisal practice. Supplemental standards applicable to appraisals prepared for specific purposes or property types may be issued by public agencies and certain client groups, e.g., regulatory agencies, eminent domain authorities, asset managers, and financial institutions. Appraisers and clients must ascertain whether any supplemental standards in addition to these Uniform Standards apply to the assignment being considered.

Definitions

For the purpose of these standards, the following definitions apply:

Appraisal: (noun) the act or process of estimating value; an estimate of value.

(adjective) of or pertaining to appraising and related functions, e.g., appraisal practice, appraisal services.

Appraisal practice: the work or services performed by appraisers, defined by three terms in these standards: appraisal, review, and consulting.

> Comment: *These three terms are intentionally generic, and not mutually exclusive. For example, an estimate of value may be required as part of a review or consulting service. The use of other nomenclature by an appraiser (e.g., analysis, counseling, evaluation, study, submission, valuation) does not exempt an appraiser from adherence to these standards.*

Cash flow analysis: a study of the anticipated movement of cash into or out of an investment.

Client: any party for whom an appraiser performs a service.

Consulting: the act or process of providing information, analysis of real estate data, and recommendations or conclusions on diversified problems in real estate, other than estimating value.

Feasibility analysis: a study of the cost benefit relationship of an economic endeavor.

Investment analysis: a study that reflects the relationship between acquisition price and anticipated future benefits of a real estate investment.

Market analysis: a study of real estate market conditions for a specific type of property.

Market value: Market value is the major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined. A current economic definition agreed upon by federal financial institutions in the United States of America is:

> The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
>
> 1. buyer and seller are typically motivated;
> 2. both parties are well informed or well advised, and acting in what they consider their best interests;
> 3. a reasonable time is allowed for exposure in the open market;
> 4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
> 5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Substitution of another currency for United States dollars in the fourth condition is appropriate in countries or in reports addressed to clients from other countries.

Persons performing appraisal services that

* The Departure Provision that appears in the USPAP is not applicable to federally related transactions.

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may be subject to litigation are cautioned to seek the exact legal definition of market value in the jurisdiction in which the services are being performed.

Mass appraisal: the process of valuing a universe of properties as of a given date utilizing standard methodology, employing common data, and allowing for statistical testing.

Mass appraisal model: a mathematical expression of how supply and demand factors interact in a market.

Personal property: identifiable portable and tangible objects which are considered by the general public as being "personal," e.g., furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment; all property that is not classified as real estate.

Real estate: an identified parcel or tract of land, including improvements, if any.

Real property: the interests, benefits, and rights inherent in the ownership of real estate.

Comment: *In some jurisdictions, the terms "real estate" and "real property" have the same legal meaning. The separate definitions recognize the traditional distinction between the two concepts in appraisal theory.*

Report: any communication, written or oral, of an appraisal, review, or analysis; the document that is transmitted to the client upon completion of an assignment.

Comment: *Most reports are written and most clients mandate written reports. Oral report guidelines (see Standards Rule 2-4) and restrictions (see Ethics Provision: Record Keeping) are included to cover court testimony and other oral communications of an appraisal, review or consulting service.*

Review: the act or process of critically studying a report prepared by another.

SECTION II—Real Property Appraisals

Standard 1

In developing a real property appraisal, an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

Comment: *Standard 1 is directed toward the substantive aspects of developing a competent appraisal. The requirements set forth in Standards Rule 1-1, the appraisal guidelines set forth in Standards Rules 1-2, 1-3, 1-4, and the requirements set forth in Standards Rule 1-5 mirror the appraisal process in the order of topics addressed and can be used by appraisers and the users of appraisal services as a convenient checklist.*

Standards Rule 1-1

In developing a real property appraisal, an appraiser must:

(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

Comment: *Departure from this binding requirement is not permitted. This rule recognizes that the principle of change continues to affect the manner in which appraisers perform appraisal services. Changes and developments in the real estate field have a substantial impact on the appraisal profession. Important changes in the cost and manner of constructing and marketing commercial, industrial, and residential real estate and changes in the legal framework in which real property rights and interests are created, conveyed, and mortgaged have resulted in corresponding changes in appraisal theory and practice. Social change has also had an effect on appraisal theory and practice. To keep abreast of these changes and developments, the appraisal profession is constantly reviewing and revising appraisal methods and techniques and devising new methods and techniques to meet new circumstances. For this reason it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Each appraiser must continuously improve his or her skills to remain proficient in real property appraisal.*

(b) not commit a substantial error of omission or commission that significantly affects an appraisal;

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Comment: *Departure from this binding requirement is not permitted. In performing appraisal services an appraiser must be certain that the gathering of factual information is conducted in a manner that is sufficiently diligent to ensure that the data that would have a material or significant effect on the resulting opinions or conclusions are considered. Further, an appraiser must use sufficient care in analyzing such data to avoid errors that would significantly affect his or her opinions and conclusions.*

(c) not render appraisal services in a careless or negligent manner, such as a series of errors that, considered individually, may not significantly affect the results of an appraisal, but which, when considered in the aggregate, would be misleading.

Comment: *Departure from this binding requirement is not permitted. Perfection is impossible to attain and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This rule requires an appraiser to use due diligence and due care. The fact that the carelessness or negligence of an appraiser has not caused an error that significantly affects his or her opinions or conclusions and thereby seriously harms a client or a third party does not excuse such carelessness or negligence.*

Standards Rule 1-2

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines:

(a) adequately identify the real estate, identify the real property interest, consider the purpose and intended use of the appraisal, consider the extent of the data collection process, identify any special limiting conditions, and identify the effective date of the appraisal;

(b) define the value being considered; if the value to be estimated is market value, the appraiser must clearly indicate whether the estimate is the most probable price:

(i) in terms of cash; or

(ii) in terms of financial arrangements equivalent to cash; or

(iii) in such other terms as may be precisely defined; if an estimate of value is based on submarket financing or financing with unusual conditions or incentives, the terms of such financing must be clearly set forth, their contributions to or negative influence on value must be described and estimated, and the market data supporting the valuation estimate must be described and explained;

Comment: *For certain types of appraisal assignments in which a legal definition of market value has been established and takes precedence, the Jurisdictional Exception may apply to this guideline.*

If the concept of reasonable exposure in the open market is involved, the appraiser should be specific as to the estimate of marketing time linked to the value estimate.

(c) consider easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature;

(d) consider whether an appraised fractional interest, physical segment, or partial holding contributes pro rata to the value of the whole;

Comment: *This guideline does not require an appraiser to value the whole when the subject of the appraisal is a fractional interest, a physical segment, or a partial holding. However, if the value of the whole is not considered, the appraisal must clearly reflect that the value of the property being appraised cannot be used to estimate the value of the whole by mathematical extension.*

(e) identify and consider the effect on value of any personal property, trade fixtures or intangible items that are not real property but are included in the appraisal.

Comment: *This guideline requires the appraiser to recognize the inclusion of items that are not real property in an overall value estimate. Additional expertise in personal property or business appraisal may be required to allocate the overall value to its various components. Separate valuation of such items is required when they are significant to the overall value.*

Standards Rule 1-3

In developing a real property appraisal, an ap-

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praiser must observe the following specific appraisal guidelines:

(a) consider the effect on use and value of the following factors: existing land use regulations, reasonably probable modifications of such land use regulations, economic demand, the physical adaptability of the real estate, neighborhood trends, and the highest and best use of the real estate;

Comment: *This guideline sets forth a list of factors that affect use and value. In considering neighborhood trends, an appraiser must avoid stereotyped or biased assumptions relating to race, age, color, religion, gender, or national origin or an assumption that racial, ethnic, or religious homogeneity is necessary to maximize value in a neighborhood. Further, an appraiser must avoid making an unsupported assumption or premise about neighborhood decline, effective age, and remaining life. In considering highest and best use, an appraiser should develop the concept to the extent that is required for a proper solution of the appraisal problem being considered.*

(b) recognize that land is appraised as though vacant and available for development to its highest and best use and that the appraisal of improvements is based on their actual contribution to the site.

Comment: *This guideline may be modified to reflect the fact that, in various legal and practical situations, a site may have a contributory value that differs from the value as if vacant.*

Standards Rule 1-4

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines, when applicable:

(a) value the site by an appropriate appraisal method or technique;

(b) collect, verify, analyze, and reconcile:
(i) such comparable cost data as are available to estimate the cost new of the improvements (if any);
(ii) such comparable data as are available to estimate the difference between cost new and the present worth of the improvements (accrued depreciation);
(iii) such comparable sales data, adequately identified and described, as are available to indicate a value conclusion;
(iv) such comparable rental data as are available to estimate the market rental of the property being appraised;
(v) such comparable operating expense data as are available to estimate the operating expenses of the property being appraised;
(vi) such comparable data as are available to estimate rates of capitalization and/or rates of discount.

Comment: *This rule covers the three approaches to value. See Standards Rule 2-2(j) for corresponding reporting requirements.*

(c) base projections of future rent and expenses on reasonably clear and appropriate evidence;

Comment: *This guideline requires an appraiser, in developing income and expense statements and cash flow projections, to weigh historical information and trends, current market factors affecting such trends, and anticipated events such as competition from developments under construction.*

(d) when estimating the value of a leased fee estate or a leasehold estate, consider and analyze the effect on value, if any, of the terms and conditions of the lease(s);

(e) consider and analyze the effect on value, if any, of the assemblage of the various estates or component parts of a property and refrain from estimating the value of the whole solely by adding together the individual values of the various estates or component parts;

Comment: *Although the value of the whole may be equal to the sum of the separate estates or parts, it also may be greater than or less than the sum of such estates or parts. Therefore, the value of the whole must be tested by reference to appropriate market data and supported by an appropriate analysis of such data.*

A similar procedure must be followed when the value of the whole has been established and the appraiser seeks to estimate the value of a part. The value of any such part must be tested by reference to appropriate market data and supported by an appropriate analysis of such data.

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(f) consider and analyze the effect on value, if any, of anticipated public or private improvements, located on or off the site, to the extent that market actions reflect such anticipated improvements as of the effective appraisal date;

Comment: *In condemnation valuation assignments in certain jurisdictions, the Jurisdictional Exception may apply to this guideline.*

(g) identify and consider the appropriate procedures and market information required to perform the appraisal, including all physical, functional, and external market factors as they may affect the appraisal;

Comment: *The appraisal may require a complete market analysis.*

(h) appraise proposed improvements only after examining and having available for future examination:

(i) plans, specifications, or other documentation sufficient to identify the scope and character of the proposed improvements;
(ii) evidence indicating the probable time of completion of the proposed improvements; and
(iii) reasonably clear and appropriate evidence supporting development costs, anticipated earnings, occupancy projections, and the anticipated competition at the time of completion.

Comment: *The evidence required to be examined and maintained under this guideline may include such items as contractor's estimates relating to cost and the time required to complete construction, market, and feasibility studies; operating cost data; and the history of recently completed similar developments. The appraisal may require a complete feasibility analysis.*

(i) All pertinent information in items (a) through (h) above shall be used in the development of an appraisal.

Comment: *See Standards Rule 2-2(k) for corresponding reporting requirements.*

Standards Rule 1-5

In developing a real property appraisal, an appraiser must:

(a) consider and analyze any current Agreement of Sale, option, or listing of the property being appraised, if such information is available to the appraiser in the normal course of business;

(b) consider and analyze any prior sales of the property being appraised that occurred within the following time periods:

(i) one year for one- to four-family residential property; and
(ii) three years for all other property types;

Comment: *The intent of this requirement is to encourage the research and analysis of prior sales of the subject; the time frames cited are minimums.*

(c) consider and reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability or suitability of the approaches used.

Comment: *Departure from this binding requirement is not permitted. See Standards Rule 2-2(k) comment for corresponding reporting requirements.*

Standard 2

In reporting the results of a real property appraisal an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

Comment: *Standard 2 governs the form and content of the report that communicates the results of an appraisal to a client and third parties.*

Standards Rule 2-1

Each written or oral real property appraisal report must:

(a) clearly and accurately set forth the appraisal in a manner that will not be misleading;

Comment: *Departure from this binding requirement is not permitted. Since most reports are used and relied upon by third parties, communications considered adequate by the appraiser's client may not be sufficient. An appraiser must take extreme care to make certain that his or her reports will not be misleading in the marketplace or to the public.*

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(b) contain sufficient information to enable the person(s) who receive or rely on the report to understand it properly;

Comment: *Departure from this binding requirement is not permitted. A failure to observe this rule could cause a client or other users of the report to make a serious error even though each analysis, opinion, and conclusion in the report is clearly and accurately stated. To avoid this problem and the dangers it presents to clients and other users of reports, this rule requires an appraiser to include in each report sufficient information to enable the reader to understand it properly. All reports, both written and oral, must clearly and accurately present the analyses, opinions, and conclusions of the appraiser in sufficient depth and detail to address adequately the significance of the specific appraisal problem.*

(c) clearly and accurately disclose any extraordinary assumption or limiting condition that directly affects the appraisal and indicate its impact on value.

Comment: *Departure from this binding requirement is not permitted. Examples of extraordinary assumptions or conditions might include items such as the execution of a pending lease agreement, atypical financing, or completion of onsite or offsite improvements. In a written report the disclosure would be required in conjunction with statements of each opinion or conclusion that is affected.*

Standards Rule 2-2

Each written real property appraisal report must:

(a) identify and describe the real estate being appraised;

(b) identify the real property interest being appraised;

Comment on (a) and (b): *These two requirements are essential elements in any report. Identifying the real estate can be accomplished by any combination of a legal description, address, map reference, copy of a survey or map, property sketch and/or photographs. A property sketch and photographs also provide some description of the real estate in addition to written comments about the physical attributes of the real estate. Identifying the real property rights being appraised requires a direct statement substantiated as needed by copies or summaries of legal descriptions or other documents setting forth any encumbrances.*

(c) state the purpose of the appraisal;

(d) define the value to be estimated;

(e) set forth the effective date of the appraisal and the date of the report;

Comment on (c), (d) and (e): *These three requirements call for clear disclosure to the reader of a report the "why, what and when" surrounding the appraisal. The purpose of the appraisal is used generically to include both the task involved and rationale for the appraisal. Defining the value to be estimated requires both an appropriately referenced definition and any comments needed to clearly indicate to the reader how the definition is being applied [see Standards Rule 1-2(b)]. The effective date of the appraisal establishes the context for the value estimate, while the date of the report indicates whether the perspective of the appraiser on the market conditions as of the effective date of the appraisal was prospective, current, or retrospective. Reiteration of the date of the report and the effective date of the appraisal at various stages of the report in tandem is important for the clear understanding of the reader whenever market conditions on the date of the report are different from market conditions on the effective date of the appraisal.*

(f) describe the extent of the process of collecting, confirming, and reporting data;

Comment: *This requirement is designed to protect third parties whose reliance on an appraisal report may be affected by the extent of the appraiser's investigation; i.e., the process of collecting, confirming and reporting data.*

(g) set forth all assumptions and limiting conditions that affect the analyses, opinions, and conclusions;

Comment: *It is suggested that assumptions and limiting conditions be grouped together in an identified section of the report.*

(h) set forth the information considered, the

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appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;

Comment: *This requirement calls for the appraiser to summarize the data considered and the procedures that were followed. Each item must be addressed in the depth and detail required by its significance to the appraisal. The appraiser must be certain that sufficient information is provided so that the client, the users of the report, and the public will understand it and will not be misled or confused. The substantive content of the report, not its size, determines its compliance with this specific reporting guideline.*

(i) set forth the appraiser's opinion of the highest and best use of the real estate, when such an opinion is necessary and appropriate;

Comment: *This requirement calls for a written report to contain a statement of the appraiser's opinion as to the highest and best use of the real estate, unless an opinion as to highest and best use is unnecessary, e.g., insurance valuation or value in use appraisals. If an opinion as to highest and best use is required, the reasoning in support of the opinion must also be included.*

(j) explain and support the exclusion of any of the usual valuation approaches;

(k) set forth any additional information that may be appropriate to show compliance with, or clearly identify and explain permitted departures from, the requirements of Standard 1;

Comment: *This requirement calls for a written appraisal report or other written communication concerning the results of an appraisal to contain sufficient information to indicate that the appraiser complied with the requirements of Standard 1, including the requirements governing any permitted departures from the appraisal guidelines. The amount of detail required will vary with the significance of the information to the appraisal.*

Information considered and analyzed in compliance with Standards Rule 1-5 is significant information that deserves comment in any report. If such information is unobtainable, comment on the efforts undertaken by the appraiser to obtain the information is required.

(*l*) include a signed certification in accordance with Standards Rule 2-3.

Comment: *Departure from binding requirements (a) through (l) above is not permitted.*

Standards Rule 2-3

Each written real property appraisal report must contain a certification that is similar in content to the following form:

I certify that, to the best of my knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report, and I have no (or the specified) personal interest or bias with respect to the parties involved.
- my compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
- my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)
- no one provided significant professional assistance to the person signing this report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)

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Comment: *Departure from this binding requirement is not permitted.*

Standards Rule 2-4

To the extent that it is both possible and appropriate, each oral real property appraisal report (including expert testimony) must address the substantive matters set forth in Standards Rule 2-2.

Comment: *In addition to complying with the requirements of Standards Rule 2-1, an appraiser making an oral report must use his or her best efforts to address each of the substantive matters in Standards Rule 2-2. Testimony of an appraiser concerning his or her analyses, opinions, and conclusions is an oral report in which the appraiser must comply with the requirements of this Standards Rule.*

See Record Keeping under the Ethics Provision for corresponding requirements.

Standards Rule 2-5

An appraiser who signs a real property appraisal report prepared by another, even under the label of "review appraiser", must accept full responsibility for the contents of the report.

Comment: *Departure from this binding requirement is not permitted. This requirement is directed to the employer or supervisor signing the report of an employee or subcontractor. The employer or supervisor signing the report is as responsible as the individual preparing the appraisal for the content and conclusions of the appraisal and the report. Using a conditional label next to the signature of the employer or supervisor or signing a form report on the line over the words "review appraiser" does not exempt that individual from adherence to these standards.*

This requirement does not address the responsibilities of a review appraiser, the subject of Standard 3.

SECTION III—Review Appraisals

Standard 3

In reviewing an appraisal and reporting the results of that review, an appraiser must form an opinion as to the adequacy and appropriateness of the report being reviewed and must clearly disclose the nature of the review process undertaken.

Comment: *The function of reviewing an appraisal requires the preparation of a separate report or a file memorandum by the appraiser performing the review setting forth the results of the review process. Review appraisers go beyond checking for a level of completeness and consistency in the report under review by providing comment on the content and conclusions of the report. They may or may not have first-hand knowledge of the subject property or of data in the report. The Competency Provision applies to the appraiser performing the review as well as the appraiser who prepared the report under review.*

Reviewing is a distinctly different function from that addressed in Standards Rule 2-5. To avoid confusion in the marketplace between these two functions, review appraisers should not sign the report under review unless they intend to take the responsibility of a cosigner.

Review appraisers must take appropriate steps to indicate to third parties the precise extent of the review process. A separate report or letter is one method. Another appropriate method is a form or checklist prepared and signed by the appraiser conducting the review and attached to the report under review. It is also possible that a stamped impression on the appraisal report under review, signed or initialed by the reviewing appraiser, may be an appropriate method for separating the review function from the actual signing of the report. To be effective, however, the stamp must briefly indicate the extent of the review process and refer to a file memorandum that clearly outlines the review process conducted.

The review appraiser must exercise extreme care in clearly distinguishing between the review process and the appraisal or consulting processes. Original work by the review appraiser may be governed by Standard 1 rather than this standard. A misleading or fraudulent review and/or report violates the Ethics Provision.

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Standards Rule 3-1

In reviewing an appraisal, an appraiser must:

(a) identify the report under review, the real estate and real property interest being appraised, the effective date of the opinion in the report under review, and the date of the review;

(b) identify the extent of the review process to be conducted;

(c) form an opinion as to the completeness of the report under review in light of the requirements in these standards;

Comment: *The review should be conducted in the context of market conditions as of the effective date of the opinion in the report being reviewed.*

(d) form an opinion as to the apparent adequacy and relevance of the data and the propriety of any adjustments to the data;

(e) form an opinion as to the appropriateness of the appraisal methods and techniques used and develop the reasons for any disagreement;

(f) form an opinion as to whether the analyses, opinions, and conclusions in the report under review are appropriate and reasonable, and develop the reasons for any disagreement.

Comment: *Departure from binding requirements (a) through (f) above is not permitted. An opinion of a different estimate of value from that in the report under review may be expressed, provided the review appraiser:*

1. *satisfies the requirements of Standard 1;*
2. *identifies and sets forth any additional data relied upon and the reasoning and basis for the different estimate of value; and,*
3. *clearly identifies and discloses all assumptions and limitations connected with the different estimate of value to avoid confusion in the marketplace.*

Standards Rule 3-2

In reporting the results of an appraisal review, an appraiser must:

(a) disclose the nature, extent, and detail of the review process undertaken;

(b) disclose the information that must be considered in Standards Rule 3-1 (a) and (b);

(c) set forth the opinions, reasons, and conclusions required in Standards Rule 3-1 (c), (d), (e) and (f);

(d) include all known pertinent information;

(e) include a signed certification similar in content to the following:

I certify that, to the best of my knowledge and belief:

- the facts and data reported by the review appraiser and used in the review process are true and correct.
- the analyses, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report, and are my personal, unbiased professional analyses, opinions and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report and I have no (or the specified) personal interest or bias with respect to the parties involved.
- my compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this review report.
- my analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the Uniform Standards of Professional Appraisal Practice.
- I did not (did) personally inspect the subject property of the report under review.
- no one provided significant professional assistance to the person signing this review report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)

Comment: *Departure from binding requirements (a) through (e) above is not permitted.*

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Bank Holding Company Act of 1956

12 USC 1841 et seq.; 70 Stat. 133, Pub. L. 84-511 (May 9, 1956)

Section
2 Definitions
3 Acquisition of bank shares or assets
4 Interests in nonbanking organizations
5 Administration
6 [Repealed]
7 Reservation of rights to States
8 Penalties
9 Judicial review
10 Tax provisions
11 Saving provision
12 Separability of provisions

To define bank holding companies, control their future expansion, and require divestment of their nonbanking interests.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bank Holding Company Act of 1956."

* * * * *

SECTION 2—Definitions (12 USC 1841)

(a) (1) Except as provided in paragraph (5) of this subsection, "*bank holding company*" means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this Act.

(2) Any company has control over a bank or over any company if—

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company;

(B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(3) For the purposes of any proceeding under paragraph (2)(C) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 per centum of any class of voting securities of a given bank or company does not have control over that bank or company.

(4) In any administrative or judicial proceeding under this Act, other than a proceeding under paragraph (2)(C) of this subsection, a company may not be held to have had control over any given bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 per centum or more of any class of voting securities of the bank or company, or had already been found to have control in a proceeding under paragraph (2)(C).

(5) Notwithstanding any other provision of this subsection.

(A) No bank and no company owning or controlling voting shares of a bank is a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (g) of this section. For the purpose of the preceding sentence, bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; except that this limitation is applicable in the case of a bank or company acquiring such shares prior to the date of enactment of the Bank Holding Company Act Amendments of 1970 only if the bank or company has the right consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship to divest itself of such voting rights and fails to exercise that right to divest within a reasonable period not to exceed one year af-

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ter the date of enactment of the Bank Holding Company Act Amendments of 1970.

(B) No company is a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis.

(C) No company formed for the sole purpose of participating in a proxy solicitation is a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation.

(D) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The Board is authorized upon application by a company to extend, from time to time for not more than one year at a time, the two-year period referred to herein for disposing of any shares acquired by a company in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.

(E) No company is a bank holding company by virtue of its ownership or control of any State-chartered bank or trust company which—

(i) is wholly owned by thrift institutions or savings banks; and

(ii) is restricted to accepting—

(I) deposits from thrift institutions or savings banks;

(II) deposits arising out of the corporate business of the thrift institutions or savings banks that own the bank or trust company; or

(III) deposits of public moneys.

(F) No trust company or mutual savings bank which is an insured bank under the Federal Deposit Insurance Act is a bank holding company by virtue of its direct or indirect ownership or control of one bank located in the same State, if (i) such ownership or control existed on the date of enactment of the Bank Holding Company Act Amendments of 1970 and is specifically authorized by applicable State law, and (ii) the trust company or mutual savings bank does not after that date acquire an interest in any company that, together with any other interest it holds in that company, will exceed 5 per centum of any class of the voting shares of that company, except that this limitation shall not be applicable to investments of the trust company or mutual savings bank, direct and indirect, which are otherwise in accordance with the limitations applicable to national banks under section 5136 of the Revised Statutes (12 U.S.C. 24).

(6) For the purposes of this Act, any successor to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor company became a bank holding company.

(b) *"Company"* means any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any State. "Company covered in 1970" means a company which becomes a bank holding company as a result of the enactment of the Bank Holding Company Act Amendments of 1970 and which would have been a bank holding company on June 30, 1968, if those amendments had been enacted on that date.

(c) *Bank defined.** For purposes of this Act—

(1) Except as provided in paragraph (2), the term "bank" means any of the following:

(A) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act.

*See note at the end of this section.

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(B) An institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands which both—

(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

(ii) is engaged in the business of making commercial loans.

(2) The term "bank" does not include any of the following:

(A) A foreign bank which would be a bank within the meaning of paragraph (1) solely because such bank has an insured or uninsured branch in the United States.

(B) An insured institution (as defined in subsection (j)).

(C) An organization that does not do business in the United States except as an incident to its activities outside the United States.

(D) An institution that functions solely in a trust or fiduciary capacity, if—

(i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

(ii) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

(iii) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

(iv) such institution does not—

(I) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act; or

(II) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act.

(E) A credit union (as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act).

(F) an institution which—

(i) engages only in credit card operations;

(ii) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;

(iii) does not accept any savings or time deposit of less than $100,000;

(iv) maintains only one office that accepts deposits; and

(v) does not engage in the business of making commerical loans.

(G) An organization operating under section 25 or section 25(a) of the Federal Reserve Act.

(H) an industrial loan company, industrial bank, or other similar institution which is—

(i) an institution organized under the laws of a State which, on March 5, 1987, had in effect or had under consideration in such State's legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act—

(I) which does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

(II) which has total assets of less than $100,000,000; or

(III) the control of which is not acquired by any company after the date of the enactment of the Competitive Equality Amendments of 1987; or

(ii) an institution which does not, directly, indirectly, or through an affiliate, engage in any activity in which it was not lawfully engaged as of March 5, 1987,

except that this subparagraph shall cease to apply to any institution which permits any overdraft (including any intraday overdraft), or which incurs any such overdraft in such institution's account at a Federal Reserve bank, on behalf of an

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affiliate if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate.

(I) The Investors Fiduciary Trust Company, located in Kansas City, Missouri, so long as such institution—

(i) engages only in trust, fiduciary, and agency activities in which it was lawfully engaged on March 5, 1987;

(ii) engages in such activities only at the same number of locations at which such activities were conducted on such date;

(iii) does not accept demand deposits other than demand deposits which are maintained by such institution in—

(I) a trust or fiduciary capacity;

(II) the institution's capacity as a custodian or as a paying, transfer, shareholder servicing, securities clearing, escrow, or dividend disbursing agent; or

(III) any capacity which is incidental to the trust or fiduciary activities of the institution;

(iv) does not engage in the business of making commercial loans;

(v) does not exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act; and

(vi) is not directly or indirectly controlled by any company other than a company which directly or indirectly controlled such institution on March 5, 1987.

(J) A savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) which—

(i) is an insured bank (as defined in section 3(h) of such Act);

(ii) is a subsidiary of the Great Western Financial Corporation as a result of an approval in writing by the State bank supervisor of the State of New York before June 30, 1987;

(iii) meets or exceeds the investment requirements which an insured institution must meet in order to be a qualified thrift lender under section 408(o) of the National Housing Act; and

(iv) does not, directly, or through insurance products such savings bank receives from or provides to the Great Western Financial Corporation, engage in the sale or underwriting of insurance,

except that this subparagraph shall cease to apply with respect to such savings bank or any successor institution if any deposits of any other subsidiary or affiliate of the Great Western Financial Corporation which are subject to an assessment of an insurance premium under subsection (b) or (c) of section 404 of the National Housing Act are, directly or indirectly by any device whatsoever, transferred to or acquired by such savings bank or any successor institution which would have the effect of materially reducing such premium assessments. The exemption provided by this subparagraph shall cease to apply if Great Western Financial Corporation uses such savings bank or any successor institution as a vehicle to move such Corporation from Federal Savings and Loan Insurance Corporation insurance to Federal Deposit Insurance Corporation insurance.

(3) The term "District bank" means any bank operating under the Code of Law for the District of Columbia.

(d) *"Subsidiary"*, with respect to a specified bank holding company, means (1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such bank holding company, or is held by it with power to vote; (2) any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or (3) any company with respect to the management or policies of which such bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the Board, after notice and opportunity for hearing.

(e) The term *"successor"* shall include any company which acquires directly or indirectly from a bank holding company shares of any

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bank, when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank. The Board may, by regulation, further define the term "successor" to the extent necessary to prevent evasion of the purposes of this Act.

(f) *"Board"* means the Board of Governors of the Federal Reserve System.

(g) For the purposes of this Act—

(1) shares owned or controlled by any subsidiary of a bank holding company shall be deemed to be indirectly owned or controlled by such bank holding company;

(2) shares held or controlled directly or indirectly by trustees for the benefit of (A) a company, (B) the shareholders or members of a company, or (C) the employees (whether exclusively or not) of a company, shall be deemed to be controlled by such company; and

(3) shares transferred after January 1, 1966, by any bank holding company (or by any company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the Board, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

(h)(1) Except as provided by paragraph (2), the application of this Act and of section 23A of the Federal Reserve Act (12 U.S.C. 371), as amended, shall not be affected by the fact that a transaction takes place wholly or partly outside the United States or that a company is organized or operates outside the United States.

(2) Except as provided in paragraph (3), the prohibitions of section 4 of this Act shall not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States. For the purpose of this subsection, the term "section 2(h)(2) company" means any company whose shares are held pursuant to this paragraph.

(3) Nothing in paragraph (2) authorizes a section 2(h)(2) company to engage in (or acquire or hold more than 5 percent of the outstanding shares of any class of voting securities of a company engaged in) any banking, securities, insurance, or other financial activities, as defined by the Board, in the United States. This paragraph does not prohibit a section 2(h)(2) company from holding shares that were lawfully acquired before the date of enactment of the Competitive Equality Banking Act of 1987.

(4) No domestic office or subsidiary of a bank holding company or subsidiary thereof holding shares of a section 2(h)(2) company may extend credit to a domestic office or subsidiary of such section 2(h)(2) company on terms more favorable than those afforded similar borrowers in the United States.

(5) No domestic banking office or bank subsidiary of a bank holding company that controls a section 2(h)(2) company may offer or market products or services of such section 2(h)(2) company, or permit its products or services to be offered or marketed by or through such section 2(h)(2) company, unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date.

(i) For purposes of this Act, the term *"thrift institution"* means—

(1) any domestic building and loan or savings and loan association;

(2) any cooperative bank without capital stock organized and operated for mutual purposes and without profit;

(3) any Federal savings bank; and

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(4) any State-chartered savings bank the holding company of which is registered pursuant to section 408 of the National Housing Act.

(j) The term "*savings association*" or "*insured institution*" means—

(1) any Federal savings association or Federal savings bank;

(2) any building and loan association, savings and loan association, homestead association, or cooperative bank if such association or cooperative bank is a member of the Savings Association Insurance Fund; and

(3) any savings bank or cooperative bank which is deemed by the Director of the Office of Thrift Supervision to be a savings association under section 10(*l*) of the Home Owners' Loan Act.

(k) For purposes of this Act, the term "*affiliate*" means any company that controls, is controlled by, or is under common control with another company.

(*l*) For purposes of this Act, the term "*savings bank holding company*" means any company which controls one or more qualified savings banks if the aggregate total assets of such savings banks constitute, upon formation of the holding company and at all times thereafter, at least 70 percent of the total assets of such company.

(m) For purposes of this Act, the term "*qualified savings bank*"—

(1) means any savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) which was organized on or before March 5, 1987; and

(2) includes any cooperative bank that is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) and any interim savings bank that is established to facilitate a corporate reorganization, or the formation of a holding company, involving a savings bank described in paragraph (1).

[12 USC 1841. As amended by acts of July 1, 1966 (80 Stat. 236), Dec. 31, 1970 (84 Stat. 1760); Sept. 17, 1978 (92 Stat. 623); Oct. 15, 1982 (96 Stat. 1479, 1504, 1512); Aug. 10, 1987 (101 Stat. 555, 557, 562, 584); and Aug. 9, 1989 (103 Stat. 409). The date of enactment of the Bank Holding Company Act Amendments of 1970 referred to in this section is Dec. 31, 1970.

Subsection (h) of section 101 of the Competitive Equality Banking Act of 1987 (101 Stat. 554), which amended this section, reads as follows:

(h) *1987 amendment transition rule.*

(1) *Delay in application of amendment to certain institutions.* If—

(A) on March 5, 1987, an institution was not a bank (as defined in section 2(c) of the Bank Holding Company Act of 1956), as in effect on such date; and

(B) any person which had a controlling interest in such institution on March 5, 1987, made a public announcement before such date that the transfer or other disposition of such person's controlling interest in such institution was being considered,

the institution shall not become a bank (for purposes of the Bank Holding Company Act of 1956) due to the amendment made to such section 2(c) by this section before the date on which such institution fails to meet any requirement of paragraph (2).

(2) *Requirements for application of subsection.* This subsection shall not apply with respect to any institution described in paragraph (1) unless—

(A) the transfer or other disposition of the controlling interest referred to in such paragraph is completed, or an agreement to make such transfer or other disposition is in effect (or is subject only to final approval by the appropriate Federal and State regulatory agencies), before the end of the 180-day period beginning on the date of the enactment of this title;

(B) a written notice by the person acquiring a controlling interest in such institution (pursuant to the transfer or other disposition described in subparagraph (A)) of such person's intention to operate such institution as an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956, as in effect after the enactment of this title is filed with the Board before the end of the 7-day period beginning on the later of the date of such transfer (or other disposition) or the date of the enactment of this title; and

(C) the operation of such institution as an institution described in such section 2(c)(2)(F) begins before the end of the 180-day period beginning on the date the transfer (or other disposition) described in subparagraph (A) is completed.

(3) *Controlling interest.* For purposes of this subsection, a person has a controlling interest in any institution if such person controls—

(A) such institution; or

(B) any company which controls such institution,

as determined in accordance with the provisions of subsections (b) and (g) of section 2 of the Bank Holding Company Act of 1956.]

SECTION 3—Acquisition of Bank Shares or Assets (12 USC 1842)

(a) *Prior approval of Board as necessary; exceptions; subsequent approval or disposition upon disapproval.* It shall be unlawful, except with the prior approval of the Board, (1) for any action to be taken that causes any company to become a bank holding company; (2) for any action to be taken that causes a bank to become a subsidiary of a bank holding com-

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pany; (3) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (4) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (5) for any bank holding company to merge or consolidate with any other bank holding company. Notwithstanding the foregoing this prohibition shall not apply to (A) shares acquired by a bank, (i) in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraphs (2) and (3) of section 2(g), or (ii) in the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after the date of enactment of this Act in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired; or (B) additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition. The Board is authorized upon application by a bank to extend, from time to time for not more than one year at a time, the two-year period referred to above for disposing of any shares acquired by a bank in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years. For the purpose of the preceding sentence, bank shares acquired after the date of enactment of the Bank Holding Company Act Amendments of 1970 [December 31, 1970] shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior approval of the Board if the Board, upon application filed within ninety days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

(b) *Notice and hearing requirements.*

(1) Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be required is a national banking association or a District bank, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, in order to provide for the submission of the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be. The views and recommendations shall be submitted within thirty calendar days of the date on which notice is given, or within ten calendar days of such date if the Board advises the Comptroller of the Currency or the State supervisory authority that an emergency exists requiring expeditious action. If the thirty-day notice period applies and if the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within this period, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten nor more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board shall, by order, grant or deny the application on the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for ap-

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proval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. Notwithstanding any other provision of the subsection, if the Board finds that it must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition, merger, or consolidation transaction, the Board may dispose with the notice requirements of this subsection, and if notice is given, the Board may request that the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, be submitted immediately in any form or by any means acceptable to the Board. If the Board has found pursuant to this subsection either that an emergency exists requiring expeditious action or that it must act immediately to prevent probable failure, the Board may grant or deny any such application without a hearing notwithstanding any recommended disapproval by the appropriate supervisory authority.

(2) If the Board receives a certification described in section 13(f)(8)(D) of the Federal Deposit Insurance Act from the appropriate Federal or State chartering authority that a bank is in danger of closing, the Board may dispense with the notice and hearing requirements of paragraph (1) with respect to any application received by the Board relating to the acquisition of such bank, the bank holding company which controls such bank, or any other affiliated bank.

(c) *Factors for consideration by Board.* (1) The Board shall not approve—

(A) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transactions are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

(2) In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

(3) The Board shall disapprove any application under this section by any company if—

(A) the company fails to provide the Board with adequate assurances that the company will make available to the Board such information on the operations or activities of the company, and any affiliate of the company, as the Board determines to be appropriate to determine and enforce compliance with this Act; or

(B) in the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.

(4) Notwithstanding any other provision of law, the Board shall not follow any practice or policy in the consideration of any application for the formation of a one-bank holding company if following such practice or policy would result in the rejection of such application solely because the transaction to form such one-bank holding company involves a bank stock loan which is for a period of not more than twenty-five years. The previous sentence shall not be construed to prohibit the Board from rejecting any application solely because the other financial arrangements are considered unsatisfactory. The Board shall consider transactions involving bank stock loans for the formation of a one-bank holding com-

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pany having a maturity of twelve years or more on a case by case basis and no such transaction shall be approved if the Board believes the safety or soundness of the bank may be jeopardized.

(5) Consideration of the managerial resources of a company or bank under paragraph (2) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank.

(d) *Acquisitions in other states.* Notwithstanding any other provision of this section, no application (except an application filed as a result of a transaction authorized under section 13(f) of the Federal Deposit Insurance Act) shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside of the State in which the operations of such bank holding company's banking subsidiaries were principally conducted on the effective date of this amendment [July 1, 1966] or the date on which such company became a bank holding company, whichever is later, unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication. For the purposes of this section, the State in which the operations of a bank holding company's subsidiaries are principally conducted is that State in which total deposits of all such banking subsidiaries are largest.

(e) *Insured bank.* Every bank that is a holding company and every bank that is a subsidiary of such a company shall become and remain an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act. This subsection does not apply to a bank described in the last sentence of section 2(c).

(f) *Savings bank subsidiaries of bank holding companies.*

(1) Notwithstanding any other provision of this Act (other than paragraphs (2) and (3)), any qualified savings bank which is a subsidiary of a bank holding company may engage, directly or through a subsidiary, in any activity in which such savings bank may engage (as a State chartered savings bank) pursuant to express, incidental, or implied powers under any statute or regulation, or under any judicial interpretation of any law, of the State in which such savings bank is located.

(2) Except as provided in paragraph (3), any insurance activities of any qualified savings bank which is a subsidiary of a bank holding company shall be limited to insurance activities allowed under section 4(c)(8).

(3) Any qualified savings bank permitted, as of March 5, 1987, to engage in the sale or underwriting of savings bank life insurance may sell or underwrite such insurance after such savings bank is a subsidiary of a bank holding company if—

(A) the savings bank is located in the State of Connecticut, Massachusetts, or New York;

(B) such activity is expressly authorized by the law of the State in which such savings bank is located;

(C) the savings bank retains its character as a savings bank;

(D) such activity is carried out by the savings bank directly and not by—

(i) any subsidiary or affiliate of the savings bank; or

(ii) the bank holding company which controls such savings bank;

(E) such activity is carried out by the savings bank in accordance with any residency or employment limitations set forth in the savings bank life insurance statute in effect on March 5, 1987, in the State in which such bank is located; and

(F) such activity is otherwise carried out in the same manner as savings bank life insurance activity is carried out in the State in which such bank is located by savings banks which are not subsidiaries of any bank holding company registered under this Act.

(4) If any company which is not a savings bank or a savings bank holding company acquires control of a qualified savings bank,

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such savings bank shall cease to engage in any activity authorized under paragraph (1) or (3) before the end of the 2-year period beginning on the date such company acquires control, unless such activity is otherwise authorized pursuant to this Act.

(5) For the sole purpose of determining whether a qualified savings bank may continue to sell and underwrite savings bank life insurance in accordance with this subsection after control of such savings bank is acquired by a bank holding company, the assets of any other bank affiliated with, or under contract to affiliate with, such savings bank as of March 5, 1987, shall be treated as assets of the savings bank in determining whether such bank holding company is a savings bank holding company.

(g) *Mutual bank holding company.* (1) Notwithstanding any provision of Federal law other than this Act, a savings bank or cooperative bank operating in mutual form may reorganize so as to form a holding company.

(2) A corporation organized as a holding company under this subsection shall be regulated on the same terms and be subject to the same limitations as any other holding company which controls a savings bank.

[12 USC 1842. As amended by acts of July 1, 1966 (80 Stat. 237); Dec. 31, 1970 (84 Stat. 1763); Nov. 16, 1977 (91 Stat. 1389); March 31, 1980 (94 Stat. 190); Oct. 15, 1982 (96 Stat. 1479, 1488, 1512); Aug. 10, 1987 (101 Stat. 561, 579, 628, 635); Aug. 9, 1989 (103 Stat. 409); and Dec. 19, 1991 (105 Stat. 2290, 2298).]

SECTION 4—Interests in Nonbanking Organizations (12 USC 1843)

(a) *Ownership or control of any company not a bank; engagement in activities other than banking.* Except as otherwise provided in this Act, no bank holding company shall—

(1) after the date of enactment of this Act acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or

(2) after two years from the date as of which it becomes a bank holding company, or in the case of a company which has been continuously affiliated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940, prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act, after December 31, 1978, or in the case of any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, after December 31, 1980, retain direct or indirect ownership or control of any voting shares of any company which is not a bank or bank holding company or engage in any activities other than (A) those of banking or of managing or controlling banks and other subsidiaries authorized under this Act or of furnishing services to or performing services for its subsidiaries, and (B) those permitted under paragraph (8) of subsection (c) of this section subject to all the conditions specified in such paragraph or in any order or regulation issued by the Board under such paragraph: *Provided,* That a company covered in 1970 may also engage in those activities in which directly or through a subsidiary (i) it was lawfully engaged on June 30, 1968 (or on a date subsequent to June 30, 1968 in the case of activities carried on as the result of the acquisition by such company or subsidiary, pursuant to a binding written contract entered into on or before June 30, 1968, of another company engaged in such activities at the time of the acquisition), and (ii) it has been continuously engaged since June 30, 1968 (or such subsequent date). The Board by order, after opportunity for hearing, may terminate the authority conferred by the preceding proviso on any company to engage directly or through a subsidiary in an activity otherwise permitted by that proviso if it determines, having due regard to the purposes of this Act, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices; and in the case of any such company controlling a bank having bank assets in excess of $60,000,000 on or after the date of enactment of the Bank Holding Company Act Amendments of 1970 the Board shall deter-

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mine, within two years after such date (or, if later, within two years after the date on which the bank assets first exceed $60,000,000), whether the authority conferred by the preceding proviso with respect to such company should be terminated as provided in this sentence. Nothing in this paragraph shall be construed to authorize any bank holding company referred to in the preceding proviso, or any subsidiary thereof, to engage in activities authorized by that proviso through the acquisition, pursuant to a contract entered into after June 30, 1968, of any interest in or the assets of a going concern engaged in such activities. Any company which is authorized to engage in any activity pursuant to the preceding proviso or subsection (d) of this section but, as a result of action of the Board, is required to terminate such activity may (notwithstanding any otherwise applicable time limit prescribed in this paragraph) retain the ownership or control of shares in any company carrying on such activity for a period of ten years from the date on which its authority was so terminated by the Board.

The Board is authorized, upon application by a bank holding company, to extend the two-year period referred to in paragraph (2) above from time to time as to such bank holding company for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall in the aggregate exceed three years. Notwithstanding any other provision of this Act, the period ending December 31, 1980, referred to in paragraph (2) above, may be extended by the Board of Governors to December 31, 1984, but only for the divestiture by a bank holding company of real estate or interests in real estate lawfully acquired for investment or development. In making its decision whether to grant such extension, the Board shall consider whether the company has made a good faith effort to divest such interests and whether such extension is necessary to avert substantial loss to the company. Notwithstanding any other provision of this paragraph, if any company that became a bank holding company as a result of the enactment of the Competitive Equality Amendments of 1987 acquired, between March 5, 1987, and the date of the enactment of such Amendments, an institution that became a bank as a result of the enactment of such Amendments, that company shall, upon the enactment of such Amendments, immediately come into compliance with the requirements of this Act.

(b) *Statement purporting to represent shares of any company except a bank or bank holding company.* After two years from the date of enactment of this Act, no certificate evidencing shares of any bank holding company shall bear any statement purporting to represent shares of any other company except a bank or a bank holding company, nor shall the ownership, sale, or transfer of shares of any bank holding company be conditioned in any manner whatsoever upon the ownership, sale, or transfer of shares of any other company except a bank or a bank holding company.

(c) *Exemptions.* The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code of 1954, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors: and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) shares of any company engaged or to be engaged solely in one or more of the following activities; (A) holding or operating properties used wholly or substantially by any banking subsidiary of such bank holding company in the operations of such banking subsidiary or acquired for such future use: or (B) conducting a safe deposit business: or (C) furnishing services to or performing services for such bank holding company or its banking subsidiaries: or (D) liquidating assets acquired from such

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bank holding company or its banking subsidiaries or acquired from any other source prior to May 9, 1956, or the date on which such company became a bank holding company, whichever is later;

(2) shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of within a period of two years from the date on which they were acquired, except that the Board is authorized upon application by such bank holding company to extend such period of two years from time to time as to such holding company for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall extend beyond a date five years after the date on which such shares were acquired;

(3) shares acquired by such bank holding company from any of its subsidiaries which subsidiary has been requested to dispose of such shares by any Federal or State authority having statutory power to examine such subsidiary, but such bank holding company shall dispose of such shares within a period of two years from the date on which they were acquired;

(4) shares held or acquired by a bank in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraph (2) and (3) of section 2(g);

(5) shares which are of the kinds and amounts eligible for investment by national banking associations under the provisions of section 5136 of the Revised Statutes;

(6) shares of any company which do not include more than 5 per centum of the outstanding voting shares of such company;

(7) shares of an investment company which is not a bank holding company and which is not engaged in any business other than investing in securities, which securities do not include more than 5 per centum of the outstanding voting shares of any company;

(8) shares of any company the activities of which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, but for purposes of this subsection it is not closely related to banking or managing or controlling banks for a bank holding company to provide insurance as a principal, agent, or broker except (A) where the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death, disability, or involuntary unemployment of the debtor; (B) in the case of a finance company which is a subsidiary of a bank holding company, where the insurance is also limited to assuring repayment of the outstanding balance on an extension of credit in the event of loss or damage to any property used as collateral on such extension of credit and, during the period beginning on the date of the enactment of this subparagraph and ending on December 31, 1982, such extension of credit is not more than $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) and for any given year after 1982, such extension of credit is not more than an amount equal to $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) increased by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year in which such extension of credit is made; (C) any insurance agency activity in a place that (i) has a population not exceeding five thousand (as shown by the last preceding decennial census), or (ii) the bank holding company, after notice and opportunity for a hearing, demonstrates has inadequate insurance agency facilities; (D) any insurance agency activity which was engaged in by the bank

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holding company or any of its subsidiaries on May 1, 1982, or which the Board approved for such company or any of its subsidiaries on or before May 1, 1982, including (i) sales of insurance at new locations of the same bank holding company or the same subsidiary or subsidiaries with respect to which insurance was sold on May 1, 1982, or approved to be sold on or before May 1, 1982, if such new locations are confined to the State in which the principal place of business of the bank holding company is located, any State or States immediately adjacent to suchState, and any State or States in which insurance activities were conducted by the bank holding company or any of its subsidiaries on May 1, 1982, or were approved to be conducted by the bank holding company or any of its subsidiaries on or before May 1, 1982, and (ii) sales of insurance coverages which may become available after May 1, 1982, so long as those coverages insure against the same types of risks as, or are otherwise functionally equivalent to, coverages sold on May 1, 1982, or approved to be sold on or before May 1, 1982 (for purposes of this subparagraph, activities engaged in or approved by the Board on May 1, 1982, shall include activities carried on subsequent to that date as the result of an application to engage in such activities pending on May 1, 1982, and approved subsequent to that date or of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition); (E) any insurance activity where the activity is limited solely to supervising on behalf of insurance underwriters the activities of retail insurance agents who sell (i) fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or any of its subsidiaries, and (ii) group insurance that protects the employees of the bank holding company or any of its subsidiaries; (F) any insurance agency activity engaged in by a bank holding company, or any of its subsidiaries, which bank holding company has total assets of $50,000,000 or less: *Provided, however,* That such a bank holding company and its subsidiaries may not engage in the sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C); or (G) where the activity is performed, or shares of the company involved are owned, directly or indirectly, by a bank holding company which is registered with the Board of Governors of the Federal Reserve System and which, prior to January 1, 1971, was engaged, directly or indirectly, in insurance agency activities as a consequence of approval by the Board prior to January 1, 1971. In determining whether a particular activity is a proper incident to banking or managing or controlling banks the Board shall consider whether its performance by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. In orders and regulations under this subsection, the Board may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern. Notwithstanding any other provision of this Act, if the Board finds that an emergency exists which requires the Board to act immediately on any application under this subsection involving a thrift institution, and the primary Federal regulator of such institution concurs in such finding, the Board may dispense with the notice and hearing requirement of this subsection and the Board may approve or deny any such application without notice or hearing. If an application is filed under this paragraph in connection with an application to make an acquisition pursuant to section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. If an application described in the preceding sentence is approved, the Board shall publish in the Federal Register, not

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later than 7 days after such approval is granted, the order approving the application and a description of the nonbanking activities involved in the acquisition;

(9) shares held or activities conducted by any company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest;

(10) shares lawfully acquired and owned prior to May 9, 1956, by a bank which is a bank holding company, or by any of its wholly owned subsidiaries;

(11) shares owned directly or indirectly by a company covered in 1970 in a company which does not engage in any activities other than those in which the bank holding company, or its subsidiaries, may engage by virtue of this section, but nothing in this paragraph authorizes any bank holding company, or subsidiary thereof, to acquire any interest in or the assets of any going concern (except pursuant to a binding written contract entered into before June 30, 1968, or pursuant to another provision of this Act) other than one which was a subsidiary on June 30, 1968;

(12) shares retained or acquired, or activities engaged in, by any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, or by any subsidiary thereof, if such company—

(A) within the applicable time limits prescribed in subsection (a)(2) of this section (i) ceases to be a bank holding company, or (ii) ceases to retain direct or indirect ownership or control of those shares and to engage in those activities not authorized under this section; and

(B) complies with such other conditions as the Board may by regulation or order prescribe;

(13) shares of, or activities conducted by, any company which does no business in the United States except as an incident to its international or foreign business, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest; or

(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

(ii) The period for disapproval may be extended for such additional thirty-day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

(iv) The Board may disapprove any proposed investment only if—

(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of re-

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sources, decreased or unfair competition, or conflicts of interest;

(II) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company, or

(III) the bank hoding company fails to furnish the information required under clause (iii).

(v) The Board may not disapprove any proposed investment solely on the basis of the anticipated or proposed asset-to-equity ratio of the export trading company with respect to which such investment is proposed, unless the anticipated or proposed annual average asset-to-equity ratio is greater than 20-to-1.

(vi) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

(vii) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of credit.

(iii) No bank holding company or subsidiary of such company which invests in an export trading company may extend credit to such export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(C) For purposes of this paragraph, an export trading company—

(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611–631), which is a subsidiary of a bank holding

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company, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act (12 U.S.C. 601–604(a)), which is a subsidiary of a bank holding company, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in banking) in the voting stock or other evidences of ownership in one or more export trading companies.

(F) For purposes of this paragraph—

(i) the term "export trading company" means a company which does business under the laws of the United States or any State, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services.

(ii) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

(iii) the term "bank holding company" shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

(iv) the term "extension of credit" shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.

(G)(i) For purposes of determining whether an export trading company is operated principally for the purposes described in subparagraph (F)(i)—

(I) the operations of such company during the 2-year period beginning on the date such company commences operations shall not be taken into account in making any such determination; and

(II) not less than 4 consecutive years of operations of such company (not including any portion of the period referred to in subclause (I)) shall be taken into account in making any such determination.

(ii) A company shall not be treated as operated principally for the purposes described in subparagraph (F)(i) unless—

(I) the revenues of such company from the export, or facilitating the export, of goods or services produced in the United States exceed the revenues of such company from the import, or facilitating the import, into the United States of goods or services produced outside the United States; and

(II) at least $\frac{1}{3}$ of such company's total revenues are revenues from the export, or facilitating the export, of goods or services produced in the

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United States by persons not affiliated with such company.

(H)(i) The Board may not prescribe by regulation any maximum dollar amount limitation on the value of goods which an export trading company may maintain in inventory at any time.

(ii) Notwithstanding clause (i), the Board may issue an order establishing a maximum dollar amount limitation on the value of goods which a particular export trading company may maintain in inventory at any time (after such company has been operating for a reasonable period of time) if the Board finds that, under the facts and circumstances, such limitation is necessary to prevent risks that would affect the financial or managerial resources of an investor bank holding company to an extent which would be likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company.

In the event of the failure of the Board to act on any application for an order under paragraph (8) of this subsection within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. The Board shall include in its annual report to the Congress a description and a statement of the reasons for approval of each activity approved by it by order or regulation under such paragraph during the period covered by the report.

(d) *Hardship exemption of company controlling one bank prior to July 1, 1968.* To the extent that such action would not be substantially at variance with the purposes of this Act and subject to such conditions as it considers necessary to protect the public interest, the Board by order, after opportunity for hearing, may grant exemptions from the provisions of this section to any bank holding company which controlled one bank prior to July 1, 1968, and has not thereafter acquired the control of any other bank in order (1) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved, or (2) to avoid forced sales of small locally owned banks to purchasers not similarly representative of community interests, or (3) to allow retention of banks that are so small in relation to the holding company's total interests and so small in relation to the banking market to be served as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desire to further the holding company's other interests.

(e) *Divestiture of nonexempt shares.* With respect to shares which were not subject to the prohibitions of this section as originally enacted by reason of any exemption with respect thereto but which were made subject to such prohibitions by the subsequent repeal of such exemption, no bank holding company shall retain direct or indirect ownership or control of such shares after five years from the date of the repeal of such exemption, except as provided in paragraph (2) of subsection (a). Any bank holding company subject to such five-year limitation on the retention of nonbanking assets shall endeavor to divest itself of such shares promptly and such bank holding company shall report its progress in such divestiture to the Board two years after repeal of the exemption applicable to it and annually thereafter.

(f) *Certain companies not treated as bank holding companies.* (1) Except as provided in paragraph (9), any company which—

(A) on March 5, 1987, controlled an institution which became a bank as a result of the enactment of the Competitive Equality Amendments of 1987; and

(B) was not a bank holding company on the day before the date of the enactment of the Competitive Equality Amendments of 1987,

shall not be treated as a bank holding company for purposes of this Act solely by virtue of such company's control of such institution.

(2) Paragraph (1) shall cease to apply to any company described in such paragraph if—

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(A) such company directly or indirectly—

(i) acquires control of an additional bank or an insured institution (other than an insured institution described in paragraph (10) or (12) of this subsection) after March 5, 1987; or

(ii) acquires control of more than 5 percent of the shares or assets of an additional bank or a savings association other than—

(I) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

(II) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company described in paragraph (1) or any subsidiary of that company and the beneficiaries of those employees;

(III) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(IV) shares held in an account solely for trading purposes;

(V) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(VI) loans or other accounts receivable acquired in the normal course of business;

(VII) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

(VIII) shares or assets of a savings association described in paragraph (10) or (12) of this subsection;

(IX) shares of a savings association held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940, except as provided in paragraph (11); and

(X) shares issued in a qualified stock issuance under section 10(q) of the Home Owners' Loan Act;

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), (V), and (VIII)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association; or

(B) any bank subsidiary of such company fails to comply with the restrictions contained in paragraph (3)(B).

(3)(A) The Congress finds that banks controlled by companies referred to in paragraph (1) may, because of relationships with affiliates, be involved in conflicts of interest, concentration of resources, or other effects adverse to bank safety and soundness, and may also be able to compete unfairly against banks controlled by bank holding companies by combining banking services with financial services not permissible for bank holding companies. The purpose of this paragraph is to minimize any such potential adverse effects or inequities by temporarily restricting the activities of banks controlled by companies referred to in paragraph (1) until such time as the Congress has enacted proposals to allow, with appropriate safeguards, all banks or bank holding companies to compete on a more equal basis with banks controlled by companies referred to in paragraph (1) or, alternatively, proposals to permanently restrict the activities of banks controlled by companies referred to in paragraph (1).

(B) Until such time as the Congress has taken action pursuant to subparagraph (A), a bank controlled by a company described in paragraph (1) shall not—

(i) engage in any activity in which such bank was not lawfully engaged as of March 5, 1987;

(ii) offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under subsection (c)(8), or

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permit its products or services to be offered or marketed in connection with products and services of an affiliate, unless—

(I) the Board, by regulation, has determined such products and services are permissible for bank holding companies to provide under subsection (c)(8);

(II) such products and services are described in section 20 of the Banking Act of 1933 and the Board, by regulation, has permitted bank holding companies to offer or market such products or services, but has prohibited bank holding companies and their affiliates from principally engaging in the offering or marketing of such products or services; or

(III) such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date;

(iii) after the date of the enactment of the Competitive Equality Amendments of 1987, permit any overdraft (including an intraday overdraft), or incur any such overdraft in such bank's account at a Federal Reserve bank, on behalf of an affiliate, other than an overdraft described in subparagraph (C); or

(iv) increase its assets at an annual rate of more than 7 percent during any 12-month period beginning after the end of the 1-year period beginning on the date of the enactment of the Competitive Equality Amendments of 1987.

(C) For purposes of subparagraph (B)(iii), an overdraft is described in this subparagraph if—

(i) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or

(ii) such overdraft—

(I) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

(II) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.

(4) If any company described in paragraph (1) loses the exemption provided under such paragraph by operation of paragraph (2), such company shall divest control of each bank it controls within 180 days after such company becomes a bank holding company due to the loss of such exemption.

(5) This subsection shall cease to apply to any company described in paragraph (1) if such company—

(A) registers as a bank holding company under section 5(a) of this Act;

(B) immediately upon such registration, complies with all of the requirements of this Act, and regulations prescribed by the Board pursuant to this Act, including the nonbanking restrictions of this section; and

(C) does not, at the time of such registration, control banks in more than one State, the acquisition of which would be prohibited by section 3(d) of this Act if an application for such acquisition by such company were filed under section 3(a) of this Act.

(6) Each company described in paragraph (1) shall, within 60 days after the date of enactment of the Competitive Equality Amendments of 1987, provide the Board with the name and address of such company, the name and address of each bank such company controls, and a description of each such bank's activities.

(7) The Board may, from time to time, examine a company described in paragraph (1), or a bank controlled by such company, or require reports under oath from appropriate officers or directors of such company or bank solely for purposes of assuring

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compliance with the provisions of this subsection and enforcing such compliance.

(8)(A) In addition to any other power of the Board, the Board may enforce compliance with the provisions of this Act which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company or bank were a State member insured bank.

(B) Any violation of this Act by any company described in paragraph (1), and any bank controlled by such company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

(C) No provision of this paragraph shall be construed as limiting any authority of the Comptroller of the Currency or the Federal Deposit Insurance Corporation.

(9) A company described in paragraph (1) shall be—

(A) treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section; and

(B) subject to the restrictions of section 106 of the Bank Holding Company Act Amendments of 1970, in connection with any transaction involving the products or services of such company or affiliate and those of a bank affiliate, as if such company or affiliate were a bank and such bank were a subsidiary of a bank holding company.

(10) For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if—

(A) the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1) in an acquisition under section 408(m) of the National Housing Act or section 13(k) of the Federal Deposit Insurance Act; and

(B) either—

(i) the insured institution is located in a State in which such company controlled a bank on March 5, 1987; or

(ii) the insured institution has total assets of $500,000,000 or more at the time of such acquisition.

(11) Shares described in clause (ii)(IX) of paragraph (2)(A) shall not be excluded for purposes of clause (ii) of such paragraph if—

(A) all shares held under such clause (ii)(IX) by all insurance company affiliates of such savings association in the aggregate exceed 5 percent of all outstanding shares or of the voting power of the savings association; or

(B) such shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association.

(12) For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1)—

(A) from the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision, in any capacity; or

(B) in an acquisition in which the insured institution has been found to be in danger of default (as defined in section 3 of the Federal Deposit Insurance Act by the appropriate Federal or State authority.

(13) A company described in paragraph (1) that holds shares issued in a qualified stock issuance pursuant to section 10(q) of the Home Owners' Loan Act by any savings association or savings and loan holding company (neither of which is a subsidiary) shall not be deemed to control such savings association or savings and loan holding company solely because such company holds such shares unless—

(A) the company fails to comply with any requirement or condition imposed by paragraph (2)(A)(ii)(X) or section

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10(q) of the Home Owners' Loan Act with respect to such shares; or

(B) the shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company.

(g) *Limitations on certain banks.* (1) Notwithstanding any other provision of this section (other than the last sentence of subsection (a)(2)), a bank holding company which controls an institution that became a bank as a result of the enactment of the Competitive Equality Amendments of 1987 may retain control of such institution if such institution does not—

(A) engage in any activity after the date of the enactment of such Amendments which would have caused such institution to be a bank (as defined in section 2(c), as in effect before such date) if such activities had been engaged in before such date; or

(B) increase the number of locations from which such institution conducts business after March 5, 1987.

(2) The limitations contained in paragraph (1) shall cease to apply to a bank described in such paragraph at such time as the acquisition of such bank, by the bank holding company referred to in such paragraph, would not be prohibited under section 3(d) of this Act if—

(A) an application for such acquisition were filed under section 3(a) of this Act; and

(B) such bank were treated as an additional bank (under section 3(d)).

(h) *Tying provisions.* (1) An institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 2(c)(2) shall be treated as a bank, and a company that controls such an institution shall be treated as a bank holding company, for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section.

(2) A company that controls an institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 2(c)(2) and any of such company's other affiliates, shall be subject to the tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 in connection with any transaction involving the products or services of such company or affiliate and those of such institution, as if such company or affiliate were a bank and such institution were a subsidiary of a bank holding company.

(i) *Acquisition of savings associations.* (1) The Board may approve an application by any bank holding company under subsection (c)(8) to acquire any savings association in accordance with the requirements and limitations of this section.

(2) In approving an application by a bank holding company to acquire a savings association, the Board shall not impose any restriction on transactions between the savings association and its holding company affiliates, except as required under sections 23A and 23B of the Federal Reserve Act or any other applicable law.

(3)(A) Notwithstanding any other provision of this Act, any qualified savings association which became a federally chartered stock company in December of 1986 and which is acquired by any bank holding company without Federal financial assistance after June 1, 1991, and before March 1, 1992, and any subsidiary of any such association, may after such acquisition continue to engage within the home State of the qualified savings association in insurance agency activities in which any Federal savings association (or any subsidiary thereof) may engage in accordance with the Home Owners' Loan Act and regulations pursuant to such Act if the qualified savings association or subsidiary thereof was continuously engaged in such activity from June 1, 1991, to the date of the acquisition.

(B) For purposes of this paragraph, the term *"qualified savings association"* means any savings association that—

(i) was chartered or organized as a savings association before June 1, 1991;

(ii) had, immediately before the

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acquisition of such association by the bank holding company referred to in subparagraph (A), negative tangible capital and total insured deposits in excess of $3,000,000,000; and

(iii) will meet all applicable regulatory capital requirements as a result of such acquisition.

[12 USC 1843. As amended by acts of July 1, 1966 (80 Stat. 238); Dec. 31, 1970 (84 Stat. 1763); Nov. 16, 1977 (91 Stat. 1389); Nov. 10, 1978 (92 Stat. 3671); March 31, 1980 (94 Stat. 186); Oct. 8, 1982 (96 Stat. 1236); Oct. 15, 1982 (96 Stat. 1479, 1488, 1527, 1536); Jan. 12, 1983 (96 Stat. 2511); Oct. 22, 1986 (100 Stat. 2095); Aug. 10, 1987 (101 Stat. 557, 628); Aug. 23, 1988 (102 Stat. 1384, 1385); Aug. 9, 1989 (103 Stat. 408, 409, 410, 411, 546); and Dec. 19, 1991 (105 Stat. 2384).

Section 601(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 USC 1843 note) reads as follows:

(b) If the Board of Governors of the Federal Reserve System, in approving an application by a bank holding company to acquire a savings association, imposed any restriction that would have been prohibited under section 4(i)(2) of the Bank Holding Company Act of 1956 (as added by subsection (a) of this section) if that section had been in effect when the application was approved, the Board shall modify that approval in a manner consistent with that section.]

SECTION 5—Administration (12 USC 1844)

(a) *Registration of bank holding company.* Within one hundred and eighty days after the date of enactment of this Act, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each bank holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry out the purposes of this Act. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information.

(b) *Regulations and orders.* The Board is authorized to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of this Act and prevent evasions thereof.

(c) *Reports required by Board; examinations; cost of examination.* The Board from time to time may require reports under oath to keep it informed as to whether the provisions of this Act and such regulations and orders issued thereunder have been complied with; and the Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and paid by, such holding company. The Board shall, as far as possible, use the reports of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this section.

(d) *Reports to Congress; recommendations.* Before the expiration of two years following the date of enactment of this Act, and each year thereafter in the Board's annual report to the Congress, the Board shall report to the Congress the results of the administration of this Act, stating what, if any, substantial difficulties have been encountered in carrying out the purposes of this Act, and any recommendations as to changes in the law which in the opinion of the Board would be desirable.

(e) *Termination of activities or ownership or control of nonbank subsidiaries constituting serious risk.* (1) Notwithstanding any other provision of this Act, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured

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nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the bank holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(2) The Board may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the holding company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in section 9 of this Act, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(f) *Powers of Board respecting applications, examinations, or other proceedings.* In the course of or in connection with an application, examination, investigation or other proceeding under this Act, the Board, or any member or designated representative thereof, including any person designated to conduct any hearing under this Act, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum: and the Board is empowered to make rules and regulations to effectuate the purposes of this subsection. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this Act may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted or where the witness resides or carries on business, for the enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any service required under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Any court having jurisdiction of any proceeding instituted under this subsection may allow to any such party such reasonable expenses and attorneys' fees as it seems just and proper. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the Board, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or, to imprisonment for a term of not more than one year or both.

[12 USC 1844. As amended by act of Nov. 10, 1978 (92 Stat. 3646).]

SECTION 6

[Section 6 was repealed by section 9 of the act of July 1, 1966 (80 Stat. 240).]

SECTION 7—Reservation of Rights to States (12 USC 1846)

No provision of this act shall be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof.

[12 USC 1846. As amended by act of Aug. 10, 1987 (101 Stat. 563).]

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SECTION 8—Penalties (12 USC 1847)

(a) *Criminal penalty.* (1) Whoever knowingly violates any provision of this Act, or, being a company, violates any regulation or order issued by the Board under this Act, shall be imprisoned not more than 1 year, fined not more than $100,000 per day for each day during which the violation continues, or both.

(2) Whoever, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this Act shall be imprisoned not more than 5 years, fined not more than $1,000,000 per day for each day during which the violation continues, or both.

(3) Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18, United States Code.

(b) *Civil money penalty.* (1) Any company which violates, and any individual who participates in a violation of, any provision of this Act, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

(2) Any penalty imposed under paragraph (1) may be assessed and collected by the Board in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(3) The company or other person against whom any penalty is assessed under this subsection shall be afforded an agency hearing if such association or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

(4) All penalties collected under authority of this subsection shall be deposited into the Treasury.

(5) For purposes of this section, the term "violate" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(6) The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this subsection.

(c) *Notice under this section after separation from service.* The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a bank holding company (including a separation caused by the deregistration of such a company) shall not affect the jurisdiction and authority of the Board to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such holding company (whether such date occurs before, on, or after the date of the enactment of this subsection).

(d) *Penalty for failure to make reports.* (1) Any company which—

(A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error—

(i) fails to make, submit, or publish such reports or information as may be required under this Act or under regulations prescribed by the Board pursuant to this Act, within the period of time specified by the Board; or

(ii) submits or publishes any false or misleading report or information; or

(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The company shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

(2) Any company which—

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(A) fails to make, submit, or publish such reports or information as may be required under this Act or under regulations prescribed by the Board pursuant to this Act, within the period of time specified by the Board; or

(B) submits or publishes any false or misleading report or information, in a manner not described in paragraph (1)

shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(3) Notwithstanding paragraph (2), if any company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Board may, in its discretion, assess a penalty of not more than $1,000,000 or 1 percent of total assets of such company, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Board in the manner provided in subsection (b) (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(5) Any company against which any penalty is assessed under this subsection shall be afforded an agency hearing if such company submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

[12 USC 1847. As amended by acts of Nov. 10, 1978 (92 Stat. 3647); Oct. 15, 1982 (96 Stat. 1522); and Aug. 9, 1989 (103 Stat. 461, 475, 481).]

SECTION 9—Judicial Review (12 USC 1848)

Any party aggrieved by an order of the Board under this Act may obtain a review of such order in the United States Court of Appeals within any circuit wherein such party has its principal place of business, or in the Court of Appeals in the District of Columbia, by filing in the court, within thirty days after the entry of the Board's order, a petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive.

[12 USC 1848. As amended by acts of Aug. 28, 1958 (72 Stat. 951) and July 1, 1966 (80 Stat. 240).]

SECTION 10—Tax Provisions

[Subsections (a) and (b) contain language added to subchapter O of chapter 1 of the Internal Revenue Code of 1954 (26 USC). This language was subsequently incorporated into the Bank Holding Company Tax Act of 1976, along with additional language also amending the Internal Revenue Code. It was repealed by act of Nov. 5, 1990 (104 Stat. 1388.]

SECTION 11—Saving Provision (12 USC 1849)

(a) *General rule.* Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct, except as specifically provided in this section.

(b) *Antitrust review.* (1) The Board shall immediately notify the Attorney General of any approval by it pursuant to section 3 of a proposed acquisition, merger, or consolidation transaction. If the Board has found that it must act immediately in order to

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prevent the probable failure of a bank or bank holding company involved in any cash transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 3 shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 3 might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 3 on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act. 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under section 3 of this Act. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 3 in compliance with this Act and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period of no such litigation is commenced therein, the transaction may not thereafter be attached in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this Act shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

(2)(A) If—

(i) the Federal Deposit Insurance Corporation learns that a bank insured by such Corporation is in danger of closing; and

(ii) the Corporation is considering assisting the acquisition of such bank and its affiliated banks by another bank or holding company under section 13(f) of the Federal Deposit Insurance Act and such acquisition is subject to the approval of the Board under section 3 of this Act,

the Corporation shall immediately notify the Board of such facts.

(B) Upon receipt of notice from the Federal Deposit Insurance Corporation under subparagraph (A) or at such earlier time as deemed appropriate by the Board, the Board shall immediately notify the Attorney General of the United States of the facts concerning the possible acquisition.

(C) Within 5 days of receiving notice under subparagraph (B), the Attorney General shall notify the Board in writing of the Attorney General's preliminary finding as to the consistency of the possible acquisition with the antitrust laws.

(D) The Board may reduce or eliminate the post-approval waiting period established under paragraph (1) for an acquisition to which this paragraph applies, except that such period may not be eliminated or reduced to less than 5 days without the concurrence of the Attorney General.

(c) *Antitrust proceedings; Board and State banking agency as party; representation by counsel.* In any action brought under the antitrust laws arising out of any acquisition, merger, or consolidation transaction approved by the Board under section 3 of this Act, the Board and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own mo-

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tion and as of right, and be represented by its counsel.

(d) *Treatment of merger transactions consummated prior or subsequent to May 9, 1956, and not in litigation prior to July 1, 1966.* Any acquisition, merger, or consolidation of the kind described in section 3(a) of this Act which was consummated at any time prior or subsequent to May 9, 1956, and as to which no litigation was initiated by the Attorney General prior to the date of enactment of this amendment, shall be conclusively presumed not to have been in violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

(e) *Antitrust litigation; substantive law applicable to proceedings pending on or after July 1, 1966 with respect to merger transactions.* Any court having pending before it on or after the date of enactment of this amendment any litigation initiated under the antitrust laws by the Attorney General with respect to any acquisition, merger, or consolidation of the kind described in section 3(a) of this Act shall apply the substantive rule of law set forth in section 3 of this Act.

(f) *Definition of "antitrust laws".* For the purposes of this section, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1–7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12–27), and any other Acts in pari materia.

[12 USC 1849. As amended by acts of July 1, 1966 (80 Stat. 240) and Dec. 31, 1970 (84 Stat. 1766) Oct. 2, 1976 (90 Stat. 1503); Nov. 16, 1977 (91 Stat. 1390); and Aug. 10, 1987 (101 Stat. 628). The date of the amendment referred to in paragraphs (d) and (e) is July 1, 1966.]

SECTION 12—Separability of Provisions (12 USC 1841 note)

If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

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SECTION 105—Party in Interest

With respect to any proceeding before the Federal Reserve Board wherein an applicant seeks authority to acquire a subsidiary which is a bank under section 3 of the Bank Holding Company Act of 1956, to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act, or to engage in an activity otherwise prohibited under section 106 of this Act, a party who would become a competitor of the applicant or subsidiary thereof by virtue of the applicant's or its subsidiary's acquisition, entry into the business involved, or activity, shall have the right to be a party in interest in the proceeding and, in the event of an adverse order of the Board, shall have the right as an aggrieved party to obtain judicial review thereof as provided in section 9 of such Act of 1956 or as otherwise provided by law.

[12 USC 1850.]

SECTION 106—Definitions

(a) As used in this section, the terms "bank", "bank holding company", "subsidiary", and "Board" have the meaning ascribed to such terms in section 2 of the Bank Holding Company Act of 1956. For purposes of this section only, the term "company", as used in section 2 of the Bank Holding Company Act of 1956, means any person, estate, trust, partnership, corporation, association, or similar organization, but does not include any corporation the majority of the shares of which are owned by the United States or by any State. The term "trust service" means any service customarily performed by a bank trust department.

[12 USC 1971.]

(b) *Certain tie-in arrangements; prohibition; exceptions.* (1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

(E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Board may by regulation or order permit such exceptions to the foregoing prohibition as it considers will not be contrary to the purposes of this section.

(2) (A) No bank which maintains a correspondent account in the name of another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank, or to any related interest of such person, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other per-

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sons and does not involve more than the normal risk of repayment or present other unfavorable features.

(B) No bank shall open a correspondent account at another bank while such bank has outstanding an extension of credit to an executive officer or director of, or other persons who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, the bank desiring to open the account, or to any related interest of such person, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(C) No bank which maintains a correspondent account at another Bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank, or to any related interest of such person, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(D) No bank which has outstanding an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, another bank, or to any related interest of such person shall open a correspondent account at such other bank, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(E) For purposes of this paragraph, the term "extension of credit" shall have the meaning prescribed by the Board pursuant to section 22(h) of the Federal Reserve Act (12 USC 375b), and the term "executive officer" shall have the same meaning given it under section 22(g) of the Federal Reserve Act.

(F)(i) Any bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such bank who, violates any provision of this paragraph shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(ii) Notwithstanding clause (i), any bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such bank who—

(I)(aa) commits any violation described in clause (i);

(bb) recklessly engages in an unsafe or unsound practice in conducting the affairs of such bank; or

(cc) breaches any fiduciary duty;

(II) which violation, practice, or breach—

(aa) is part of a pattern of misconduct;

(bb) causes or is likely to cause more than a minimal loss to such bank; or

(cc) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(iii) Notwithstanding clauses (i) and (ii), any bank which, and any institu-

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tion-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such bank who—

(I) knowingly—

(aa) commits any violation described in clause (i);

(bb) engages in any unsafe or unsound practice in conducting the affairs of such bank; or

(cc) breaches any fiduciary duty; and

(II) knowingly or recklessly causes a substantial loss to such bank or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under clause (iv) for each day during which such violation, practice, or breach continues.

(iv) The maximum daily amount of any civil penalty which may be assessed pursuant to clause (iii) for any violation, practice, or breach described in such clause is—

(I) in the case of any person other than a bank, an amount to not exceed $1,000,000; and

(II) in the case of a bank, an amount not to exceed the lesser of—

(aa) $1,000,000; or

(bb) 1 percent of the total assets of such bank.

(v) Any penalty imposed under clause (i), (ii), or (iii) may be assessed and collected—

(I) in the case of a national bank, by the Comptroller of the Currency;

(II) in the case of a State member bank, by the Board; and

(III) in the case of an insured nonmember State bank, by the Federal Deposit Insurance Corporation,

in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(vi) Tha bank or other person against whom any penalty is assessed under this subparagraph shall be afforded an agency hearing if such bank or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subparagraph.

(vii) All penalties collected under authority of this subsection shall be deposited into the Treasury.

(viii) For purposes of this paragraph, the term "violate" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(ix) The Comptroller of the Currency, the Board, and the Federal Deposit Insurance Corporation shall prescribe regulations establishing such procedures as may be necessary to carry out this subparagraph.

(G)(i) Each executive officer and each stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of an insured bank shall make a written report to the board of directors of such bank for any year during which such executive officer or shareholder has outstanding an extension of credit from a bank which maintains a corresponding account in the name of such bank. Such report shall include the following information:

(*I*) the maximum amount of indebtedness to the bank maintaining the correspondent account during such year of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer of stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder, or which is controlled

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by such executive officer or stockholder;

(*2*) the amount of indebtedness to the bank maintaining the correspondent account outstanding as of a date not more than ten days prior to the date of filing of such report of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder;

(*3*) the range of interest rates charged on such indebtedness of such executive officer or stockholder of record; and

(*4*) the terms and conditions of such indebtedness of such executive officer or stockholder of record.

(ii) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by any bank or executive officer or principal shareholder thereof concerning any extension of credit by a correspondent bank to the reporting bank's executive officers or principal shareholders, or the related interests of such persons.

(H) For the purpose of this paragraph—

(i) the term "bank" includes a mutual savings bank, a savings bank, and a savings association (as those terms are defined in section 3 of the Federal Deposit Insurance Act);

(ii) the term "related interests of such persons" includes any company controlled by such executive officer, director, or person, or any political or campaign committee the funds or services of which will benefit such executive officer, director, or person or which is controlled by such executive officer, director, or person; and

(iii) the terms "control of a company" and "company" have the same meaning as under section 22 (h) of the Federal Reserve Act (12 USC 375b).

(I) The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such a bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such bank (whether such date occurs before, on, or after the date of the enactment of this subparagraph).

[12 USC 1972. As amended by acts of Nov. 10, 1978 (92 Stat. 3690); Oct. 15, 1982 (96 Stat. 1520, 1523, 1526); Aug. 9, 1989 (103 Stat. 461, 473); and Dec. 19, 1991 (105 Stat. 2359).]

(c) *Jurisdiction of courts; duty of U.S. attorneys; equitable proceedings; petition; expedition of cases; temporary restraining orders; bringing in additional parties; subpoenas.* The district courts of the United States have jurisdiction to prevent and restrain violations of subsection (b) of this section and it is the duty of the United States attorneys, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. The proceedings may be by way of a petition setting forth the case and praying that the violation be enjoined or otherwise prohibited. When the parties complained of have been duly notified of the petition, the court shall proceed, as soon as possible, to the hearing and determination of the case. While the petition is pending, and before final decree, the court may at any time make such temporary restraining order or prohibition as it deems just. Whenever it appears to the court that the ends of justice require that other parties be brought before it, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and subpoenas to that end may be served in any district by the marshal thereof.

[12 USC 1973.]

(d) *Actions by United States; subpoenas for witnesses.* In any action brought by or on be-

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half of the United States under subsection (b), subpoenas for witnesses may run into any district, but no writ of subpoena may issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the prior permission of the trial court upon proper application and cause shown.

[12 USC 1974.]

(e) *Civil actions by persons injured; jurisdiction and venue; amount of recovery.* Any person who is injured in his business or property by reason of anything forbidden in subsection (b) may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, and shall be entitled to recover three times the amount of the damages sustained by him and the cost of suit, including a reasonable attorney's fee.

[12 USC 1975.]

(f) *Injunctive relief of persons against threatened loss or damages; equitable proceedings; preliminary injunctions.* Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of a violation of subsection (b), under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

[12 USC 1976.]

(g) *Limitation of actions; suspension of limitations.* (1) Subject to paragraph (2), any action to enforce any cause of action under this section shall be forever barred unless commenced within four years after the cause of action accrued.

(2) Whenever any enforcement action is instituted by or on behalf of the United States with respect to any matter which is or could be the subject of a private right of action under this section, the running of the statute of limitations in respect of every private right of action arising under this section and based in whole or in part on such matter shall be suspended during the pendency of the enforcement action so instituted and for one year thereafter: *Provided,* That whenever the running of the statute of limitations in respect of a cause of action arising under this section is suspended under this paragraph, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within the four-year period referred to in paragraph (1).

[12 USC 1977.]

(h) *Actions under other Federal or State laws unaffected; regulations or orders barred as a defense.* Nothing contained in this section shall be construed as affecting in any manner the right of the United States or any other party to bring an action under any other law of the United States or of any State, including any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this section. No regulation or order issued by the Board under this section shall in any manner constitute a defense to such action.

[12 USC 1978.]

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