

## FEDERAL RESERVE BOARD

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO  
THE FEDERAL RESERVE BOARD

X-7108

May 27, 1932.

Dear Sir:

Since my letter of December 14, 1931, I have received the following additional letters from some of the counsel to the Federal reserve banks commenting further upon the legal and practical problems arising under the bank collection code, and copies are inclosed for your information:

1. Letter of November 9, 1931, from Mr. Robert S. Parker, Counsel to the Federal Reserve Bank of Atlanta (X-7108-f);
2. Letter of December 30, 1931, and nine inclosures from Mr. M. G. Wallace, Counsel to the Federal Reserve Bank of Richmond (X-7108-a and X-7108-a-1 to X-7108-a-9, inclusive);
3. Letter of December 16, 1931, from Mr. H. G. Leedy, Counsel to the Federal Reserve Bank of Kansas City (X-7108-b); and
4. Three letters, one with an inclosure, from Mr. A. C. Agnew, Counsel to the Federal Reserve Bank of San Francisco, dated December 22, 1931, January 5, 1932, and January 22, 1932 (X-7108-e, X-7108-d, X-7108-c and X-7108-c-1).

I regret that the pressure of other and more urgent matters has been so great that it has been impossible for me to reply to these letters and I am not yet able to find time to comment upon them in detail. I hope, however, that each of the counsel who has written to me on this subject will consider this

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circular letter as an acknowledgment of his letter and will pardon my failure to reply separately and in detail.

Some of the counsel who have written to me and some of the others with whom I have discussed the subject from time to time have expressed the view that this subject should be considered at a conference of counsel for all Federal reserve banks, and I concur in this view; but I do not believe that we can conveniently hold such a conference until some time after Congress adjourns. I am writing you a separate letter with reference to the possibility of holding a conference some time this summer for the purpose of considering with the Standing Committee on Collections and the officials of the Treasury Department certain matters pertaining to the cashing of Government warrants and checks by Federal reserve banks under the provisions of Treasury Department Circular No. 176, as requested by the Conference of Governors of all Federal reserve banks; and we can consider the legal and practical problems arising under the Uniform Bank Collection Code at the same time.

With kindest personal regards and all best wishes, I am

Cordially yours,

Walter Wyatt,  
General Counsel.

Inclosures.

(FOR ALL COUNSEL - HEAD OFFICES ONLY)

## FEDERAL RESERVE BANK

OF RICHMOND

December 30, 1931.

Federal Reserve Board,  
Washington, D. C.

Attention: Mr. Walter Wyatt, General Counsel.

Dear Mr. Wyatt:

I refer to your letter of December 14th with reference to the handling of checks in unpaid cash letters to national banks in states in which the Bank Collection Code is in force.

I enclose you herewith a draft of a letter which was sent by Mr. R. H. Broadus, Deputy Governor of this bank, under date of November 10th to the Federal reserve banks of all districts in which the Bank Collection Code was in force in some states of the district, excepting the Federal Reserve Bank of Chicago. We had already had some correspondence with the latter Federal reserve bank and with his Counsel. I also enclose copies of all replies which we have received. Our letter was written before the telegram sent by Mr. G. F. Awalt, Deputy Comptroller, under date of December 2nd, so that the enclosed file is not of great value.

You will see, however, that practices and methods of Federal reserve banks have differed materially and the situation has created so much difficulty that I have no very clear idea as to what is the best method to follow. In the correspondence to which I referred the Federal Reserve Bank of Chicago had advised that they would prove a claim unless instructed to the contrary and proceeded as they had done before the statute except they asked for the return of the check when specifically so requested by the endorser. They did not give any definite notice to the receiver as to their election except by filing claim.

As you know, we have endeavored to give to our endorsers the benefit of the election. Our experience was that it was almost impossible to secure prompt replies from the endorsers and many of the endorsers replied instructing us to treat their checks as dishonored but failed to give the names of the drawers. As you know, when checks are charged to the accounts of the drawers they are filed alphabetically under the name of the drawers. It is, therefore, extremely difficult to find a check in any particular cash letter unless all cancelled checks in the bank are examined and the dates of the endorsements on them inspected. Even then it is difficult because the endorsements are made with rubber stamps and frequently blurred or one endorsement is superimposed upon another so that they are almost illegible.

Since receivers usually return to depositors a statement of their account with cancelled checks many checks were naturally returned to depositors before our demand for the return of the checks was made on the receiver. The statute expressly provides that the check returned to the

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drawer does not release the drawer, but it is extremely difficult to have any satisfactory settlement if the check is not returned to the holder. For example: The drawer may know that he is liable to someone but it does not follow that he is liable to the original payee as the payee may not have reimbursed the subsequent endorser and the drawer's liability is to the holder.

Since Mr. Awalt's telegram was sent we have altered our method. We now notify endorsing banks that we will elect to treat their items as dishonored unless definite instructions to the contrary to prove a claim are in our hands on a date mentioned. We write to the receiver immediately stating that we will advise him of our election on or before a particular date and ask him to withdraw from his files all checks in our unpaid cash letter and send them to us so that we may have photostatic copies made. Then on the day upon which we have previously named we return to endorsing banks all checks except those upon which we have been instructed to prove a claim and return the latter to the receiver.

I have had but one actual case under the latter system. The receiver was able to identify and return to us all checks but three small ones and so this system has worked very well to date. The one failure, however, involved only a comparatively small bank. In the case of a large bank I am afraid the receiver will find it difficult to locate and return the checks upon which we are unable to give the names of the drawers.

Mr. Walden recently informed me that the Conference of Governors referred to the Collection Committee and the Conference of Counsels certain questions relating to the revision of treasurer circular No. 176. If such a conference is held I believe it will be advisable to include on the agenda a full discussion of the problems arising out of the operation of the Bank Collection Code, and it might be advisable to have the Collection Committee and Conference of Counsels consider the problems jointly and also with representatives of the Comptroller's office. I doubt if it will be advisable to hold such a conference immediately as I believe it will be better to wait until we have had more experience in operation under the Code, and I imagine that our friends in the Comptroller's office and most of the Collection Committee are like myself, so swamped with immediate and pressing problems that they will have little time to give to a rather complicated subject.

Very truly yours,

(Signed) M. G. Wallace,  
Counsel.

MGW/gr

I am informed that the Uniform Bank Collection Code is in force in at least one state in your district, and I would like to have you write me giving me your experience in handling unpaid cash letters in states where this code is in force.

The code appears to give us a right to elect to treat checks in unpaid cash letters to drawee banks as dishonored or to elect to prove a claim on behalf of the owners against the failed bank. The code provides that this latter claim is a preferred one, but our counsel has advised us that in his opinion the section of the code which gives the agent collecting bank the option to treat the checks as dishonored or to file a claim is probably applicable to national banks, but that the section which declares that the claim when established shall be preferred is probably not applicable to national banks.

In the case of state banks we have exercised the right of election vested in us and have proceeded as under the former law; that is to say, we notify our endorsing banks that we will prove a claim unless instructed to the contrary, except that in the case of Federal reserve banks who have directed us not to prove such claims without express instructions we advise them that we will await instructions, but in no case do we demand or attempt to secure the return of checks.

In the case of national banks, thinking that since we could not secure the allowance of the claims as preferred, we considered that it would be wiser to consult our endorsing banks before making an election. We have, therefore, in all such cases immediately notified all endorsing banks and asked for instructions as to whether we should elect to file a claim upon their items or treat them as dishonored. We find that our endorsing banks do not give a prompt reply to our requests for instructions and in many cases it is almost impossible to obtain replies.

When instructions to that effect are received, we demand from the receivers the return of the checks which our endorsing banks request us to treat as dishonored. We understand the Comptroller of the Currency has instructed the receivers not to return the checks themselves but to have photostatic copies made if we are willing to bear the expense of making such copies and to send such copies to us.

Our counsel has advised us that under the code failure to obtain possession of the check does not impair the right of the holder to proceed on the drawer and endorsers, but naturally in practice our failure to obtain the checks causes much confusion among our endorsing banks and the large number of inquiries received makes the correspondence exceedingly burdensome.

I would be greatly obliged if you would write me telling me how you proceed in such cases and what your experience has been. I should especially like to know:

Do you exercise the right of election without consulting endorsing banks and, if so, do you elect to treat the checks as dishonored or to establish claims?

Do you make a distinction between state and national banks in making your election to establish a claim or to treat the checks as dishonored?

If you consult your endorsing banks before making your election, do you in your advice set any time in which a reply must be received by you, and, if so, what course do you follow if no reply is received within that time?

If you elect to treat any checks as dishonored, have you been able to secure the return of the checks; or, if not, do you take any steps to require the receivers to return them?

Very truly yours,

C O P Y

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## FEDERAL RESERVE BANK OF PHILADELPHIA

November 14, 1931

MR. R. H. BROADDUS, Deputy Governor,  
Federal Reserve Bank,  
Richmond, Virginia.

Dear Mr. Broaddus:

I am extremely sorry that your letter of November 10 has not been acknowledged before this, and trust that you will accept my apology for the delay.

The subject of your letter, the Uniform Bank Collection Code of 1931, has been receiving the consideration of the officers of this bank, and we have been in conference with our counsel. Your letter embodies the questions upon which we have been concentrating our study, and at this stage of the analysis, we would not feel justified in venturing any decisions until we receive further word from counsel. There are so many angles to be considered with regards to the provision of Section 11 (Election to Treat as Dishonored Items Presented by Mail) and our experience in the collection of checks under our present arrangements, that we feel any opinions we might offer in the absence of specific experience, would be more or less conjectural.

Assuring you of our willingness to confer with you as soon as we are in possession of sufficient data, and appreciating your inquiry in this matter, I am

Very truly yours,

(Signed) James M. Toy  
Assistant Cashier.

JMT:G

C O P Y

. 202

Federal Reserve Bank  
of Cleveland

November 19, 1931

Mr. R. H. Broaddus, Deputy Governor,  
Federal Reserve Bank of Richmond,  
Richmond, Virginia.

Dear Mr. Broaddus:

I am in receipt of your letter of November 10th with respect to the operation of the Uniform Collection Code which is in force in a number of the states, and asking for our experience in the method of handling items involved in bank failures in this district.

The Uniform Bank Collection Code has been adopted by Kentucky, West Virginia and Pennsylvania in this district. It was before the Legislature of Ohio two years ago, but was not enacted. In the three states in which it has been enacted in this district, it has not been in force a sufficient time to properly judge its merits or to permit the development of a definite scheme of handling items involved in bank failures. It has been our view from the beginning that Section 13 of the Uniform Bank Collection Code providing for preferences on behalf of the owners of unremitted for collection items upon a failed bank, is not applicable to national banks and the state banking officials of Pennsylvania and Kentucky have not as yet committed themselves to recognize the Section in dealing with insolvent state banks under their jurisdiction. We are confident, however, that in due course the state banking officials of these states will recognize the right to a preference under the circumstances recited in Section 13 of the Code.

We have had a very similar provision in the Ohio General Code for a number of years which has greatly facilitated the settlement of collection items in the liquidation of an insolvent bank's assets, and we believe that when Section 13 is fully recognized by the state banking officials of the various states in which the Code has been enacted, that it will be of considerable benefit in simplifying the handling of collection items which have been drawn on a state bank which becomes insolvent before paying the items and will be resorted to generally by the owners of such items rather than seeking the remedy prescribed in Section 11.

Section 11 of the Uniform Collection Code, which provides an election on the part of the agent collecting bank to treat items as dishonored which have been sent to a drawee bank for collection but which are unremitted for at the time of failure, is we believe, applicable to national as well as state banks.

Since the adoption of the Uniform Bank Collection Code in the



Mr. R. H. Broadbuss, Deputy Governor - 2 -

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three states in this district referred to, we have followed the practice of immediately notifying the receiver or examiner in charge of the failed bank that all unpaid items received from us for collection shall be held by him and not returned to the makers until we have advised him whether or not we elect to treat any of said items as dishonored. Upon receipt of such instructions on any check we immediately notify the receiver or examiner in charge of our intention to treat the item as dishonored and demand its return.

At the same time we charge the items back to our endorsers and request their instructions as to whether we should treat the items as dishonored, or file claim against the insolvent bank.

Upon receipt of their replies or in the event no reply is received and a sufficient length of time has elapsed in which the endorsers could have notified us, claim is prepared against the insolvent bank for all items except those upon which we have been specifically instructed to elect to treat as dishonored. In notifying our endorsers no time limit is fixed for their replies. We do, however, call their attention to the statutory provision requiring "reasonable diligence".

Up to the present date we have not had sufficient experience to determine the exact effect of the treatment of items as dishonored. The legislation being new, apparently the state banking officials, including the receivers of failed banks, have no definite policy with respect to the operation of Section 11 as in some cases the Receivers have returned the dishonored items to us while in other instances they have either refused to return the items or have advised us that the matter will be taken under consideration.

In the case of failed national banks we have not been able to secure the return of any items nor any evidence that the Comptroller of the Currency or the Receiver or Examiner in Charge of the bank recognized any controlling effect of the Uniform Bank Collection Code other than an offer to furnish us with photostatic copies of items which we elected to treat as dishonored, provided we were willing to pay for such copies.

Prior to the adoption of the Uniform Bank Collection Code, practically all of our endorsers were content to file claims against the insolvent bank, but since the adoption of the Code a very considerable percentage of our endorsers have been instructing us to treat their items as dishonored when the bank upon which they are drawn fails before payment. We have felt that there was a possibility of incurring liability to the owners of collection items where we did not seek instructions from them before presenting claim, so as to give them an opportunity to have the items dishonored if it were to their advantage to have the items so treated. Consequently, the correspondence incident to this procedure has been immeasurably increased over the situation as it existed prior to the enactment of the Code.

Mr. R. H. Broaddus, Deputy Governor - 3 -

November 19, 1931

With respect to failed state banks in this district we have felt justified in discouraging the practice of dishonoring the unpaid items and have tried to point out to our endorsers the more desirable course of establishing a preference in the assets of the failed bank through the filing of claim against the bank. As to national banks, we have likewise discouraged the dishonoring of unpaid checks, by pointing out to the endorsers that the controlling effect of the Uniform Collection Code has not been recognized by the Comptroller of the Currency and their rights to proceed thereunder will very likely be contested by the Comptroller. The right to treat such items as dishonored appears to appeal to a great many of our endorsers, both as to state and national banks and we have no doubt that before many months the scope and effect of Section 11 of the Uniform Collection Code will have to be determined by litigation, either in this or some other district.

Very truly yours,

(Signed) M. J. Fleming  
Deputy Governor

MJF:H

C O P Y

## FEDERAL RESERVE BANK OF

ST. LOUIS

November 13, 1931.

Mr. R. H. Broadbuss, Deputy Governor,  
Federal Reserve Bank of Richmond,  
Richmond, Virginia.

Dear Mr. Broadbuss:

The legislatures of the States of Missouri, Illinois, Indiana and Kentucky in the Eighth District have passed what is termed the "Uniform Bank Collection Code" as fostered by the American Bankers Association.

Several questions present themselves for interpretation when the various phases of the code are considered. The American Bankers Association explanation of the code indicates all banks are affected which would include National banks. There is a question in our opinion, whether it will be so upheld as the obtaining of preference against National banks on claims covering involved transit checks is a question which has already been decided by the Supreme Court and as you know it has always been denied, except in those cases where checks on other than the closed bank are involved and the claim is divided into two parts, one of which covers checks drawn on the other banks collected through the defunct National bank which items it is the custom for the Comptroller of the Currency to allow as preferred, provided the assets of the closed bank were augmented by such collection. Therefore, that part of Section 13 which defines claims under a certain state of facts as preferred would seem to be in conflict with past decisions insofar as it relates in a general way to National banks and will no doubt have to be further tested in order that a definite course of procedure may be adopted in respect to those states that have passed the code.

Another fact to be considered is the blanket authorizations which were interchanged by the Federal reserve banks in 1922. They were founded upon the then prevailing conditions, which under the new codes, appear to be changed. Therefore it is possible that the blanket authorizations may have to be re-drafted so as to contemplate the effect of the new codes.

The Missouri Code does not give the endorsing bank or holder the option of treating a check as dishonored or the election to file claim but provides that

(Section 11-Paragraph 2) "When a drawee or payor bank has presented to it for payment an item or items drawn on or payable by or at such bank and at the time has on deposit to the credit of the maker or drawer, an amount equal to such item or items and such drawee or payor shall fail or close for business as above (under circumstances as outlined in paragraph 1, section 11) after having charged such item or items to the account of the maker or drawer thereof.

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Mr. R. H. Broadbuss, Deputy Governor,  
Federal Reserve Bank of Richmond,  
Richmond, Virginia.

or otherwise discharged his liability thereon, but without such item or items having been paid or settled for by the drawee or payor, either in money or by an unconditional credit given on its books or on the books of any other bank which has been requested or accepted so as to constitute such drawee or payor, or any other bank debtor therefor, the assets of such drawee or payor shall be impressed with a trust in favor of the owner or owners of such item or items for the amount thereof or for the balance payable upon a number of items which have been exchanged and such owner or owners shall be entitled to a preferred claim upon such assets, irrespective of whether the funds representing such item or items can be traced and identified as part of such assets or has been intermingled with or converted into other assets of such failed bank." (Underscoring is ours).

Since the passage of the code some two and one-half years ago, every claim we have filed against State banks in Missouri have been given preference.

In the case of the Illinois Act, Section 11 establishes the right of the agent collecting bank to treat as dishonored checks which are presented by mail to the drawee or payor and not finally settled for in any one of four methods outlined in that section and in Section 13, it is provided that a preferred claim exists under certain conditions. Section 11 of the code is worded as follows:

"Where an item is duly presented by mail to the drawee or payor whether or not the item has been charged to the account of the maker or drawer thereof or returned to such maker or drawer, the agent collecting bank so presenting may at its election exercised with reasonable diligence, treat such item as dishonored by nonpayment and recourse may be had upon prior parties thereto in any of the following cases:

- (1) Where the check or draft of the drawee or payor bank upon another bank received in payment therefor shall not be paid in due course;
- (2) Where the drawee or payor bank shall without request or authority tender as payment its own check or draft upon itself or other instrument upon which it is primarily liable;
- (3) Where the drawee or payor bank shall give an unrequested or unauthorized credit therefor on its books or the books of another bank; or

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Mr. R. H. Broadus, Deputy Governor,  
Federal Reserve Bank of Richmond,  
Richmond, Virginia.

(4) Where the drawee or payor shall retain such items without remitting therefor on the date of receipt or on the day of maturity if payable otherwise than on demand and received by it prior to or on such date of maturity.

Provided, however, that in any case where the drawee or payor bank shall return any such item unpaid not later than the date of receipt or of maturity as aforesaid in the exercise of its right to make payment only at its own counter, such items cannot be treated as dishonored by nonpayment and the delay caused thereby shall not relieve prior parties from liability.

Provided further that no agent collecting bank shall be liable to the owner of an item where in the exercise of ordinary care in the interest of such owner it makes or does not make the election above provided or takes such steps as it may deem necessary in cases (2), (3) and (4) above."

Our experience since the passage of the code in Illinois has been rather limited due to the few number of banks that have closed on which claims have been filed. We expect to have more experience in that state as time goes on. Section 13 of the Illinois code provides that:

"Except in cases where an item or items is dishonored by nonpayment, as provided in Section 11 \*\*\*\* such owner or owners shall be entitled to a preferred claim upon such assets, irrespective of whether the funds representing such item or items can be traced and identified as part of such assets or has been intermingled with or converted into other assets of such failed bank."

The codes, as passed by the Indiana and Kentucky legislatures, are practically similar to that passed in the State of Illinois, as outlined above and several claims filed recently against State banks in those states have been taken up by receivers and paid promptly.

We have not up to this time changed our method of procedure in the charging back and filing claim on involved checks, which briefly is as follows:

When any bank located in the Eighth District, State or National, closes the outstanding checks that are not finally paid, whether draft has been remitted

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Mr. R. H. Broadus, Deputy Governor,  
Federal Reserve Bank of Richmond,  
Richmond, Virginia.

or not, are charged back to the endorsing banks and they are requested to notify us whether or not they desire claim filed. In the case of our own members we furnish an authorization to file claim covering their respective items and ask that it be completed for such checks as they want included. A sample of the authorization is enclosed.

The blanket authorizations as exchanged by the Federal reserve banks in 1922 govern such checks as were deposited by them or their direct sending members.

We hope the above information will be of some value to you and are pleased to make the following comment in specific answer to the questions mentioned in the seventh paragraph of your letter:

(1) We do not make any election as to whether checks are to be treated as dishonored or claim filed and merely request the endorsing bank to notify us whether or not they desire claim filed in their behalf.

(2) Answer No. 1 we believe will also answer Question No. 2.

(3) We do not establish a time limit in which to receive instructions from the endorsing banks unless the time limit of filing claims as furnished by the Examiners of Receivers is drawing near, in which event we endeavor to expedite the receipt of instructions.

(4) We have not up to this time made any effort to have the Examiners or Receivers return checks which have been stamped or cancelled paid and charged to the accounts of the drawers with the exception of banks located in the State of Arkansas which operate under a statute that requires Receivers or Examiners when taking charge of a closed bank to return to the last endorser all checks which have not been finally paid or settled for by the closed bank, irrespective or whether the checks have been charged to the accounts of the makers, provided they are still on the bank premises. If they have been cancelled paid, charged to the accounts of and delivered to the makers, the Receivers or Examiners are not required to reverse entry or return them.

We shall be very glad to have the benefit of your further experience in the

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Mr. R. H. Broadus, Deputy,  
Federal Reserve Bank of Richmond,  
Richmond, Virginia.

collection of your data, assuming that you are obtaining it from the other Federal reserve banks also, as it is possible that laws as recently passed in this district will require a change in our procedure.

If we can be of any further service to you insofar as the Eighth District is concerned, please do not hesitate to call on us.

Yours very truly,

(Signed) O. M. Attebery,  
Deputy Governor.

C O P Y

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FEDERAL RESERVE BANK OF  
MINNEAPOLIS

December 2, 1931

Mr. R. H. Broaddus, Deputy Governor,  
Federal Reserve Bank,  
Richmond, Virginia.

My dear Mr. Broaddus:

I do not know just why reply to your letter of November 10th has been delayed and I ask you to pardon me for not giving the matter earlier attention.

The only state in the Ninth Federal Reserve District which has adopted the bank collection code is Michigan. The upper peninsula of Michigan is within our district. The act was adopted this year and is found at #240 Michigan Public Acts 1931.

This bank has had no experience at all in making claims against Michigan banks and particularly none since this act was adopted May 29, 1931.

When this code was first prepared by the attorney for the American Bankers Association we presented the same to our counsel who was of opinion that numerous embarrassing questions would arise if adopted. Our counsel without having gone very deeply into the matter is of the opinion that this legislation would not have the effect of giving a preferred claim in the liquidation of a national bank under circumstances where no preferred claim would be allowed in the absence of such legislation.

As to state banks the act gives a preference under certain circumstances to the "owner or owners" of items not finally remitted for. In view of this language there is serious question in the mind of our counsel whether our bank should assume the burden of attempting to establish a preferred claim in any case. To counsel and to ourselves it seems more in accordance with the theories indicated by Regulation J that our bank, where final remittance is not received, should treat the items as dishonored in all cases except where we are able to receive prompt instructions from our endorsers to the contrary.

In the light of the foregoing I cannot specifically answer any of your questions.

It would seem from your letter that you have probably written other Federal Reserve Banks along the same lines. If so, and you have had replies from them, we would much appreciate copies thereof.

Very truly yours,

(Signed) Harry Yaeger,  
Deputy Governor.

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C O P Y

## FEDERAL RESERVE BANK OF KANSAS CITY

December 1, 1931.

Mr. R. H. Broaddus, Deputy Governor,  
Federal Reserve Bank of Richmond,  
Richmond, Virginia.

Dear Mr. Broaddus:

Your letter of November 10, with reference to our policy in connection with the handling of transit claims in states where the Uniform Bank Collection Code has been adopted, was referred to our Counsel with the request that he let me have a memorandum thereon and in some way it became sidetracked and has just come to light

Up to this time, we have not formulated any definite policy in this matter for the reason that we have been awaiting the ruling of the Comptroller of the Currency. There has been considerable discussion as to whether or not the provisions of the Uniform Bank Collection code apply to national banks and the Comptroller, as I understand it, has not yet agreed that they have any application. Our last information was to the effect that he was giving thorough consideration to the matter and, if he concludes that the statute is applicable, it is the opinion of our attorney that it will then be proper for us to ascertain from the endorsers of items involved in recent national bank failures in Nebraska whether or not they desire the items to be treated as dishonored. It is also our opinion that, even though the Comptroller's conclusion may be adverse, we may, nevertheless, conclude that we should treat the items as dishonored if our endorsers so desire. Until such time as the Comptroller has determined his position, however, we see no necessity for taking the matter up with our endorsers. The code was only recently enacted in Wyoming and New Mexico, and while it was enacted a year ago in Nebraska, there have been only three or four national bank failures in that state since its enactment and all of these have occurred within the last couple of months. In these cases, we have notified the receivers that we may later determine to elect to treat the items as dishonored, and that we will indicate our position as soon as the Comptroller has reached a decision.

In all the states in this district, with the exception of Oklahoma, the state laws provide that we are entitled to preferred claims on transit items. Our method of procedure in the filing of claims up to this time is outlined in a memorandum from our Transit Manager as follows:

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"Whenever either a state or a national bank closes, items involved in drafts on which payment has been refused are immediately charged back to endorsers, the advice of such action being given through the medium of our form letter 817, a copy of which is attached. This letter, you will note, is accompanied by Form 214, which is the authority to be signed by the endorser or owner of the item in the event they wish us to represent them in filing claim. The endorser is advised that if they desire we will represent them in filing claim, and that if they desire us to represent them the enclosed form of authority should be signed in duplicate and returned to us not later than sixty days from the date of the insolvency. Shortly after that time, while our letter states that we will not file claim unless the authorization is received by such time, we trace any outstanding items on which we have not received authorization, giving our endorsers a further opportunity to handle the matter through us. After a lapse of a week or ten days from the date of tracing, unless replies are received, we proceed to prepare and file our claim, omitting items not authorized.

"The claim is in all cases filed for preference, although in the case of national banks we, of course, have never been able as yet to obtain preference and must accept a common claim."

I realize that this is a rather poor and belated answer to your inquiry, but since we have not yet established a definite policy, based on the new collection code, it seems to be the best I can do at this time. Our attorney advises that he has had some correspondence with your Mr. Wallace on the subject and that it has been suggested that there should be an effort made to have these matters handled in a uniform manner in all districts and in all states where the uniform code has been adopted. If, after you have completed your study of this question, you have any suggestions which you think would be of value to us, I will appreciate hearing from you at your convenience.

With kind personal regards, I am

Very truly yours,

(Signed) C. A. Worthington  
L.

Deputy Governor.

CAW:L

C O P Y

## FEDERAL RESERVE BANK OF KANSAS CITY

December 1, 1931.

Mr. R. H. Broaddus,  
Deputy Governor,  
Federal Reserve Bank of Richmond,  
Richmond, Virginia.

Dear Mr. Broaddus:

Since writing to you on November 17th, relative to our procedure in regard to filing claims pertaining to checks on banks which have failed, Deputy Comptroller of the Currency Awalt wired the General Counsels of all Federal Reserve Banks submitting a proposal under date of November 20th, of which no doubt you have seen a copy.

On November 23d, the Twin Falls National Bank, Twin Falls, Idaho, failed to open for business. We wired Deputy Comptroller Awalt to request the Examiner in charge to surrender to the Federal Reserve Bank of San Francisco checks contained in a cash letter for which we held a dishonored remittance draft. The Examiner promptly received such instructions, and the checks are being returned to endorsers as dishonored.

This procedure we shall follow in the future, in the case of suspended National banks in Washington, Oregon and Idaho, which States have adopted the Uniform Collection Code.

Yours very truly,

(Signed) N. Clerk

Deputy Governor.

(C O P Y)

FEDERAL RESERVE BANK  
OF DALLAS

December 9, 1931

Mr. R. H. Broaddus, Deputy Governor  
Federal Reserve Bank  
Richmond, Virginia

Dear Mr. Broaddus:

We have delayed replying to your letter of November 10 until this time for the reason that it was handed to our Counsel for attention and he has been away from the city until now.

Our Counsel advises us that the State of New Mexico has adopted the Uniform Bank Collection Code. Thus far, however, we have had no experience in connection with the same except in the case of one failed national bank in the State of New Mexico, which was subsequently reopened.

As an actual case has not yet presented itself to us, we have not as yet formulated a definite policy to be pursued. It has always been our practice in connection with the filing of claims against insolvent banks to just notify our endorser banks and then upon receipt of authority to proceed accordingly to file claim against the insolvent bank.

We are inclined to the view that in the case of state banks located in the states where the uniform bank collection code has been adopted our usual practice should be followed, with additional advice to our endorsers of the fact that such state has adopted the Uniform Bank Collection Code, with due reference to the provisions of the code in respect to the establishment of a preferred claim.

In the case of national banks, we feel as you do that the claim could not be established as a preferred one. While, as we have stated, we have had no experience in connection with such matters, we anticipate the same trouble which you have experienced in the endorsing banks failing to reply promptly to our requests for instructions. In this connection we are considering the advisability of providing in such notice that a failure to reply will constitute authority to treat the item as dishonored, and to accordingly authorize us to demand the return of such checks from the receivers.

While we have received no definite advice, we now understand that the Comptroller of the Currency has reversed his former ruling concerning the return of the checks themselves and now instructs the receivers to make return

However, in any event, at present we feel that in the case of national banks, in the absence of authority to the contrary, our action should be to treat the items as dishonored.

Yours very truly,

(Signed) R. R. Gilbert  
Deputy Governor

(C O P Y)

## FEDERAL RESERVE BANK OF SAN FRANCISCO

November 17, 1931.

Mr. R. H. Broaddus,  
Deputy Governor,  
Federal Reserve Bank of Richmond,  
Richmond, Virginia.

Dear Mr. Broaddus:

In your letter of November 10th, inquiry was made relative to the status of the Uniform Bank Collection Code in the Twelfth District, and also as to our procedure in regard to filing claims pertaining to checks sent for collection to banks which suspended without making settlement.

The Uniform Bank Collection Code is in effect in the States of Washington, Oregon and Idaho, and, in addition, the State of Utah has a code granting a preference on drafts issued for the settlement of checks and other collection items. We have experienced no difficulty in Oregon or Utah in establishing preferred claims for dishonored drafts.

Our first effort to file a claim under the amended code in the State of Washington met with some opposition. It did not take long, however, to convince the Bank Commissioner of our right to a preference. The Spokane Clearing House and the Washington State Bankers Association were very much exercised over the dispute which arose between ourselves and the State Banking Department, and were anxious that the Federal Reserve Bank make a test case. The position was taken, however, that the Federal Reserve Bank was not interested in prosecuting any cases excepting those which might become necessary to defend its rights under Regulation J and its own circular governing check-collecting operations. Our endorsers were notified that a preference would be asked and, in the event of its refusal, our claim would be assigned to whomsoever the endorsers might elect, thus giving the State Banking Department or the Clearing House Association an opportunity for testing the law.

We now have in the course of filing in Idaho our first claim under the Uniform Bank Collection Code. It is our opinion that we have a preference. However, the question is before the Banking Department and will be decided in the near future. Should the preference be not granted, we shall follow the same course we suggested in Washington, that is, the endorsers will be given an opportunity to arrange among themselves the appointment of an assignee who will receive our claim and prosecute it to a conclusion.

As to National banks, it is our opinion that the Uniform Bank Collection Code does not apply, inasmuch as the provisions of the National Bank Act specifically set forth the manner in which claims against insolvent National banks shall be filed.

Mr. R. H. Broaddus -- 2

During the year, a National bank failed in the State of Washington, and our endorsers were quite insistent that we should file for a preference under the Uniform Bank Collection Code. The question was submitted to the Comptroller who rejected the idea of a preference; consequently, we again informed our endorsers that if they desired to test the case our claim would be assigned to whomsoever they elected.

We have taken the position in the States of Idaho, Oregon and Washington that we should not demand the return of items whenever a draft has been issued, but should stand on the advantage of a preference based on the unpaid draft. In following this course, we assume a minor risk if it later should be found that the suspended bank had insufficient good assets out of which to meet the preferred claim. Under such a circumstance, we might have done better to treat the items as dishonored, because the holder of such check may have had a better opportunity to recover from the makers than from the trust. There is no way of determining these matters in advance, so we place our reliance upon the preference and assume the very remote risk of having an endorser claim that the Reserve Bank had selected the course least beneficial to him.

When charging our endorsers for unpaid checks involving collection through State banks in Idaho, Utah, Oregon and Washington, we notify them that it is our opinion a preference will be granted (see Form Mis. 108H enclosed); and, in the case of items involving the suspension of National banks and State banks in Arizona, California and Nevada, we say that claims will be filed unless we are notified to the contrary before a specified date (not later than fifty days after suspension). See Form Mis. 108K enclosed. Also, see our letter to you dated October 28, 1931.

Answering your questions seriatim:

We exercise the right of election without consulting endorsing banks. Where an option is given (Washington, Oregon and Idaho) to file preferred claim on the basis of the dishonored draft, or to regard the items covered by the draft as dishonored, the former course is adopted.

A distinction is made between State and National banks in making election to establish claims or to treat the checks as dishonored. In the case of National banks and State banks in Arizona, California and Nevada, where no preference for a dishonored remittance draft is given, we make a demand for the return of checks merely to show that the Reserve Bank has exhausted its efforts on behalf of endorsers. As the request is invariably denied, our efforts stop at that point, and we do not ask for copies of the checks.

It is our practice to enclose with cash letters sent to member and non-member clearing banks, a form of settlement draft, which may or may not be used by the remitting bank. In the event of a suspension of

Mr. R. H. Broadus -- 3

the drawer of such a draft, we charge it to the bank's account provided the bank is in funds and the draft is in our possession before we have official notice of the suspension of the bank. If the draft comes into our possession after we have official notice of suspension, it is dishonored. We have felt that the position of the Federal Reserve Bank should be unequivocal when a draft drawn against sufficient funds is presented to it for payment. In other words, the draft either should be paid or dishonored on presentation, depending upon the status of the drawer. This has the same effect as though the settlement draft were drawn on a correspondent bank.

For your information, the following is a list of copies of correspondence herein enclosed, which may be of interest to you:

Letter to Spokane Branch, March 23, 1931.  
Letter to All Branches, June 10, 1931.  
Letter to Spokane Branch, June 11, 1931.  
Telegram to Comptroller of the Currency, May 27, 1931.  
Telegram from Comptroller, May 28, 1931.  
Telegram to Comptroller, June 2, 1931.  
Telegram from Comptroller, June 4, 1931.  
Telegram to Comptroller, June 4, 1931.  
Telegram from Comptroller, June 5, 1931.  
Letter to Mr. Thomas B. Paton, Oct. 15, 1931.  
Letter to Federal Reserve Bank of Richmond, Oct. 28, 1931.

Yours very truly,

(signed) Ira Clerk

Deputy Governor

C O P Y

FEDERAL RESERVE BANK  
OF  
KANSAS CITY

December 16, 1931.

Hon. Walter Wyatt, General Counsel,  
Federal Reserve Board,  
Washington, D. C.

My dear Mr. Wyatt:

I am just in receipt of your letter of December 14, with which you sent me copy of letter quoting a telegram which Mr. Awalt, Deputy Comptroller of the Currency, sent to the Receiver of the Peoples National Bank of Pulaski, New York, on December 2, 1931, which sets forth the attitude of his Department with reference to the right of forwarding banks to exercise an election to treat items dishonored pursuant to the provisions of Section 11 of the Uniform Collection Code in those instances in which a finally collected remittance has not been made by the drawee banks.

It seems to me highly desirable that all of the Federal reserve banks follow a uniform practice in exercising the election which is given under the Code, and I consider your suggestion a good one that the check collection circulars of all of the banks be amended by adding a recital of the kind that you mention.

Yours very truly,

(Signed) H. G. Leedy

HGL:FH



## FEDERAL RESERVE BANK OF SAN FRANCISCO

January 22, 1932.

Walter Wyatt, Esq.,  
General Counsel,  
Federal Reserve Board,  
Washington, D. C.

Dear Mr. Wyatt:

As an example of the kinds of practices which are creeping into the Federal Reserve System, resulting from the various methods being pursued under the so-called "Bank Collection Code", I hand you herewith copy of a letter addressed to this bank by the Federal Reserve Bank of St. Louis which recently happened to come to my attention.

You will note that the check was drawn on a state bank located in Indiana, which state has adopted the Bank Collection Code. You will also observe that the St. Louis Bank, in spite of the fact that a preference could undoubtedly be obtained, requests instructions from us as its endorser whether or not to file for a preference or to treat the item as dishonored pursuant to the provisions of Section 11.

I cannot see any reason for this procedure and its pursuit, it seems to me, will result in great confusion.

Let us suppose, in this instance, that part of the endorsers on the items involved decide that they prefer to treat the checks as dishonored and pass the responsibility back through the chain of endorsers, while others of the parties in interest determine that they would prefer to file for a preference. The receiver of the insolvent bank, if the same course is pursued as in some of the states in this district, would refuse to acknowledge the claim because it was not predicated on the draft but only on certain items embraced therein. Moreover, there is a serious risk that by the delay necessary in order to obtain definite instructions from the endorsers the Federal Reserve Bank of St. Louis will be unable to obtain the return of the checks, they having been handed back by the officers in charge of the insolvent bank to the makers thereof. There is the further risk that a delay of two or three weeks, during which instructions are being obtained, will be treated as an unreasonable delay and the return of the items refused.

I cannot for the life of me see why, under circumstances such as this, the Federal Reserve Bank should hesitate, without any instructions whatever, to file for and accept a preferred claim, excepting extraordinary cases where even preferred claims would not be paid in full.

Walter Wyatt, Esq.

-2-

January 22, 1932.

Of course, in the instance under discussion, the Federal Reserve Bank of St. Louis asks for instructions from its endorser and that endorser probably asks for instructions from its customer and so on ad lib.

I become more strongly convinced all the time that the procedure under the Check Collection Code should be uniform throughout the System and that the various courses which will be pursued by the Federal Reserve Banks, under given conditions, in those states where the Bank Collection Code has been adopted, should be clearly set forth in a uniform circular. Otherwise, confusion, delay and litigation are inevitable.

I would like very much to have your observations in regard to this matter.

Cordially yours,

(Signed) Albert C. Agnew  
Counsel.

Enclosure.

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## FEDERAL RESERVE BANK OF ST. LOUIS

January 12, 1932

Federal Reserve Bank,  
San Francisco,  
California.

Gentlemen:

On 1-11-32 we sent our advice of no return regarding items  
on Evansville, Indiana listed in cash letters as follows:

<u>Sending Bank</u>	<u>Date &amp; Total Cash Letter</u>	<u>Amount</u>
Yourselves	1-4-32 \$42.32	17.32

The check was listed in regular cash letter to the Central Union Bank, Evansville, Indiana and draft was remitted but remains unpaid and protested due to the closing of the Central Union Bank, Evansville, Indiana.

Since all checks are credited subject to final payment we have deducted from your credits \$17.32 to cover. We are informed that under the Bank Collection Code which is in force in the state of Indiana, we have an option to treat such checks as dishonored or to file a claim against the failed bank.

- 2 -

January 12, 1932

If you desire to treat the checks as dishonored, you should give notice of dishonor to all prior endorsers and the drawers and look to them for payment; and if you request, we will demand and endeavor to obtain the return of the checks. If claim is filed against the failed bank, you will probably release the drawers from any further liability and will receive dividends on the amount of the checks as declared by the Receiver. If you elect to file claim, it may be possible, according to Section 13 of the Bank Collection Code, to obtain a preferred classification of the claim.

As we must notify the Receiver promptly whether we elect to prove a claim against the failed bank or to treat the checks as dishonored, please notify us as soon as possible, but in any event not later than January 28, 1932, using the enclosed form and giving the name of the drawers of the checks if obtainable. If you desire our services in the matter of filing claim, please so indicate on the enclosed form and return to us as soon as possible, and claim will be filed under the terms of your General Authorization dated April, 12, 1922 as amended October 28, 1931.

If we do not receive your instructions to the contrary on or before the date mentioned in the foregoing paragraph, the checks will be treated as dishonored and a demand made upon the Receiver for the return of them. Whether or not the checks are subsequently obtained, no claim will be filed by us after the demand for the return of the checks is made.

Kindly acknowledge receipt of this letter.

Very truly yours

F. N. Hall

F. N. Hall  
Controller

C O P Y

X-7108-d

## FEDERAL RESERVE BANK OF SAN FRANCISCO

January 5, 1932.

Walter Wyatt, Esq.,  
General Counsel,  
Federal Reserve Board,  
Washington, D. C.

SUBJECT: Legal and Practical Problems  
arising under the Bank  
Collection Code.

Dear Mr. Wyatt:-

I have not replied earlier to your letter of November 6 transmitting copies of your correspondence with counsel to the Federal Reserve banks and with the Comptroller of the Currency relative to the above subject, for the reason that I wanted to first thoroughly discuss the matter with the officers of this bank. This has been delayed, but I trust that my observations will be none the less of value to you.

I believe that the position taken by the Comptroller of the Currency to the effect that the provisions of the Uniform Check Collection Code providing for preference on dishonored drafts given in purported settlement of cash letters do not apply to National Banks, is sound. I do not believe that Section 13 of the Uniform Code is applicable to National Banks.

I am further of the opinion that the procedure now adopted by the Comptroller's office whereby, upon demand made with reasonable promptness, the checks involved in a dishonored remittance draft are returned to the collecting Federal Reserve bank so that they may be returned to the indorsers of the Federal Reserve bank and treated as dishonored, will in the great majority of cases work out to the benefit of the owners of such items.

I am firmly of the opinion that it is highly expedient that some uniform procedure be evolved in connection with the handling of transactions of this character by all the Federal Reserve banks. I am informed that it is the present practice of some of the Federal reserve banks, before requesting the return of the original items, to communicate with their indorsers and ask instructions as to whether or not a general claim shall be filed or whether the return of the item shall be demanded. This it seems to me will inevitably result in considerable delay and in many instances in delay to a point where the return of the item will not be demanded "with reasonable promptness". It also

Walter Wyatt, Esq., General Counsel --- 2.

seems to me that pursuing this policy will result in confusion in that in a given case some of the indorsers of the Federal Reserve bank will desire the return of the items while others will prefer that a general claim be filed. If such a situation were presented it might occur that the receiver of the insolvent national bank would refuse to accept a claim predicated upon the unpaid remittance draft if part of the items embraced within that draft were not to be made the subject of a claim but were to be returned.

Moreover, in matters of this character the pursuit of one method of operations by some of the Federal Reserve banks and the pursuit of another by other such banks, results in confusion within the system. Items which come to a Federal Reserve bank from another district should be treated in the same manner as the treatment accorded them in the district from which they come. Otherwise, dissatisfaction, misunderstanding and endless confusion is bound to result.

I feel very strongly that it may be advisable to consider an amendment to Regulation "J" in relation to the manner in which items involved in unpaid remittance drafts drawn upon national banks located in those states which have adopted the Uniform Code, will be treated. Personally, I feel that a uniform practice should be either incorporated in Regulation "J" or in the Uniform Check Collection circulars, and I am of the opinion that every Federal Reserve bank should state in its check collection circular, among the terms and conditions upon which items will be received for collection, that in every instance where items drawn on a national bank in a state which has adopted the Uniform Code become involved in an unpaid remittance draft, the Federal Reserve bank will pursue the uniform policy of demanding the return of the items immediately, treating the same as dishonored and charging the amounts thereof back to the indorsers of the Federal Reserve bank. In the great majority of cases I believe that such uniform practice would result in a greater recovery to the owner of the item than would result through filing a claim as a general creditor.

As long as there is any contrariety of procedure as between Federal Reserve banks, or as long as the Federal Reserve banks concerned adopt a policy of asking for advice from their indorsers, confusion will result and I fear in some instances, litigation.

To the end that this matter be thoroughly discussed and settled both as between the Federal Reserve banks and the Board and as between the banks and the Comptroller's office, I think that a conference is advisable. If no such conference is held, it seems to me that it will be a long time before the uniform practice will be adopted.

With kindest personal regards,

Very truly yours,

(Signed) Albert C. Agnew  
Counsel

C O P Y

X-7108-e

## FEDERAL RESERVE BANK OF SAN FRANCISCO

December 22, 1931.

Walter Wyatt, Esq.,  
General Counsel,  
Federal Reserve Board,  
Washington, D. C.

Dear Mr. Wyatt:

I have received and discussed with the officers of this bank your letter of December 14, transmitting copy of a telegram which Mr. Awalt sent to the Receiver of the Peoples National Bank, Pulaski, New York, and copy of a letter addressed to you by Mr. Wallace, Counsel to the Federal Reserve Bank of Richmond, under date of November 21, 1931.

We agree with you that any practice involving delay in an election to treat checks involved in unpaid remittance drafts as dishonored until after the owners thereof have been consulted as to their desires will not only be unduly burdensome to the Federal Reserve Banks, but will lead to endless disputes over the question of whether Federal Reserve Banks have notified the receivers of their election "within a reasonable time". We also feel that any practice in handling such checks, under which the owners thereof are given the opportunity of instructing the Federal Reserve Banks not to demand the return of the items, will result in endless confusion.

We think it is essential that a uniform practice similar to that already established with reference to the protesting of checks be adopted and incorporated in the check collection circulars. This could easily be done by including in such circulars a statement to the effect that the Federal Reserve Bank will elect to treat as dishonored all checks on insolvent national banks in states which have adopted Section 11 of the Uniform Bank Collection Code, and which have been functioned by the drawee banks without final payment therefor having been made. We have adopted this practice in this district and have so notified all other Federal Reserve Banks.

Walter Wyatt, Esq.

-2-

December 22, 1931.

It seems to us that the policy adopted by the Office of the Comptroller of the Currency, as outlined in Mr. Awalt's telegram of December 2 (X-7043), is fair and offers to the Federal Reserve Banks a clear and expeditious method of handling such transactions. It may also be advisable to amend Regulation J in this regard, provided a uniform policy can be agreed upon as among all Federal Reserve Banks. No one can claim that his interest has been jeopardized by treating the items as dishonored, as the rights of all prior parties are preserved.

Uniformity of action among all the Federal Reserve Banks seems quite essential in order to avoid confusion and possible disputes leading to litigation. We, therefore, feel that such a uniform policy involving either the amendment of Regulation J or the check collection circulars should be adopted at the earliest practicable date. I do not agree with Mr. Wallace that a conference of counsel, together with the operating officers of the banks involved, to discuss and settle this matter would be amiss.

Yours very truly,

(Signed) Albert C. Agnew  
Counsel.

ACA:MA