

JPMORGAN CHASE & CO.

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Executive Director and
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Legal Department

February 8, 2019

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Via Electronic Delivery

Re: Regulation CC Proposed Rule;
Federal Reserve Board Docket No. R-1637; RIN 7100 AF-28;
Bureau of Consumer Financial Protection Docket No. CFPB-2018-0035; RIN 3170-AA31

Dear Ladies and Gentlemen:

JPMorgan Chase Bank, National Association (JPMorgan Chase) appreciates the opportunity to respond to the proposed rule changes to Regulation CC and the reopening of the comment period for existing proposed rule changes issued by the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection (the "Agencies"), and published in the Federal Register on December 10, 2018 (the "Proposal").

As with our response to the initial Funds Availability Proposal in 2011, JPMorgan Chase worked with the Electronic Check Clearing House Organization, now part of The Clearing House Payments Company, LLC, its member banks and other interested parties, to review and analyze the Proposal. JPMorgan Chase also participated in industry calls led by the American Bankers Association. JPMorgan Chase supports their more extensive responses and provides additional comments to the proposed changes to Regulation CC.

(A) ***Electronic Notices under 229.13(g)(1)(ii) - Notice of Exception Holds, and 229.16(c)(2)(ii) – Longer delays on a case-by-case basis.*** With regard to the proposed requirement that banks send exception and case-by-case hold notices electronically "[i]f the customer has agreed to accept notices electronically", JPMorgan Chase has revisited this issue and no longer supports such a mandate. Although customers routinely agree to receive their monthly statements and other types of communications electronically through online access, exception hold notices are processed on different systems. For example, customers who have signed up to receive their monthly bank statements online know to access this information through the online system at their convenience. Providing exception hold notices with all required information in the same manner may not satisfy the notice

requirements specific to exception holds. We agree that if a bank has established electronic communication capabilities specifically with regard check deposit exception hold notices that meet the requirements under Subpart B of Regulation CC, and a customer has agreed to receive such communications electronically, then requiring that such notices be sent to such customers in the time frames specified in the Proposal might be appropriate; however, it should not be mandated for customers who have signed up for online receipt of their monthly bank statements or other types of communications generally.

- (B) **229.13(h)(4) - Availability of deposits subject to extended holds.** JPMorgan Chase recommends that a “reasonable period” of time for an extended hold on checks that are not drawn on the depository bank remain as provided in the current rules, i.e., five business days (for a total of seven) instead of the proposed total of four business days for such check deposits. Even in a fully electronic check image clearing and return environment, some checks still require manual review and processing. Check fraud has continued to increase and fraudsters take advantage of the fact that check clearing is not a straight through process. Delays in processing may include (a) issues with electronic check images or associated the data records not meeting the recognized industry standards in the forward collection process including check image exchange through an intermediary or network provider, (b) issues with the check images once presented to the paying bank, or (c) issues with processing the return electronically. Industry standards have been established for check image quality and electronic transmission and receipt of check data which was recognized in the Funds Availability Proposal in 2011; and, if these industry standards are not met, delays may occur in the forward or return process even if both banks have agreed to process electronically. Also, fraudsters may manipulate the check information to intentionally cause the check to not process in an automated way, resulting in delayed manual review. We continue to see returns after four business days and a significant dollar value of returns occur five or more days after the date of deposit. The vast majority of check deposits are processed with no holds and those held are usually released the next day after further investigation; however, we do hold a small fraction of checks for seven days. Fraudsters find ways to cause delays in check processing in an attempt to obtain availability before the check can be investigated and returned unpaid. Therefore, we strongly recommend that the “reasonable period” of time to place a hold on a check deposit remain as stated in the current rule. We believe recognizing that check fraud remains an issue and preserving hold periods as a fraud-protection tool while providing depositors earlier access to their funds, is still important. Although the regional differences tied to nonlocal checks and paper processing have been eliminated, exposure to increased losses due to check fraud which takes advantage of issues unique to check clearing and processing through the banking system which cause delays in an effort to obtain availability before the check is returned unpaid, remains an issue and we therefore support retaining the current hold times.

(C) **229.16(c)(2)(i) – Case-by-case holds.** In response to the specific request for comment on whether banks find the case-by-case hold option useful, JPMorgan Chase continues to place case-by-case holds on certain checks based upon established criteria designed to identify checks that are likely to be returned unpaid, substantially reducing fraud losses. This option allows for a shorter hold period (two days on non-depository bank items) than under the exception hold options. In an effort to minimize check fraud losses, if the case-by-case hold option is eliminated, banks may turn to the maximum regulatory hold periods for all check deposit issues as opposed to giving faster availability for check deposits that meet the criteria for a shorter hold period under this option. Our systems analyze a check deposit based upon predetermined criteria for case-by-case holds and if the system identifies an issue with a particular deposit, the shorter hold period will be used and further research may be done to determine if a longer hold should be placed on the funds. These criteria are confidential so that deposits are not modified to evade detection.

JPMorgan Chase Bank, National Association appreciates the opportunity to provide additional comment on these important changes to Regulation CC and welcome any requests to discuss the points raised in our response. Should you have any questions, please contact Janice Havins at (713) 216 8070.

Sincerely,



Janice M. Havins
Executive Director and
Assistant General Counsel