JPMorgan

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Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
Attn: Ms. Jennifer J. Johnson, Secretary
Reference: Docket Number R-1202

Governors:

JPMorgan Chase Bank ("JPMorgan") is pleased to comment on the proposal by the Board of Governors of the Federal Reserve System (the "Board") to amend subpart A of Regulation J to provide for the rights and obligations of sending banks, paying banks, returning banks, and Reserve Banks in connection with collection of substitute checks and items that have been converted to electronic form (the "Proposal"). JPMorgan Chase & Co. is the second largest banking institution in the United States. As such, it has a keen interest in the smooth and efficient operation of the payments system in the U.S.

JPMorgan agrees with and supports the comment letter submitted jointly by several financial services industry organizations and technology companies, including JPMorgan (the "Industry Letter"). JPMorgan also supports the comment letter submitted by The Clearing House. In addition, JPMorgan offers the following comments.

JPMorgan supports the efforts of the Board and its expressed intention to make parallel the protections that the Reserve Banks give and receive in connection with the items they transfer, present or return, and in particular electronic items that may or may not be reconverted at some point into a substitute check. However, not all of the provisions of the proposed amendments appear to be consistent with the Board's expressed intent. Unless such consistency is achieved, the Reserve Banks would have an unfair competitive advantage over sending banks.

We believe that the warranties in Regulation J need to be consistent in the scope and the recipients of the warranties in order to achieve the Board's expressed intention. Thus, all warranties Reserve Banks make should be made "to a subsequent collecting bank and to the paying bank and any other payor" as are the warranties made by other senders.

As proposed, Sections 210.5(a)(5)(iv) and (v) provide for two new indemnities from the sending bank to the Reserve Bank. The sending bank would indemnify each Reserve Bank for losses resulting from any indemnity made by the Reserve Bank pursuant to Regulation J Section 210.6(b)(3)(ii) or Section 229.53 of Regulation CC, ultimately, any losses that occur due to the receipt of a substitute check instead of an original check.

JPMorgan believes that these indemnities are overbroad and, consistent with the Board's expressed intention, should be made parallel to the indemnities given by the Reserve Bank. The proposed new indemnities allow a Reserve Bank to recover from a sending bank whether or not the electronic item transmitted to the Reserve Bank was the cause of the liability of the Reserve Bank, or subsequent collecting bank, under Section 229.53 of Regulation CC. Thus, if the sending bank were to transmit an electronic item to a Reserve Bank in accordance with all applicable standards but the Reserve Bank created a substitute check that breached subpart D of Regulation CC (through no fault of the sending bank), the sending bank would still be liable to the Reserve Bank. We believe that liability to be inappropriate and inconsistent with the Board's expressed intent.

The indemnities in Section 210.5(a)(5)(iv) and (v) should only apply when the sender breached a warranty under Section 210(a) (3) or (4), respectively. Under such an indemnity, the sending bank would retain liability for losses that were caused by the actions or omissions of the sending bank. But the sending bank would not be liable for the acts or omissions of a Reserve Bank. That would make the indemnities related to electronic items substantially the same for a sender and a Reserve Bank.

Finally, we request the Board consider clarifying in the Supplementary Information to Section 210.5(a)(4)(i) of the final rule, that the phrase “except for any changes required or permitted by part 229, subpart D of this chapter for substitute checks” does not require the sending bank to code position 44 of the MICR line of an electronic item in the manner required for substitute checks or electronic representations of substitute checks. Moreover, we request commentary further clarifying that permissible industry standards may also include standards providing for the omission of characters, such as dashes, from the MICR line.

We complement the Board for its recognition of the importance of all-electronic transactions and the gap in coverage that would occur when the Reserve Banks or other banks send electronic items that would not be covered by the Check Clearing for the 21st Century Act and subpart D of Regulation CC. We hope that our comments have been helpful to the Board. Should you have any questions with regard to our letter, please contact Molly Carpenter at molly_carpenter@bankone.com or at telephone number 312-732-3560.

Very truly yours,

Julie