VARIATION BY AGREEMENT CLAUSE LEGAL ISSUES

1.) Does the *Doctrine of Implied Immunity* shield banks from class action and/or anti-trust prosecution by our court system in the present case under review, i.e., the use of the "variation by agreement clause" to avoid the Regulation CC mandate (at least for checks cleared through the Fed) that a check is legally considered paid upon the receipt of the electronic files that constitute the underlying check transactions?

2.) What is the role of the contemplated "Preemption Determinations" in the context of the *Doctrine of Implied Immunity*?

3.) If the Board of Governors of the Federal Reserve System were to modify the variation by agreement clause of Regulation CC, by limiting any or all variations to less than one banking business day, or in other words by prohibiting business day cut-of variations into another banking day's accounting ledger, then would the state's Uniform Commercial Code (UCC) also need to be changed in the same manner, to prevent state-chartered financial institutions from gaining a competitive advantage over nationally chartered banks, in this regard?

4.) Could the Board specifically limit the Electronic Check Clearing House Organization (ECCHO) "variation" under review, on grounds that ECCHO should not actually be considered a "clearinghouse" under either Regulation CC or the UCC since ECCHO does not provide settlement to banks (rule making bodies are usually considered trade associations)?

5.) Could the Board prohibit the ECCHO variations in question specifically by prohibiting the use of electronic "Notices of Presentment" for posting as debits to "on-us" Demand Deposit Activity (DDA) accounts on a banking business day other than the same banking day the original check, the digitized image of the original check, or the substitute document of the original check, was deposited?

6.) Could the Board prohibit Paying and Presenting Banks from collusion relative to the publication of funds availability schedules by requiring that variation agreements like the ECCHO "bi-lateral agreements" or "business practices agreements" be filed with the Federal Reserve System and thereby made available to the public through the Freedom of Information Act (FOIA)?

7.) Does the act of bi-laterally agreeing between banks to settle (for an "on-us" cashletter that in all other respects qualifies for classification as a "same-day settlement presentment") on the accounting treatment basis of 50% in today's immediate funds with 50% deferred-credit until the next banking business day -- instead of same-day credit with settlement "at par" -- constitute the conceptual equivalent of "non-par" banking, or payment on the basis of $0.50 on the dollar?

8.) Could the Board modify Regulation CC to state that all checks are legally considered "paid" upon the receipt of the electronic file or subdocument which replaced the original check, which must take the form only of either a legally constituted digitized image or a substitute document, and also state that ECCHO concept of electronic "Notices of Presentment" constitute neither class of item and are, therefore, prohibited for use in posting debits to DDA accounts?

9.) Do Federal Reserve Bank Examiners have access to a Fed-regulated bank's table of accounts and the balances associated with each underlying individual account?

10.) Are General Ledger "suspense account" balances classified as bank assets for the purpose of determining a bank's "Tier One" or "equity" capital adequacy standard under the Basel III accords?

11) Would an intentional misrepresentation of Tier-One Capital by an EPD practicing bank's CEO therefore constitute a violation of existing securities laws?