The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 27, 2004

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20‘” Street and Constitution Avenue, NW
Washington, DC 20551

Re: R-1176: Availability of Funds and Collection of Checks

Dear Ms. Johnson:

Thank you for the opportunity to offer comments on the proposal to amend Regulation CC. The Kansas Bankers Association is a non-profit trade organization representing banks throughout the state of all sizes and levels of sophistication.

As we read through the proposal referred to above, we recognize the need to add regulations to address the nuances presented by the Check Clearing for the 21st Century Act. Our members have very strong opinions about the potential for fraud regarding the substitute checks and will be addressing those concerns at another time. This comment letter focuses on the proposed changes to the treatment of **remotely-created demand drafts.**

As the proposal suggests, the revisions were originally proposed as amendments to Articles 3 and 4 of the Uniform Commercial Code. Several states have enacted their own version of these revisions, but because the entire set of proposed amendments to Articles 3 and 4 of the UCC were controversial in nature, many states are unwilling to bring the matter before their legislatures.

We would strongly and respectfully urge the Federal Reserve to enact the proposed changes to the treatment of remotely-created demand drafts. As they are defined in the proposal, these remotely-created items are becoming more commonplace as a convenient means to complete a transaction. However, these drafts have also becoine convenient to those wishing to perpetrate fraud and so the use of these drafts has drawn suspicion.

Even though the FTC attempts to minimize losses from fraud through the Telemarketing and Consumer Fraud and Abuse Prevention Act, and here in Kansas, we also passed a state law requiring the “consumer’s express authorization” on all drafts submitted by a supplier under the Kansas Consumer Protection Act (see 2003 Supp. K.S.A. 50-6,105), fraud happens.

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The KBA strongly agrees that we need to set warranties defining responsibility for which party is liable in the case of an unauthorized remotely-created demand draft. We also agree that because the depositary bank is in the best position to control this type of fraud, the warranty that the draft is properly payable should rest with that party.

In order for these warranties to work effectively, they must travel across state lines. There is no time to wait for each state to enact these provisions one-by-one. We believe it is appropriate to get the revisions made now and to make them uniform throughout the banking system with the proposed amendments to Regulation CC.

In conjunction with these proposed changes to the presentment warranties, we would also respectfully request that you consider inserting a time frame in which a financial institution has to return a remotely-created demand draft. Regulation E requires the consumer to notify a financial institution of an unauthorized transfer within 60 days of the date the periodic statement is sent or made available to the consumer. We would ask the Federal Reserve to give the financial institution the same amount of time to be able to return the draft as not being properly payable. In other words, we would request that a financial institution have 60 days from the date they send the periodic statement to the consumer to return a remotely-created demand draft for being unauthorized.

Thank you for your time and attention to these most important matters.

Sincerely,

James S. Maag
President

Kathleen Taylor Olsen
Associate General Counsel