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Subject: Availability of Funds and Collection of Checks

March 10, 2004

Via Electronic Mail

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, DC 20559

Subject: Docket R-1176 (Comments on Proposed Rules for Check 21 Act Implementation)

Dear Board of Governors:

Thank you for the opportunity to comment on the regulations proposed by the Federal Reserve on December 22, 2003 for implementation of the Check 21 Act (PL108-100).

>From a banking and business point of view this legislation contains features that are positive with regard to streamlining the way checks are to be processed and check payees are to receive their payments. It takes advantage of the rapid and tremendous advancements in electronic technology that have come about in recent years. I am supportive of this general concept.

However, from a check writer's point of view, the legislation and the proposed implementation regulations provide little to cheer about. Just as creative people have developed the wonderful technology to allow this electronic system to be implemented, it seems virtually certain that other equally creative (but less scrupulous) people will look for and find ways to violate or "game" the system, resulting in fraudulent transactions what will be harmful to private citizens. While the proposed regulations provide a small measure of consumer protection, I believe the check writer will be required to bear a disproportionate share of the resulting liability burden in the event of fraudulent electronic transactions against his account. I believe the proposed rules should be rewritten or amended to accomplish the following:

1. Provide a procedure by which an individual can "opt out" of allowing all electronic debits, including those involving substitute checks, from his account(s). The definitions of "account" and "bank" are pretty broad, so it would appear that any account having checkwriting privilege would be affected by these rules. For example, many banks offer brokerage services and serve as custodians for retirement funds (IRA's). Such accounts generally are not federally insured and could have very large value. Such accounts need protection from being drained rapidly by check fraud occurring at electronic speed. The customer may not become aware of the fraudulent activity until he receives a statement as much as a month later, by which time irreparable harm may have been done. The burden will be on the consumer to get the matter straightened out.

2. Include in Model Disclosure C-5A (Substitute Check Policy Disclosure--Substitute Checks and Your Rights) a clear policy statement allowing consumers to opt out of having electronic debits being made to

their accounts through the use of substitute checks. This should also apply to any substitute check debits processed through the Automated Clearing House. Board should also consider amending Regulation E (12 CFR 205) to add similar opt out provisions covering such check conversions.

3. Many banks currently charge fees if certain minimum balances are not maintained in accounts. As a result, many consumers maintain account balances well in excess of \$2,500 to control the cost of having a checking account. The Check 21 Act will result in consumers reducing their balances to less than \$2,500 because they will have to wait up to 45 business days (about 2 months) to get their money back in the event of a large fraudulent withdrawal. Banks would appear to have no real incentive (other than the account holder's good will) to resolve any fraud claim in less than 45 days. Under the proposed rules banks must pay interest on the funds in question while the 45-day investigation proceeds. But the interest rates on checking accounts are so low (my checking account currently pays 0.1%) the banks would come out far ahead if the minimum balance requirement is violated (example: \$13.00 monthly fee if balance falls below \$10,000). And, of course, the consumer would incur additional penalty costs if the electronic fraud results in his other checks being rejected because of insufficient funds. Banks should not be rewarded for taking longer than necessary to resolve a claim. Aggressive investigation of fraud claims is needed, no matter what the monetary size of the claim. Such action should also help reduce the number of such incidents through more rapid apprehension of perpetrators, benefiting both the bank and the consumer. This is also another reason for having procedures for opting out of allowing all electronic debits from an account.

4. Through the definition of "bank" PL108-100 would appear to exclude a bank located outside of the USA from submitting a substitute check for electronic debit. A direct plain English statement to that effect in these regulations should be provided. Recovery of fraudulently-transferred funds from accounts outside the USA would be difficult. Again, the threat of this happening is another reason consumers would want to opt out of any electronic debits against their accounts.

Thank you for consideration of these observations and comments.

Yours very truly,

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