

FIRST TENNESSEE BANK NATIONAL ASSOCIATION

Via E-mail: Regs.comments@federalreserve.gov

March 12, 2004

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Attention: Docket No. R-1176

Re: Federal Reserve Board Proposed Amendments to Regulation CC to Add
New Subpart D, with Commentary, to Implement the Check Clearing for
the 21st Century Act

Dear Ms. Johnson:

First Tennessee Bank National Association (“First Tennessee Bank”) appreciates the opportunity to comment to the Federal Reserve Board on its proposed rule to amend Regulation CC to implement the Check Clearing for the 21st Century Act (the “Check 21 Act”). First Tennessee Bank is a member bank of The Electronic Check Clearing House Organization (“ECCHO”), a not-for-profit national clearinghouse dedicated to promoting electronic check collection and related payment system improvements. First Tennessee Bank, along with other member banks of ECCHO, have worked together to collectively provide a comprehensive comment letter from ECCHO to the Federal Reserve Board. First Tennessee Bank agrees with the views expressed by David Walker, President of ECCHO, in his letter to the Federal Reserve Board and we strongly urge you to give Mr. Walker’s letter careful consideration. First Tennessee Bank also supports the comments expressed in a separate joint letter submitted by certain financial services industry organizations, including ECCHO, and certain other technology companies.

First Tennessee Bank would also request that the Federal Reserve Board give additional consideration as to whether the substitute check warranty provided in § 229.52(a)(2) and the proposed commentary should recognize an exception if a duplicate payment results from the failure of the paying bank to confirm settlement on the substitute check. Proposed § 229.52(a) sets forth the content of the substitute check warranties and identifies the banks that provide, and the events that trigger provision of, those

warranties. In particular, proposed §229.52(a)(2) provides that no depository bank, drawee, drawer, or indorser will be asked to make payment based on a check that it already has paid. Hypothetically, a reconvertng bank may create a substitute check that is sent for forward collection through the Federal Reserve. If the reconvertng bank is later charged by the Federal Reserve for a missing substitute check item that was included in the reconvertng bank's cash letter, the reconvertng bank will then contact the paying bank to confirm whether the item was paid, and if so, how the paying bank settled for the item. If the paying bank refuses to confirm the receipt and payment of the item due to financial privacy concerns or other reasons, the reconvertng bank is unable to determine whether the item paid and faces the dilemma on whether to process another substitute check or some other electronic or paper representation of the substitute or original check. Likewise, if the paying bank incorrectly confirms non-settlement of the item and the reconvertng bank processes another substitute check on the belief that the original item has not paid, the paying bank is the impetus for causing a duplicate payment to result. The substitute check warranty in proposed § 229.52(a)(2) makes the reconvertng bank responsible for the double posting of the item when in fact there would never have been a second item sent for collection had the paying bank confirmed payment and receipt of the original item. First Tennessee Bank believes that the final rule should clarify that a reconvertng bank or transferring bank is not responsible for a breach of warranty, and therefore no liability for consequential damages, if the reconvertng bank or transferring bank used reasonable efforts to determine whether a substitute check had been paid before sending a duplicate item for forward collection. This same rationale should be extended and applied to return items as well. We believe that such an interpretation is consistent with the underlying premise of the Check 21 Act which is designed so that losses associated with a substitute check ultimately would be borne by the party that caused the problem with the substitute check. In the hypothetical described above, the introduction of the substitute check itself does not lead to the duplicative payment, but the paying bank's lack of cooperation in providing information as to the settlement of the original item.

First Tennessee Bank appreciates the opportunity to comment on the Proposal. In the event you have further questions or comments on this matter, please do not hesitate to contact me at (901) 542-7051.

Sincerely,

Janet Honeycutt
Vice President and Manager Operations Control