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Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Electronic Address: [reg.comments@federalreserve.gov](mailto:reg.comments@federalreserve.gov)

RE: Regulation CC-Docket No. R-1226

Dear Ms. Johnson:

Wachovia Corporation (“Wachovia”) appreciates this opportunity to comment on the proposed amendments to Regulations CC and J that would define “remotely created checks” and create transfer and presentment warranties for such checks. Wachovia is one of the largest providers of financial services to retail, brokerage, and corporate customers throughout the East Coast and the nation, with assets of \$507 billion and stockholders’ equity of \$46 billion as of March 31, 2005. Wachovia’s four core businesses, the General Bank, Capital Management, Wealth Management, and the Corporate and Investment Bank, serve 13 million households and businesses, primarily in 15 states and Washington, D.C. Wachovia’s broker-dealer, Wachovia Securities, LLC, serves clients in 49 states. Global services are provided through 33 international offices. Online banking and brokerage products and services also are available through Wachovia.com.

Wachovia strongly supports the Board’s proposal to create a remotely created check warranty; however, we do have some specific concerns with the proposal as drafted, which we address below. As a member of the Electronic Check Clearing House Corporation (“ECCHO”) and The Clearing House (“TCH”), we also participated in the preparation of the comment letters ECCHO and TCH are each submitting to the Board on behalf of its members. We support the comments set forth in ECCHO’s and TCH’s letters and urge you to give them careful consideration. Our comments below are intended to supplement these letters.

#### Proposed Definition

The Board’s proposed definition is as follows:

**(fff) Remotely Created Check means a check that is drawn on a customer account at a bank, is created by the payee, and does not bear a signature in the format agreed to by the paying bank and the customer.**

Wachovia strongly agrees with the Board’s proposal to apply the remotely created check definition to all customer accounts and not just consumer accounts. Although most of these items are drawn on consumer accounts, there is no reason to treat them differently and it would be operationally difficult and overly burdensome to do so. As stated by the Board, whether the remotely created item is drawn

on a consumer or non-consumer account, “the depository bank would appear to be in the best position to address the potential for fraudulent check writing.”

We have serious concerns regarding other aspects of the definition. Specifically, we oppose the Board’s proposal to limit the definition to only those items “created by the payee.” In Wachovia’s experience, parties unrelated to the payee, or payee’s agent can also create such checks. For example, bill pay providers may purport to create such items on behalf of the maker. It is also possible that fraudsters could create such items in the name of a “payee,” without the knowledge or authorization of either the named payee or maker. It would be operationally difficult, if not impossible, for a paying bank to determine the “source” of a remotely created item, and, even if it could determine source, to determine whether source was acting as agent of payee. To avoid uncertainty in the check collection and return system, the definition should enable a party, upon inspection of the item itself, to quickly determine whether or not it is a “remotely created check.”

We also recommend that the Board expand the definition to include remotely created checks created from all types of deposit accounts and credit accounts. The proposed definition limits the definition to accounts as defined under Regulation CC, and thus would exclude items drawn on money market accounts or credit accounts that are governed by the UCC. In order to reach uniformity, the proposal needs to cover the same types of items that would be subject to the warranty requirements of the UCC.

Finally, we are concerned that the proposed language that the item “does not bear the signature in the format agreed to by the paying bank and the customer,” may inadvertently pull traditional forged maker checks under the scope of this warranty. The key distinguishing feature of remotely created checks should be that such items do not bear the signature (or purported signature) of the account holder. Although the Board attempts to address this in the commentary, Wachovia recommends that the definition clearly state that such items do not bear the purported signature of the drawer (the format should not matter). Additionally, the commentary should be expanded to clearly explain that signed items (regardless of whether authorized) are not covered by the warranty. In its commentary, the Board should set forth more examples of what is likely to appear on the signature line of a remotely created check, in place of a signature. The commentary currently gives one example, but there are many others, including that on some remotely created checks the name of the account holder is simply printed out on the line.

Instead of the proposed definition, Wachovia recommends that the Board adopt the revised definition proposed by ECCHO: **“Remotely created check” means a check that is drawn on a customer account at a bank, is not created by the paying bank, and does not bear a signature purporting to be the signature of the customer.**” Although the ECCHO definition is our first choice, we also believe that many problems with the proposed definition could be solved by revising the definition of remotely created checks to match the definition of “demand drafts” already adopted by many states, including California, in their demand draft warranty statutes.

#### Extension of the Midnight Deadline

Wachovia is opposed to extending the Midnight Deadline for the return of remotely created checks, because it may adversely impact settlement, final payment, the depository bank’s ability to defend itself against wrongful claims, and check law in general; however, we strongly support the idea of allowing these claims to be handled within the check collection and return system on a “with entry basis” for at least 60 days, similarly to the way the items are currently being handled under clearing house Rule 8, adopted by many clearing houses. Having to process each claim under a collection letter would be extremely time consuming and burdensome. Furthermore, we believe the burden should properly be on the bank of first deposit to dispute the claim. We urge the Board to allow for such processing in its Operating Circular No. 3, and to clarify in its commentary that the clearinghouse rules may also set up such processes and procedures. We urge the Board to clearly state in the rule and commentary that banks may, by agreement, either directly or through clearing house rules set up processes and procedures for handling warranty claims.

#### Allow the State Legislatures to Adopt the UCC Amendments

Wachovia opposes waiting for the State Legislatures to adopt the UCC Amendments. First, getting such laws adopted is a time consuming process. Second, once adopted, it is unlikely the laws would be uniform. Instead, we urge the Board to continue to move forward with its proposal to adopt a uniform rule governing remotely created checks. We also urge the Board to clearly address any state preemption issues in the final rule or commentary and clarify that interbank agreements, including the Federal Reserve's operating circular and private sector clearing house rules can vary these warranty provisions by agreement and can set up the processes and procedures for handling these claims through the check collection and return system.

#### MICR Line Identifier

Wachovia is strongly opposed to the idea of assigning digits in the External Processing Code Field (Position 44) to remotely created checks. We do not see the benefit of such an identifier, especially since a wrongdoer could easily leave such an identifier off. We believe position 44 is better reserved for other purposes. Significant cost and systems complexity would be required to update the MICR edit/validation software in all bank check processing systems to detect the new EPC codes while providing little true benefit. This is compounded by the fact that this digit is highly subject to misread on six-inch checks as the digit occurs near the edge. Similarly, there is no easy way to know that the digit was really there, if it was not picked up due to the lack of reasonable edits. There are only ten digits available and five are in current use. Some of the remaining digits have higher misread rates and/or need to be reserved for more pressing needs such as the identification of carrier documents.

#### Defenses to a RCC Warranty Claim

The final rule should also address what defenses are available in defense of a breach of warranty claim related to remotely created checks. We believe that a warranting bank should be able to defend such a warranty claim, using the same defenses it would be entitled to assert under the UCC with respect to other warranty claims, including that the drawer bank's customer failed to examine his or her statements and report the unauthorized item or the claimant bank's failure to timely notify the warranting bank of the claim within a reasonable time. We recommend that the Board clarify in the rule or its commentary that these defenses would apply, and that, for purposes of these defenses, the unauthorized check will be deemed to have an unauthorized signature

Thank you for the opportunity to comment on this very important proposal. We would be happy to discuss our comments with you in further detail. If you have any questions, please contact Camilla McDevitt at 706-563-1394.

Very truly yours,

Rebecca Henderson  
Senior Vice President and  
Deputy General Counsel

Cc: Camilla McDevitt  
Eugene Katz