

April 29, 2005

**Payment Systems**

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

Re: Docket No. R-1226 – Proposed Amendments to Regulations J and CC

Dear Ms. Johnson:

Branch Banking and Trust Company and its affiliated banks and subsidiaries of BB&T Corporation (BB&T) appreciate the opportunity to comment to the Board of Governors of the Federal Reserve System on the proposed amendments to Regulations J and CC.

BB&T, with \$102 billion in assets, is the nation's ninth largest financial holding company and operates more than 1,400 financial centers in the Carolinas, Virginia, Maryland, West Virginia, Kentucky, Tennessee, Georgia, Florida, Alabama, Indiana and Washington, D.C.

BB&T welcomes and strongly supports the Board's proposal to define "remotely created checks" (RCCs) and to create transfer and presentment warranties that will shift liability for unauthorized RCCs to the depository bank. The depository bank is clearly in the best position to prevent its customers from depositing unauthorized RCCs, and as such, should bear the risk of loss for these items. We also believe that the proposed warranties should apply to RCCs drawn on both consumer and non-consumer accounts. Unauthorized drafts can be, and are, issued against both types of account, and we see no reason for the confusion and additional operational burden that would result from a requirement to treat them differently.

**Definitions**

BB&T believes that the proposed definition of RCCs does not adequately address all of the types of instruments that should be subject to the proposed warranties. First, it is not clear how a paying bank, or even the customer on whose account an RCC is drawn, would be able to determine, by examining an item, if it was created by the payee or some party other than the payee. Secondly, some bill payment companies, acting as their customer's agent, generate remotely created checks drawn on the customer's account and payable to the merchant designated by the customer. We believe that it is appropriate to have RCC warranty protections apply to checks created by third parties, whether or not they are the payee.

We suggest that the definition of RCC be revised to address the above issues and we propose the following:

"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.

In the event the Board does not agree with our recommendation, BB&T suggests that consideration be given to a definition consistent with the definition of "demand draft" adopted by California and a number of other states under their UCCs. This approach would provide a consistent statutory definition for these types of items under federal and state law. A suggested definition, based on the definition from the California Commercial Code, is shown below:

"Remotely created check" means a writing not signed by a customer that is created by a third party under the purported authority of the customer for the purpose of charging the customer's account with a bank. A remotely created check shall contain the customer's account number and may contain any or all of the following:

- (1) The customer's printed or typewritten name.
- (2) A notation that the customer authorized the draft.
- (3) The statement "No Signature Required" or words to that effect.

We also ask that Commentary be provided regarding the term "customer account" used in the definition. This Commentary should specify that the term "customer account" includes, in addition to traditional checking accounts, money market deposit accounts, customer asset and credit accounts maintained at a bank, and accounts used by a bank to pay official and teller checks. This Commentary would clarify that the RCC warranties apply to the full range of potential RCCs which could be created using printed information from the bottom of a customer's credit card convenience, asset or money market account check, or a bank's cashier's check.

Further, we note that the Proposal does not specifically address whether or not the definition of RCC is intended to include those checks that are payable-through a bank and drawn on another bank or a non-bank payor. It is unclear from the text of the current definition of RCC in the Proposal whether payable-through checks would be considered RCCs. This is because it is not clear whether for purposes of the definition a payable-through check is "drawn on a customer account at a bank" and because payable-through checks generally do not bear the signature of the drawer. We believe that payable-through checks should fall within the definition of an RCC and ask that Commentary be provided specifying that payable-through checks are considered to be RCCs.

#### Warranty Provisions

BB&T is generally supportive of the broadened warranty provisions included in the Proposal. We agree that the warranties should apply only to banks, and not to customers, whom we believe are already adequately protected against unauthorized RCCs under the provisions of

the Uniform Commercial Code. We also agree that any transferring, collecting or presenting bank should warrant that the RCC it is transferring or presenting is consistent with the customer's authorization. We recommend that the customer authorization warranty be limited to just the payee and dollar amount shown on the face of the RCC, and should specifically exclude any information from the back of the check, such as endorsements.

We also request that the Federal Reserve provide additional Commentary concerning the warranty, to address situations where the name of the payee on the RCC varies from the name identified to the customer when the RCC was authorized, such as in the case of a business operating with a trade name, but using its legal name to designate the payee on the RCCs it creates. We also recommend additional Commentary that would clarify that the RCC warranty does not extend to situations where a customer claims an RCC was unauthorized because of "buyer's remorse" with respect to purchase that is paid for with an RCC.

We further recommend clarification in the Commentary concerning defenses against RCC warranties that could be raised by transferring or presenting banks. Specifically, a transferring or presenting bank should be permitted to raise as a defense against a claim of a claimant bank the fact that the drawer customer is precluded under UCC 4-406 from claiming that the RCC is unauthorized if the customer failed to examine his or her statement in a reasonably prompt period of time to determine that the RCC was unauthorized. Similarly, a transferring or presenting bank should be able to raise a defense of comparative negligence against a claimant bank bringing an RCC warranty claim, as permitted under Section 229.38(c) of Regulation CC if, for example, the claimant bank has recredited its customer pursuant to the customer's claim that the RCC was unauthorized, but fails to make the RCC warranty claim to the transferring bank in a timely manner.

Finally, we anticipate that the Federal Reserve's Operating Circular and private sector check clearinghouse rules will be amended to establish efficient and low cost procedures and processes for claimant banks to make RCC warranty claims to transferring or presenting banks. We feel it is particularly important that these procedures allow for payment of RCC warranty claims to be processed by means of settlement entry. We believe that Rule 8 of the *Uniform Rules for Paper Check Exchange* of The National Clearing House has proven to be an effective mechanism for processing these warranty claims and should be used as the model for amendments to the Operating Circular.

In regard to the potential RCC warranty alternatives discussed in the Proposal, BB&T does not believe that either alternative would be practical or appropriate. Waiting for additional states to adopt UCC Revisions addressing RCCs would involve an unreasonable delay in dealing with a significant problem. Additionally, we feel that incorporating the RCC warranties into Regulation CC will avoid the confusion and unnecessary operational burden that would result from the various versions of the UCC revisions that states are likely to adopt. We also do not feel it is appropriate to extend the midnight deadline for return of RCCs, as our recommendation above to adopt procedures similar Rule 8 warranty claim processing is a more appropriate alternative.

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Other Comments and Information

BB&T is opposed to the suggestion that MICR line Position 44 be used to identify RCCs. There are only a limited number of MICR line positions and codes available, and we believe they should be reserved for other purposes. We also do not believe that the additional costs, to banks and RCC issuers, of reprinting checks and adapting check processing and return systems would be justified.

BB&T is unable to provide any useful quantitative data on the prevalence of remotely created checks, as they are not readily distinguishable from other checks except through visual examination. We are, however, able to comment on their use, which includes the payment of utility bills, insurance premiums, health club, country club and association dues and monthly installment loans. RCCs are also used by collection agencies, telemarketers and some bill payment services for customer bill payments, as well as for collection of returned check fees by some merchants and centralized check return processing services. Lastly, depository transfer checks are a form of RCC that have long been used by commercial customers.

In response to the request for comment on the manner in which RCCs reflect the account-holder's authorization, several examples from recently processed items are shown in Attachment A. In all of the examples, the authorization language appears in the lower right hand section of the draft, in the area where the account-holder's signature would typically appear.

Finally, we request that the Board provide at least a nine-month period for implementing any changes to Regulation CC related to RCCs. This time would be needed for banks to modify their depositor agreements, policies and procedures and to make their employees and customers aware of the new rules. If the changes include a requirement for specific RCC identifiers in the MICR line, we would recommend that the implementation period be at least one year, to allow sufficient time for changes to banks' check processing systems and for customers and check printers to make the necessary revisions to their checks.

Thank you for the opportunity to provide our comments and suggestions on this important Proposal.

Sincerely,



Joseph S. Blount  
Vice President & Payment Systems Consultant  
(703) 241-3035

## ATTACHMENT A ACCOUNT-HOLDER AUTHORIZATION EXAMPLES

- \_\_\_\_\_  
AUTHORIZED SIGNATURE  
(Blank signature line with the words *Authorized Signature* printed below the signature line.)
- PRE-APPROVED DRAFT  
NO SIGNATURE REQUIRED  
(Above information printed on signature line of draft)
- NO SIGNATURE REQUIRED  
Your account holder has authorized this payment to payee.  
Payee indemnifies you for payment of this check. This check shall be deposited only to the credit of payee and the lack of endorsement is guaranteed by payee.
- [Facsimile Signature of person other than Account-Holder]  
by [Payee Name] as authorized signatory for  
[printed Account-Holder Name]
- [Printed Account-Holder Name]  
by [Payee Name]  
Any Questions, Call [Telephone Number]
- SIGNATURE NOT REQUIRED  
by [Payee Name]  
as authorized signatory for  
[Account-Holder Name]
- SIGNATURE NOT REQUIRED  
Your depositor has authorized this payment to payee.  
Payee to hold you harmless for payment of this document.  
This document shall be deposited only to credit of payee.  
Absence of endorsement is guaranteed by payee.
- [Printed Account-Holder Name]  
This payment has been authorized by  
your depositor and is guaranteed  
the above named company.
- THIS PAYMENT HAS BEEN AUTHORIZED BY YOUR DEPOSITOR  
Any Questions? Call: (no telephone number listed)  
SIGNED: [Printed Account-Holder Name]  
by authorized representative: [Printed Payee Name]