

A large, abstract graphic on the left side of the page, consisting of overlapping diagonal bands in shades of orange, red, and blue, forming a shape reminiscent of a stylized 'X' or a series of overlapping planes.

June 3, 2011

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

**Re: Docket No. R-1409: Regulation CC Revisions**

Dear Ms. Johnson:

TeleCheck Services, Inc. appreciates the opportunity to comment on Docket No. R-1409, the Federal Reserve Board's (the Board) proposed revisions to Regulation CC. Among the numerous proposed changes to Regulation CC, our responses below focus on the items we believe are the most significant in nature, and we generally support the more minor changes in the proposal. Most importantly, we support the application of Regulation CC to electronically created items, such as paperless remotely created checks. Not only are these items significant to TeleCheck, they have a known business case for reducing processing costs, creating efficiencies and being environmentally friendly. Thus, we support the inclusion of these into Regulation CC and encourage the Board to move forward with the implementation of Subpart C and D, even if the Consumer Financial Protection Bureau is not fully established or operational since the Board retains sole responsibility for these two subparts.

By way of background, TeleCheck Services, Inc., a subsidiary of First Data Corporation, provides check acceptance, processing and risk analytics services to thousands of retailers and financial institutions. For over 40 years, TeleCheck has safeguarded businesses from check-related losses and fraud. Accepting checks has never been riskier; with TeleCheck, retailers can offer check acceptance as a safe and secure payment option.

**TELECHECK'S COMMENTS**

***§ 229.2(c) - Definition of ATM - Commentary - Provides that a remote deposit capture device is not an ATM because a person is depositing an image rather than depositing cash or paper checks.***

We support the Board's approach in the proposed rule to clarify that a remote deposit capture (RDC) device is not an ATM. Most RDC devices are controlled by the customer - not by the customer's financial institution - and the customer retains possession of the original check in an RDC transaction. As such, RDC devices are not equivalent to ATMs, which are controlled by the customer's financial institution or a financial institution within an ATM network. Therefore, we agree that the current and proposed rule requirements in Regulation CC applicable to ATM deposits should not apply to deposits by means of an RDC device.

***§ 229.2(s) - Definition of Electronic Collection Item - Defines "electronic collection item" as an electronic image of and information related to a check that a bank sends for forward collection that: (a) a paying bank has agreed to receive under § 229.36(a), (b) is sufficient to***

**create a substitute check, (c) conforms with ANS X9.100-187, unless Board determines different standard or parties otherwise agree.**

We agree that a definition of an electronic collection item is required, but we are concerned that the definition may be too narrow in scope. The definition of an electronic collection item requires that the electronic image and related information be sufficient to create a substitute check. Although we support this approach in the definition, we are concerned that the proposed change to Regulation CC relating to electronic collection items does not recognize that there may be a range of items that financial institutions will want to collect as images but do not qualify as electronic collection items. Some items that a depository financial institution receives do not contain sufficient information for the creation of a substitute check. The MICR line information may be incomplete and non-repairable, or the item may not be readable when truncated into an image. In these circumstances, the depository financial institution will still be required to provide funds availability to its customer, and for cost and timing considerations, it will want to collect the item electronically.

We suggest that the final rule acknowledge and clarify that financial institutions can agree (by clearinghouse rule, Federal Reserve Circular, or otherwise) to collect electronic images (and electronic check data only, without image) by forward and return exchange of a check image, notwithstanding that the image is not an electronic collection item under Regulation CC. The final rule should provide that the provisions of Regulation CC would not apply to such image exchange, including the obligation on paying the financial institution to return the item expeditiously.

We ask that the Board add an additional exception to the expeditious return requirement of Section 229.30(b)(1) to state that paying and returning financial institutions do not have an obligation for expeditious return if the original item did not qualify as an “electronic collection item” or an “electronic return” for any reason.

***§ 229.2(u) -- Definition of Electronic Presentment Point - Defines “electronic presentment point” as the electronic location that the paying bank has designated for receiving electronic collection items.***

We believe the definition needs clarification regarding what it means to “designate” an electronic presentment point, particularly in the context of same day settlement items. It is not clear from the proposed rule whether the paying financial institution would need to have a prior agreement with the presenting financial institution for exchange of electronic collection items that are same day settlement items.

***§ 229.2(u) - Definition of Electronic Presentment Point Commentary - Designation of email address or other electronic email address.***

We are concerned that an email address and designated IP address used without a prior written agreement to use these methods to exchange images may appear unsecure and subject the involved parties to possible fraud. When agreements are in place, financial institutions typically include security requirements within the agreement to address when and how email and IP address should be used.

***§ 229.12(d) - Deposits at nonproprietary ATMs - Reduces the maximum hold period for nonproprietary ATM deposits from five business days to four business days.***

Within the proposed rule, the Board requested comment as to whether there is still support for maintaining the distinction between proprietary and non-proprietary ATMs. We support maintaining the current distinction between proprietary ATMs and non-proprietary ATMs. There are still many ATMs that are not image-enabled and accept paper checks for deposit. As a result, depository financial institutions may still experience delays in settlement or processing of checks deposited at non-proprietary ATMs.

***§229.30(d)(ii) - Refer-to-Maker Reason for Return - States that “refer to maker” is insufficient as a reason for return, because “refer to maker” is an instruction to the recipient of the returned check and not a reason for return.***

We support this approach and agree that “return to maker” is insufficient as a reason for the return.

***§ 229.30(e) - Notice in lieu of return - Commentary - Provides that a bank may send a notice in lieu of return only where neither the check itself nor an image of and information related to the check is sufficient to create a substitute check.***

In its proposed rule, the Board requested comment on whether or not the notice in lieu of return should be maintained or deleted. We support maintaining in the final rule the option for a paying financial institution to send a notice in lieu of return. We also support including the MICR line of the original check in the notice in lieu of return when that information is available to the paying financial institution. This information is typically helpful to the depository financial institution identifying the item to which the notice relates.

We recommend that the Board also consider permitting the paying financial institution to include with the notice in lieu an image that the paying financial institution may have, even though that image is not sufficient to create an electronic return. The depository financial institution may find it useful for research to have at least a partial/incomplete image of the returned item along with the notice in lieu of return information.

***§ 229.34(c) - Commentary - Transfer and presentment warranties with respect to a remotely created check - Amends commentary to clarify that the RCC warranty would apply to both an electronic collection item created from an RCC and an electronic image and information transferred as an electronic collection item created for an RCC.***

The Supplementary information is clear that the new commentary in Section 229.34(c) is intended to clarify that images of paperless remotely created checks are subject to the remotely created checks warranty. However, we believe the actual text in the commentary is not as clear. We ask the Board to clarify this point in the commentary.

***§ 229.34(e) - Electronic image and information transferred as an electronic collection item or electronic return - A bank that transfers or presents an electronic image and related electronic information as if it were an electronic collection item or electronic return makes all the warranties in § 229.34 as if the image and information were an electronic collection item or electronic return.***

We support the Board's approach in the proposed rule to apply the warranties under Section 229.34 to electronic images, which are not created from paper items that are

exchanged between financial institutions. This will reduce the unnecessary creation of paper for remotely created checks.

The Board requested comments on whether it should consider making electronically created items subject to subpart C, in the future, as if they were a “check.” As mentioned in our opening comments, we strongly support application of subpart C of Regulation CC to electronically created items and support the application of Regulation CC to both paperless remotely created checks as well as to the application of paperless items.

Paperless remotely created checks have a known business case for reducing processing costs, creating efficiencies, and being environmentally friendly. In fact, digital checks are praised in the Federal Bank of Chicago’s 2009 policy discussion paper on checks as digital orders.

“The digital check EPO could leverage the existing electronic check infrastructure and provide a convenient, low-cost payment option for both consumers and businesses, based on a payment method that they have found useful for many years. The overall efficiency of the payment system would increase as a result.”

The paper goes on to state that “due to the Check 21 revolution, digital images have replaced paper items in the clearing and settlement process. We argue that a new kind of check, one never having any paper form whatsoever, could complete this transformation and enhance consumer welfare. The new kind of check would work equally as well for businesses, which have retained the check because of its convenience and simplicity.”

Therefore, we strongly encourage the Board to write the final rule to consider paperless remotely created checks as “checks” for purposes of subpart C, even if the Board determines not to cover other types of paperless electronic items under subpart C at this time.

## **RESPONSES TO THE BOARD’S OTHER REQUESTS FOR COMMENT**

**Effective Date - Revised subparts A and B take effect 30 days following publication of the final rule. Financial institutions would have 12 months to comply with the amendments to subpart B and the model forms in appendix C. Amendments to subparts C and D become effective six months following publication of the final rule.**

We support the proposed effective dates and ask that the Board proceed with implementation of Subpart C and D even if the Consumer Financial Protection Bureau is not operational, since the Board retains sole responsibility for these two subparts.

**Potential future changes to reduce risks to depositary banks - The Board requests comment on whether it would be desirable to reduce the amount of time afforded to the paying bank to decide whether or not to pay a check that has been presented to it.**

We support reducing the amount of time afforded to the paying financial institution to decide whether to pay a check that has been presented. The quicker returns are processed, the higher the potential to reduce fraud in the system.

Thank you for the opportunity to provide comments, and we appreciate your consideration of our concerns. Please don't hesitate to contact me with questions.

Sincerely,

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