



June 3, 2011

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

Re: Docket No. R-1409 and RIN No. 7100 AD 68

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 on the Board of Governors' (the Board) proposed amendments to Regulation CC, Availability of Funds and Collection of Checks (the Proposal), to facilitate the banking industry's ongoing transition to fully-electronic interbank check collection and return.

As of March 31, 2011, BB&T is one of the largest financial services holding companies in the U.S. with \$157 billion in assets and market capitalization of \$19.1 billion. Based in Winston-Salem, N.C., the company operates approximately 1,800 financial centers in 12 states and Washington, D.C., and offers a full range of consumer and commercial banking, securities brokerage, asset management, mortgage and insurance products and services. A Fortune 500 company, BB&T is consistently recognized for outstanding client satisfaction by J.D. Power and Associates, the U.S. Small Business Administration, Greenwich Associates and others. More information about BB&T and its full line of products and services is available at www.BBT.com.

BB&T welcomes the steps the Board is taking to encourage and facilitate the banking industry's adoption of fully electronic check collection and return. We believe that electronic processing will lead to greater efficiency and reduced risk in the U.S. payments system and will benefit consumers, businesses and the financial industry.

BB&T is generally supportive of the Proposal but we have comments and concerns related to several provisions which are noted below.

Definition of Electronic Collection Item (ECI) §229.2(s)

We are supportive of the proposed new definition that we believe to be necessary in light of other changes in the Proposal. We request that the Board incorporate the following changes in its final rules:

- Modify the definition to not require that the paying bank has agreed to accept electronic images electronically. In cases where numerous banks are involved in

the collection, the depository and collecting banks may have no knowledge of whether the paying bank has agreed to accept ECIs and thus, whether the new Regulation CC provisions will apply to the ECI. The Board should consider modifying the definition to state that only the two banks exchanging the ECI are required to have agreed to the exchange.

- We also believe the requirement that the ECI be sufficient to create a substitute check is too restrictive, as it does not provide for instances in which banks will want to exchange items which do not meet this requirement. For example, there are numerous items with incomplete and non-repairable MICR lines that do not contain sufficient data to create a substitute check, but for which the depository bank will still be required to provide funds availability to its depositor. Banks should be permitted to collect such items electronically. We recommend that the final rules explicitly allow banks to agree (through clearinghouse rules, Federal Reserve Circular, or other arrangements) to forward and return check images even if the items are not sufficient to create substitute checks.
- The reference to industry standard ANS X9.100-187 should stipulate that future amendments to the standard become effective upon their release, and that Regulation CC does not need to be amended for the new standard to take effect.

Definition of Electronic Return §229.2(v)

Our comments above on the definition of ECIs also apply to similar aspects of the Electronic Return definition.

Timing of Notice § 229.13(g)(1)(ii)

While we are supportive of provisions permitting banks to provide electronic notices of exception holds to customers who have agreed to accept notices electronically, we believe the Proposal should be revised as noted below:

- Electronic delivery should be permitted but not mandated. Banks' notice delivery capabilities and client preferences vary, and a bank may not be able to send, or a client wish to receive, all types of notifications via a single mechanism, be it paper or electronic.
- Any provisions governing the timeliness of electronic notices should be based upon when the financial institution sends the notice, and not when it is viewed or received by the customer. Financial institutions have no control over when a client chooses to open an e-mail or view an alert received on their mobile device, just as they have no control over when a client chooses to read notices delivered by the U.S. Mail.
- Additionally, the commentary for this provision should clarify that notices delivered electronically meet the notice obligation and that there is no requirement to send a separate paper notice.

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Availability of Deposits Subject to Exceptions §229.13(h)

The Proposal would reduce the safe harbor for the reasonable hold extension for a deposit of non-on-us checks to two business days, for a total of four business days. We are strongly opposed to this provision and believe the Board is mistaken in its statement that the safe harbor would provide "...adequate time for the depository bank to learn of nonpayment of virtually all checks that are returned." Even assuming full adoption of electronic collection and return processing, four days would not be adequate in all cases, such as when a check is altered or intentionally damaged to delay its collection and return (e.g., through tampering with the account or routing/transit number) or in cases where manual intervention is otherwise required. Additionally, items ineligible for image exchange that will need to be collected via paper processes will justify a longer exception hold period. We believe that the proposed safe harbor would subject depository banks to a significantly increased risk of loss.

We urge the Board to increase the hold extension safe harbor for non-on-us checks to three business days, for a total of five business days.

Exceptions to Expeditious Return of Checks § 229.30(b)

We agree with and strongly support the proposed new exception to the right of expeditious return for depository banks that have not agreed to accept returned checks electronically as outlined in § 229.32(a). We believe that the Proposal should also address situations in which an item does not qualify for return as an electronic return under either Regulation CC or the rules of a clearinghouse, image exchange network or the Federal Reserve Operating Circular #3. In these cases the items must be returned as paper items and the paying bank should not be subject to an expeditious return obligation. The Board may wish to consider requiring a notice from the paying bank to the depository bank in such situations where the paying bank is aware that the return will be subject to delay because the item will be delivered in paper form.

We also support the comments on this section of the Proposal being submitted jointly by the Electronic Check Clearing House Organization (ECCHO) and The Clearing House (TCH) in a separate letter (the ECCHO/TCH Letter).

Extension of Deadline §229.30(c)

We support the Proposal's provision extending the paying bank's deadline for return to the time of dispatch if the delivery method used would ordinarily reach the depository bank by 4:00 pm on the second business day following the banking day on which the check was presented to the paying bank. This change will accommodate situations in which the paying bank needs additional time to research and process large numbers of items and still allow items to be received by the depository bank in a timely manner. We would also support changes that would require actual receipt of the returns at the paying bank by the specified deadline, as long as the effective date for this change was extended to allow paying banks sufficient time to review and modify their return procedures as necessary to ensure compliance.

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“Refer to maker” Reason for Return §229.30(d)

The Board is proposing to amend the commentary to this section to state that “refer to maker” is insufficient as a reason for return, and requests comment on whether there are circumstances in which it is appropriate to use only “refer to maker” when returning a check.

We are opposed to the Board’s proposed change for a variety of reasons. First of all, in cases where a bank’s clients use a positive pay service, the paying bank may not know the underlying factual reason for the drawer’s instruction to return an item. Additionally, the drawer may suspect there is fraud associated with an item, but be unwilling to state this due to potential liability considerations.

Secondly, before “refer to maker” is eliminated as a valid return reason, there needs to be a thorough review and consideration by industry participants of available return reasons to determine that there are valid alternatives available for all situations in which “refer to maker” is currently used. This effort would be most effectively coordinated by industry standard groups.

Finally, elimination of “refer to maker” would entail significant operational and system changes at paying banks, including modifications to positive pay and return processing software, as well as procedural changes for both internal staff and positive pay clients.

We recommend that the Board defer elimination of the “refer to maker” return reason pending a more comprehensive evaluation conducted jointly with financial industry participants and standards groups

Notice of Nonpayment §229.33

We support the Proposal’s provisions eliminating the notice of non-payment currently required for checks of \$2,500 or more. With electronic image exchange processing, such notices would generally be received at the same time as the image of the returned item and would be redundant. This change will also provide additional incentive for depository banks to agree to accepted returns electronically.

Settlement Amount, Encoding and Offset Warranties §229.34(b)

We agree with and support the provision that would extend current encoding warranties to include any information encoded after issue as electronic information.

Transfer and Presentment Warranties with Respect to a Remotely Created Check §229.34 section C

We welcome and support the proposed commentary that attempts to clarify that Remotely Created Check (RCC) warranties would apply to images of “paperless” RCCs that are created electronically and are not derived from a paper check. We recommend that the text of the commentary be revised to make it clearer that the Board’s intent is to apply RCC warranties to these items.

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We also urge the Board to consider changes to the definition of an RCC that would exclude items created by bill payment companies and other agents acting on behalf of the authorizing client that are used for making payments to unrelated third party payees. These items have been the subject of a significant number of needless disputes and confusion since the RCC provisions were first implemented in 2006. For RCCs generated by bill payment companies not affiliated with the paying banks, disputed items are returned to the payee's bank, leaving the payee with no warranty claim against the bill payment company, and unable to provide evidence of authorization, since the payee did not deal directly with the customer to authorize the payment.

The revised definition should cover only items printed/created by the payee, either on its own behalf or on behalf of the authorizing customer.

Electronic Image and Information Transferred as an Electronic Collection Item or Electronic Return §229.34(e)

We commend the Board for proposing changes that would provide a regulatory framework for paperless RCCs. It is known that these items, which are difficult to identify, are currently being exchanged among banks on a limited basis. We also believe that there are a number of practical applications for these items that would benefit consumers and potentially provide new methods for making fast, convenient and low costs payments in a variety of situations. We support application of Subpart C to paperless electronic collection items and electronic returns.

Same-Day Settlement §229.36(d)1 and §229.36(d)2

While we agree with the concept of allowing paying banks to require that checks presented for same-day settlement (SDS) be presented as ECIs, we believe the Proposal does not fully address a number of questions and issues, including:

- It is not clear in the Proposal whether electronic presentment of SDS items requires an agreement between the banks. If an agreement is required, how does the Proposal address situations in which a paying bank requires electronic presentment of all SDS items but the collecting bank prefers to present paper SDS items?
- The Proposal appears to allow paying banks to choose whether or not they will receive paper items for SDS presentment. If a paying bank chooses to accept only paper and therefore declines to enter into agreements to accept SDS items electronically, what recourse is available to presenting banks who wish to present SDS items to the bank electronically?
- Does the Proposal allow paying banks to accept SDS items electronically from some presenting banks, yet require paper SDS presentment from others?

Due to these questions, we urge the Board to defer any changes to SDS rules pending further study and evaluation of their impact. As part of the additional study, we also

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suggest the Board consider provisions that would mandate the eventual elimination of paper presentment of SDS items. Any recommended changes identified in the course of this additional study and evaluation should be issued for public comment in a separate proposal.

Other Requests for Comment - II. Potential Future Changes to Reduce Risks to Depository Banks

The Board has requested comment on whether it would be desirable to reduce the amount of time afforded to a paying bank to decide whether or not to pay a check that has been presented to it, and also whether there are other, preferable, ways to reduce the risk to depository banks.

BB&T would be opposed to any reduction in the time allowed to paying banks to make pay or return decisions. We do not believe that the risks to depository banks are sufficient to justify the disruption and costs that paying banks would experience as a result of shortening the decision window. We also note that increased adoption of electronic image exchange processing and other changes in the Board's Proposal will contribute to a reduction in the overall level of risk in the U.S. check collection system.

Thank you for your consideration of our comments, and please feel free to contact me with any questions. We also wish to note that as a full member of ECCHO and an owner bank of The Clearing House, BB&T participated in the development of their joint comment letter on the Proposal and is in general support of its contents.

Sincerely,



Joseph S. Blount
Senior Vice President