



June 3, 2011

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

via: www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm

RE: Docket No. R-1409; Regulation CC Revisions

Dear Ms. Johnson:

We are pleased to submit a comment letter regarding the proposed revisions to Regulation CC (the "Proposed Rule"). BBN recognizes that the Proposed Rule is extremely important and raises significant policy concerns for both our business model and our client institutions. The final rule will impact how the financial services industry completes its migration to fully electronic check image exchange.

Bankers' Bank Northeast ("BBN"), a state chartered, FDIC insured and Federal Reserve member bankers' bank located in Glastonbury, Connecticut provides correspondent services to over 200 federally insured financial institutions in New England and New York State. Fifty-six of our client institutions are also investors in their bankers' bank. We service both community banks and credit unions (aka "depository institutions"). Specifically, BBN has the following comments:

1. *Section 229.2(r) – Definition of Depository Bank:* Clarifies that a bank that rejects a check submitted for deposit is not a depository bank.

1.1. Comment(s)

1.1.1. We agree with the clarification in the Proposed Rule that an institution that rejects a check should not be viewed as a "depository bank."

1.1.1.1. We request that the Commentary in the final rule include further explanation on the different ways a check could be received and then subsequently rejected.

1.1.1.2. We request that the Commentary clarify that a deposited item that is rejected can be either an on-us item or a transit item.

1.1.2. We feel that additional clarification in the Commentary will keep the final rule from being overly burdensome while still providing guidance and clarification to the financial services industry in understanding the scope of this exception from the definition of Depository Bank.

2. *Section 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 depository bank sends for forward collection that (a) a paying bank has agreed to receive under Section 229.36(a); (b) is sufficient to create a substitute check; and (c) conforms with ANS X9.100-187; unless parties otherwise agree.
 - 2.1. Comment(s)
 - 2.1.1. We agree that there needs to be a definition of “electronic collection item” (“ECI”) within Regulation CC. However, the definition as it exists in the Proposed Rule, appears too limiting and lacking explanation.
 - 2.1.2. Agreement to Receive ECI - The definition requires that in order for the item to be deemed an ECI, the paying bank must agree to receive the ECI under Section 229.36. As the definition stands today, it appears that the regulation may be requiring banks to develop individual agreements between themselves and EACH institution from which they choose to accept items, including returns. This would prove to be onerous and not practical in today’s environment. We take exception to this definition and request the following:
 - 2.1.2.1. We request that the term “agreement” be further clarified in the final rule. Specifically, we feel that any paying or collecting bank that has agreed to receive items electronically from the Federal Reserve, for the routing number on which the check is drawn, has agreed to receive items electronically from any other bank who can present such items electronically.
 - 2.1.2.1.1. We feel that by defining “an agreement to receive ECI” as any bank that has already agreed to receive ECI from the Federal Reserve covers the majority of banks. Furthermore, the bank of first deposit would have certainty that an item sent forward as a fully encoded ECI would retain that designation and would be required to be returned expeditiously to them (assuming they also receive electronic returns).
 - 2.1.2.1.2. A definition of this nature removes any confusion about what constitutes an agreement, who has responsibility for determining if an agreement is in place between the paying bank and the other institutions, and, more importantly, removes any doubt about whether the ECI would be subject to the proposed provisions of Regulation CC if the paying bank and the other institutions do not have an agreement, and lastly, this would remove the possibility that any risk could be off-set onto the depository bank(s) in the event that the paying bank and the other institutions do not have an agreement in place.
 - 2.1.2.2. We request that the definition of ECI be simplified to merely state that “any electronic image...that a bank sends for forward collection that **has not been rejected**” is an ECI.
 - 2.1.2.2.1. Defining electronic collection items as those that have not been rejected adds clarity that items exchanged between two or more

banks constitutes an agreement to exchange items without placing additional limitations unnecessarily.

2.1.2.2.2. We support the Board's electronic collection item and electronic return item provisions, and we support the item warranties as stipulated in the Proposed Rule. We do not support that imperfect items currently subject to Regulation CC should be exempt from item warranties or expeditious return requirements due to operational decisions to streamline check processing and presentment operations.

2.1.3. Reference to Industry Standards (ANS X9.100-187) We take exception to this definition and future references and request the following:

2.1.3.1. We request that the references to ANSI standard be removed and replaced with the verbiage "most current industry accepted format." The reference to specific ANSI standards and the suggestions that future amendments to the ANSI standard be effective immediately are not practical, viable, or appropriate for regulation. [Also applies to Section 229.2(hh) & 229.35(a)]

3. *Section 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.

3.1. Comment(s)

3.1.1. We generally agree with the definition; however we request that the final rule include additional clarity regarding what is meant by "designating an electronic presentment point" - specifically in the context of same-day-settlement items.

3.1.2. We disagree with the commentary that the electronic presentment point may be an email address and that the presentment point would be referenced in the check image endorsement. This is not acceptable industry practice and should not be acceptable under Regulation CC.

4. *Subpart B – Funds Availability; General Application of Subpart B to Remote Deposit Capture (RDC) deposits*

4.1. Comment(s)

4.1.1. We support the approach in the Proposed Rule to not apply Subpart B of Regulation CC to RDC deposits of check images.

4.1.2. We request that the Commentary to the final rule include a statement that expressly states that deposits of images by RDC or other transmissions to a depository bank are not subject to subpart B of Regulation CC.

5. *Section 229.13(e)-4 – Reasonable cause to doubt collectability – Commentary:* A depository bank may not invoke this exception for funds availability because a paying bank demands paper presentment and the depository bank knows it will not receive the return prior to the time by which it must make the deposited funds available.

5.1. Comment(s)

- 5.1.1. We support the approach in the final rule in which a depository bank is not permitted to place an extended hold on deposited funds solely because the depository bank does not have an image exchange agreement with the paying bank.
 - 5.1.2. We request that the final rule include an additional exception for funds availability to address paying bank routing numbers that the depository bank determines have been retired in accordance with industry practice. We believe that it is preferable to provide protection to banks in the form of a permissible extended hold on the item for deposit; otherwise, they may seek to protect themselves from the risks associated with these items by rejecting the items at the time of deposit.
6. *Section 229.13(g)(1)(ii) – Timing of Notice:* Defining notification. If the customer has agreed to receive electronic notification, the depository institution shall send the notice in such a way that the bank may reasonably expect the customer to receive it no later than the first business day following the day the deposit is made or the facts become known to the depository bank, whichever is later.
- 6.1. Comment(s)
 - 6.1.1. We support the inclusion of the authority for a depository bank to provide notices and disclosures electronically for purposes of Regulation CC.
 - 6.1.1.1.A depository bank should not be required to communicate notice of exception to customers electronically just because they may be communicating electronically for other services or reasons with that customer. Therefore, we do not support mandating the use of electronic communication in the final rule.
 - 6.1.2. We request that the Commentary clarify that if a customer chooses to receive electronic notifications, and the depository bank agrees to send such, then the electronic notification shall be in place of the paper notification. If the customer has agreed to receive electronic notices, there is no reason to send additional paper notification.
7. *Section 229.13(h) – Availability of deposits subject to exceptions:* Safe harbor for the reasonable hold extension for a deposit of on-us checks remains one business day. Safe harbor for the reasonable hold extension for other checks is reduced to two business days.
- 7.1. Comment(s)
 - 7.1.1. We strongly request that the final rule provide additional time for the safe harbor for non-on-us items, beyond the additional two days set forth in the Proposed Rule. It typically takes longer than four business days to collect an item, therefore, we recommend that the final rule allow for a safe harbor of no less than five business days. The time period for forward and return exchange must extend beyond four business days in order to prevent additional risk and fraud from being injected into the clearing process.
 - 7.1.1.1.Reducing the safe harbor time period will increase risk of loss to depository banks and potentially increase monetary losses substantially.

Based on a survey of our constituents, 81.5% of returns are received on the fourth day or later.

8. *Section 229.16(c)(2)(i) – Notice at time of case-by-case delay:* Amends the case-by-case notice requirement to require that a case-by-case notice of delayed availability include the total amount of the deposit. The Proposed Rule requested comment on whether banks found the case by case notice option still useful.

- 8.1. Comment(s)

- 8.1.1. We support the final rule continuing to allow depository banks to impose case-by-case holds on deposited items. This practice continues to be actively used by our constituents.

9. *Section 229.30(a)(1) – Commentary:* Sets forth the test for expeditious return of a check by the paying bank. The paying bank shall send returned checks expeditiously so that the depository bank normally would receive the returned check no later than 4:00 pm (local time) on the second business day following the banking day on which the check was presented. The Commentary provides examples of where banks have agreed to receive electronic returns from paying banks.

- 9.1. Comment(s)

- 9.1.1. We request that the final rule designate, at least in the Commentary, that the Federal Reserve can be the primary return channel.

- 9.1.1.1. We strongly support the depository bank be listed on the FedReturn Endpoint Listing as the base requirement for considering an institution image receipt enabled. In this regard, we request that the final rule provide guidance on when a bank has an agreement for electronic returns with a particular paying bank and is thus entitled to expeditious returns which includes various types of relationships but specifically states that if the bank has affected an electronic exchange agreement for expeditious returns through the Federal Reserve, regardless of whether or not the paying bank has an agreement with the Federal Reserve for sending of electronic image returns to the Federal Reserve, then that institution has agreed to receive electronic returns.

- 9.1.2. We request that the term “agreement” have further clarification in the final rule. Specifically, that any paying or collecting depository bank that has agreed to receive items electronically from the Federal Reserve for the routing number on which the check is drawn, has agreed to receive items electronically. [See Comments for Section 229.2(s) – Definition of Electronic Collection Item]

10. *Section 229.30(a)(1) – Commentary:* Paying bank may rely upon list of depository banks published by the returning bank to determine if depository bank has agreed to receive items electronically.

- 10.1. Comment(s)

- 10.1.1. We disagree with the suggestion that a private entity could adequately maintain a comprehensive list of returning banks and bank of first deposit routing numbers.

10.1.1.1. The FedReturn Endpoint Listing is currently the most accurate and accessible list available to establish whether a depository bank can receive an electronic return item.

11. *Refer-to-maker reason for return - Commentary:* 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. A paying bank may use “refer to maker” instruction in addition to the reason for return.

11.1. Comment(s)

11.1.1. We are strongly opposed to the Proposed Rules’ approach to prohibiting a paying bank from using the “refer to maker” return reason on a stand-alone basis. We request that the final rule not prohibit the paying bank from using the “refer to maker” return reason.

11.1.1.1. In many situations “refer to maker” as a return reason code is the most appropriate reason to be placed on the item.

11.1.1.2. Requiring banks to reduce or eliminate in all cases the use of the “refer to maker” return reason will require substantial and costly procedural and systems changes at the paying banks.

12. *Section 229.32(a)(1) – Commentary:* Provides that a depository bank is “deemed” to have an agreement for electronic returns if the returning bank holds itself out as willing to accept electronic returns from the paying bank, even if the paying bank has no actual agreement with the returning bank.

12.1. Comment(s)

12.1.1. We strongly disagree with this statement and request that this Commentary be removed from the final rule.

13. *Section 229.36(d)(1) and (2)-Same-day Settlement:* Permits a paying bank to require that checks presented for same-day-settlement be presented as electronic collection items to a designated electronic presentment point [Section 229.36(d)(2)].

13.1. Comment(s)

13.1.1 We support the Board’s provisions for paying banks to have the option to require that all same-day settlement presentments be delivered electronically. To allow new same-day paper presentments into the system is counter to the Board’s directive under the Expedited Funds Availability Act designed to streamline the check collection process. **Therefore, we strongly recommend that the paying bank be allowed to determine whether SDS is to be electronic or paper and that the presenting bank conforms to the paying bank’s preference.** Receiving SDS items as paper creates additional processing complexity for image enabled community banks.

13.1.1.1. Finally, given the large number of bilateral or direct exchange arrangements that have already been established across the industry, we encourage the Board to clarify that existing direct exchange agreements be included as eligible for same-day-settlement provisions if the SDS presentment is separated from other forward collection work that the paying bank receives in its role as the collecting bank.

13.1.2. Additionally, we strongly recommend and request that the final rule establish a sunset date for **paper** SDS presentment. The value of accelerated SDS presentment and settlement provisions has largely been replaced by the increased efficiency of direct image exchange arrangements. In fact, the idea of a completely image enabled environment would indicate that in theory all electronic images could be SDS.

14. *Section 229.36(d)(2) – Same-day-settlement:* Deletes the provision of regulation that permits the paying bank to require SDS items to be separate from other forward items and return items.

14.1. Comment(s)

14.1.1. We strongly disagree with the deletion of this provision. The final rule should permit a paying bank to require that electronic and paper SDS items presented in cash letter or electronic files are separate from other forward and return items because commingling these items would be onerous to fulfilling the requirement of timely settlement.

Bankers' Bank Northeast appreciates the opportunity to comment on this important proposal. Please do not hesitate to contact me at egr@bankersbanknortheast.com (860-657-4926) or Peter J Sposito at pjs@bankersbanknortheast.com (860-633-5690) with any questions regarding these comments.

Sincerely,



Peter J Sposito
President & CEO



Elissa G Reynolds
Senior Vice President, Operations