May 1, 2014
John W. King
Vice President
U.S. Bank, N.A.

Robert deV. Frierson

Secretary

Board of Governors of the Federal Reserve System

20th Street and Constitution Avenue, NW

Washington, D.C., 20551

Re: Docket No [R-1409] RIN No. 7100 AD 68; U.S. Bank Comments to proposed amendments to Regulation CC

This letter is in response to the proposed amendments to Regulation CC, Availability of Funds and Collection of Checks, published by the Board of Governors of the Federal Reserve System ("Board") proposing to facilitate the banking industry's ongoing transition to fully electronic check collection and return, including two alternative frameworks for return requirements. The first, eliminating the expeditious-return requirement for returned checks but requiring a paying bank returning a paper check to provide the depositary bank with a notice of nonpayment of the check and the second, retaining the current expeditious-return requirement using the current two-day test for checks being returned to a depositary bank electronically via another bank, but eliminating the notice-of nonpayment requirement.

U.S. Bank National Association ("U.S. Bank") has reviewed the proposed amendments to the rules and has further endorsed and adopted the Comments set forth by certain financial services industry organizations and technology companies ("Industry Commenters"). Because of the importance of recommendations and clarifications sought by the Industry Commenters, U.S. Bank reiterates its support of those comments and further comments as follows:

229.2(dd) – Definition of Routing Number

U. S. Bank agrees with the Industry Commenters that the Federal Reserve Board consider adopting a new rule under Regulation CC that would provide collecting banks with clear authority to return or reject back to the BOFD or a prior collecting bank an item with a routing number that is listed as retired or otherwise deactivated through the [Routing Number Administrative Board] or other centralized industry list. The BOFD or the prior collecting bank would have the option to send the item to the paying bank on a collection basis.

PAYING BANK'S RESPONSIBILITY FOR RETURN OF CHECKS AND NOTICES OF NONPAYMENT

229.31(a)-1 Exception to Notice of Non-Payment for Unidentifiable BOFD.

U.S. Bank agrees with the Industry Commenters and we support the new proposed requirement that the paying bank must not be able to identify the depositary bank from the depositary bank's indorsement in either the addendum record or within the image of the check itself in order for the item to have an unidentifiable depositary bank.

229.31(a)-1-c Requirement of Presenting Bank to Accept Return When Unidentifiable BOFD.

U.S. Bank agrees with the Industry Commenters and we support the proposed addition to the Commentary that states , in the event the paying bank cannot identify the BOFD, a presenting bank or a prior collecting bank "is required" to accept a return of an item that the presenting bank or prior collecting bank handled in the forward collection stream.

229.31(e) Use of "Refer to Maker" as a Return Reason.

U.S. Bank supports the decision by the Federal Reserve Board not to ban the use of the "refer to maker" return reason. We agree there are situations where the "refer to maker" return reason is the most appropriate reason to be placed on the item, and there are no other return reasons that would better describe the reason for the return.

229.31(i) Routing of "Not Our Items" in Return Process.

U.S. Bank does not support the inclusion of a prohibition that would prohibit a returning bank, which handled an item in the forward collection process, from rejecting a return item back to the paying bank or another returning bank on the basis that the item is a "not our item" or "NOI". U.S. Bank is in agreement with the Industry Commenters that the use of clearinghouse rules, operating circular or bilateral agreement would be a better venue for addressing NOIs.

BOARD PROPOSED ALTERNATIVE FRAMEWORKS FOR RETURN REQUIREMENTS

U.S. Bank does not support the adoption of either of the Board's proposed alternatives for return in the final rule. While the Fed's proposed Alternatives attempt to provide regulatory incentives to encourage banks to migrate the remaining 2% of paper returns to electronic return, the Board Proposals do not impose the right incentives on the proper parties and are not sufficiently strong to push the holdout BOFDs to accept electronic returns.

Alternative 1 does not require expeditious return by the paying and returning banks nor does it require that all banks in the return channel use an electronic return route. For a BOFD that is not electronic return, having the BOFD guaranteed of a notice of all paper returns would eliminate any incentive for those BOFDs to migrate to electronic return.

Alternative 2 would be operationally difficult and complex for a paying bank to know whether or not it had an electronic return channel in place to a particular BOFD via one of the paying bank's multiple returning banks and would make it difficult for a paying bank to determine its responsibilities to a particular BOFD for expeditious return. This risk of non-expeditious return and the the removal of the notice of nonpayment for items of $2500, place an inappropriate amount of financial risk on a BOFD that has made a reasonable effort to implement and maintain electronic return channels.

U.S. Bank is in agreement with the Industry Commenters' recommendation that the Fed establish under the final rule that all banks and depositary institutions will cease the use of paper returns within a designated time period. If Regulation CC requires full connectivity for electronic return, we believe the market would develop products and service options that would achieve full connectivity for electronic return. The sunsetting of paper return would establish a clear timeline and remove the regulatory uncertainty associated with the two Alternatives in the Proposal. By mandating that depositary institutions use electronic return, the Board would be taking an action that is necessary to automate the return of checks that would otherwise be returned via an increasingly slow and manual paper return process. U.S. Bank supports the industry commenters proposed outline of obligations and requirements for sunsetted paper returns:

Outline of the Obligations and Requirements to Sunset Paper Return

A. BOFD, Paying Bank, Returning Bank Electronic Return Arrangement Obligations Under Reg. CC
   a) BOFD would be required to establish electronic return arrangements such that BOFD will receive 100 percent of its return items via electronic return.
   b) Paying Bank would be required to establish electronic return arrangements such that Paying Bank can reach 100 percent of all BOFDs via electronic return.
   c) Returning Bank would be required to establish electronic return arrangements such that Returning Bank can reach 100 percent of all BOFDs via electronic return.

B. BOFD, Paying Bank, Returning Bank Paper Returns Under Reg. CC
   a) Paper returns sent in the manner of collection items would be limited to <u>ONLY</u> items that are ineligible for electronic return due to a problem with the item itself.
      i. BOFD would be required to accept paper returns in the same manner as it accepts collection items today at a designated location.
      ii. Paying Bank and Returning Bank would be required to send paper returns in the same manner as it sends collection items to BOFD or a Returning Bank

C. Paying Bank, Returning Bank Expeditious Return Requirement Under Reg. CC
   a) After the Implementation Date, there would be no expeditious return or notice of nonpayment obligations on the Paying Bank or the Returning Bank.

229.34(a) – Warranties with respect to electronic checks and electronic returned checks

U.S. Bank does not agree with extending the warranties to drawer and depositing customers outside applicable law and account agreements between the customers. We agree with the Industry Commenters that extending the warranties to the drawer and depositing customers would complicate the inter-bank warranty process, complicate the appropriate resolution of the dispute and potentially expose banks other than the account holding bank to potential direct liability to account holding bank's customers. If the customer's claim relates or arises from an act or omission of a prior bank in the forward or return process, the account holding bank would make its customer whole and then pursue the prior bank on the claim. Enabling customers of the account holding bank to bring claims directly against other banks in the check collection system would undermine the limitations on liabilities that the non-account holding banks have.

229.34(b) – Indemnity with respect to an electronic image or electronic information not related to a paper check.

U.S. Bank supports the approach in the Proposal to provide protection to the paying bank in the event that the exchange of ECIs causes a loss to the paying bank that would not have happened had an electronic check, created from a paper check, been exchanged between the banks. We agree with the Industry Commenters suggestion that the Federal Reserve Board revise this section to establish a combination warranty and indemnification rule such that 1) the sending bank warrants to the receiving bank that the electronic check exchanged was created from an original paper check, and 2) the sending bank indemnifies the paying bank for all losses associated with the breach of the warranty.

U.S. Bank does not support any rule or commentary prohibiting banks from exchanging ECIs in the future. There is ongoing discussion regarding the creation and usage of ECIs as a payment instrument and Regulation CC should not inhibit the potential for additional innovation in this area of check payments.

Damages for Losses Associated with Regulation E Non-Compliance.

U.S. Bank supports the proposed changes in the final rule that a paying bank may bring a claim under the new ECI warranty/indemnity to recover the paying bank's losses arising from Regulation E non-compliance which was caused by the receipt of the ECI, as opposed to an electronic check (created from the paper original check). Because the paying bank does not control the creation of the ECI and may not be able to identify that an ECI was presented to it for posting, in the event that the paying bank incurs loss arising from Regulation E noncompliance, the paying bank should be able to recover such loss from the BOFD or other sending bank.

229.34(g) – Warranties and Indemnities - Truncating Bank indemnity.

U.S. Bank supports the Federal Reserve's proposed new indemnity between the truncating BOFD and the second BOFD that accepts the original paper check for deposit.

It provides the BOFD holding the paper check with a claim against the truncating bank whose customer failed to control the original paper check after the image deposit. While this proposed indemnity does not address the full range of RDC duplication scenarios, it does address a scenario where it is reasonable to impose the loss on the truncating bank which was best positioned to control the subsequent deposit of the paper check by its customer. U.S. Bank supports the

industry commenters' recommendation that the final rule include a time period within which the indemnified BOFD must make a claim under the indemnity to the truncating BOFD. U.S. Bank further recommends that the Board clarify that the indemnification is applicable so long as the second BOFD qualifies as a Holder in Due Course as specified under UCC and so long as the second BOFD has possession of or access to the original item.

Truncating Bank Indemnity Not Applicable to Counterfeit or Altered Items.
U.S. Bank agrees with the Industry Commenters that the Board include in the Commentary to the final rule, that a claim under the truncating bank indemnity is not available when the second BOFD incurs a loss on a check deposit that is the result of an alteration of an item or a counterfeit item that is not the same item that was deposited by image at the truncating bank

229.36(f) – Presentment and issuance of checks– Same-Day settlement
U.S. Bank would like to see the paper SDS rule either eliminated in the final rule or sunsetted by a certain date. The checking industry has migrated to electronic clearing of checks and it does not make sense to maintain capability for paper check presentment and receipt. The paper SDS Rule was created to address competitive challenges in the pre-SDS environment by allowing presenting banks to direct present under the SDS rule without fee and with same day financial settlement. In the electronic exchange environment, there are concerns that the competitive issues identified in the pre-SDS rule environment are returning to check image exchange, specifically the Federal Reserve Bank's competitive advantage in electronic presentment. We agree the Federal Reserve needs to take steps to address the competitive imbalance that may result in migration of a substantial portion of electronic exchange volume to the Reserve Banks. We would anticipate the Reserve Banks, in partnership with the Industry, would continue discussions around the development and implementation of a viable electronic SDS rule set that would address the potential competitive issues.

Additional Issue for Comment: Presumption of Alteration.
U.S. Bank supports the addition to Regulation CC of a presumption of alteration and not counterfeit in the event there is insufficient evidence to determine whether or not a particular check image was altered or is a counterfeit item. We believe having a predictable and uniform

national rule for the resolution of this type of dispute is of particular value since there have been several different court decided resolutions for what appears to be similar disputes.

Additional Issue for Comment: Definition of Remotely Created Check.
U.S. Bank agrees with the Industry Commenters that the Federal Reserve Board define a "remotely created check" as an item that does not contain the signature of the drawer and was created by the payee or the agent or service provider of the payee and should exclude an item that does not contain the drawer's signature but was created by the account holding customer or the customer's agent or service provider, other than the payee or the payee's agent or service provider.

This requested change in the definition of RCC will make the paying bank responsible (under Regulation CC and the UCC) for the payment and determination of authorization of an RCC, for those RCCs that are created by the account holding customer and the agent and service providers of the account holding customer. This is an appropriate allocation of liability as the paying bank, and not the BOFD or the payee, is best positioned to monitor its customer's authorization of these types of items. The paying bank is best positioned to control authorization for unsigned drafts created in the context of its own bill payment service, regardless of whether the service is offered directly by the paying bank or by a third party service provider to the paying bank.

Effective Date.
The U.S. Bank supports a delayed effective date for the final rule of at least six (6) months from the publication of the final rule.

We appreciate the opportunity to respond to the proposed amendments to Regulation CC. If you have any questions, please call John W. King at 612-973-6167

Respectfully Submitted,

John W. King

Vice President

U. S. Bank