



March 12, 2004

Ms. Jennifer J. Johnson
Secretary of the Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 20551
By Email To: regs.comments@federalreserve.gov
From: marcy.wilkov@aexp.com

Re: Comments from the American Express Travelers Cheques and
Prepaid Services Group to the Notice of Proposed Rule – 12 CFR Part
229; Regulation CC – Docket No. R-1176

Dear Ms. Johnson:

In order to implement the recently enacted Check Clearing for the 21st Century Act (“Check 21”), the Board of Governors of the Federal Reserve System issued proposed amendments to Regulation CC for comment. I am Group Counsel for the American Express Travelers Cheques and Prepaid Services Group (“American Express TCPS”), and I hereby submit this comment letter on their behalf.

American Express TCPS processes millions of paper travelers checks and is pleased that the new legislation specifically includes these products within the definition of “checks.” We are also pleased that the 24 hour window to return items has been preserved, since that window is critical to our ability to detect and avoid fraudulent items.

We do, however, have two concerns.

First, there appears to be a lack of guidance on the question of how long original checks should be retained by the reconverting banks. As you no doubt know, for purposes of fraud investigation and anti-money laundering compliance, access to the original check can be very important. For example, unlike substitute checks, original checks can reveal differences in pressure used to sign a check, or even fingerprints that may be important for an investigation. Also, with respect to counterfeit checks and altered checks, the original might be necessary simply to identify the authenticity of the item.

American Express TCPS acknowledges that reconverting banks should not have to maintain copies of original checks for an inordinate period of time, but holding original

checks for a short period, such as 30 days, would certainly be appropriate. We should add that we do not believe the indemnity provisions, while helpful, will be sufficient to address the problem of lost original checks, since in many instances, such as anti-money laundering investigations, there is no financial “loss” to be remedied, but instead there is valuable data required for investigative purposes. In addition, we would seek clarification that an issuer or drawer of a check can request an original copy, even though the check has already been honored. For example, to complete an anti-money laundering investigation or a counterfeit investigation, American Express TCPS would need to receive an original travelers check within five business days of its request for such a check.

Second, American Express TCPS is uncertain about the impact of the “expedited recredit” provisions – both for consumers and banks – when the item involved is a travelers check as opposed to a personal check linked to a bank account. Many consumers deposit travelers checks in their bank accounts, and after that deposit occurs, American Express TCPS becomes aware that those travelers checks are subject to other claims. For example, sometimes the travelers checks have been “washed” and then represented; or sometimes they are counterfeits, or altered items. To the extent the claim arises out of checks deposited into consumer accounts, we believe American Express TCPS and our clearing banks should have the same access to the “expedited recredit” provisions as would apply to other drafts. We believe that was the intent of the drafters, but we feel the language could be clarified, perhaps through a specific reference in the commentary.

American Express TCPS appreciates the opportunity to provide commentary on the new proposed amendments to Regulation CC implementing Check 21. We would be happy to meet and discuss with you the concerns noted above, or any other questions you may have regarding travelers checks and Check 21. If you have any questions, do not hesitate to contact me at (212) 640-5732.

Sincerely yours,

Marcy E. Wilkov
Group Counsel