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March 12, 2004

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

**RE: Comments on Proposed Amendments to Regulation CC
Docket Number R-1176**

Dear Ms. Johnson:

This comment letter is submitted on behalf of First Data Corporation ("First Data") in response to the proposal (the "Proposal") to amend Regulation CC (Availability of Funds and Collections of Checks) published by the Board of Governors of the Federal Reserve System (the "Board"). This important proposal would implement the Check Clearing for the 21st Century Act (the "Check 21 Act"). First Data appreciates the opportunity to present to the Board its view of the Proposal.

First Data is one of the world's leading providers of transaction processing; payment systems; electronic commerce and information-based services to both businesses and consumers. Principal products provided by its payment systems business include money orders and official checks of its Western Union Financial Services ("Western Union") and Integrated Payment Systems ("IPS") subsidiaries, and payment processing solutions offered by its REMITCO subsidiary. IPS is a leading provider of official checks and money orders to the financial services industry and its instruments serve as an alternative to a financial institution's own disbursement items such as teller's or cashier's checks. Western Union is a world leader in money transfer services and offers customers several payment products, including Western Union money orders, which are available at over 182,000 Western Union agent locations worldwide. In 2003, IPS, REMITCO and Western Union together cleared 1 billion physical checks.

Board's Actions Concerning Check Truncation

First Data commends the Board on its efforts in drafting the Check Truncation Act proposal which became the foundation of the Check 21 Act. First Data believes the Act will transform and modernize the check collection process to the benefit of many participants in the nation's payment system. Further, we applaud the Board's development of the Proposal which would implement the Check 21 Act. With some important modifications and clarifications, the Proposal will provide a workable check truncation framework for participants of the check collection process.

COMMENTS TO THE PROPOSAL

Section 229.2 Definitions

Reconverting Bank

The Board's section by section analysis discussing the proposed commentary to the definition of "Reconverting bank" states that "[t]he proposed commentary to this definition provides further clarification as to when and where creation of a substitute check occurs and explains that a bank need not accept a substitute check that was created by a non-bank and that has not yet been handled by a bank, unless the bank agrees to do so." However, the proposed commentary makes clear that "[a] bank is a reconverting bank if it creates a substitute check directly or if another person by agreement creates a substitute check on the bank's behalf." Accordingly, a bank (Bank A) would be required to accept a substitute check of a non-bank processor who receives information electronically on behalf of Bank B in order to create substitute checks on behalf of Bank B. This point is made clear in Example 2.b of the commentary.

We request that the Board provide further examples of when a bank would be required to accept a substitute check created by a non-bank, and to include where a non-bank drawer returns a draft drawn by its agent* on the non-bank as drawee, which is payable through a bank. Although the non-bank is typically the last participant in the collection and payment chain for these payable through items, for various reasons, including fraud and stop payment instructions, some small portion of these items will be returned. Unless the non-bank can create a substitute check, the particular return items must be manually retrieved and sorted and sent back to the relevant bank in such time to meet the appropriate deadlines. This is a particularly labor intensive and time consuming task (for example, in the case of First Data, in one day, a couple of hundred items may need to be retrieved and sorted from over 1.5 million items). Given the high volume of checks processed as payable through items, manually retrieving and sorting return items undercuts the Check 21 Act's stated purpose of "improv[ing] the overall efficiency of the Nation's payments system," because a major sector of the check processing industry would not be able to avail itself of the electronic processing efficiencies which the Act is intended to promote. Although substitute checks created by a non-bank using its clearing bank's routing number may, perhaps, be viewed as created on behalf of the clearing bank (in which case the commentary as proposed would already be sufficient to require other banks to accept such substitute checks), we request that the Board specify that a bank that authorizes a non-bank to use its routing number for payable through items is a reconverting bank with respect to substitute checks created by such non-bank in check return processing.

* For example, in the case of IPS, the agent would be the financial institution seller of IPS Official Checks.

Substitute Check

The Board particularly requests comment on the proposed commentary to the substitute check definition that describes the various ways in which the MICR line of a substitute check can vary from the MICR line of the original check. We believe that it is important that the MICR line contain **all** of the information from the original check. We suggest that the MICR line information should not be changed or reordered, as long as the item meets the American National Standards Institute's standard for a MICR line. We believe that the use of a "4" or "5" in position 44 would be an acceptable variance.

The Board proposes that if there is a MICR-read error on a substitute check, the item would not be considered a substitute check by definition. However, these so-called "purported substitute checks" would still carry the warranties, indemnity and recredit rights of a substitute check. We request that the Board clarify that there are no legal implications with regard to general check law, *e.g.*, the applicability of the Uniform Commercial Code's check provisions to a purported substitute check.

The proposed commentary provides that a reconverting bank that creates a substitute check from an original check with a misencoded amount or bank that handles a substitute check that perpetuates the amount encoding error may repair the MICR line to facilitate the processing of the check without changing the item's status as a substitute check. Further, the proposed commentary would require a reconverting bank to correct MICR-read errors before creating a substitute check. We inquire as to whether an item that is repaired incorrectly would be treated as a substitute check and whether warranties shift from an indemnifying bank to the reconverting bank that incorrectly repaired the substitute check?

Section 229.30(c)(1) Paving Banks' Responsibility for Return of Checks

Section 229.30 establishes a different return deadline (instead of the midnight deadline) for notice of nonpayment to a returning bank: "on or before the receiving bank's cutoff hour for the next processing cycle (if sent to a returning bank). .."

We request that the Board elaborate on this "cut off time" modification in the comment to this section.

Sections 229.35 (a) and 229.38 (d) and Appendix D

The Board specifically requests comment on what benefits, if any, there would be in providing returning banks with the flexibility to endorse on the front of checks and to include additional information in their indorsements. First Data believes that there are merits to this proposal. For instance, an indorsement on the front of a check may be more legible, since less check processing information is required to appear on the front of a check as compared to the back of a check.

Section 229.51

Content and Provision of Substitute Check Warranties

The Board specifically requests comment on whether using information from a check to create an ACH debit entry should be a payment request covered by the proposed "duplicative payment" warranty that provides that no depository bank, drawee, drawer or indorser will receive presentment or return of, or otherwise be charged for a duplicative item, *i.e.*, an item that it has already paid.

Although it could be argued that an ACH debit is not an electronic version of a substitute check or original check, First Data believes that the duplicative payment warranty should apply to ACH debits; to determine otherwise would frustrate Congressional intent. Congress included the warranty to protect against the possibility that parties could be required to pay or be charged on a check twice because an original and substitute check could simultaneously make their way through the forward collection process. Where a party is required to pay or be charged twice for a single item, it should be irrelevant that an original or substitute check was converted to an ACH debit. The net result is that there has been a duplicative payment or charge that resulted directly from the creation of a substitute check. Thus, ACH debits should be covered by the proposed duplicative payment warranty.

Legal Status of an Item that Purports to Be a Substitute Check but Is Not

The Board proposes that a substitute check that does not have the same MICR line as the original check would be treated as a substitute check in a limited circumstance, *i.e.*, a recipient of an item that purports to be a substitute check but is not would have warranty and indemnity rights, and, where applicable, recredit and consumer awareness disclosure rights as though the item were a substitute check. The Board requests comment on whether an item that fails to meet any of the other substitute check requirements in Section 229.2(zz) should also be treated as though it were a substitute check for those limited purposes.

Among other things, Section 229.2(zz) as proposed requires that a substitute check contains an image of the front and back of an original check. First Data believes that an item that does not contain an image of the back of an original check should be treated as though it were a substitute check where the back of the original check was blank, at least for the limited purpose of providing the recipient with warranty and indemnity rights, and, where applicable, recredit and consumer awareness disclosure rights under subpart D as though the item were a substitute check.

Section 4(b)(1) of the Check 21 Act, which outlines the standard for legal equivalence, requires that a substitute check accurately represent all of the information on the front and back of the original check as of the time the original check was truncated. Where there is no information appearing on the back of an original check at truncation, there should be no requirement that a blank image be captured. Rather, we propose that encoding on the substitute

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check could alert subsequent parties that the back of the original check was blank at the time of truncation.

For example, if a merchant or remittance (lock box) transaction has no physical endorsement or if the transaction could be handled electronically, there should be no need to reproduce the actual back of the original check, since it would be blank. This approach would parallel the National Automated Clearing House Association's account receivable ("ARC") entry provisions, which does not require retention of a copy of the back of a check that is used as a source document for an ARC entry. In that case, too, there is no information on the back of the check.

Because capturing and storing an image of a blank check backing would require the expenditure of significant financial resources without providing any benefit to any party in the forward collection process, such a requirement would be wholly inefficient. The vast majority of checks received via lock box or at the point of sale have nothing on them at the point they are converted to an image. Therefore, we request that the Board consider eliminating the requirement that a substitute check capture the back of an original check where the back of the original check is blank, or alternatively, treat a substitute check that does not capture the back of an original check, where such backing was blank, as if it were a substitute check, for the limited purposes discussed above.

Claim Processing

We inquire as to whether the Federal Reserve System will play a role in facilitating the processing of claims via adjustments between parties' Federal Reserve accounts or will it be the responsibility of a claimant institution to work directly with the reconverting bank or through the courts? Further, how will claim processing be handled where a Federal Reserve Bank is the reconverting bank in a claim?

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Once again, First Data appreciates the opportunity to provide its comments regarding the Proposal to the Board. If you have any questions regarding the foregoing, please contact me at 720-332-3528.

Sincerely,

Adam P. Coyle
President
Integrated Payment Systems Inc.,
a subsidiary of First Data Corporation