

Rules and Regulations

Federal Register

Vol. 62, No. 56

Monday, March 24, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0926]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted amendments to its Regulation CC relating to the availability of funds and collection of checks. The amendments do not represent any major policy changes and are intended to clarify the regulation and, in some cases, reduce the compliance burden for depository institutions.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Florence Young, Assistant Director (202/452-3955), Division of Reserve Bank Operations and Payment Systems; Stephanie Martin, Senior Attorney (202/452-3198), Heatherun Allison, Attorney (202/452-3565), Legal Division; Manley Williams, Attorney (202/452-3667), Kyung Cho-Miller, Attorney (202/452-2412), and Obrea Poindexter, Attorney (202/452-2412), Division of Consumer and Community Affairs. For the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

I. Overview

The Board has adopted amendments to its Regulation CC (12 CFR Part 229), Availability of Funds and Collection of Checks. The amendments are clarifying and technical in nature and do not represent any major policy changes. The amendments to subpart B of the

regulation, governing availability schedules and disclosures, address a variety of issues, including the treatment of deposits received at "contractual" branches (such as affiliate banks¹). Many of the amendments are designed to reduce the burden on banks of complying with the regulation. For example, the amendments would provide more flexibility for hold notices under emergency conditions, clarify the various media by which banks may give written notices, and delete certain notice content requirements. The Board has also updated the model forms in Appendix C. Banks that use earlier versions of the model forms are protected from civil liability under § 229.21(e), but all banks are encouraged to use the new versions when reordering or reprinting supplies.

The amendments to subpart C, governing collection of checks, clarify the interaction between Regulation CC and the Uniform Commercial Code (U.C.C.); set forth rules for checks drawn on banks in Guam, American Samoa, and the Northern Mariana Islands; and address other check collection matters.

A red-lined version of the amendments to the regulation, model forms, and commentary is available from the Board's Freedom of Information Office or by calling 202-452-3684.

The Board received 64 comments to the proposed amendments from the following types of institutions:

Banks/thrifts	15
Bank holding companies	14
Credit unions	10
Trade associations	9
Federal Reserve Banks	7
Clearinghouses	3
Banking service companies	3
Credit card companies	2
Federal Home Loan Banks	1

II. Section-by-Section Analysis

Available for withdrawal (§ 229.2(d)). The regulation defines "available for withdrawal" to mean available for all uses generally permitted to the customer for actually and finally collected funds under the bank's account agreement or policies. The commentary to this definition clarifies that funds are considered available for withdrawal

even if they are being held to satisfy, among other things, the customer's liability arising from the certification, guaranty, or acceptance of a check or the sale of a cashier's or teller's check. The Board proposed to revise the commentary to clarify that funds held to meet contingent obligations of the customer related to the account are considered to be available for withdrawal. For example, a depository bank might receive a notification that the customer has authorized a debit to the account at a point-of-sale terminal. Banks often "memo-post" these debits to the customer's account in advance of the settlement date.

The Board received eighteen comments on the proposal. Ten commenters favored the proposal. Eight commenters either opposed the proposal or requested clarification. Apparently, these commenters interpreted the proposal to prohibit "memo-posting" and to require a bank to allow a customer to withdraw funds on which the bank had placed a hold to satisfy a transaction to be debited from the customer's account. The Board intended the opposite, however. A bank may "memo-post" contingent account liabilities such as debit card transactions to a customer's account without violating its obligations under this subpart. The Board has adopted revised commentary language to clarify this point.

Definition of "bank" (Section 229.2(e)). The regulation stated that, for purposes of subpart C, the term "bank" includes any person engaged in the business of banking, including a Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit of general local government acts as a paying bank. The Board proposed to amend the regulation's definition of "bank" to clarify that the Federal Reserve Banks, the Federal Home Loan Banks, and state or units of general local government are not necessarily engaged in the business of banking, notwithstanding the fact that they are included in this definition. The Board received no comments on this change and has adopted the amendment as proposed.

Definition of "traveler's check" (Section 229.2(hh)). The commentary stated that "[t]raveler's checks that are not issued by banks may not have any

¹ "Bank" in Regulation CC and in this document includes all depository institutions, such as commercial banks, savings institutions, and credit unions.

words on them identifying a bank as drawee or paying agent * * * .” Some people had interpreted this provision to mean that traveler’s checks were prohibited from having words on them identifying a bank. The Board proposed to revise the commentary to clarify that only a description of a possible situation, and not a prohibition, is intended. The Board received two comments in support of this change and has adopted a slightly revised version of the proposal.

Notice requirement to state amount of deposit (Sections 229.13(g) and 229.16(c)). Regulation CC required a notice of an exception hold (§ 229.13(g)(1)(i)(B)) or a case-by-case hold (§ 229.16(c)(2)(i)(B)) to include the amount of the deposit from which funds will be held. Some banks noted that when they learn that a check is being returned by the paying bank several days after the day of deposit, it is often difficult to trace the check back to a particular deposit, especially in cases where a corporate customer makes several multi-check deposits on a single day. The Expedited Funds Availability Act (the Act) does not require the notice to contain the amount of the deposit. The Board proposed to eliminate the “amount of deposit” requirement for both exception and case-by-case hold notices. The Board received thirty-one comments on this proposal, twenty-seven of which expressed support. Two commenters indicated that the requirement to state the amount of deposit was not burdensome, and two commenters indicated that it would be beneficial to retain the requirement “to ensure the accuracy of the number of days being held versus the policy or regulation requirements” or to “aid the consumer in identifying which deposit the hold applies to.” The Board believes that depositors can identify the holds that the bank has applied based on other information in the hold notice and has eliminated the “amount of deposit” requirement as proposed.

The Board also requested comment on the burdens to depository banks and the benefits to customers of the requirement for hold notices to include the date of deposit. The Board received twenty-seven comments in response to this request. Eighteen commenters supported retention of the date requirement, cited consumer benefits of the requirement, or noted that the requirement imposed little or no burden on banks. In general, these commenters indicated that the date requirement is an important and necessary reference point for depositors in identifying a transaction and also helps banks track particular checks. Seven commenters

avored eliminating the date requirement or stated that the requirement imposed burden on banks. Two commenters supported elimination of the date requirement as long as consumers could obtain the necessary information regarding a hold from the other information in the notice. The Board believes that the date requirement continues to provide useful information to depositors and imposes only a minor burden on banks. The Board, therefore, has retained the date requirement for exception hold and case-by-case hold notices.

Emergency exception notices and length of holds (Sections 229.13 (g) and (h)). The regulation allows a depository bank to place an exception hold on funds deposited by check in the case of an emergency, such as a computer or communications interruption, suspension of payments by another bank, or war. The regulation required the depository bank to provide a notice to the customer of the emergency hold in the same manner in which it provides notice under the other exception holds, except that no notice was necessary if the funds were made available before the notice had to be sent. (That is, the bank would have to mail or deliver the notice to the customer no later than the first business day following the day the facts upon which a determination to invoke the hold became known to the depository bank.) Some banks argued that during a major disaster they would be unable to meet the timing deadline for emergency exception hold notices due to the time required to move to a backup processing site and the need for the bank to focus on other customer service priorities in the event of major disasters.

Section 604(f)(2)(C) of the Act requires depository banks to send emergency exception hold notices “in accordance with regulations of the Board.” Therefore, the Board proposed to amend § 229.13(g) of Regulation CC to require a depository bank to give reasonable notice of emergency exception holds and to make conforming revisions to the commentary. Reasonable notice in some situations might consist of individual notices mailed to customers as soon as practicable or, in other situations, may consist of general notices, such as postings at branches or ATMs, or newspaper, television, or radio notices. The Board also proposed clarifying amendments to § 229.13(h) regarding the length of exception holds and corresponding revisions to the commentary.

The Board received twenty-eight comments on this proposal, all in

support. One commenter requested further guidance on the factors to consider when determining what form the notice should take. The Board believes that the factors as to what is reasonable will vary with the situation and that specifying factors may be overly restrictive. Another commenter recommended that a bank be permitted to provide notices by posting or publication in all situations warranting an emergency hold. The Board, however, believes that these methods may not necessarily be reasonable in all situations. The Board believes its proposal provides significant flexibility to banks under emergency conditions and has amended § 229.13(g) and revised the accompanying commentary as proposed.

Written notices (Sections 229.13(g) and 229.15(a)). Section 229.13(g) requires a depository bank to provide written exception hold notices to customers. Section 229.15(a) requires banks to make availability policy and other disclosures in writing and requires that certain disclosures be in a form the customer may keep. The Board proposed to revise the commentary to both these sections to clarify that notices and disclosures delivered via fax or electronic media that display text on a monitor or screen, such as electronic mail, screenphone, or interactive television, are considered written notices and disclosures if the customer agrees to receive notices and disclosures through such means. The proposal also provided that a customer may request a paper copy of an electronic notice or disclosure. Twenty-one comments were received on the proposal, all in favor of the proposed revisions. One commenter recommended that a customer be allowed to request a paper copy of an exception notice only within a reasonable period of time after receiving electronic notice.

The Board has re-examined the need to allow the customer to request a paper copy of an electronic notice or disclosure, with an eye toward providing banks with more flexibility in servicing their customers, fostering innovation, and reducing costs while maintaining the level of customer protection contemplated by Congress. The Act specifies that certain notices and disclosures must be written but does not specify that they must be on paper or in another form that must be retained. Under the proposal, a bank may send electronic notices and disclosures only if the customer agrees. If a customer was not satisfied with its arrangement with its bank, it could rescind the agreement and request that the bank send all future notices and

disclosures on paper, or close its account. Customers interested in retaining a paper copy presumably would agree to receive notices and disclosures electronically only if they had the capability to print the electronic information that they receive. The final commentary language adopted by the Board states that the Regulation CC requirements would be satisfied by an electronic notice or disclosure that displays the text and is in a form that the customer may keep (for example, electronic information that can be downloaded or printed). The Board has dropped the proposed commentary provision stating that a consumer may request a paper copy of a notice delivered. The Board is conducting a comprehensive review of notice and disclosure requirements under consumer protection regulations and may, in the future, request comment on additional proposals regarding the use of electronic communications to meet the various regulatory requirements. Future proposals may affect Regulation CC as well as the other regulations.

Exception holds and the cash withdrawal rule (Section 229.13(h)). Section 229.12(d) permits a depository bank to extend holds on deposits of local, nonlocal, and certain other checks by one business day for purposes of withdrawals by cash or similar means, with the exception of \$400, which must be made available by 5:00 p.m. on the original availability day (the "cash withdrawal rule"). The purpose of the cash withdrawal rule is to allow depository banks an additional day to learn if a check is being returned before allowing irrevocable withdrawals from the customer's account. Some banks asked how the cash withdrawal rule works in conjunction with the exception holds. For example, when a large deposit exception hold is placed on a \$7,000 local check, \$100 must be made available for withdrawal on the next business day. For check-writing purposes, \$4,900 must be available by the second business day after deposit. For withdrawal by cash or similar means, \$400 out of the \$4,900 must be available by 5:00 p.m. of the second day and the remainder of the \$4,900 must be available by the third business day after deposit. The banks asked whether the five-day exception hold on the \$2,000 excess over \$5,000 is added to the second business day for all purposes, or whether the hold period may be added to the second day for check-writing withdrawals and to the third day for cash and similar withdrawals. The Board proposed to clarify that the exception hold periods should be added

to the normal availability schedules (to the second business day in the previous example). The Board reasoned that it would not be necessary to extend the exception hold period for cash withdrawal purposes, as in almost every case the depository bank should learn of a returned local check before the morning of the seventh business day after deposit.

The Board received four comments on this proposal. One commenter opposed the proposal, stating that it would require expensive and extensive reprogramming. Two other commenters stated that adopting the proposal would make regulatory compliance more difficult. One commenter stated that additional clearing time is beneficial and may help prevent losses. Upon consideration of these comments, the Board has decided that, to avoid costly systems changes for banks and in an effort to simplify the rule, the exception hold periods may be added to the availability period as applicable to unlimited cash withdrawals. Therefore, the Board has not adopted the proposed revision.

Disclosure of branch-specific policies (Section 229.16(a)). Section 229.16 requires banks to furnish notices of their specific availability policies. Some banks have established different availability policies at different branches (or for deposits accepted on behalf of the bank by affiliates or "contractual branches"). These banks asked about the disclosure implications of different policies and whether such a bank must disclose to every customer what routing numbers are local to each location where deposits are accepted. The Board proposed to revise the commentary to § 229.16(a) to clarify that a bank may provide customers with a branch-specific disclosure. The Board proposed that banks, when determining which disclosure to provide, be allowed to allocate customers between branches through good faith use of a reasonable method, such as where the customer opened the account.

The Board received sixteen comments on this proposal. Some of the commenters expressed concern about identifying customers with specific branches, given the trends towards servicing accounts remotely or through contractual branches. Accordingly, the Board has revised the proposed commentary language to state that a bank may establish different availability policies for different groups of customers and may allocate customers for disclosure purposes by any reasonable method. The allocation need not be branch-based. The final commentary revision also states that a

bank may establish different availability policies for deposits at different locations, such as at contractual branches. The Board also amended the commentary to § 229.16(b) to clarify that if a bank does not have a cut-off hour prior to its closing time, the bank need not disclose a cut-off hour.

Initial disclosures (Section 229.17). The regulation requires a bank to provide an availability policy disclosure to a potential customer before opening an account. The commentary states that, if a bank receives a written request by mail asking that an account be opened and including an initial deposit, the bank may open the account with the deposit but must mail the required disclosures not later than the business day following the banking day on which the bank receives the deposit. Although the Board proposed no changes to this section, one commenter asked that the period for mailing a disclosure after receiving an initial deposit through the mail be extended to ten days. The commenter stated that additional time is necessary for the bank to perform "due diligence" steps, such as conducting a credit check and verifying the information submitted by the customer. The commenter stated that, because a bank may ultimately decline an account and send back the initial deposit, sending a disclosure before final acceptance of the account could be confusing to the customer. As the Board did not seek comment on any changes to the initial disclosure rules in § 229.17, it is not adopting any changes to this section at this time. The Board will, however, consider seeking comment on this matter in the future.

Deposits at contractual branches (Sections 229.2(s), 229.10(c), 229.14(a), 229.19(a)). Due to easing of branching restrictions, the practice of one bank accepting deposits on behalf of another bank ("contractual branching") is growing more prevalent. The Board proposed to clarify the commentary regarding treatment of deposits at contractual branches. The proposed revision to the commentary to the definition of local paying bank (§ 229.2(s)) stated that a branch of a bank that is acting as an agent of the depository bank is considered a branch of the depository bank. Therefore, a check would be deemed local or nonlocal based on the location of the contractual branch with respect to the location of the paying bank.

The Board also proposed to revise the commentary to §§ 229.10(c) and 229.19(a) to clarify that deposits at contractual branches would be treated similarly to deposits at proprietary ATMs; deposits at contractual branches

would be considered deposited when the funds are received by the contractual branch teller. However, deposits at contractual branches would not be considered deposited at a teller station staffed by an employee of the depository bank within the meaning of § 229.10(c) (ii)–(v) and therefore would not be subject to next-day availability under those provisions. The Board also proposed to revise the commentary to § 229.19(a) to state that the depository bank could set a noon cut-off hour for deposits at contractual branches, as these deposits are treated as received at “off-premise” facilities. Finally, the Board proposed to revise the commentary to § 229.14(a) to clarify that, in the case of a deposit at a contractual branch, interest must accrue when the account-holding bank receives credit for the deposit, not when the contractual branch receives credit.

The Board received twenty-two comments on the proposal. Fourteen commenters supported the proposal. Two commenters stated that deposits made at contractual branches should be treated similarly to deposits made at nonproprietary ATMs rather than at proprietary ATMs, as proposed. The Board believes that, on balance, deposits made over the counter to a teller at a branch, albeit a contractual branch, are more akin to deposits at proprietary ATMs than those at nonproprietary ATMs. The Board has retained the proposed treatment of contractual branch deposits.

One commenter stated that “local paying bank” under § 229.2(s) should include paying banks that are members of the same local clearinghouse as is the depository bank. The Board notes that a bank is free under Regulation CC to treat as local checks those checks that are drawn on paying banks that are members of the same local clearinghouse and that can be collected on a local basis regardless of the paying bank’s Federal Reserve check processing region. The Board has determined, however, not to require banks to do so, because such a requirement could make it extremely complicated for banks to assign availability for a given check based on its routing number.

Another commenter asked that the Board provide additional guidance on how to determine whether a check is local or nonlocal, particularly when the paying bank has interstate branches. The Board believes that the commentary to the definition of “local check” (§ 229.2(r)) already provides sufficient guidance on this issue. The commentary states that, generally, a depository bank may rely on a check’s routing number to determine whether the check is local or

nonlocal. (The only instance when a bank may not be able to rely on the routing number is when the check is drawn on one bank and payable through another bank, in which case the check is local or nonlocal based on the location of the drawee bank rather than the location of the payable-through bank whose routing number is on the check.)

Several commenters requested clarifications of various kinds. One commenter asked whether a hold notice may be given by a contractual branch or whether it must be given by the account-holding bank. The Board believes that the regulation clearly places the responsibility for providing notices with the account-holding bank, but a contractual branch may agree to provide notices on behalf of the account-holding bank. Another commenter asked whether the Board would allow up to one year for banks to comply with the new contractual branching provisions. The Board does not believe that a one-year lead time is necessary, as the revisions represent a clarification of the existing rule rather than new requirements. One commenter asked whether a bank’s lobby disclosure obligations under § 229.18 require disclosure of the availability of funds for all deposits at that location or only for accounts maintained at that location. The Board added a clarification to the commentary to § 229.18(b) to clarify that lobby notices need only describe the bank’s availability policy, not the availability policy of the bank for which it is acting as a contractual branch.

The Board adopted the other commentary revisions to §§ 229.2(s), 229.10(c), 229.14(a), and 229.19(a) substantially as proposed. In addition, to provide a single reference point for the definition of “contractual branch,” the Board has added a definition of this term to § 229.2. The Board has also added references to contractual branches in §§ 229.2(s) and 229.19(a).

Holds on other funds—notice (section 229.19(e)). Section 229.19(e) provides that when a bank accepts a deposit to an account that is subject to the Regulation CC availability requirements, the bank may not place a hold on any other funds of the customer (such as a savings account) that exceeds those requirements. This section also provides that when a bank cashes a check over the counter (other than an “on-us” check), the bank may not place a hold on that customer’s account that exceeds the Regulation CC schedules that would apply if the check were deposited. Section 229.19(e) does not explicitly address whether the depository bank must provide a hold notice (case-by-case or safeguard

exception) in these cases. The Board proposed to revise the commentary to § 229.19(e) to clarify that a hold notice would be required if an exception or case-by-case notice would have been required under §§ 229.13 or 229.16 had the hold been placed on funds deposited in an account subject to the regulation.

The Board received eight comments on this proposal. Four commenters expressed support for the proposal. One commenter requested clarification on whether notices are required when the hold is not associated with a deposit to an account. Two commenters opposed the imposition of additional regulatory burden with respect to accounts not covered by Regulation CC. The Board has adopted revised commentary language to clarify that a notice under this section is required only when the funds being held are funds in an account that is covered by Regulation CC. Another commenter observed that, if notice is required where, for example, a bank cashes a check over the counter, the wording of the notice should not refer to “number of days following deposit,” as no deposit is involved. The Board has revised the commentary to the model notices to clarify how to amend the notices in these circumstances. One commenter expressed concern that notices of such a policy must be incorporated into a bank’s availability policy. The Board notes that model clauses C–6 (Holds on Other Funds (Check Cashing)) and C–7 (Holds on Other Funds (Other Accounts)) provide models for inclusion in a bank’s availability policy.

Midnight deadline extension (section 229.30(c)). The regulation (§ 229.30(c)(1)) allows a bank to return a check after the midnight deadline, as long as it uses a means of delivery designed to get the returned check to the receiving bank by the end of that receiving bank’s next banking day, or later if “highly expeditious transportation” is used. Section 229.30(c)(2) allows a paying bank to extend a Saturday midnight deadline if the checks get to a returning bank by the cut-off hour for the returning bank’s next processing cycle or to a depository bank by the end of the depository bank’s next banking day. The Board proposed to amend the regulation to clarify that § 229.30(c)(1) pertains to all midnight deadlines other than Saturday midnight deadlines, and that § 229.30(c)(2) pertains only to an extension of a Saturday midnight deadline. The Board received nine comments, all of which supported the proposal. The Board has adopted the amendment as proposed.

The Board also requested comment on whether further modifications to the regulation would be desirable in light of problems posed by nonstandard banking days other than Saturdays, such as mid-week holidays. The Board received thirteen comments in response to this request. Of these, nine commenters stated that further modifications to the regulation were not necessary, and four commenters stated that further modifications or clarification would be desirable. As none of the commenters stated that nonstandard banking days raise significant problems, the Board decided not to make any further modifications with respect to nonstandard holidays at this time.

The Board also requested comment on whether the regulation's conditions for extending a midnight deadline should require a determination of motive or whether the regulation should simply set forth a "time-of-receipt" test. Specifically, the Board asked whether § 229.30(c) should be available only "in order to expedite delivery" (and not, for example, to avoid a kite) or whether extension of the midnight deadline should be permitted for any reason so long as the returned check is received by the receiving bank by the end of that bank's next banking day (or later if "highly expeditious transportation" is used). The Board received twelve comments on this issue. All commenters expressed support for clarifying that no motive test is intended in this section. The Board agrees that § 229.30(c) should not require a determination of motive for midnight deadline extensions. To provide clarity on this point, the Board has deleted the words "in an effort to expedite delivery of a returned check to a bank" from § 229.30(c)(1).

Extra day to create qualified returned checks (section 229.31(a)). Section 229.31(a) allows a returning bank to convert a returned check to a qualified returned check (that is, to encode the returned check with the routing number of the depository bank, the amount of the check, and a return identifier so that it can be handled in an automated manner). If the returning bank creates a qualified returned check, § 229.31(a) provides a one-day extension in the returning bank's time frame for meeting the "forward-collection" expeditious-return test in § 229.31(a)(2) (but not the "two-day/four-day" test) and the deadlines for return under Regulation J and the U.C.C. This extension does not apply if the returning bank returns the check directly to the depository bank, because in that case the preparation of the qualified returned check will not expedite handling by other banks. Given the improvements in the check return

system since Regulation CC was first implemented, the Board proposed to eliminate the extension and to amend § 229.31(a) of the regulation and revise the accompanying commentary accordingly. The Board requested comment on whether this extension is still necessary and, if so, a description of the operational problems that elimination of the extension would cause.

The Board received twenty-three comments in response to this proposal. Thirteen commenters supported eliminating the extra day to create qualified returned checks, and ten commenters opposed eliminating the extra day. One commenter stated that the extra day should be retained if, without it, the use of qualified returns would be likely to decrease. Similarly, another commenter stated that it did not oppose the elimination of the extra day so long as the extra day is no longer necessary as an incentive to create qualified returned checks. One Reserve Bank commented that the extra day should be retained, stating that it still receives more raw returns than it can process overnight. One commenter, a clearinghouse, stated that if the extra day were eliminated then paying banks would be likely to shift returns to the Federal Reserve Banks, benefitting the public sector at the expense of the private sector. As some returning banks may still use the extra day, and to avoid unintended shifts in volume from the private sector to the public sector, the Board has determined to retain the extra day for creating qualified returned checks.

Midnight deadline warranty and U.C.C. defenses (Section 229.34(a)(1)). Section 229.34(a)(1) requires a paying or returning bank that returns a check to warrant that the return is within its deadlines under Regulation CC, Regulation J, and the U.C.C. The commentary to § 229.30(a) clarifies that a paying bank is not responsible for failure to make expeditious return under that section to a party that has breached a presentment warranty under U.C.C. 4-208. This commentary is consistent with U.C.C. 4-302(b), which subjects the paying bank's liability for missing its midnight deadline to defenses based on a breach of a presentment warranty or fraud. The Board proposed to revise the commentary to § 229.34(a)(1) to clarify that a paying or returning bank's warranty of timely return within the U.C.C. deadline is subject to U.C.C. claims or defenses. The Board received six comments on this proposal, all of which supported the proposed commentary revision. The Board has adopted the revision as proposed.

Set-off rights (§ 229.34(c)(4)) and returning bank liability (§ 229.31(a)). Under § 229.34(c)(4), if a paying bank overpays a presenting bank for checks presented, the paying bank may set off the excess amount paid against subsequent settlements for checks presented by that bank. The Board proposed to amend that section (and revise the accompanying commentary) to give any bank in the collection or return chain the right to offset excess settlement made to a particular bank against settlement for subsequent checks or returned checks transferred by that bank. The Board received six comments in response to this proposal. Five commenters expressed support for the proposed revision, citing increased efficiency and decreased administrative costs. One commenter opposed the proposal, pointing out the potential for a confusing cycle of correcting debits and credits if one bank automatically sets off while the other bank affirmatively makes an adjusting settlement for the excess amount. In addition to considering the comments, the Board considered whether the proposal was necessary to protect banks in the collection and return chain. The current regulation allows set-off by the paying bank versus the presenting bank because the paying bank is obligated to accept and settle for (or return) checks presented to it even in the absence of a settlement agreement with the presenting bank. A bank has a similar obligation to accept returned checks for which it is the depository bank. Intermediary collecting and returning banks, however, are free to agree with each other about the terms for handling checks, including provisions for offset. These banks could structure their agreements as netting contracts that are enforceable even in the event of a counterparty failure, under the terms of Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991.² The Board, therefore, has expanded the offset provisions of § 229.34(c)(4), but only to the depository bank-returning bank relationship and not to the relationships between intermediary collecting and returning banks.

The Board also proposed to revise the commentary to § 229.31(a), which discusses the returning bank's liability if it makes an encoding error when creating a qualified returned check. The commentary pointed out that the returning bank could be liable under § 229.38 for losses caused by negligence. The Board proposed to add that the returning bank could also be liable for a breach of its encoding warranty under

² 12 U.S.C. 4401 *et seq.*

§ 229.34(c)(3). The Board received five comments on this proposal. Four commenters supported the proposed revision, while one commenter opposed it, stating that the depository bank should be held liable for encoding errors instead of a returning bank in order to encourage depository banks to provide legible endorsements. The Board notes that the regulation provides for a chain of encoding warranties whereby an intermediary bank could make a claim back against the encoding bank on a mis-encoded check. The Board has adopted the revision as proposed.

Time limit for notice of warranty breach (§ 229.34(f)). Sections 4-207(d) and 4-208(e) of the U.C.C. provide that a claimant on a breach of warranty must give notice to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, or else the warrantor is discharged to the extent of any loss caused by the delay in notice. The Board proposed to add this time limitation for notices of warranty claims to Regulation CC to ensure that the same time limitations apply for check-related warranty claims, regardless of whether the claim is under state or federal law. The Board received four comments in response to this proposal, all of them supporting the proposed amendment. The Board has adopted the amendment as proposed.

Electronic presentment (§ 229.36(c)). Section 229.36(c) allows a bank to present a check electronically under an agreement with the paying bank. That section and the accompanying commentary contained references to check "truncation" (generally a term used to describe a system in which the physical check is held at some point in the check collection process). An electronic presentment arrangement may, but does not necessarily, include truncation of the physical check. Therefore, the Board proposed to amend § 229.36(c) and revise the accompanying commentary to apply it to "electronic presentment" arrangements, not merely "truncation" arrangements. The Board also proposed to revise the commentary by adding an example of an electronic presentment arrangement.

The Board received thirteen comments on this proposal. Ten commenters opposed the proposed commentary example, most of them stating that the example would appear to include within the scope of "electronic presentment" arrangements where the paying bank receives presentment of the physical check after having previously received information electronically about the check. These commenters stated that the proposal

should be limited to those check collection arrangements under which presentment occurs upon receipt by the paying bank of the information about the check rather than upon receipt of the physical check itself. The Board did not intend to cover check collection arrangements where presentment occurs upon receipt by the paying bank of the physical check itself. The Board has, therefore, adopted revised language to the regulation and the accompanying commentary.

Labelling requirements for payable-through checks (§ 229.36(e)). A bank that arranges for a check drawn on it to be payable through another bank must ensure that certain information is printed on the face of the check. Specifically, § 229.36(e) requires that these checks show (1) the name, location, and first four digits of the routing number of the bank by which the check is payable, and (2) the words "payable through" followed by the name and location of the payable-through bank. The Board adopted these labelling requirements to enable banks and their customers to identify payable-through checks and to determine whether they are local or nonlocal. The provisions regarding the "payable through" designation and the name and location of the payable-through bank are similar to provisions in U.C.C. 4-106. As these particular labelling requirements are covered by state law, the Board proposed to eliminate them from Regulation CC.

The Board received eight comments on this proposal. Two commenters supported the proposal. One commenter suggested that the commentary make reference to U.C.C. § 4-106 to avoid the misperception that "payable through" language is not required at all. Six commenters opposed the proposal. Two of these commenters desired a uniform standard in Regulation CC as opposed to various state law requirements. Two other commenters stated that U.C.C. § 4-106 does not by its terms require the location of a payable-through bank to be shown on a check, and, therefore the Board should continue to require payable-through information. One commenter suggested that the Board require all checks to show on their face the name and location of the bank whose routing number is used on the check.

The purpose of requiring conspicuous "payable through" labelling was to ensure the ability of depository banks to identify payable-through checks visually. Accordingly, the Board has determined to continue to require the words "payable through" and the name of the bank on payable-through checks.

However, there appears to be no continuing reason to require payable-through checks to identify the location of the payable-through bank. Accordingly, the Board has deleted this requirement. The Board notes, however, that removing the location of the payable-through bank from a payable-through check would require the payable-through bank to accept the check at any branch or head office under § 229.36(b)(3).

Measure of damages (§ 229.38(a)). The commentary states that the measure of damages provided in § 229.38(a) "derives from U.C.C. 4-103(e) and 4-202(c)." The Board proposed to revise the commentary to clarify the effect of U.C.C. 4-202(c) upon the measure of damages, as U.C.C. 4-202(c) does not state a measure of damages but rather limits liability by providing that a bank that has exercised ordinary care is not liable for the insolvency, neglect, misconduct, mistake, or default of others, or for the loss or destruction of an item by others. The Board received one comment on this change, in support, and has adopted the revision as proposed.

Correction to commentary (section 229.38(d)). In the 1995 technical amendments to Regulation CC (60 FR 51669, October 3, 1995), some words were inadvertently dropped from the commentary to § 229.38(d). The Board proposed to correct the commentary. The Board received no comments on this change and has adopted the revisions as proposed.

Preference against depository bank (section 229.39(b)). Section 229.39(b) gives a bank a preferred claim against a closed paying or depository bank that "finally pays" a check or returned check without settling for it. A paying bank "finally pays" (becomes accountable for) a check if it doesn't settle for or return the check by the applicable deadline. A depository bank is obligated to "pay" for a returned check under § 229.32(b) but may not return the returned check. The depository bank can meet its obligations under § 229.32(b) only by settling for the returned check. Therefore, the depository bank cannot "finally pay" for a returned check without settling for it. The Board proposed to amend § 229.39(b) and revise the accompanying commentary to clarify this distinction. The Board did not receive any comments to this proposal. Accordingly, the Board has adopted the amendment and revision as proposed.

Preference against presenting bank (section 229.39(d)). Section 229.39(d) gives a paying bank a preferred claim against a closed presenting bank in the

event that the presenting bank breaches an amount or encoding warranty as provided in § 229.34(c) (1) or (3) and does not reimburse the paying bank for adjustments for a settlement made by the paying bank in excess of the value of the checks presented. This preference is intended to have the effect of a perfected security interest and is intended to put the paying bank in the position of a secured creditor for purposes of the receivership provisions of the Federal Deposit Insurance Act and similar provisions of state law.

The Board added § 229.39(d) in 1992, as part of the "same-day settlement" amendments to Regulation CC (57 FR 46956, October 14, 1992). At that time, some commenters suggested that the preferred claim should extend to claims other than adjustments, such as breach of a U.C.C. presentment warranty (such as warranties against forged or missing indorsements and alterations). At that time, the Board noted that a preferred claim against a failed presenting bank for forgeries, missing indorsements, and alterations may reduce risk to the paying bank. That risk, however, was not directly related to the obligation to make same-day settlement and was not addressed in the original proposal; therefore, the Board did not adopt the commenters' suggestion at that time. The Board requested comment on whether § 229.39(d) should be expanded to cover the U.C.C. presentment warranties.

The Board received six comments in response to this proposal. Four of the commenters expressed support for the proposal. One commenter stated that the proposal should not be limited to the paying bank, but should be broadened to consider whether such a preference would be desirable for the benefit of collecting banks, returning banks, and depository banks that receive U.C.C. and Regulation CC warranties. One commenter opposed the proposal, stating that although preferred claims against failed presenting banks may reduce risk to paying banks, that risk is not related to the obligation to make same-day settlement. For this latter reason, the Board determined that § 229.39(d) should be narrowly targeted to warranties related to same-day settlement situations (amount and encoding). Accordingly, the Board determined not to adopt the proposal.

Exclusions (section 229.42). The regulation exempts certain checks from the expeditious-return and notice-of-nonpayment requirements (such as a check drawn upon the United States Treasury, a U.S. Postal Service money order, or a check drawn on a state or a unit of general local government that is

not payable through or at a bank). The Board proposed to amend the regulation to reflect that such checks are also exempt from the same-day settlement requirements of § 229.36(f). The Board received six comments on the proposal. Three commenters supported the proposal. Three commenters opposed the proposal, stating that no justification exists for the existing exclusion of these checks from the expeditious-return and notice-of-nonpayment requirements. The exclusion provision has been in effect since the regulation was adopted in 1988. At that time, the Board noted that handling of Treasury checks is governed by Treasury rules and that the Board's authority over state and local government checks is not clear. For these reasons, the Board has adopted the amendment as proposed.

Checks payable in Guam, American Samoa, and the Northern Mariana Islands (section 229.43). The Board has received inquiries as to the applicability of Regulation CC to checks drawn on depository institutions located in Guam, American Samoa, and the Northern Mariana Islands ("Pacific island banks"). For purposes of the Board's Regulation J, which governs collection of checks through Federal Reserve Banks, Pacific island banks are deemed to be in the Twelfth Federal Reserve District. Some checks drawn on these institutions ("Pacific island checks") bear U.S. routing numbers and are generally handled by banks in the U.S. in the same manner as other checks.

Because the Act does not include Guam, American Samoa, or the Northern Mariana Islands in the definition of "United States," Pacific island banks are not "banks" and Pacific island checks are not "checks" as defined in Regulation CC. Banks often handle Pacific island checks in the same manner as other checks, however. The Board believes that applying some of the provisions of subpart C to Pacific island checks would provide an appropriate legal framework for the handling of these checks. The Board proposed to add a new § 229.43 to the regulation and accompanying commentary to set forth the provisions of subpart C that apply to checks drawn on Pacific island banks.

The Board received five comments on this proposal, generally supporting the proposal. The Board had proposed that Pacific island checks not be subject to expeditious-return requirements and that depository banks receiving notice of nonpayment of Pacific island checks not be subject to the requirements of § 229.33(d) for timely notice to customers. The Board specifically sought comment on these two issues. Two commenters agreed that the

expeditious-return requirements should not be applied to returning banks returning Pacific Island checks. One commenter believed that § 229.33(d) should apply to Pacific island checks because these checks frequently take longer to be dishonored. The Board's purpose in adopting § 229.43, however, is to empower banks to handle Pacific island checks in the same manner as other checks (for example, to make direct returns of such checks) and not to add new requirements or liability with respect to these checks except insofar as is necessary to ensure the proper functioning of the check collection system. The Board, therefore, has not applied § 229.33(d) or the expeditious-return rules to Pacific island checks.

Another commenter expressed support for the proposal, but stated that the proposal should not be limited to "negotiable" checks since Subpart C of Regulation CC also applies to nonnegotiable checks pursuant to § 229.2(k). The Board adopted the changes generally as proposed but has modified the proposal to cover nonnegotiable checks.

Model Forms (Appendix C). The Board proposed to make technical and stylistic changes to facilitate use of the model forms and received several suggestions for additional improvements. One commenter suggested that the model availability policy disclosures would be clearer if the first sentence indicated that the policy applies to deposits of both cash and checks. The commenter also suggested that models C-4 and C-5 would be clearer if, in the section on deposits not made in person, the disclosure read "the day we receive your deposit" instead of "the day of your deposit." Models C-1 through C-5 have been modified accordingly. The commenter further suggested that the Board insert the word "generally" before any statement of when funds will be available, if the statement is subject to exceptions. The Board believes that the heading "longer delays may apply" provides a sufficient warning and did not adopt this suggestion.

Another commenter suggested that the model disclosures indicate that a bank has the discretion to implement a new account exception hold under section 229.13. As indicated in the commentary to section 229.16(a), the disclosure provided by a bank must reflect the availability policy followed in most cases, and if a bank has a policy of imposing delays in availability on any customers longer than those specified in its disclosure, those customers must receive disclosures that reflect the longer applicable availability

periods. Thus, if a bank places new account holds just on particular classes of checks, such as checks over a certain amount, that policy should be reflected in the account disclosures. If a bank has a policy of placing new account holds on the accounts of certain customers, the disclosure provided to those customers should reflect that practice. The Board does not believe that additional model forms are necessary.

One commenter requested that the Board amend model notices C-17 and C-18 concerning notices at locations where employees accept consumer deposits. The commenter requested that the Board add language indicating that this notice applies only to deposits made at that location and to accounts maintained at that location. Although the Board has revised the commentary to section 229.18(b) to clarify that a lobby notice need only describe the bank's availability policy for that branch, the Board does not believe that the lobby notice needs to contain such a limitation. A bank may add such a limitation, however, if it chooses.

The Board also requested comment on whether any models in addition to those currently in Appendix C would be helpful. One commenter stated that additional models are not necessary, while another commenter stated that the models should include a model clause for inclusion in the availability policy disclosures of banks in contractual branch arrangements. If a bank's availability policy disclosure does not apply to deposits at other locations (deposits at contractual or other branches in different check processing regions, for example) the disclosure should note that fact, or if a bank follows a case-by-case hold policy, it could use the case-by-case hold provisions. The Board has adopted a new model clause C-11A (Availability of funds deposited at other locations), for banks that base the availability of funds on the location where the funds are deposited. The Board has also adopted commentary to that clause.

The Board proposed the following additional changes to the models.

Model C-3 Next-day availability, case-by-case holds to statutory limits, and § 229.13 exceptions. The Board proposed to revise Model C-3 to clarify the availability of funds subject to a hold. Generally, the first \$100 is available on the first business day after the day of deposit. The first \$100 is not available, however, if the funds are subject to an exception hold under § 229.13 other than a large deposit exception. The Board received two comments on this proposal. One commenter supported the proposal. The

other commenter suggested that the Board enumerate the circumstances in which the \$100 would not be available. Because the availability of that \$100 depends on the type of the hold, it is not possible to provide concise additional guidance, and the Board believes that a lengthy explanation would not be useful. Accordingly, the Board has adopted the model substantively as proposed.

Model C-5 Holds to statutory limits on all deposits. The Board proposed to revise Model C-5 to facilitate use of the form by banks that elect to impose the limitation on withdrawals by cash under § 229.12(d). One commenter suggested the Board include a cross-reference to the section on local checks the first time the phrase "local check" is used. Because the disclosure is relatively short, the Board does not believe that a cross reference is necessary and has adopted the model substantively as proposed.

Model C-10 Cash withdrawal limitation. The Board proposed to revise Model C-10 to facilitate the incorporation of the clause into the various model availability policy disclosures. The Board received no comments on this proposal and has adopted the model as proposed.

Model C-12 Exception hold notice. The Board proposed to revise Model C-12 to clarify that the optional provision concerning overdraft or returned check fees applies only to the last category of reasons, reasonable cause to doubt collectibility. In addition, to reflect the change to § 229.13(g)(1)(i)(B), the Board proposed to delete the reference to the amount of the deposit. One commenter requested that the Board add natural disasters to the examples of emergency conditions. The Board believes that additional examples are unnecessary and has adopted the model as proposed.

Model C-13 Reasonable cause hold notice. To reflect the change to § 229.13(g)(1)(i)(B), the Board proposed to delete the reference to the amount of the deposit. The Board received no comments on the model notice, and has adopted it as proposed.

Model C-16 Case-by-case hold notice. The Board proposed to revise the model notice to incorporate optional language for banks that elect to impose the cash withdrawal limitation. In addition, to reflect the change to § 229.16(c)(2)(i)(B), the Board proposed to delete the reference to the amount of the deposit. The Board received no comments on the model notice, and has adopted it as proposed.

Commentary to model forms. The Board proposed to make technical and stylistic changes to the Commentary to

the model disclosures, clauses, and notices. For example, the Board proposed to clarify that the Act's protection from liability for banks that use the models properly applies to the model clauses and notices as well as to the model disclosures. The Board also proposed to revise the commentary to Models C-2 through C-5 to clarify that in disclosing that a longer delay may apply, a bank may disclose when funds will be generally available based on when the funds would be available if the deposit were of a nonlocal check. Finally, the Board proposed to revise the commentary to model notices C-12 through C-16 to clarify that a bank should modify the notices if it places a hold on other funds. One commenter requested additional guidance on how to modify the notices if it places a hold on other funds. The commentary to Model Notices C-12 through C-21 has been revised to provide specific wording a bank could use to modify the notices.

Another commenter recommended that the Board clarify that if a bank does not have a cut-off hour prior to its closing, it need not disclose a cut-off hour. The introductory commentary to the models has been modified accordingly, as has the commentary to § 229.16(b), as discussed above.

Civil liability. Banks that use earlier versions of the models are protected from civil liability under § 229.21(e), but are encouraged to use new versions when reordering or reprinting supplies.

III. Final Regulatory Flexibility Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

The final amendments will apply to all depository institutions, regardless of size, and represent relatively small changes to the existing rule. The amendments should not have a negative economic impact on small institutions, and, therefore, there were no significant alternatives that would have minimized the economic impact on those institutions. The amendments will clarify rights and duties of depository

institutions and, in some cases, reduce economic burden on all affected entities.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements amended in this rule are found in 12 CFR 229.13, 229.16(c), 229.34(f), 229.36(e), and Appendix C. This information is intended to alert consumers about their financial institutions' checkhold policies and to help prevent unintentional (and costly) overdrafts. The respondents are for-profit financial institutions, including small businesses. The Board's Regulation CC applies to all types of depository institutions, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Any estimates of paperwork burden for institutions other than state member banks that would be affected by the amendments would be provided by the federal agency or agencies that supervise those lenders.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0235.

The amendments are not expected to change the ongoing annual burden. The estimated burden per response ranges from 3 minutes (for a notice of exception, a case-by-case hold notice, or a notice to a potential new customer or to any person upon request) to 20 hours for notices of changes in policy. There are 1,042 state member banks and an average frequency of 3,314 responses per respondent each year. The total amount of annual burden is estimated to be 183,711 hours. Based on an hourly cost of \$20, the annual cost to the public is estimated to be \$3,674,220. There is not estimated to be any annual cost burden over the annual hour burden.

Additionally, the Federal Reserve estimated that there would be associated capital or start up cost in the amount of \$80 per bank for revising the notices to conform with the new model availability policy disclosures, clauses, and notices when a bank exhausts its current supply. The Board received one comment from a commercial bank which pointed out that "many financial institutions deliver these disclosures to

their customers either in pre-printed format, with other account rules or information, or in computer format. This commenter further stated that "in terms of creation of documents, review and final drafting, printing and forms destruction, the costs of the revisions . . . will exceed \$10,000 for large financial institutions." The notice of proposed rulemaking stated on page 27806 that "banks that use earlier versions of the model forms would be protected from civil liability under § 229.21(e), but would be encouraged to use new versions when reordering or reprinting new supplies." This final rule makes the same statement in the "Supplementary Information" section, before the section-by-section analysis. The regulation does not require destruction or disposal of any notices currently in use. The \$80 cost estimate is intended to represent only the costs associated with complying with the revisions to disclosure requirements in the regulation, not the cost of complying with the regulation on an on-going basis. Since, as the commenter pointed out, the Board's revision of twelve model disclosures will cause many financial institutions to revise more than twelve of its disclosures, forms, and computer programs, the Board is revising its estimate of the one-time cost of complying with the revisions to \$400 per state member bank, for a total of \$416,800.

Because the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises. The disclosure of information to consumers with regard to the availability of funds is available to the public. The account information regarding the availability of funds in an individual's account is confidential between the institution and the consumer.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0235), Washington, DC 20503.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 12 CFR Part 229 is amended as set forth below:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

2. In § 229.2, the first sentence in paragraph (e) concluding text is revised, paragraph (s) is revised, paragraph (pp) is redesignated as paragraph (qq), and a new paragraph (pp) is added to read as follows:

§ 229.2 Definitions.

* * * * *
(e) * * *

For purposes of subpart C of this part and, in connection therewith, this subpart A, the term *bank* also includes any person engaged in the business of banking, as well as a Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit of general local government acts as a paying bank. * * *

(s) *Local paying bank* means a paying bank that is located in the same check-processing region as the physical location of the branch, contractual branch, or proprietary ATM of the depository bank in which that check was deposited.

(pp) *Contractual branch*, with respect to a bank, means a branch of another bank that accepts a deposit on behalf of the first bank.

3. Section 229.13 is amended as follows:

- a. In paragraphs (g)(1) introductory text and (g)(1)(ii)(A), the phrase "paragraphs (b) through (f)" is revised to read "paragraphs (b) through (e)";
- b. Paragraphs (g)(1)(i)(B) and (g)(1)(i)(E) are revised;
- c. Paragraph (g)(1)(ii)(B) is removed and the paragraph designation (g)(1)(ii)(A) is removed;
- d. Paragraph (g)(4) is redesignated as paragraph (g)(5) and new paragraph (g)(4) is added; and
- e. Paragraph (h)(4) is revised.

The addition and revisions read as follows:

§ 229.13 Exceptions.

- (g) Notice of exception—(1) * * *
- (i) * * *
- (B) The date of the deposit;

(E) The time period within which the funds will be available for withdrawal.

(4) Emergency conditions exception notice. When a depository bank extends the time when funds will be available for withdrawal based on the application of the emergency conditions exception contained in paragraph (f) of this section, it must provide the depositor with notice in a reasonable form and within a reasonable time given the circumstances. The notice shall include the reason the exception was invoked and the time period within which funds shall be made available for withdrawal, unless the depository bank, in good faith, does not know at the time the notice is given the duration of the emergency and, consequently, when the funds must be made available. The depository bank is not required to provide a notice if the funds subject to the exception become available before the notice must be sent.

(h) Availability of deposits subject to exceptions.

(4) For the purposes of this section, a "reasonable period" is an extension of up to one business day for checks described in § 229.10(c)(1)(vi), five business days for checks described in § 229.12(b) (1) through (4), and six business days for checks described in § 229.12(c) (1) and (2) or § 229.12(f). A longer extension may be reasonable, but the bank has the burden of so establishing.

4. Section § 229.16(c)(2)(i)(B) is revised to read as follows:

§ 229.16 Specific availability policy disclosure.

(c) Longer delays on a case-by-case basis.

(2) (i) (B) The date of the deposit;

5. In § 229.19, paragraph (a)(1) and the first sentence of paragraph (a)(5)(ii) are revised to read as follows:

§ 229.19 Miscellaneous.

(1) Funds deposited at a staffed facility, ATM, or contractual branch are considered deposited when they are received at the staffed facility, ATM, or contractual branch;

(ii) After a cut-off hour set by the depository bank for the receipt of deposits of 2:00 p.m. or later, or, for the receipt of deposits at ATMs, contractual

branches, or off-premise facilities, of 12:00 noon or later.

6. In § 229.30, paragraph (c) is revised to read as follows:

§ 229.30 Paying bank's responsibility for return of checks.

(c) Extension of deadline. The deadline for return or notice of nonpayment under the U.C.C. or Regulation J (12 CFR part 210), or § 229.36(f)(2) is extended to the time of dispatch of such return or notice of nonpayment where a paying bank uses a means of delivery that would ordinarily result in receipt by the bank to which it is sent—

(1) On or before the receiving bank's next banking day following the otherwise applicable deadline, for all deadlines other than those described in paragraph (c)(2) of this section; this deadline is extended further if a paying bank uses a highly expeditious means of transportation, even if this means of transportation would ordinarily result in delivery after the receiving bank's next banking day; or

(2) Prior to the cut-off hour for the next processing cycle (if sent to a returning bank), or on the next banking day (if sent to the depository bank), for a deadline falling on a Saturday that is a banking day (as defined in the applicable U.C.C.) for the paying bank.

7. In § 229.34, the section heading and paragraph (c)(4) are revised and a new paragraph (f) is added to read as follows:

§ 229.34 Warranties.

(c) Warranty of settlement amount, encoding, and offset.

(4) If a bank settles with another bank for checks presented, or for returned checks for which it is the depository bank, in amount exceeding the total amount of the checks, the settling bank may set off the excess settlement amount against subsequent settlements for checks presented, or for returned checks for which it is the depository bank, that it receives from the other bank.

(f) Notice of claim. Unless a claimant gives notice of a claim for breach of warranty under this section to the bank that made the warranty within 30 days after the claimant has reason to know of the breach and the identity of the warranting bank, the warranting bank is discharged to the extent of any loss caused by the delay in giving notice of the claim.

8. In § 229.36, the heading and the last sentence of paragraph (c) and paragraph (e)(1)(ii) are revised to read as follows:

§ 229.36 Presentment and issuance of checks.

(c) Electronic presentment. An electronic presentment agreement may not extend return times or otherwise vary the requirements of this part with respect to parties interested in the check that are not party to the agreement.

(e) Issuance of payable-through checks.

(ii) The words "payable through" followed by the name of the payable-through bank.

9. In § 229.39, paragraph (b) is revised to read as follows:

§ 229.39 Insolvency of bank.

(b) Preference against paying or depository bank. If a paying bank finally pays a check, or if a depository bank becomes obligated to pay a returned check, and suspends payment without making a settlement for the check or returned check with the prior bank that is or becomes final, the prior bank has a preferred claim against the paying bank or the depository bank.

10. Section 229.42 is revised to read as follows:

§ 229.42 Exclusions.

The expeditious-return (§§ 229.30(a) and 229.31(a)), notice-of-nonpayment (§ 229.33), and same-day settlement (§ 229.36(f)) requirements of this subpart do not apply to a check drawn upon the United States Treasury, to a U.S. Postal Service money order, or to a check drawn on a state or a unit of general local government that is not payable through or at a bank.

11. A new § 229.43 is added to read as follows:

§ 229.43 Checks payable in Guam, American Samoa, and the Northern Mariana Islands.

(a) Definitions. The definitions in § 229.2 apply to this section, unless otherwise noted. In addition, for the purposes of this section—

(1) Pacific island bank means an office of an institution that would be a bank as defined in § 229.2(e) but for the fact that the office is located in Guam, American Samoa, or the Northern Mariana Islands;

(2) Pacific island check means a demand draft drawn on or payable

through or at a Pacific island bank, which is not a check as defined in § 229.2(k).

(b) *Rules applicable to Pacific island checks.* To the extent a bank handles a Pacific island check as if it were a check defined in § 229.2(k), the bank is subject to the following sections of this part (and the word "check" in each such section is construed to include a Pacific island check)—

(1) § 229.31, except that the returning bank is not subject to the requirement to return a Pacific island check in an expeditious manner;

(2) § 229.32;

(3) § 229.34(c)(2), (c)(3), (d), and (e);

(4) § 229.35; for purposes of § 229.35(c), the Pacific island bank is deemed to be a bank;

(5) § 229.36(d);

(6) § 229.37;

(7) § 229.38(a) and (c) through (h);

(8) § 229.39(a), (b), (c) and (e); and

(9) §§ 229.40 through 229.42.

12. Appendix C to Part 229 is amended as follows:

a. The appendix heading is revised;

b. The introductory text is revised;

c. The heading above the contents listing for models C-1 through C-5 is revised;

d. A new item is added to the end of the contents listing for Model Clauses;

e. The heading immediately above model policy disclosure "C-1—Next-day availability" is revised; and

f. Model Availability Policy Disclosures C-1 through C-5, Model Clauses C-9 and C-10, and Model Notices C-12 through C-16 are revised, and a new Model Clause C-11A is added.

The revisions and additions read as follows:

Appendix C to Part 229—Model Availability Policy Disclosures, Clauses, and Notices

This Appendix contains model availability policy disclosures, clauses, and notices to facilitate compliance with the disclosure requirements of Regulation CC (12 CFR Part 229). Although use of these models is not required, banks using them properly to make disclosures required by the Regulation CC are deemed to be in compliance.

Model Availability Policy Disclosures

* * * * *

Model Clauses

* * * * *

C-11A Availability of Funds Deposited at Other Locations

* * * * *

Model Availability Policy Disclosures

C-1—Next-Day Availability

Your Ability to Withdraw Funds

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once the funds are available, you can withdraw them in cash and we will use them to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

C-2—Next-day availability and § 229.13 exceptions

Your Ability to Withdraw Funds

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified,

teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

C-3—Next-Day Availability, Case-by-Case Holds to Statutory Limits, and § 229.13 Exceptions

Your Ability To Withdraw Funds

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the fifth business day after the day of your deposit. The first \$100 of your deposits, however, may be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.

- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

C-4—Holds to Statutory Limits On All Deposits (Includes Chart)

Your Ability To Withdraw Funds

Our policy is to delay the availability of funds from your cash and check deposits. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

- U.S. Treasury checks that are payable to you.

- Wire transfers.
- Checks drawn on (*bank name*) [unless (*any limitations related to branches in different states or check processing regions*)].

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

- Cash.
- State and local government checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].

- Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].

- Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day we receive your deposit.

Other Check Deposits

To find out when funds from other check deposits will be available, look at the first four digits of the routing number on the check:

BILLING CODE 6210-01-P

Personal Check

_____ 19__

Pay to the
order of _____ | \$ _____
dollars

(Bank name and
Location)

123456789 0000000000 000 _____

Routing number

Business Check

Name of Company
Address, City, State

_____ 19__

Pay to the
order of _____ | \$ _____
dollars

(Bank name and
Location)

000000000 123456789 0000000000 000 _____

Routing number

BILLING CODE 6210-01-C

Some checks are marked "payable through" and have a four-or nine-digit number nearby. For these checks, use this four-digit number (or the first four digits of

the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Once you have determined the first

four digits of the routing number (1234 in the examples above), the following chart will show you when funds from the check will be available:

First four digits from routing number	When funds are available	When funds are available if a deposit is made on a Monday
[local numbers]	\$100 on the first business day after the day of your deposit Remaining funds on the second business day after the day of your deposit.	Tuesday. Wednesday.
All other numbers	\$100 on the first business day after the day of your deposit Remaining funds on the fifth business day after the day of your deposit	Tuesday. Monday of the following week.

If you deposit both categories of checks, \$100 from the checks will be available on the first business day after the day of your deposit, not \$100 from each category of check.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.

- You have overdrawn your account repeatedly in the last six months.
 - There is an emergency, such as failure of computer or communications equipment.
- We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we

receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be

available until the second business day after the day of your deposit.
 Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

C-5—Holds to Statutory Limits on All Deposits

Your Ability To Withdraw Funds

Our policy is to delay the availability of funds from your cash and check deposits. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider

that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

- U.S. Treasury checks that are payable to you.
 - Wire transfers.
 - Checks drawn on (*bank name*) [unless (*any limitations related to branches in different states or check processing regions*)].
- If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:
- Cash.

- State and local government checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].

- Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].

- Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day we receive your deposit.

Other Check Deposits

The delay for other check deposits depends on whether the check is a local or a nonlocal check. To see whether a check is a local or a nonlocal check, look at the routing number on the check:

BILLING CODE 6210-01-P

Personal Check

_____ 19__

Pay to the order of _____ | \$ _____

dollars

(Bank name and Location)

123456789 0000000000 000 _____

Routing number

Business Check

Name of Company
 Address, City, State

_____ 19__

Pay to the order of _____ | \$ _____

dollars

(Bank name and Location)

000000000 123456789 0000000000 000 _____

Routing number

BILLING CODE 6210-01-C

If the first four digits of the routing number (1234 in the examples above) are (*list of local numbers*), then the check is a local check. Otherwise, the check is a nonlocal check. Some checks are marked "payable through" and have a four-or nine-digit number nearby. For these checks, use the four-digit number

(or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make funds from local and nonlocal checks available as follows.

1. Local checks. The first \$100 from a deposit of local checks will be available on

the first business day after the day of your deposit. The remaining funds will be available on the second business day after the day of your deposit.

For example, if you deposit a local check of \$700 on a Monday, \$100 of the deposit is available on Tuesday. The remaining \$600 is available on Wednesday.

2. Nonlocal checks. The first \$100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the fifth business day after the day of your deposit.

For example, if you deposit a \$700 nonlocal check on a Monday, \$100 of the deposit is available on Tuesday. The remaining \$600 is available on Monday of the following week.

Longer Delays May Apply

Funds you may deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit. If you deposit both categories of checks, \$100 from the checks will be available on the first business day after the day of your deposit, not \$100 from each category of check.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

Model Clauses

* * * * *

C-9—Automated Teller Machine Deposits (Extended Hold)

Deposits at Automated Teller Machines

Funds from any deposits (cash or checks) made at automated teller machines (ATMs) we do not own or operate will not be available until the fifth business day after the day of your deposit. This rule does not apply at ATMs that we own or operate.

(A list of our ATMs is enclosed. or A list of ATMs where you can make deposits but that are not owned or operated by us is enclosed. or All ATMs that we own or operate are identified as our machines.)

C-10—Cash Withdrawal Limitation

Cash Withdrawal Limitation

We place certain limitations on withdrawals in cash. In general, \$100 of a deposit is available for withdrawal in cash on the first business day after the day of deposit. In addition, a total of \$400 of other funds becoming available on a given day is available for withdrawal in cash at or after (*time no later than 5:00 p.m.*) on that day. Any remaining funds will be available for withdrawal in cash on the following business day.

* * * * *

C-11A—Availability of Funds Deposited at Other Locations

Deposits at Other Locations

This availability policy only applies to funds deposited at (*location*). Please inquire for information about the availability of funds deposited at other locations.

Model Notices

C-12—Exception Hold Notice

Notice of Hold

Account number: (*number*)
Date of deposit: (*date*)

We are delaying the availability of \$(*amount being held*) from this deposit. These funds will be available on the (*number*) business day after the day of your deposit.

We are taking this action because:

- A check you deposited was previously returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- The checks you deposited on this day exceed \$5,000.
- An emergency, such as failure of computer or communications equipment, has occurred.
- We believe a check you deposited will not be paid for the following reasons [*]:

[*If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (*description of procedure for obtaining refund*).]

C-13—Reasonable Cause Hold Notice

Notice of Hold

Account number: (*number*)
Date of deposit: (*date*)

We are delaying the availability of the funds you deposited by the following check: (*description of check, such as amount and drawer*).

These funds will be available on the (*number*) business day after the day of your

deposit. The reason for the delay is explained below:

- We received notice that the check is being returned unpaid.
- We have confidential information that indicates that the check may not be paid.
- The check is drawn on an account with repeated overdrafts.
- We are unable to verify the endorsement of a joint payee.
- Some information on the check is not consistent with other information on the check.
- There are erasures or other apparent alterations on the check.
- The routing number of the paying bank is not a current routing number.
- The check is postdated or has a stale date.
- Information from the paying bank indicates that the check may not be paid.
- We have been notified that the check has been lost or damaged in collection.
- Other:

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (*description of procedure for obtaining refund*).]

C-14—One-Time Notice for Large Deposit and Redeposited Check Exception Holds

Notice of Hold

If you deposit into your account:

- Checks totaling more than \$5,000 on any one day, the first \$5,000 deposited on any one banking day will be available to you according to our general policy. The amount in excess of \$5,000 will generally be available on the (*number*) business day after the day of deposit for checks drawn on (*bank name*), the (*number*) business day after the day of deposit for local checks and (*number*) business day after the day of deposit for nonlocal checks. If checks (not drawn on us) that otherwise would receive next-day availability exceed \$5,000, the excess will be treated as either local or nonlocal checks depending on the location of the paying bank. If your check deposit, exceeding \$5,000 on any one day, is a mix of local checks, nonlocal checks, checks drawn on (*bank name*), or checks that generally receive next-day availability, the excess will be calculated by first adding together the (*type of check*), then the (*type of check*), then the (*type of check*), then the (*type of check*).

- A check that has been returned unpaid, the funds will generally be available on the (*number*) business day after the day of deposit for checks drawn on (*bank name*), the (*number*) business day after the day of deposit for local checks and the (*number*) business day after the day of deposit for nonlocal checks. Checks (not drawn on us) that otherwise would receive next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

C-15—One-Time Notice for Repeated Overdraft Exception Hold

Notice of Hold

Account Number: (number) Date of Notice: (date)

We are delaying the availability of checks deposited into your account due to repeated overdrafts of your account. For the next six months, deposits will generally be available on the (number) business day after the day of your deposit for checks drawn on (bank name), the (number) business day after the day of your deposit for local checks, and the (number) business day after the day of deposit for nonlocal checks. Checks (not drawn on us) that otherwise would have received next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

C-16—Case-by-Case Hold Notice

Notice of Hold

Account number: (number) Date of deposit: (date)

We are delaying the availability of \$(amount being held) from this deposit. These funds will be available on the (number) business day after the day of your deposit [(subject to our cash withdrawal limitation policy)].

If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (description of procedure for obtaining refund).]

* * * * *

13. In appendix E to Part 229, under section II,

a. In paragraph E.2., the last sentence is revised;

b. Paragraph S.1. is revised;

c. In paragraph HH.2., the last sentence is revised; and

d. A new paragraph PP. is added. The revisions and additions read as follows:

Appendix E to Part 229—Commentary

* * * * *

II. Section 229.2 Definitions

* * * * *

E. 229.2(d) Available for Withdrawal

* * * * *

2. * * * For example, a bank does not violate its obligations under this subpart by holding funds to satisfy a garnishment, tax levy, or court order restricting disbursements from the account; or to satisfy the customer's liability arising from the certification of a check, sale of a cashier's or teller's check, guaranty or acceptance of a check, or similar transaction to be debited from the customer's account.

* * * * *

S. 229.2(s) Local Paying Bank

1. "Local paying bank" is defined as a paying bank located in the same check-processing region as the branch, contractual branch, or proprietary ATM of the depository bank. For example, a check deposited at a contractual branch would be deemed local or nonlocal based on the location of the contractual branch with respect to the location of the paying bank.

* * * * *

HH. 229.2(hh) Traveler's Check

* * * * *

2. * * * Sometimes traveler's checks that are not issued by banks do not have any words on them identifying a bank as drawee or paying agent, but instead bear unique routing numbers with an 8000 prefix that identifies a bank as paying agent.

* * * * *

PP. 229.2(pp) Contractual Branch

1. When one bank arranges for another bank to accept deposits on its behalf, the second bank is a contractual branch of the first bank. For further discussion of contractual branch deposits and related disclosures, see §§ 229.2(s) and 229.19(a) of the regulation and the commentary to §§ 229.2(s), 229.10(c), 229.14(a), 229.16(a), 229.18(b), and 229.19(a).

* * * * *

14. In appendix E, under section IV, in paragraph D.3.a., two new sentences are added to the end of the paragraph to read as follows:

* * * * *

IV. Section 229.10 Next-Day Availability

* * * * *

D. 229.10(c) Certain Check Deposits

* * * * *

3. * * *

a. * * * Employees of a contractual branch would not be considered employees of the depository bank for the purposes of this regulation, and deposits at contractual branches would be treated the same as deposits to a proprietary ATM for the purposes of this regulation. (See also, Commentary to § 229.19(a).)

* * * * *

15. In appendix E, under section VII:

a. In paragraph H.1.a, the first sentence is revised and two new sentences are added to the end of the paragraph;

b. Paragraph H.1.e. is removed and paragraph H.1.f. is redesignated as paragraph H.1.e.;

c. Paragraph H.4. is redesignated as paragraph H.5. and new paragraph H.4. is added;

d. The second sentence in paragraph I.1. is revised; and e. The first sentence in paragraph I.4. is revised.

The additions and revisions read as follows:

* * * * *

VII. Section 229.13 Exceptions

* * * * *

H. 229.13(g) Notice of Exception

1. * * *

a. If a depository bank invokes any of the safeguard exceptions to the schedules listed above, other than the new account or emergency conditions exception, and extends the hold on a deposit beyond the time periods permitted in §§ 229.10(c) and 229.12, it must provide a notice to its customer.

* * * A depository bank satisfies the written notice requirement by sending an electronic notice that displays the text and is in a form that the customer may keep, if the customer agrees to such means of notice. Information is in a form that the customer may keep if, for example, it can be downloaded or printed.

* * * * *

4. Emergency conditions exception notice.

a. If an account is subject to the emergency conditions exception under § 229.13(f), the depository bank must provide notice in a reasonable form within a reasonable time, depending on the circumstances. For example, a depository bank may learn of a weather emergency or a power outage that affects the paying bank's operations. Under these circumstances, it likely would be reasonable for the depository bank to provide an emergency conditions exception notice in the same manner and within the same time as required for other exception notices. On the other hand, if a depository bank experiences a weather or power outage emergency that affects its own operations, it may be reasonable for the depository bank to provide a general notice to all depositors via postings at branches and ATMs, or through newspaper, television, or radio notices.

b. If the depository bank extends the hold placed on a deposit due to an emergency condition, the bank need not provide a notice if the funds would be available for withdrawal before the notice must be sent. For example, if on the last day of a hold period the depository bank experiences a computer failure and customer accounts cannot be updated in a timely fashion to reflect the funds as available balances, notices are not required if the funds are made available before the notices must be sent.

* * * * *

I. 229.13(h) Availability of Deposits Subject to Exceptions

1. * * * This provision establishes that an extension of up to one business day for "on us" checks, five business days for local checks, and six business days for nonlocal checks and checks deposited in a nonproprietary ATM is reasonable. * * *

* * * * *

4. One business day for "on us" checks, five business days for local checks, and six business days for nonlocal checks or checks deposited in a nonproprietary ATM, in addition to the time period provided in the schedule, should provide adequate time for the depository bank to learn of the nonpayment of virtually all checks that are returned. * * *

* * * * *

16. In appendix E, under section VIII, a new sentence is added to the end of paragraph A.1. to read as follows:

* * * * *

VIII. Section 229.14 Payment of Interest

A. 229.14(a) In General

1. * * * In the case of a deposit at a contractual branch, credit is received on the day the depository bank receives credit for the amount of the deposit, which may be different from the day the contractual branch receives credit for the deposit.

* * * * *

17. In appendix E, under section IX, two new sentences are added immediately following the second sentence of paragraph A.1. to read as follows:

* * * * *

IX. Section 229.15 General Disclosure Requirements

A. 229.15(a) Form of Disclosures

1. * * * A depository bank satisfies the written disclosure requirement by sending an electronic disclosure that displays the text and is in a form that the customer may keep, if the customer agrees to such means of disclosure. Information is in a form that the customer may keep if, for example, it can be downloaded or printed. * * *

* * * * *

18. In appendix E, under section X, three new sentences are added to the end of paragraph A.2., one new sentence is added to the end of paragraph B.6., and the last sentence of paragraph C.2.a. is revised to read as follows:

* * * * *

X. Section 229.16 Specific Availability Policy Disclosure

A. 229.16(a) General

* * * * *

2. * * * A bank may establish different availability policies for different groups of customers, such as customers in a particular geographic area or customers of a particular branch. For purposes of providing a specific availability policy, the bank may allocate customers among groups through good faith use of a reasonable method. A bank may also establish different availability policies for deposits at different locations, such as deposits at a contractual branch.

* * * * *

B. 229.16(b) Content of Specific Policy Disclosure

* * * * *

6. * * * If a bank does not have a cut-off time prior to its closing time, the bank need not disclose a cut-off time.

* * * * *

C. 229.16(c) Longer Delays on a Case-by-Case Basis

* * * * *

2. * * *

a. * * * In addition, the notice must include the account number, the date of the

deposit, and the amount of the deposit being delayed.

* * * * *

19. In appendix E, under section XII, a sentence is added to the end of paragraph B.1. to read as follows:

XII. Section 229.18 Additional Disclosure Requirements

* * * * *

B. 229.18(b) Locations Where Employees Accept Consumer Deposits

1. * * * A bank that acts as a contractual branch at a particular location must include the availability policy that applies to its own customers but need not include the policy that applies to the customers of the bank for which it is acting as a contractual branch.

* * * * *

20. In appendix E, under section XIII, two new sentences are added immediately following the first sentence of paragraph A.2., the last four sentences of paragraph A.6.a. are revised, and a new sentence is added to the end of paragraph E.3. to read as follows:

XIII. Section 229.19 Miscellaneous

A. 229.19(a) When Funds Are Considered Deposited

* * * * *

2. * * * Funds received at a contractual branch are considered deposited when received by a teller at the contractual branch or deposited into a proprietary ATM of the contractual branch. (See also, Commentary to § 229.10(c) on deposits made to an employee of the depository bank.) * * *

* * * * *

6. * * *

a. * * * For receipt of deposits at ATMs, contractual branches, or other off-premise facilities, such as night depositories or lock boxes, the depository bank may establish a cut-off hour of 12:00 noon or later (either local time of the branch or other location of the depository bank at which the account is maintained or local time of the ATM, contractual branch, or other off-premise facility). The depository bank must use the same timing method for establishing the cut-off hour for all ATMs, contractual branches, and other off-premise facilities used by its customers. The choice of cut-off hour must be reflected in the bank's internal procedures, and the bank must inform its customers of the cut-off hour upon request. This earlier cut-off for ATM, contractual branch, or other off-premise deposits is intended to provide greater flexibility in the servicing of these facilities.

* * * * *

E. 229.19(e) Holds on Other Funds

* * * * *

3. * * * When a customer cashes a check over the counter and the bank places a hold on an account of the customer, the bank must give whatever notice would have been required under §§ 229.13 or 229.16 had the check been deposited in the account.

* * * * *

21. In appendix E, under section XVI, a new sentence is added to the end of paragraphs C.1.a. and C.1.b. to read as follows:

* * * * *

XVI. Section 229.30 Paying Bank's Responsibility for Return of Checks

* * * * *

C. 229.30(c) Extension of Deadline

1. * * *

a. * * * This paragraph applies to the extension of all midnight deadlines except Saturday midnight deadlines (see paragraph C.1.b. of this appendix).

b. * * * This paragraph applies exclusively to the extension of Saturday midnight deadlines.

* * * * *

22. In appendix E, under section XVII, the second sentence of paragraph A.7.b. is revised to read as follows:

* * * * *

XVII. Section 229.31 Returning Bank's Responsibility for Return of Checks

A. 229.31(a) Return of Checks

* * * * *

7. * * *

b. * * * If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under § 229.38 for losses caused by any negligence or under § 229.34(c)(3) for breach of an encoding warranty. * * *

* * * * *

23. In appendix E, under section XX, the first sentence of paragraph A.1. and paragraph C.5. are revised, and a new paragraph F. is added as follows:

* * * * *

XX. Section 229.34 Warranties

A. 229.34(a) Warranty of Returned Check

1. This paragraph includes warranties that a returned check, including a notice in lieu of return, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the U.C.C. (subject to any claims or defenses under the U.C.C., such as breach of a presentment warranty), Regulation J (12 CFR part 210), or § 229.30(c); that the paying or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the original check has not been and will not be returned for payment. * * *

* * * * *

C. 229.34(c) Warranty of Settlement Amount, Encoding, and Offset

* * * * *

5. Paragraph (c)(4) provides that a paying bank or a depository bank may set off excess settlement paid to another bank against settlement owed to that bank for checks presented or returned checks received (for which it is the depository bank) subsequent to the excess settlement.

* * * * *

F. 229.34(f) Notice of Claim

1. This paragraph adopts the notice provisions of U.C.C. sections 4-207(d) and 4-208(e). The time limit set forth in this paragraph applies to notices of claims for warranty breaches only. As provided in § 229.38(g), all actions under this section must be brought within one year after the date of the occurrence of the violation involved.

* * * * *

24. In appendix E, section XXII is amended as follows:

a. Paragraph C. is revised; and

b. In paragraph E., the first sentence of paragraph E.1. is revised to read as follows:

* * * * *

XXII. Section 229.36 Presentment and Issuance of Checks

* * * * *

C. 229.36(c) Electronic Presentment

1. Under an electronic presentment agreement, presentment takes place when the paying bank receives an electronic transmission of information describing the check rather than upon delivery of the physical check. Electronic presentment agreements may include a variety of procedures in which the physical check is held (truncated) or delayed by the depository or collecting bank. U.C.C. 4-110 and 4-406(b) make express provision for truncation and electronic presentment.

2. This paragraph allows electronic presentment by agreement with the paying bank; however, such agreement may not prejudice the interests of other parties to the check. For example, an electronic presentment agreement may not extend the paying bank's time for return. Such an extension could damage the depository bank, which must make funds available to its customers under mandatory availability schedules.

* * * * *

E. 229.36(e) Issuance of Payable Through Checks

1. If a bank arranges for checks payable by it to be payable through another bank, it must require its customers to use checks that contain conspicuously on their face the name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable and the legend "payable through" followed by the name of the payable-through bank. * * *

* * * * *

25. In appendix E, section XXIV is amended as follows:

a. In paragraph A.2., the third sentence is revised; and

b. In paragraph D.2.b., the second sentence is removed and two new sentences are added immediately following the first sentence to read as follows:

* * * * *

XXIV. Section 229.38 Liability

A. 229.38(a) Standard of Care; Liability; Measure of Damages

* * * * *

2. * * * The measure of damages provided in this section (loss incurred up to amount of check, less amount of loss party would have incurred even if bank had exercised ordinary care) is based on U.C.C. 4-103(e) (amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care), as limited by 4-202(c) (bank is liable only for its own negligence and not for actions of subsequent banks in chain of collection). * * *

* * * * *

D. 229.38(d) Responsibility for Certain Aspects of Checks

* * * * *

2. * * *

b. * * * Under § 229.33(a), a paying bank that returns a check in the amount of \$2,500 or more must provide notice of nonpayment to the depository bank by 4:00 p.m. on the second business day following the banking day on which the check is presented to the paying bank. Even if a payable-through check in the amount of \$2,500 or more is not returned through the payable-through bank as quickly as would have been required had the check been received by the bank by which it is payable, the depository bank should not suffer damages unless it has not received timely notice of nonpayment. * * *

26. In appendix E, under section XXV, the first sentence in paragraph C.1. is revised to read as follows:

XXV. Section 229.39 Insolvency of Bank

* * * * *

C. 229.39(b) Preference Against Paying or Depository Bank

1. This paragraph gives a bank a preferred claim against a closed paying bank that finally pays a check without settling for it or a closed depository bank that becomes obligated to pay a returned check without settling for it. * * *

* * * * *

27. In appendix E, under section XXVIII, the first sentence of paragraph A. is revised to read as follows:

XXVIII. Section 229.42 Exclusions

A. Checks drawn on the United States Treasury, U.S. Postal Service money orders, and checks drawn on states and units of general local government that are presented directly to the state or unit of general local government and that are not payable through or at a bank are excluded from the coverage of the expeditious-return, notice-of-nonpayment, and same-day settlement requirements of subpart C of this part. * * *

* * * * *

28. In appendix E, section XXIX is redesignated as section XXX, a new section XXIX is added, and newly designated section XXX is revised to read as follows:

* * * * *

XXIX. Section 229.43 Checks Payable in Guam, American Samoa, and the Northern Mariana Islands

A. 229.43(a) Definitions

1. Bank offices in Guam, American Samoa, and the Northern Mariana Islands (which Regulation CC defines as Pacific island banks) do not meet the definition of bank in § 229.2(e) because they are not located in the United States. Some checks drawn on Pacific island banks (defined as Pacific island checks) bear U.S. routing numbers and are collected and returned by banks in the same manner as checks payable in the U.S.

B. 229.43(b) Rules Applicable to Pacific Island Checks

1. When a bank handles a Pacific island check as if it were a check as defined in § 229.2(k), the bank is subject to certain provisions of Regulation CC, as provided in this section. Because the Pacific island bank is not a bank as defined in § 229.2(e), it is not a paying bank as defined in § 229.2(z) (unless otherwise noted in this section). Pacific island banks are not subject to the provisions of Regulation CC.

2. A bank may agree to handle a Pacific island check as a returned check under § 229.31 and may convert the returned Pacific island check to a qualified returned check. The returning bank is not, however, subject to the expeditious-return requirements of § 229.31. The returning bank may receive the Pacific island check directly from a Pacific island bank or from another returning bank. As a Pacific island bank is not a paying bank under Regulation CC, § 229.31(c) does not apply to a returning bank settling with the Pacific island bank.

3. A depository bank that handles a Pacific island check is not subject to the provisions of subpart B of Regulation CC, including the availability, notice, and interest accrual requirements, with respect to that check. If, however, a bank accepts a Pacific island check for deposit (or otherwise accepts the check as transferee) and collects the Pacific island check in the same manner as other checks, the bank is subject to the provisions of § 229.32, including the provisions regarding time and manner of settlement for returned checks in § 229.32(b), in the event the Pacific island check is returned by a returning bank. If the depository bank receives the returned Pacific island check directly from the Pacific island bank, however, the provisions of § 229.32(b) do not apply, because the Pacific island bank is not a paying bank under Regulation CC. The depository bank is not subject to the notice of nonpayment provisions in § 229.33 for Pacific island checks.

4. Banks that handle Pacific island checks in the same manner as other checks are subject to the indorsement provisions of § 229.35. Section 229.35(c) eliminates the need for the restrictive indorsement "pay any bank." For purposes of § 229.35(c), the Pacific island bank is deemed to be a bank.

5. Pacific island checks will often be intermingled with other checks in a single cash letter. Therefore, a bank that handles Pacific island checks in the same manner as other checks is subject to the transfer warranty provision in § 229.34(c)(2)

regarding accurate cash letter totals and the encoding warranty in § 229.34(c)(3). A bank that acts as a returning bank for a Pacific island check is not subject to the warranties in § 229.34(a). Similarly, because the Pacific island bank is not a "bank" or a "paying bank" under Regulation CC, § 229.34(b), (c)(1), and (c)(4) do not apply. For the same reason, the provisions of § 229.36 governing paying bank responsibilities such as place of receipt and same-day settlement do not apply to checks presented to a Pacific island bank, and the liability provisions applicable to paying banks in § 229.38 do not apply to Pacific island banks. Section 229.36(d), regarding finality of settlement between banks during forward collection, applies to banks that handle Pacific island checks in the same manner as other checks, as do the liability provisions of § 229.38, to the extent the banks are subject to the requirements of Regulation CC as provided in this section, and §§ 229.37 and 229.39 through 229.42.

XXX. Appendix C—Model Availability Policy Disclosures, Clauses, and Notices

A. Introduction

1. Appendix C contains model disclosures, clauses, and notices that may be used by banks to meet their disclosure responsibilities under the regulation. Banks using the models properly will be in compliance with the regulation's disclosure requirements.

2. Information that must be inserted by a bank using the models is italicized within parentheses in the text of the models. Optional information is enclosed in brackets.

3. Banks may make certain changes to the format or content of the models, including deleting material that is inapplicable, without losing the Act's protection from liability for banks that use the models properly. For example, if a bank does not have a cut-off hour prior to its closing time, or if a bank does not take advantage of the § 229.13 exceptions, it may delete the references to those provisions. Changes to the models may not be so extensive as to affect the substance, clarity, or meaningful sequence of the models. Acceptable changes include, for example:

a. Using "customer" and "bank" instead of pronouns.

b. Changing the typeface or size.

c. Incorporating certain state law "plain English" requirements.

4. Shorter time periods for availability may always be substituted for time periods used in the models.

5. Banks may also add related information. For example, a bank may indicate that although funds have been made available to a customer and the customer has withdrawn them, the customer is still responsible for problems with the deposit, such as checks that were deposited being returned unpaid. Or a bank could include a telephone number to be used if a customer has an inquiry regarding a deposit.

6. Banks are cautioned against using the models without reviewing their own policies and practices, as well as state and federal laws regarding the time periods for availability of specific types of checks. A bank using the models will be in compliance

with the Act and the regulation only if the bank's disclosures correspond to its availability policy.

7. Banks that have used earlier versions of the models (such as those models that gave Social Security benefits and payroll payments as examples of preauthorized credits available the day after deposit, or that did not address the cash withdrawal limitation) are protected from civil liability under § 229.21(e). Banks are encouraged, however, to use current versions of the models when reordering or reprinting supplies.

B. Model Availability Policy Disclosures, Models C-1 Through C-5

1. Models C-1 through C-5 generally.

a. Models C-1 through C-5 are models for the availability policy disclosures described in § 229.16. The models accommodate a variety of availability policies, ranging from next-day availability to holds to statutory limits on all deposits. Model C-3 reflects the additional disclosures discussed in §§ 229.16 (b) and (c) for banks that have a policy of extending availability times on a case-by-case basis.

b. As already noted, there are several places in the models where information must be inserted. This information includes the bank's cut-off times, limitations relating to next-day availability, and the first four digits of routing numbers for local banks. In disclosing when funds will be available for withdrawal, the bank must insert the ordinal number (such as first, second, etc.) of the business day after deposit that the funds will become available.

c. Models C-1 through C-5 generally do not reflect any optional provisions of the regulation, or those that apply only to certain banks. Instead, disclosures for these provisions are included in Models C-6 through C-11A. A bank using one of the model availability policy disclosures should also consider whether it must incorporate one or more of Models C-6 through C-11A.

d. While § 229.10(b) requires next-day availability for electronic payments, Treasury regulations (31 CFR part 210) and ACH association rules require that preauthorized credits ("direct deposits") be made available on the day the bank receives the funds. Models C-1 through C-5 reflect these rules. Wire transfers, however, are not governed by Treasury or ACH rules, but banks generally make funds from wire transfers available on the day received or on the business day following receipt. Banks should ensure that their disclosures reflect the availability given in most cases for wire transfers.

2. *Model C-1 Next-day availability.* A bank may use this model when its policy is to make funds from all deposits available on the first business day after a deposit is made. This model may also be used by banks that provide immediate availability by substituting the word "immediately" in place of "on the first business day after the day we receive your deposit."

3. *Model C-2 Next-day availability and § 229.13 exceptions.* A bank may use this model when its policy is to make funds from all deposits available to its customers on the first business day after the deposit is made, and to reserve the right to invoke the new

account and other exceptions in § 229.13. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check.

4. *Model C-3 Next-day availability, case-by-case holds to statutory limits, and § 229.13 exceptions.* A bank may use this model when its policy, in most cases, is to make funds from all types of deposits available the day after the deposit is made, but to delay availability on some deposits on a case-by-case basis up to the maximum time periods allowed under the regulation. A bank using this model also reserves the right to invoke the exceptions listed in § 229.13. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check.

5. *Model C-4 Holds to statutory limits on all deposits.* A bank may use this model when its policy is to impose delays to the full extent allowed under § 229.12 and to reserve the right to invoke the § 229.13 exceptions. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check. Model C-4 uses a chart to show the bank's availability policy for local and nonlocal checks and Model C-5 uses a narrative description.

6. *Model C-5 Holds to statutory limits on all deposits.* A bank may use this model when its policy is to impose delays to the full extent allowed under § 229.12 and to reserve the right to invoke the § 229.13 exceptions. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check.

C. Model Clauses, Models C-6 Through C-11A

1. *Models C-6 through C-11A generally.* Certain clauses like those in the models must be incorporated into a bank's availability policy disclosure under certain circumstances. The commentary to each clause indicates when a clause similar to the model clause is required.

2. *Model C-6 Holds on other funds (check cashing).* A bank that reserves the right to place a hold on funds already on deposit when it cashes a check for a customer, as addressed in § 229.19(e), must incorporate this type of clause in its availability policy disclosure.

3. *Model C-7 Holds on other funds (other account).* A bank that reserves the right to place a hold on funds in an account of the customer other than the account into which the deposit is made, as addressed in § 229.19(e), must incorporate this type of clause in its availability policy disclosure.

4. *Model C-8 Appendix B availability (nonlocal checks).* A bank in a check processing region where the availability schedules for certain nonlocal checks have been reduced, as described in Appendix B of Regulation CC, must incorporate this type of clause in its availability policy disclosure. Banks using Model C-5 may insert this

clause at the conclusion of the discussion titled "Nonlocal checks."

5. *Model C-9 Automated teller machine deposits (extended holds)*. A bank that reserves the right to delay availability of deposits at nonproprietary ATMs until the fifth business day following the date of deposit, as permitted by § 229.12(f), must incorporate this type of clause in its availability policy disclosure. A bank must choose among the alternative language based on how it chooses to differentiate between proprietary and nonproprietary ATMs, as required under § 229.16(b)(5).

6. *Model C-10 Cash withdrawal limitation*. A bank that imposes cash withdrawal limitations under § 229.12 must incorporate this type of clause in its availability policy disclosure. Banks reserving the right to impose the cash withdrawal limitation and using Model C-3 should disclose that funds may not be available until the sixth (rather than fifth) business day in the first paragraph under the heading "Longer Delays May Apply."

7. *Model C-11 Credit union interest payment policy*. A credit union subject to the notice requirement of § 229.14(b)(2) must incorporate this type of clause in its availability policy disclosure. This model clause is only an example of a hypothetical policy. Credit unions may follow any policy for accrual provided the method of accruing interest is the same for cash and check deposits.

8. *Model C-11A Availability of funds deposited at other locations*. A clause similar to Model C-11A should be used if a bank bases the availability of funds on the location where the funds are deposited (for example, at a contractual or other branch located in a different check processing region). Similarly, a clause similar to Model C-11A should be used if a bank distinguishes between local and non-local checks (for example, a bank using model availability policy disclosure C-4 or C-5), and accepts deposits in more than one check processing region.

D. Model Notices, Models C-12 Through C-21

1. *Model Notices C-12 through C-21 generally*. Models C-12 through C-21 provide models for the various notices required by the regulation. A bank that cashes a check and places a hold on funds in an account of the customer (see § 229.19(e)) should modify the model hold notice accordingly. For example, the bank could replace the word "deposit" with the word "transaction" and could add the phrase "or cashed" after the word "deposited."

2. *Model C-12 Exception hold notice*. This model satisfies the written notice required under § 229.13(g) when a bank places a hold based on a § 229.13 exception. If a hold is being placed on more than one check in a deposit, each check need not be described, but if different reasons apply, each reason must be indicated. A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft or returned check fees after

invoking the reasonable cause exception under § 229.13(e).

3. *Model C-13 Reasonable cause hold notice*. This notice satisfies the written notice required under § 229.13(g) when a bank invokes the reasonable cause exception under § 229.13(e). The notice provides the bank with a list of specific reasons that may be given for invoking the exception. If a hold is being placed on more than one check in a deposit, each check must be described separately, and if different reasons apply, each reason must be indicated. A bank may disclose its reason for doubting collectibility by checking the appropriate reason on the model. If the "Other" category is checked, the reason must be given. A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft or returned check fees after invoking the reasonable cause exception under § 229.13(e).

4. *Model C-14 One-time notice for large deposit and redeposited check exception holds*. This model satisfies the notice requirements of § 229.13(g)(2) concerning nonconsumer accounts.

5. *Model C-15 One-time notice for repeated overdraft exception hold*. This model satisfies the notice requirements of § 229.13(g)(3).

6. *Model C-16 Case-by-case hold notice*. This model satisfies the notice required under § 229.16(c)(2) when a bank with a case-by-case hold policy imposes a hold on a deposit. This notice does not require a statement of the specific reason for the hold, as is the case when a § 229.13 exception hold is placed. A bank may specify the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit when funds will be available. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a case-by-case hold.

7. *Model C-17 Notice at locations where employees accept consumer deposits and Model C-18 Notice at locations where employees accept consumer deposits (case-by-case holds)*. These models satisfy the notice requirement of § 229.18(b). Model C-17 reflects an availability policy of holds to statutory limits on all deposits, and Model C-18 reflects a case-by-case availability policy.

8. *Model C-19 Notice at automated teller machines*. This model satisfies the ATM notice requirement of § 229.18(c)(1).

9. *Model C-20 Notice at automated teller machines (delayed receipt)*. This model satisfies the ATM notice requirement of § 229.18(c)(2) when receipt of deposits at off-premises ATMs is delayed under § 229.19(a)(4). It is based on collection of deposits once a week. If collections occur more or less frequently, the description of when deposits are received must be adjusted accordingly.

10. *Model C-21 Deposit slip notice*. This model satisfies the notice requirements of § 229.18(a) for deposit slips.

By order of the Board of Governors of the Federal Reserve System, March 17, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-7156 Filed 3-21-97; 8:45 am]

BILLING CODE 6210-01-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33-7405; 34-38419; 35-26688; 39-2348; IC-22571]

RIN 3235-AG96

Adoption of Updated EDGAR Filer Manual; Correction and Delay of Implementation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correction and delay of implementation.

SUMMARY: The Commission is correcting an amendment to Regulation S-T to conform to the Office of Federal Register's requirements for incorporation by reference and postponing the implementation of an updated edition of the EDGAR Filer Manual which was published in the **Federal Register** on February 27, 1997 [62 FR 8877] in order to resolve technical issues that delayed system implementation from March 10, 1997 to March 24, 1997. The incorporation by reference into the Code of Federal Regulations remains March 10, 1997.

DATES: The correction to § 232.301 is effective March 10, 1997. The implementation of the new edition of the EDGAR Filer Manual is delayed until March 24, 1997. The incorporation by reference of the EDGAR Filer Manual approved by the Director of the Federal Register as of March 10, 1997 remains unchanged.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, David T. Copenhafer at (202) 942-8800; for questions concerning investment company filings, Ruth Armfield Sanders, Senior Counsel, Division of Investment Management, at (202) 942-0591; and for questions with respect to documents subject to review by the Division of Corporation Finance, Margaret R. Black at (202) 942-2940.

SUPPLEMENTARY INFORMATION: On February 27, 1997, the Commission announced the adoption of an updated EDGAR Filer Manual ("Filer Manual"), which sets forth the technical formatting requirements governing the preparation and submission of electronic filings