

days before shipment to the United States, as otherwise required by § 92.104(c)(8).

(c) *Ratite eggs from Canada.* Hatching eggs of ratites that were laid in Canada may be imported into the United States:

(1) Without being quarantined upon arrival in the United States; and

(2) At any of the ports of entry listed in paragraph (b)(2) of this section or authorized by § 92.105(a); and

(3) If offered for entry at a Canadian land border port listed in § 92.203(b), without an import permit.

Done in Washington, DC, this 28th day of May 1996.

Lonnie J. King,

*Administrator, Animal and Plant Health Inspection Service.*

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## 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:** Proposed rule.

**SUMMARY:** The Board is proposing amendments to its Regulation CC relating to the availability of funds and collection of checks. The proposed 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.

**DATES:** Comments must be submitted on or before August 2, 1996.

**ADDRESSES:** Comments, which should refer to Docket No. R-0926, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, D.C. 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street NW. Comments may be inspected in Room MP-500 between 9:00 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Louise Roseman, Associate Director (202/452-2789), 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, Staff Attorney, (202/736-5565), 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 NW., Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** The Board is proposing amendments to its Regulation CC (12 CFR Part 229), Availability of Funds and Collection of Checks. The proposed amendments are clarifying and technical in nature and do not represent any major policy changes. The proposed 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 banks). Many of the proposed amendments are designed to reduce the burden on depository institutions of complying with the regulation. For example, the proposed amendments would provide more flexibility for banks giving hold notices under emergency conditions, clarify the various media by which written notices may be given, and delete certain notice content requirements. The Board is also proposing to update the Model Forms in Appendix C.

The proposed amendments to subpart C, governing collection of checks, would make various clarifications of 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. The Board is specifically requesting comment on the time required for a bank to qualify a returned check for automated processing (§ 229.31(a)), the provisions regarding the extension of the midnight deadline (§ 229.30(c)), and the extent of a presenting bank's preferred claim against a closed paying bank (§ 229.39(d)).

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

#### 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 has received several inquiries as to whether funds would be considered available for withdrawal if they are being held to satisfy a contingent obligation of the customer relating to the customer's account. 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 proposes 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.

*Definition of "bank" (§ 229.2(e)).* The regulation states 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 proposes 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.

*Definition of "traveler's check" (§ 229.2(hh)).* The Commentary states that "[t]raveler's checks that are not issued by banks may not have any words on them identifying a bank as drawee or paying agent \* \* \*." Some commenters have interpreted this provision to mean that traveler's checks are prohibited from having words on them identifying a bank. The Board proposes to revise the Commentary to clarify that only a description of a possible situation, and not a prohibition, is intended.

*Notice requirement to state amount of deposit (§§ 229.13(g) and 229.16(c)).* Regulation CC requires 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 have 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 Act does not require the notice to contain the amount of the deposit. The Board is proposing to eliminate the "amount of deposit" requirement for both exception and case-by-case hold notices. The Board also requests comment on the burdens to depository banks and the benefits to customers of the requirement for hold notices to include the date of deposit.

*Emergency exception notices (§§ 229.13(g)).* The regulation allows a depository bank to place an exception hold on funds deposited by check in the case of an emergency, such as computer or communications interruptions, suspension of payments by another bank, or war. The regulation requires 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 is necessary if the funds are made available before the notice must be sent. Some banks have argued that during a major disaster they would be unable to meet the timing deadline for emergency exception hold notices. (Under the current regulation, 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 become known to the depository bank.) The current deadline may be impracticable 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 has the authority to adopt a more flexible provision regarding the timing of emergency hold notices. Because of the difficulty of determining an appropriate time deadline for notices in advance of any particular emergency, the Board is proposing to amend Regulation CC to require a depository bank to give reasonable notice of emergency exception holds. 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 proposes to amend § 229.13(g) and revise the

accompanying Commentary to provide separate requirements for emergency condition exception notices.

*Written notices (§§ 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 disclosures in writing. Some banks have asked whether a notice sent through electronic mail would be permissible. The Board is proposing to revise the Commentary to both these sections to clarify that notices 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.

*Exception holds and the cash withdrawal rule (§ 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 have asked how the cash withdrawal rule works in conjunction with the exception holds. For example, if a large deposit exception hold is placed on a \$7,000 local check, \$100 must be made available on the next business day, an additional \$4,900 must be available by the second business day after deposit for check-writing purposes and by the third business day after deposit for withdrawal by cash or similar means. The banks asked whether the five-day exception hold on the \$2,000 remainder 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 believes that it is not 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 by the seventh business day after deposit. Therefore, the Board is proposing to clarify that the exception hold periods may be applied to the availability schedules for local and nonlocal checks and checks deposited in a nonproprietary ATM, but may not be extended under the cash withdrawal rule.

*Disclosure of branch-specific policies (§ 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 have 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 is proposing to revise the Commentary to § 229.16(a) to clarify that a bank may provide customers with a branch-specific disclosure. The Board proposes 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. This proposal is consistent with the disclosure requirement in the Interagency Policy Statement on Branch Closings.<sup>1</sup>

*Deposits at contractual branches (§§ 229.2(s), 229.10(c), 229.14(a), 229.19(a)).* Due to easing of interstate branching restrictions, the practice of one bank accepting deposits on behalf of another bank ("contractual branching") is growing more prevalent. The Board proposes 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)) states 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 proposes 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; that is, 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). The Board is also proposing 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 proposes to revise the Commentary to § 229.14(a) to clarify

<sup>1</sup> 58 FR 49083, September 21, 1993.

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.

*Holds on other funds—notices* (§ 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 that exceeds those requirements. Similarly, if a customer cashes a check over the counter (other than an “on-us” check), § 229.19(e) prohibits the bank from placing a hold on a transaction account of that customer that exceeds the Regulation CC schedules that would apply to that check. 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 is proposing to revise the Commentary to 229.19(e) to clarify that such a hold requires a notice if an exception or case-by-case notice would have been required under 229.13 or 229.16 had the funds been deposited in an account or had the hold been placed on those funds.

*Midnight deadline extension* (§ 229.30(c)). The regulation (§ 229.30(c)(1)) allows a bank to return a check after the midnight deadline, in order to expedite delivery, 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 proposes 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 extension of a Saturday midnight deadline.

The Board also requests comment on whether further modifications to the regulation would be desirable in light of problems posed by nonstandard banking days other than Saturdays, e.g., mid-week holidays. For example, should the § 229.30(c)(2) midnight deadline extension apply in all instances when a bank is open on a non-business day, such as a mid-week holiday? Do nonstandard banking days cause other problems for banks in complying with the regulation?

In addition, some banks have asked whether the regulation’s conditions for extending a midnight deadline require a determination of motive or whether the regulation simply sets forth a “time-of-receipt” test. Specifically, questions have arisen concerning whether § 229.30(c) is available only “in order to expedite delivery” (and not, for example, to avoid a kite) or whether extension of the midnight deadline is 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 requests comment on the circumstances under which banks make use of the extension of the midnight deadline and under which the extension should be available.

*Extra day to create qualified returned checks* (§ 229.31(a)). Section 229.31(a) allows a returning bank to convert a returned check to a qualified returned check (i.e., 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 believes that the one-day extension is rarely used and is unnecessary. The Board proposes to eliminate the extension and to amend § 229.31(a) of the regulation and revise the accompanying Commentary accordingly. The Board requests comment on whether this extension is still necessary and, if so, a description of the operational problems that elimination of the extension would cause.

*Midnight deadline warranty and U.C.C. defenses* (§ 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 proposes 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.

*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 proposes 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 also proposes 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 currently points out that the returning bank could be liable under § 229.38 for losses caused by negligence. The Board proposes to add that the returning bank could also be liable for a breach of its encoding warranty under § 229.34(c)(3).

*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 proposes to add this time limitation for notices of warranty claims to Regulation CC. The Board’s proposal would ensure that the same time limitations apply for check-related warranty claims, regardless of whether the claim is under state or federal law.

*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 contain 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 proposes to amend § 229.36(c) and revise the accompanying Commentary to apply it to "electronic presentment" arrangements, not merely "truncation" arrangements. The Board also proposes to revise the Commentary by adding an example of an electronic presentment arrangement.

*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 federal regulatory provision appears to be unnecessary, and the Board is proposing to eliminate it from Regulation CC. The Board would retain the labelling requirements regarding the name, location, and first four digits of the routing number of the bank by which the check is payable.

*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 proposes 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.

*Correction to Commentary (§ 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 is proposing to correct the Commentary.

*Preferred claim against depository bank (§ 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 proposes to amend § 229.39(b) and revise the accompanying Commentary to clarify this distinction. The substance of § 229.39(b) would not change.

*Preference against presenting bank (§ 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 (e.g., 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. The Board is now requesting comment on whether § 229.39(d) should be expanded to cover the U.C.C. presentment warranties.

*Exclusions (§ 229.42).* The regulation exempts certain checks from the expeditious return and notice of nonpayment requirements (e.g., 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 proposes to amend the regulation to reflect that such checks are also

exempt from the same-day settlement requirements of § 229.36(f).

*Checks payable in Guam, American Samoa, and the Northern Mariana Islands (§ 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 proposes 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 is proposing that the regulation specifically allow banks to handle Pacific island checks for direct return and to convert them to qualified returned checks. Because the subpart B availability schedules do not apply to Pacific island checks, the Board is not proposing to subject returning banks to the expeditious return requirements of § 229.31, even though, as a practical matter, the Board believes that in most cases, banks will handle returned Pacific island checks expeditiously. The Board requests comment on whether the liability for failure to comply with expeditious return rules should apply for Pacific island checks. In addition, the Board is proposing that depository banks that receive notice of nonpayment on Pacific island checks are not subject to the provisions of § 229.33(d) requiring timely notice to the depository bank's customer. Again, the Board believes that in practice, most depository banks would give notice to their customer within the time frame required by § 229.33(d) and requests comment on whether that section should apply to depository banks with regard to Pacific island checks.

The only Regulation CC warranties that would apply to banks handling Pacific island checks for forward collection or return are the cash letter total and encoding warranties in § 229.34(c)(2) and (3). In addition, the Board would apply relevant provisions of §§ 229.35–229.42 to banks that handle Pacific island checks.

*Model Forms (Appendix C).* The Board proposes to make technical and stylistic changes to facilitate use of the model forms. For example, the Board would revise the typefaces. Information that a bank must insert, such as the bank's cut-off hour, would be italicized in parentheses. Where a provision is required only if a bank has elected to take advantage of a particular section of the regulation (requiring the use of a special deposit slip to receive next-day availability for a teller's check, for example) the provision would be enclosed in brackets and the additional disclosure requirements (how to obtain a special deposit slip, for example) would be italicized within parentheses in the brackets. 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 supplies. The Board requests comment on whether any models in addition to those currently in Appendix C would be helpful to banks.

The Board proposes 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 proposes 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 deposit. The first \$100 may not be available, however, if the funds are subject to an exception hold under § 229.13.

*Model C-5 Holds to statutory limits on all deposits.* The Board proposes 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).

*Model C-10 Cash withdrawal limitation.* The Board proposes to revise Model C-10 to facilitate the incorporation of the clause into the various model availability policy disclosures.

*Model C-12 Exception hold notice.* The Board proposes 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 proposed change to § 229.13(g)(1)(i)(B),

the Board would delete the reference to the amount of the deposit.

*Model C-13 Reasonable cause hold notice.* To reflect the proposed change to § 229.13(g)(1)(i)(B), the Board proposes to delete the reference to the amount of the deposit.

*Model C-16 Case-by-case hold notice.* The Board proposes to revise the model notice to incorporate optional language for banks that elect to impose the cash withdrawal limitation. In addition, to reflect the proposed change to § 229.16(c)(2)(i)(B), the Board would delete the reference to the amount of the deposit.

*Commentary to model forms.* The Board proposes to make a number of technical and stylistic changes to the Commentary to the model disclosures, clauses, and notices. For example, the proposed Commentary clarifies 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. In addition, the proposed Commentary to Models C-2 through C-5 clarifies 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. The proposed Commentary to model notices C-12 through C-16 clarifies that a bank should modify the notices if it places a hold on other funds.

#### Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b)), a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule, are contained in the supplementary material above. The proposed rules require no additional reporting or recordkeeping requirements and do not overlap with other federal rules.

Another requirement for the initial regulatory flexibility analysis is a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposal will apply to all depository institutions regardless of size. The proposed amendments generally clarify rights and duties of depository institutions and do not impose any substantial economic burden on small entities.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rulemaking under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0235), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed rulemaking are found in 12 CFR 229.13, 229.15(a), 229.16(a), 229.16(c), 229.19(e), 229.34(f), former 229.36(e), and Appendix C. This information is intended to alert consumers about their financial institutions' check-hold 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 proposed 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 proposed 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 estimates that there is 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.

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.

Comments are invited on: (a) whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

#### 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 proposed to be 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 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. \* \* \*

\* \* \* \* \*

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) 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.* (1) If an exception contained in paragraphs (b) through (f) of this section applies, the depository bank may extend the time periods established under §§ 229.10(c) and 229.12 (b), (c), (e), and (f) by a reasonable period of time.

(2) If a depository bank invokes an exception contained in paragraphs (b) through (e) of this section with respect to a check described in § 229.10(c)(1) (i) through (v) or § 229.10(c)(2), it shall make the funds available for withdrawal not later than a reasonable period after

the day the funds would have been required to be made available had the check been subject to § 229.12 (b), (c), (e), or (f).

(3) If a depository bank invokes an exception under paragraph (f) of this section based on an emergency condition, the depository bank shall make the funds available for withdrawal not later than a reasonable period after the emergency has ceased or the period established in §§ 229.10(c) and 229.12 (b), (c), (e), or (f), whichever is later.

(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 for checks deposited in a nonproprietary ATM. 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 § 229.30, 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 section 229.36(f)(2) is extended to the time of dispatch of such return or notice of nonpayment where a paying bank, in an effort to expedite delivery of a returned check to a 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.

6. In § 229.31, the last two sentences of paragraph (a) concluding text are removed.

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 in amount exceeding the total amount of the checks or returned checks received, the bank may set off the excess settlement amount against subsequent settlements for checks or returned checks 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) 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. (1) A bank that arranges for checks payable by it to be payable through another bank shall require that the name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable be printed conspicuously on the face of each check.

9. In § 229.39, paragraphs (b) and (d) are revised to read as follows:

§ 229.39 Insolvency of bank.

(b) Preference against paying or depositary bank. If a paying bank finally pays a check, or if a depositary 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 depositary bank.

(d) Preference against presenting bank. If a paying bank settles with a presenting bank for one or more checks, and if the presenting bank breaches a warranty specified in § 229.34(c)(1) or (3) or in the U.C.C. with respect to those checks and suspends payments before satisfying the paying bank's warranty claim, the paying bank has a preferred claim against the presenting bank for the amount of the warranty claim.

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. 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 negotiable demand draft drawn on or payable through or at a Pacific island bank, which is not a check as defined in § 229.2(k).

(3) The definitions in § 229.2 apply to this section, unless otherwise noted.

(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 as if the Pacific island check were a check defined in § 229.2(k):

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

The revisions 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 Availability Policy Disclosures

C-1—Next-day availability

YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to make funds from your 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.

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

YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to make funds from your 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 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 that you deposit in your account. 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 of 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:

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

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 of the day after the your deposit .....	Tuesday. Monday day of 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 that you deposit in your account. 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), the deposit will be treated like a deposit of a local check. Funds from these deposits will generally be available on the second business day after the day of 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

Pay to the order of \_\_\_\_\_ | \$ \_\_\_\_\_  
\_\_\_\_\_ | dollars  
(Bank name and Location)  
123456789 0000000000 000 \_\_\_\_\_

Routing number

Business Check

Name of Company  
Address, City, State  
Pay to the order of \_\_\_\_\_ | \$ \_\_\_\_\_  
\_\_\_\_\_ | dollars  
(Bank name and Location)  
000000000 123456789 0000000000 000 \_\_\_\_\_

Routing number

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 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 a new 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.

\* \* \* \* \*

#### 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, the last sentence of paragraph E.2. and the last sentence of paragraph HH.2. are revised and a new sentence is added to the end of paragraph S.1. to read as follows:

Appendix E to Part 229—Commentary

\* \* \* \* \*

II. Section 229.2 Definitions

\* \* \* \* \*

E. 229.2(d) Available for Withdrawal

\* \* \* \* \*

2. \* \* \* For example, funds are available for withdrawal even though they are being held by a bank to satisfy a garnishment, tax levy, or court order restricting disbursements from the account; 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; or to satisfy a contingent liability of the customer related to the account.

\* \* \* \* \*

S. 229.2(s) Local Paying Bank

1. \* \* \* A branch of a bank accepting a deposit as agent for the depository bank (a contractual branch) is a branch of the depository bank for purposes of this definition.

\* \* \* \* \*

HH. 229.2(hh) Traveler's Check

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

IV. Section 229.10 Next-Day Availability

\* \* \* \* \*

D. 229.10(c) Certain Check Deposits

\* \* \* \* \*

3. Deposits Made to an Employee of the Depository Bank.

a. \* \* \* The depository bank may have a contractual arrangement with another bank under which the other bank will accept deposits on behalf of the depository bank. Employees of such 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;

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

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

d. The second sentence in paragraph I.1. is revised;

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

f. Paragraph I.5. is revised.

The additions and revisions read as follows:

\* \* \* \* \*

VII. Section 229.13 Exceptions

\* \* \* \* \*

H. 229.13(g) Notice of Exception

1. In general.

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 transmission of a visual display of the text, if the customer agrees to receive account information through such means. The depository bank, however, must give a paper copy of the notice to the customer upon request.

\* \* \* \* \*

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 regulation provides that 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. \* \* \*

5. In the case of the application of the emergency conditions exception, the depository bank may extend the hold placed on a check by not more than a reasonable period following the end of the emergency or the time funds must be available for withdrawal under §§ 229.10(c) or 229.12(b), (c), (e), or (f), whichever is later.

\* \* \* \* \*

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 or agent of a depository bank, 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 or agent 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 requirement that disclosures be in writing and in a form the customer may keep by sending an electronic transmission of a visual display of the text, if the customer agrees to receive account information through such means. The depository bank, however, must give a paper copy of the disclosure to the customer upon request. \* \* \*

\* \* \* \* \*

18. In appendix E, under section X, paragraph A.3. is redesignated as paragraph A.4. and a new paragraph A.3. is added, 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

\* \* \* \* \*

3. A bank may establish different availability policies for different branches (or contractual branches) and may allocate customers to a particular branch for purposes of providing a specific availability policy. In this situation, the bank must allocate customers between branches through good faith use of a reasonable method, such as where the customer opened the account.

\* \* \* \* \*

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 XIII, three sentences are added to the end of paragraph A.2., the last four sentences of paragraph A.6.a. are revised, and a

new paragraph E.4. is added to read as follows:

\* \* \* \* \*

XIII. Section 229.19 Miscellaneous

A. 229.19(a) When Funds Are Considered Deposited

\* \* \* \* \*

2. \* \* \* The depository bank might have a contractual arrangement with another bank under which the other bank will accept deposits on behalf of the depository bank. Funds received at such 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. Banking day of deposit.

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

\* \* \* \* \*

4. When a customer deposits a check in an account and the depository bank places a hold on other funds of the customer, or 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 be required under §§ 229.13 or 229.16 had the funds been deposited in an account or had the hold been placed on those funds.

\* \* \* \* \*

20. 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 (which are covered exclusively by paragraph C.1.b of this appendix).

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

\* \* \* \* \*

21. In appendix E, under section XVII, paragraph A.7. 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. Qualified returned checks. The expeditious return requirement for a returning bank in this regulation is more stringent in many cases than the duty of a collecting bank to exercise ordinary care under U.C.C. 4-202 in returning a check. A returning bank is under a duty to act as expeditiously in returning a check as it would in the forward collection of a check. Consistent with its duty of expeditious return and its midnight deadline under U.C.C. 4-202 and § 210.12(a) of Regulation J (12 CFR 210.12(a)), a returning bank may qualify a returned check. A qualified returned check will be handled by subsequent returning banks more efficiently than a raw return. The qualified returned check must include the routing number of the depository bank, the amount of the check, and a return identifier encoded on the check in magnetic ink. 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.

\* \* \* \* \*

22. 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 any bank in the forward-collection or return chain may set off excess settlement paid to another bank against settlement owed to that bank for

checks or returned checks transferred subsequent to the excess settlement. \* \* \* \* \*

F. 229.34(f) Notice of Claim

1. This paragraph adopts for this Regulation CC the warranty notice provisions of U.C.C. sections 4-207(d) and 4-208(e).

23. 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. and paragraph E.2. are revised to read as follows:

\* \* \* \* \*

XXII. Section 229.36 Presentment and Issuance of Checks

\* \* \* \* \*

C. 229.36(c) Electronic Presentment

1. Electronic presentment includes a variety of procedures in which the physical check may be held (truncated) or delayed by the depository or collecting bank, and the information from the check is transmitted to the paying bank electronically. Often, electronic presentment agreements provide that presentment takes place when the paying bank receives the electronic transmission. Express provision for truncation and electronic presentment is made in U.C.C. 4-110 and 4-406(b). This paragraph allows electronic presentment by agreement with the paying bank; however, such agreement may not prejudice the interests of prior 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.

2. An electronic presentment agreement must be designed so that the rights of third parties are not prejudiced by the agreement. For example, banks may agree to an electronic presentment arrangement whereby the presenting bank transmits information about the check electronically to the paying bank before the arrival of the physical checks. The parties (including the drawer of the check) could agree that presentment continues to occur upon arrival of the physical checks at the paying bank but that the paying bank will settle for and/or return the checks within the time frames that would apply if the electronic transmission constituted presentment, if the physical checks arrive by the time specified in the agreement.

\* \* \* \* \*

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. \* \* \*

2. If a payable-through check does not meet the requirements of this paragraph, the bank by which the check is payable may be liable

to the depository bank or others as provided in § 229.38. For example, a bank by which a payable-through check is payable could be liable to a depository bank that suffers a loss, such as lost interest or liability under Subpart B, that would not have occurred had the check met the requirements of this paragraph. Similarly, a bank may be liable under § 229.38 if a check payable by it that is not payable through another bank is labeled as provided in this section. The bank by which the check is payable may be liable for additional damages if it fails to act in good faith.

\* \* \* \* \*

24. 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. \* \* \* 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. \* \* \*

\* \* \* \* \*

25. In appendix E, under section XXV, the first sentence in paragraph C.1. and the first sentence in paragraph E.1. are 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. \* \* \*

\* \* \* \* \*

E. 229.39(d) Preference Against Presenting Bank

1. This paragraph 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) or a presentment warranty as provided in the U.C.C. (see U.C.C. 4-208) 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. \* \* \*

\* \* \* \* \*

26. 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 regulation CC. \* \* \*

\* \* \* \* \*

27. In appendix E, section XXIX is redesignated as section XXX and a new section XXIX is added 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. Banks that handle Pacific island checks are not subject to the provisions of subpart B of Regulation CC, including the availability, notice, and interest accrual requirements, with respect to these checks.

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, § 229.31(c) does not apply to a returning bank settling with the Pacific island bank.

3. A bank might accept a Pacific island check for deposit (or otherwise accept the check as transferee) and collect the Pacific island check in the same manner as other checks. Under these circumstances, the depository 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 requirements 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 a Pacific island check 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.

28. Newly-redesignated section XXX is revised to read as follows:

\* \* \* \* \*

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 and alternate ways of providing the 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 take advantage of the § 229.13 exceptions, it may delete the material relating to those exceptions. The changes may not be so extensive, however, 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-11. 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-11.

d. While § 229.10(b) of the regulation 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 of the regulation. 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 of the regulation. 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-11

1. *Models C-6 through C-11 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)(1), 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.

#### 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.

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 the bank places the hold on other funds (see § 229.19(e)), the notice should be modified accordingly. 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). If the bank places the hold on other funds (see § 229.19(e)), the notice should be modified accordingly. 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. If the bank places the hold on other funds (see § 229.19(e)), the notice should be modified accordingly.

5. *Model C-15 One-time notice for repeated overdraft exception hold.* This

model satisfies the notice requirements of § 229.13(g)(3). If the bank places the hold on other funds (see § 229.19(e)), the notice should be modified accordingly.

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. If the bank places the hold on other funds (see § 229.19(e)), the notice should be modified accordingly. 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, May 15, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-13880 Filed 5-31-96; 8:45 a.m.]

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 14 CFR Part 250

[Docket No. OST-96-1255 Notice 96-7]

RIN 2105-AC45

#### Oversales Signs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Department proposes to eliminate a consumer notice about airline oversales that is required to appear on signs at airports, city ticket offices, and travel agencies, on the basis that the information will continue to be