



June 7, 2010

Ms. Louise Roseman
Director
Division of Reserve Bank Operations and Payment Systems
Board of Governors of the Federal Reserve System
Constitution Avenue and 20th Street
Washington, DC 20551

RE: Possible Changes to Regulation CC Expeditious-Return Requirement

Dear Ms. Roseman:

The Clearing House Association L.L.C.¹ is writing to you to provide comments on three possible changes to the Regulation CC expeditious-return requirement as circulated in your e-mail dated April 27, 2010, to us and several other parties. We have also provided for your consideration a fourth possible change, which we believe would more efficiently provide incentives to promote industry-wide adoption of electronic returns, thereby accelerating the return process and improving the nation's payment system.

The Federal Reserve completed the consolidation of check-processing regions for purposes of Regulation CC on February 27, 2010. Consequently, 100% of all checks are now defined under Regulation CC to be "local checks" and must be given two-day availability by depository banks.

In many cases, there is a risk that when a local check is returned unpaid by the paying bank, it is not received by the depository bank before the depository bank is required to make the funds

¹ The members of The Clearing House Association are: Bank of America, National Association; The Bank of New York Mellon; Capital One, National Association; Citibank, N.A.; Deutsche Bank Trust Company Americas; HSBC Bank USA, National Association; JPMorgan Chase Bank, National Association; The Royal Bank of Scotland, N.V.; UBS AG; U.S. Bank National Association; and Wells Fargo Bank, National Association. The following banks, which are members of The Clearing House Association's Payments Law Committee, also participated in the development of this letter: Branch Banking and Trust Company; City National Bank; Comerica Bank; First Citizens Bank & Trust Company; Fifth Third Bank; KeyBank National Association; Manufacturers and Traders Trust Company; PNC Bank, National Association; and RBS Citizens, National Association.

available for withdrawal. This risk is mitigated by the requirement in §§ 229.30-31 of Reg CC that the paying bank and returning bank, if any, return the unpaid check expeditiously to the depository bank.

In order to provide an incentive to depository banks to agree to receive electronic returns and thereby accelerate the return process, the Federal Reserve on April 27, 2010, circulated a document outlining three options for "Possible Changes to Regulation CC Expeditious-Return Requirement" ("April 27 document").

The Clearing House appreciates the effort by the Federal Reserve to accelerate the return process. For the reasons stated below, we have some concerns that the three options proposed by the Federal Reserve might not accomplish this goal. However, we have proposed a fourth option, which we believe would achieve the Federal Reserve's intended purpose of accelerating the return process.

Option 1: Additional Duties for Returning Banks

Summary:

In order to be entitled to expeditious return under §§ 229.30-31 of Regulation CC, the depository bank must agree to receive returned checks electronically from at least one returning bank. Returning banks would be required to publish a list of the routing numbers of the depository banks to which they deliver checks electronically. If the depository bank and the paying bank use different returning banks, the two returning banks would be required to agree to accept returns from each other.

TCH comment:

We believe this option is too complicated and would take too long to implement. As noted in the Appendix of the April 27 document, the banking industry is already rapidly moving to electronic returns: 93% of returned checks sent to the Reserve Banks in March 2010 were in electronic form (up from 76% in March 2009), and 63% of returned checks sent by the Reserve Banks to depository banks in March 2010 were in electronic form (up from 21% in March 2009). By the time Option 1 were approved and returning banks entered into agreements to accept returns from each other, we believe banks already will be sending a very high percentage of returns in electronic form. What is needed is an option that helps the banks move even more rapidly to the desired goal of 100% electronic returns.

In addition, banks do not have accurate lists of other banks' routing numbers. Many routing numbers are inaccurate or obsolete. Therefore, the requirement in this option that the returning

banks publish a list of the routing numbers of the depository banks to which they deliver checks electronically would be problematic, if not impossible.

Option 2: Returns Through the Forward Path

Summary:

A bank that sends a forward collection check electronically to another bank would be required to accept electronic return of the check from that bank, and a bank that returns a check would send the check to the bank from which it received forward presentment. The concept of a "returning bank" under Regulation CC would be eliminated.

TCH comment:

Some banks act as correspondent banks for other banks. In such capacity, they receive checks deposited at their respondent banks and present them to the paying banks for payment. However, unpaid checks are frequently sent back to the depository bank through the Federal Reserve or another returning bank. This procedure would disrupt these wide-spread and well-established arrangements. Also, as a correspondent bank, it may be cost prohibitive to receive the returns and set up electronic return processes with a depository bank for which the correspondent bank has a very low number of returns. Therefore, we believe this is not a workable option.

Option 3: Let Market Solutions Address the Gap

Summary:

In order to be entitled to expeditious return, depository banks must agree to receive returned checks electronically, in conformance with industry standards. Paying and returning banks must comply with expeditious-return requirements and figure out how to get a returned check expeditiously to a depository bank that has agreed to accept returns electronically.

TCH comment:

We believe that market solutions will eventually result in 100% of returns being delivered to depository banks in electronic form. However, we believe that Option 3 would place too much of the burden on paying and returning banks during the period that the banking industry is working towards that goal. We believe that a depository bank should be required to do more than merely agree to receive returned checks electronically. A depository bank could broadly agree to receive returned checks electronically but delay in agreeing or not agree at all to the details regarding the acceptable method of electronic return. We believe that a depository bank should be required to

agree to receive electronic returns through a specific mechanism. Otherwise, the paying and returning banks would have the burden of complying with the Regulation CC expeditious-return requirements while they are trying to figure out how to get the electronic returns back to the depository bank. We believe that our "Option 4" below would be a workable solution to this dilemma.

TCH Option 4:

In order to be entitled to expeditious return of a check, a depository bank must agree to receive the returned check electronically through at least one of the following methods: (i) a direct contractual relationship with the paying bank, (ii) a direct contractual relationship with a returning bank that has a direct contractual relationship with the paying bank to handle the returned check, (iii) some other mutual relationship with the paying bank such as where the paying bank has an arrangement to send the return and the depository bank has an arrangement to receive such return through a network provided by a clearing house or some other third party, or (iv) the Federal Reserve. If the depository bank has not agreed to receive a returned check electronically through one or more of the methods listed in the preceding sentence, it shall not be entitled to expeditious return of such check. In all cases, the electronic return must be in conformance with generally applicable industry standards and practices.

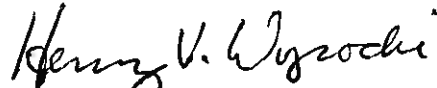
TCH comment:

This option would relieve a paying bank of the burden of having to comply with the Regulation CC expeditious-return requirements before it has figured out how to return a check electronically to the depository bank. Since a depository bank would not be entitled to expeditious return before it both (1) agreed to accept returns electronically and (2) agreed to accept electronic returns through a specified method, we believe this option would also serve as the catalyst for more rapid movement towards the goal of 100% electronic returns by providing an incentive to depository banks to receive and paying banks to send electronic returns. In addition, this option addresses the situation where the depository bank has not agreed to accept returned checks electronically through one of the specified methods. If the depository bank does not have an arrangement with the paying bank that is returning a check and the depository bank does not otherwise agree to accept returns through the Federal Reserve, only then would the depository bank not be entitled to expeditious return. We believe that TCH Option 4 would accelerate the return of checks and improve the nation's payment system.

We recognize that there are other issues related to the implementation of any of the above options, such as whether the notice of nonpayment requirement in § 229.33 of Regulation CC should apply if the depository bank has not agreed to accept returned checks electronically. However, our comments in this letter are restricted to providing specific responses to the options circulated by the Federal Reserve and to propose an alternate option that more precisely describes what a depository bank must do to be entitled to expeditious return.

If you have any questions regarding this matter or would like to have a meeting to discuss Option 4, please contact me at (212) 612-9216.

Very truly yours,



Henry V. Wysocki
Senior Vice President and
Senior Counsel

HVW:kp