

From: John S. Burnett  
Subject: Regulation CC

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Comments:

Thank you for the chance to comment on the voluminous undertaking of bringing Regulation CC current. Bankers have been clamoring for much of the work covered by this proposal since the final nail was put in the coffin of the "local/nonlocal check" in 2010.

I have two concerns (more may develop as I dig deeper into the proposal).

1. As proposed, current section 229.33's requirement for a notice of non-payment for checks of \$2,500 or more would be eliminated. Although the proposal suggests that banks would have a year's grace from the final rule's effective date to implement this change, one can assume that most paying banks would adopt that change at once. Theoretically, at least, those same banks could "game" the grace period to delay their adoption of electronic outgoing return items, so that depository banks could be left with no required notice and the remnants of the old expeditious return measure, which would continue to allow banks to use the forward presentment rule. Paying banks that "cherry pick" the proposed new rule's provisions in this way could put depository banks at increased risk of loss.
2. In the proposed Commentary sections on Appendix C, proposed Comment C-4 (Model C-8) still includes vestigial wording referring to local/nonlocal checks, and there is an unpaired closing bold bracket at the end.

#### Case-by-Case Holds

The Board has requested comment "on the extent to which banks continue to find it useful to apply case-

by-case holds to check deposits and on whether the regulation's provision for case-by-case holds should be deleted." The Board has stated that, "[i]n the absence of nonlocal checks, the extra hold period that a depository bank may obtain by applying a case-by-case hold is generally not sufficient for the bank to learn that a deposited check has been returned unpaid before making funds available to the depositor."

While I agree that the one-day extra that a depository bank may obtain by applying case-by-case holds may not be sufficient in many cases to learn of the return of a deposited check, some banks continue to apply such holds to mitigate potential risk of loss. Many banks that have general next day availability policies continue to disclose the potential for case-by-case and exception holds.

I am concerned that eliminating the possibility of case-by-case holds could have the undesired consequence of shifting some of those banks to a policy of generally holding funds deposited by check to the statutory limits, and reserving the right to place exception holds. That could result in a delay of

availability of other than next-day items by an extra day (from general next-day to general second-day availability).

Regards,

John S. Burnett