June 3, 2011

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th and C Streets, N.W.
Washington, DC 20551

Re: Docket No. R-1409: Regulation CC Revisions

Ladies and Gentlemen:

The Electronic Check Clearing House Organization ("ECCHO"), The Clearing House ("TCH"), Independent Community Bankers of America ("ICBA") and BITS are pleased to submit this joint comment letter to the Federal Reserve Board (the "Board") regarding its proposed revisions to Regulation CC (the "Proposed Rule"). ECCHO, TCH, ICBA and BITS are referred to collectively in this letter as the "Commenters."

ECCHO is the national clearing house for check image exchange, and the ECCHO Rules are used by over 3,000 member financial institutions to provide rules coverage for their check image exchange and return transactions. TCH operates the SVPCO image exchange network. TCH's CHECCS Operating Rules adopt the ECCHO Rules, with certain additions and modifications, and govern image exchange through the SVPCO network. ICBA, the nation's voice for community banks, represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers they serve. BITS is the technology policy division of The Financial Services Roundtable, which represents 100 of the largest integrated financial services companies. Among BITS' primary activities is the coordination of a committee of fraud specialists that develops solutions to protect consumers and the industry from fraud losses. Additional information regarding these four organizations is included at the end of this letter.

As described in more detail below, in reviewing the Proposed Rule, the Commenters sought input from a wide range of their respective memberships and other financial services industry participants. The positions and comments in this letter, while based upon input from our respective members and others, ultimately represent the views of the Commenters. We expect that some of our respective member financial institutions will submit separate comments taking different positions regarding one or more issues raised by the Proposed Rule. In addition, one or more of the Commenters also may submit separate comment letters with comments and views specific to their organization and membership.

Background on Proposed Rule Review Process For This Comment Letter

The Commenters recognize that the Proposed Rule raises significant policy issues for the financial services industry, and that the final rule will impact how the financial services industry completes its migration to full electronic check image exchange in the next few years. In light of this, the Commenters sought to open their review process for the Proposed Rule to as wide a range of financial institutions, check image processors and financial services trade associations as possible.

The Commenters hosted numerous conference calls and in-person meetings with their respective member financial institutions and, in the case of ECCHO, also with its sponsoring organizations (the latter group includes various financial institution processors and image exchange providers). This working group included representatives from a range of institutions, including large banks, midsize/regional banks, community banks and credit unions. The working group also included representatives of entities that are engaged in the check clearing business on behalf of other institutions, including banker's banks, check processors, clearing and settlement providers, and image archive providers. The Commenters also invited representatives of other financial services trade associations and the regional payments associations to participate in the review and discussion of the Proposed Rule. ECCHO circulated a written analysis of the Proposed Rule and draft comments to this large working group in order to solicit feedback and input. Over 400 financial services industry representatives were invited to participate in this process. The Commenters believe that this open review process, involving the perspectives of many participants in the check image exchange process, was necessary to appropriately analyze the proposed revisions to Regulation CC and provide the Board with useful comments.

Structure of Comments

There are numerous proposed changes to Regulation CC in the Proposed Rule, ranging from minor technical changes to changes raising significant policy questions. To address these many issues in the most organized manner possible, we have set forth our comments in chart format, which cross-references the related changes in the Proposed Rule. This chart is attached to this letter. The comments in the chart are organized sequentially to match the order of the proposed revisions in the Proposed Rule. We believe this format will assist the Board in its review of our comments.

Need For The Final Rule

We appreciate the substantial effort that the Board and its staff put into developing the Proposed Rule and soliciting input from the financial services industry and other stakeholders regarding different approaches to the expeditious return requirement. As the Board knows, the financial services industry has been operating as a single check processing region for approximately one year now. Financial institutions, therefore, are very interested in new

guidance regarding the paying bank's expeditious return requirement under Regulation CC in this new processing environment. We urge the Board to move quickly to consider all stakeholders' comments relating to the expeditious return requirement set forth in the Proposed Rule and to adopt a final rule addressing, at a minimum, the expeditious return requirement.

Thank you for this opportunity to provide our comments to you regarding the Proposed Rule. If you have any questions regarding this letter, please do not hesitate to contact one of the undersigned representatives of the Commenters.

Electronic Check Clearing House Organization

David Walker
President & CEO
dwalker@eccho.org
214-273-3201

The Clearing House Payments Co., L.L.C.

Robert C. Hunter
Deputy General Counsel
Rob.Hungter@theclearinghouse.org
336-769-5314

Independent Community Bankers of America

Viveca Y. Ware
Senior Vice President
Regulatory Policy
viveca.ware@icba.org
202-659-8111

BITS

Leigh Williams
President
Leigh@fsround.org
202-589-2440

Information Regarding The Commenting Organizations

BITS

BITS is the technology policy division of The Financial Services Roundtable, created to foster the growth and development of electronic financial services and e-commerce for the benefit of financial institutions and their customers. BITS focuses on strategic issues where industry cooperation serves the public good, such as critical infrastructure protection, fraud prevention, and the safety of financial services by leveraging intellectual capital to address emerging issues at the intersection of financial services, operations and technology. BITS' efforts involve representatives from throughout our member institutions, including CEOs, CIOs, CISOs, and fraud, compliance, and vendor management specialists. For more information, go to http://www.bits.org/.

ECCHO

ECCHO is a not-for-profit national check clearinghouse owned by its over 3,000 member financial institutions dedicated to promoting electronic check collection and related payment system improvements. ECCHO is recognized across the U.S. as the national provider of private sector check image exchange rules. During 2010, ECCHO member financial institutions used check images to exchange under the ECCHO check clearinghouse rules approximately 7.9 billion transactions totaling $9.9 trillion. See ECCHO's web page at www.ECCHO.org

The Clearing House

Established in 1853, The Clearing House is the nation's oldest banking association and payments company. It is owned by the world's largest commercial banks, which employ 1.4 million people in the U.S. and hold more than half of all U.S. deposits. The Clearing House is a nonpartisan advocacy organization representing through regulatory comment letters, amicus briefs and white papers the interests of its owner banks on a variety of systemically important banking issues. The Clearing House Payments Company provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost $2 trillion daily and representing nearly half of the automated clearinghouse, funds-transfer, and check-image payments made in the U.S. See The Clearing House's web page at www.theclearinghouse.org.

The Independent Community Bankers of America

The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever changing marketplace. With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold $1.2 trillion in assets, $960 billion in deposits, and $750 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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§ 229.2(c) –Definition of ATM - Commentary Provides that a remote deposit capture device is not an ATM because a person cannot deposit cash or paper checks.	Remote Deposit Capture Devices Not ATMS. We support the approach in the Proposed Rule to clarify that a remote deposit capture device is not an ATM because a person cannot deposit cash or checks into it. Most RDC devices are controlled by the customer, and not by the customer's bank. Also, RDC devices can operate in an offline mode in which the devices can scan and process check images, holding items for later transmittal to the customer's bank. Furthermore, unlike in the ATM context, the customer retains possession of the original check in an RDC transaction. RDC devices are not analogous to ATMs, which are controlled by the customer's bank or a bank within an ATM network. As a result, we agree that the current and Proposed Rule requirements in Regulation CC applicable to ATM deposits should not apply to deposits by means of an RDC device.
§ 229.2(r) – Definition of Depositary Bank Clarifies that a bank that rejects a check submitted for deposit is not a depositary bank.	Bank that Rejects Deposit is Not A Depositary Bank. We agree with the clarification in the Proposed Rule that a bank that rejects a deposit should not be viewed as a "depositary bank." There are many reasons that a bank may reject a deposit of a paper check or an imaged item. The reasons for the deposit rejection may relate to problems with the item (such as missing indorsements, retired routing number, or not eligible for image exchange for a deposit made via RDC or image enabled ATM) or concerns regarding fraud or other payment risk (such as a concern that the customer is creating a check kiting scheme). A bank should not be subject to the Regulation CC requirements applicable to depositary banks generally when rejecting a deposit, regardless of whether the rejection occurs at the teller counter, at an ATM, in mail deposit processing or in a back-office processing center of the bank one or more days after the receipt of the check from the customer at the bank. We request that the Federal Reserve include in the final rule or the Commentary examples of the different ways a check could be received (ATM, teller, mail, lockbox processing) and then subsequently rejected for deposit by a bank of first deposit after review of the deposit. We also recommend that the final rule or the Commentary include a statement in this example that the deposited item can be an on-us item or a transit item. We believe this additional clarification in the final rule or the Commentary will be helpful to the financial services industry in understanding the scope of this exception from the definition of a "depositary bank."
§ 229.2(s) – Definition of Electronic Collection Item Defines "electronic collection	We agree that there needs to be a definition of "electronic collection item" within Regulation CC in light of the other changes that the Federal Reserve is proposing to establish with respect to expeditious return, new transfer warranties and same day settlement. We have the following comments and suggestions regarding the proposed

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item" as an electronic image of and information related to a check that a bank sends for forward collection that: (a) a paying bank has agreed to receive under § 229.36(a), (b) is sufficient to create a substitute check, (c) conforms with ANS X9.100-187, unless Board determines different standard or parties otherwise agree.	definition and related issues. Agreement to Receive Electronic Collection Items. First, the definition requires that in order for the item to be deemed an electronic collection item, the paying bank must agree to receive the electronic collection item under Section 229.36. This condition on the definition appears too limiting. For example, there could be an exchange of a check image that passes through two or more banks before it reaches the paying bank. If the paying bank turns out to not have an agreement for receipt of electronic collection items, then the exchange of the image between the depositary bank and prior collecting banks would not be subject to the new provisions (such as the warranties) in Regulation CC relating to an electronic collection item. Moreover, it is possible that the depositary bank and one or more of the collecting banks may have no knowledge of whether or not the paying bank "has agreed" to receive electronic collection items, and instead the depositary bank simply moves the image forward through image clearing arrangements, such as correspondent banks, exchange networks or clearing houses. Only the presenting bank in the check clearing arrangement would have knowledge of whether the paying bank has agreed to receive electronic collection items. Coverage of the image as an electronic collection item should not be so unpredictable. This result appears too limiting from a policy and operational matter. One possible approach to addressing this issue in the final rule would be for the final rule to instead simply state that an item is an electronic collection item if the two banks that are exchanging the image item (regardless if the banks are depositary or paying banks) have agreed to exchange electronic collection items. Another approach that could be taken in the final rule (in conjunction with the reference to agreement of the banks) is to use terms such as "sending bank" and "receiving bank" in the definition, instead of the terms "presenting bank" and "paying bank." This approach would provide coverage under Regulation CC as an electronic collection item where two collecting banks, or the depositary bank and a collecting bank, are exchanging a check image. Requirement that Image be Eligible for Substitute Check Creation. Second, the definition of electronic collection item requires that the electronic image and related information be sufficient to create a substitute check. We generally support this approach in the definition. This condition on the definition appears appropriate in light of the new warranties in Section 229.34 relating to the electronic collection item having information sufficient for a receiving bank to create a substitute check. However, we are concerned that the proposed changes to Regulation CC relating to electronic collection items do not recognize that there may be a range of items that will not qualify as an electronic collection item, and yet the banks will still want to collect as images. For example, there are many check image items that a depositary bank receives that do not meet industry standards for image quality, do not contain sufficient information for the creation of a substitute check, or are contained in an electronic file that does not meet agreed technical specifications for an exchange of electronic files of check images. Also, the MICR line information may be incomplete and non-repairable, or the item may not be readable when truncated into an image,

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	etc. However, the depositary bank will still be required to provide funds availability to its customer on such a paper item deposit, even though the paper item or related image contains these problems. As such, the depositary bank will want to collect the item through image exchange for cost and speed reasons. In addition, it is our experience that the financial services industry is interested in allowing banks to exchange check images that do not contain the full field MICR line information in the related electronic file. One of the reasons for this approach is that the paying bank generally is best positioned to repair account MICR line data that has been read as incomplete by the truncating bank. In light of the above, we suggest that the final rule recognize and acknowledge that banks can agree (by clearinghouse rule, Federal Reserve Circular, or otherwise) to collect electronic images (and electronic check data only, without image) by forward and return exchange of a check image, notwithstanding that the image is not an electronic collection item or an electronic return under Regulation CC. In these cases, the final rule should provide that the provisions of Regulation CC would not apply to such image forward and return image exchanges. Banks would be permitted under clearing house rules, Federal Reserve Circular or otherwise to agree to exchange the image in forward and return subject to special rule requirements for such images, such as unique flagging requirements and/or liability allocations, that are appropriate to these items that do not qualify as electronic collection items or electronic returns. However, paying banks would not be required to provide the depositary bank with expeditious return with respect to the non-qualifying item as a requirement under Regulation CC. We believe that this approach to handling these non-qualifying items is appropriate in light of the fact that the alternative approach of delivering the paper check would be expensive and slow. Banks should be encouraged to collect the item by image, even if the image cannot meet the requirements of being an electronic collection item or electronic return. <u>References to Industry Standards</u>. We have discussed the issue of the Proposed Rule's reference to certain specific industry standards both with member financial institutions that participated in our review process as well as with individuals that have direct experience working with the committees that review and develop the industry standards for check image exchange. Based upon this input, it is our view that the final rule should not contain an express requirement for compliance with the ANS X9.100-187 standard within the definitions of electronic collection item or electronic return. Rather, we would support this standard being listed in the Commentary to the final rule only as one example of a permissible agreed upon standard for check image exchange. It is our view that the ANS X9.100-187 is not specific enough on a standalone basis to be referenced into these two definitions in Regulation CC. This standard requires implementing documentation to be agreed upon by exchanging banks or networks in order for its use

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	in a particular exchange. Accordingly, we recommend that the final rule state that the banks exchanging a check image must agree to an industry-wide or other unique technical standard that will govern their exchange of check images, so long as this standard permits the bank receiving the check image to create a substitute check that meets the definitional and legal equivalence requirements of a substitute check under Regulation CC. This approach will provide banks and exchange networks with sufficient flexibility to adopt the appropriate check image exchange standard that best works for the two exchanging banks, but still meets the need of the receiving bank and subsequent banks to potentially create a substitute check from the image. In the alternative, if the specific standard needs to be stated in the final rule, we recommend that the reference to industry standard ANS X9.100-187 in the final rule make it clear that any future amendments to the standard are effective upon release of the amended standard and its implementation according to any timeframe stated in the amended standard. That is, the Regulation itself does not have to be amended by the Federal Reserve in order for the new standards amendment to take effect. We believe this approach will allow the industry to effectively establish the time line for the transition to new or amended technical standards, and avoid the risk that the standards implementation is delayed as a result of delays in the regulatory process. To adopt this approach, the final rule could provide that the standard is the ANS X9.100-187 standard, "as may be amended and implemented from time to time by ANS" or similar language.
§ 229.2(s) – *Definition of Electronic Collection Item – Commentary* Recognizes that banks enter into agreements for check image exchange. Terms of agreements vary. If item meets definition of "electronic collection item," subpart C applies to item as if it were a "check." Agreement to receive electronic collection items may be bilateral/Fed Circular/clearing house rule or other interbank agreement.	Additional Examples of Agreements. The final rule should include an additional example of a permissible agreement of banks for check image exchange. Many banks enter into a contract with an image exchange network in which the bank agrees to exchange items with those banks that are part of the same network and that execute similar contracts with the network operator. Sometimes these agreements are part of a clearing house rules structure, other times they are contractual arrangements between the bank and the network operator. The banks do not have separate agreements with each bank that is part of the network, just the single agreement with the network operator to participate in the network. Reference to Clearing House Arrangements. We support the reference that an agreement to receive electronic collection items may occur through clearing house rules.

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§ 229.2(u) – – Definition of Electronic Presentment Point Defines "electronic presentment point" as the electronic location that the paying bank has designated for receiving electronic collection items. *Specific Issues On Which the Fed Has Requested Comment* *Whether this definition provides enough specificity.*	The definition may need additional clarity regarding what it means to "designate" an electronic presentment point, particularly in the context of same-day settlement items. In situations where the banks have agreements in place for the exchange of electronic collection items, the banks typically define with specificity the agreed presentment point. However, it is not clear from the Proposed Rule whether or not the paying bank would have to have a prior agreement with the presenting bank for exchange of electronic collection items that are same-day settlement items. See comment and discussion of issues associated with same-day settlement items in Section 229.36. Changes to this definition may be needed in light of those comments.
§ 229.2(u) – Definition of Electronic Presentment Point Commentary Designation of email address or other electronic email address	It is not industry practice to "designate" a return or presentment location for electronic images by publicly posting an email address or IP address for the depositary bank/paying bank, or by referencing such an address in the check image indorsement record. (See additional discussion regarding this issue in comment to § 229.32(a)(2).) We recommend that the final rule not suggest that this posting or publication of email address or IP address, absent an agreement of the two banks for electronic presentment or return, is acceptable industry practice or acceptable under Regulation CC.
§ 229.2(v) –Definition of Electronic Return	Please see our comments to the definition of "electronic collection item." We have the same comments and concerns with the similar aspects of the definition of "electronic return." In addition, the Federal Reserve should include an additional exception to the expeditious return requirement of Section 229.30(b)(1) of the final rule to state that, absent an agreement to the contrary, the paying bank and the returning banks do not have an obligation for expeditious return if the item does not qualify as an "electronic return" for any reason. For example, the item does not qualify for return as an electronic return under Regulation CC because the image of the item, or related MICR information, is not sufficient to create a substitute check. Of course, the banks or clearing house that have agreed to exchange these non-qualified items could by the same agreement establish expeditious return requirements as appropriate. This additional proposed exception is discussed in greater detail in our comments to Section 229.30(b)(1). (A paying bank would of course have to provide expeditious return for a presented paper check or a substitute check that did qualify as an electronic return upon imaging of the item by the paying bank.)

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§ 229.2(w) – Definition of Electronic Return Point Defines "electronic return point" as the electronic location that the depositary bank has designated for receiving electronic returns.	Please see our comment to the definition of "electronic presentment point" regarding the use of email addresses and IP addresses.
§ 229.2(hh) – Definition of Paper or electronic representation of a substitute check -- Commentary States that an electronic representation of a substitute check may also be an electronic collection item or electronic return, if the electronic representation contains sufficient information for creating a substitute check and conforms to ANS X9.100-187, or another format to which the parties agreed.	Please see our comments above in "Section 229.2(s) – Definition of Electronic Collection Item" regarding our views as to the specific reference in Regulation CC to the ANS X9.100-187 standard.
229.2(pp) –Definition of Routing Number - Commentary Clarification of information that appears in electronic indorsement record	We believe that the proposed Commentary contains an incorrect reference to "paying bank," as opposed to "payable through bank." This section states that, "Where a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable through bank, not the payor bank. In the case of an electronic collection item the routing number of the paying bank is contained in the electronic image of the check (in fractional form or nine-digit form) or in the electronic information related to the check (in nine-digit form)……" For electronic collection items, it is our understanding that information about the payable through bank, not the paying bank, would appear in the electronic information relating to the item, as well as on the original check.

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Subpart B - Funds Availability *General Application of Subpart B to Remote Deposit Capture (RDC) deposits* .	As currently drafted, the Proposed Rule does not require the application of subpart B availability requirements to check images that are transmitted by the customer to the depositary bank by means of RDC. We view the Proposed Rule's approach on this issue as consistent with the approach under current Regulation CC. The Proposed Rule does apply subpart C of the Regulation to "electronic collection items" (See proposed Section 229.33) as if such electronic collection items were "checks." We support the approach in the Proposed Rule, as well as current Regulation CC, to not apply subpart B of Regulation CC to RDC deposits of check images. A depositary bank enters into a written agreement with each customer that governs the terms of the check image deposit by remote deposit capture, including when a check image is deemed received at the depositary bank. We believe it is appropriate for the depositary bank to have the flexibility to determine all issues relating to the RDC deposit, including method/timing of receipt, funds availability and possible holds on the deposit of check images. For example, a bank may develop different receipt requirements, internal/external controls, availability rules, etc. for a large corporate user of RDC deposits as compared to an infrequent user of RDC deposits. The FFIEC has issued extensive guidance to the financial services industry regarding the nature of risks associated with RDC transactions, including the obligation on a financial institution to have contracts in place with its RDC customers to address these types of issues. We believe that continuing to place these funds availability issues under an agreement/contract approach is consistent with the FFIEC guidance. We request that the Commentary to the final rule include a statement that expressly states that deposits of images by RDC or other transmission to a depositary bank are not subject to subpart B of Regulation CC.
§ 229.10(c)(1)-5 Commentary Defines "$100" as the "minimum amount," and replaces subsequent references to "$100" with references to "the minimum amount.	As a drafting matter, we found the new proposed Commentary to this Section somewhat difficult to understand, as it uses the term "minimum amount" as opposed to an actual number like "$200". We suggest that the Commentary use an actual dollar amount in the example, and note that the dollar amount may change over time as new minimum dollar amounts are established.
§ 229.12(d) – Deposits at nonproprietary ATMs Reduces the maximum hold	The Proposed Rule requested comment as to whether or not there was still support for maintaining the distinction between proprietary and non-proprietary ATMs. We support maintaining the current distinction between proprietary ATMs and non-proprietary ATMs. While many ATMs are enabled with image deposit capability,

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period for nonproprietary ATM deposits from 5 business days to 4 business days.	there are still ATMs that accept paper checks for deposit that cannot be truncated to images at the point of deposit. As a result, depositary banks may still experience delays in waiting for settlement or processing of checks that are deposited at non-proprietary ATMs.
§ 229.13(e)-4 – Reasonable cause to doubt collectability--Commentary A depositary bank may not invoke this exception for funds availability because a paying bank demands paper presentment and the depositary bank knows it will not receive the return prior to the time by which it must make the deposited funds available.	No Extended Hold for Lack of Electronic Exchange Connection. We support the approach in the final rule in which a depositary bank is not permitted to place an extended hold on deposited funds solely because the depositary bank does not have an image exchange agreement with the paying bank, even though the item will be collected through paper handing and any return of the item will likely occur beyond the 2 day hold period. Permitting the depositary bank to extend the hold for this reason will only incent banks not to establish agreements for forward and return exchange of check images. Retired Routing Numbers. We recommend that the Federal Reserve include in the final rule an additional exception for funds availability to address paying bank routing numbers that the depositary bank determines have been retired in accordance with industry practice for retiring bank routing numbers. Customers will on occasion seek to deposit items that are drawn on routing numbers of paying banks that have been retired. In many cases, these items will be processed by the paying bank and paid, as the paying bank is still willing to accept and pay items on old, retired routing numbers (such as in the case of a merger). In other cases, the retired routing numbers are indicative of (a) a potential fraud (e.g., where the fraudster has intentionally included a retired routing number on the fraudulent check in an effort to delay the collection and return of the check so that the depositary bank is not aware the check will be returned upon lifting the hold on the related deposited funds), or (b) a closed account, and there is the potential for these items to be returned unpaid. Furthermore, because the routing numbers are retired, it may take longer for the collecting banks and paying bank to process the item, even if the item is handled as an image in both the forward and return process. This is because the depositary bank, collecting banks, and/or the paying bank will have to research the item, determine the appropriate routing number, and in the case of the paying bank determine if the account previously assigned to that routing number is still active at the paying bank under a different routing or account number. In addition, because these items are drawn on retired routing numbers, it is likely that these routing numbers are not turned on for image exchange through private sector image exchange, and the item may have to be exchanged and returned as an original check or a substitute check. We believe it is preferable to provide protection to the depositary bank in the form of a permissible extended hold on the item, in order to encourage the depositary bank to take the item for deposit. Otherwise, depositary banks may seek to protect themselves from the risks associated with these items by rejecting these retired routing number

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	items at the time of deposit.
§ 229.13(g) – Notice of exception Requires that the notice of an exception hold contain the total amount of the deposit, in addition to the amount of the deposit being held. Requires that the notice specify the "day the funds will be made available for withdrawal" instead of "the time period within which" the funds will be available for withdrawal.	We are opposed to this proposed change in the notice exception. Requiring disclosure of the "total amount of deposit" in the notice of the exception would only provide a small incremental, if any, improvement in the ability of the customer to understand the notice regarding the exception. There is no indication from banks' experience that the current form for these notices is not understandable to customers. Moreover, implementing this change to the notice would be operationally complicated. For example, how would split deposits be handled where the customer is splitting a large deposit into two different accounts? If the hold only applies to the funds that are going into one account, it would be confusing to place on the notice the total amount of the deposit that was being made to the two accounts when the notice is applicable to only one account. Similarly, how would a cash back deposit be handled where the customer is receiving cash first and only depositing a portion of the amount to his or her account? Finally, implementing this change in the notice requirement will be complex and require costly reprogramming of numerous bank systems (ATM, teller deposit, back office etc.). The limited incremental value of the additional disclosure must be weighed against the expected increases in complexity and cost. At a minimum, this proposed change should be adopted only as an available option for the disclosure, not as a mandatory substitute. Based on the Commenters' review of the Proposed Rule with their respective member banks, it appears that a number of banks have already implemented a notice system that includes some of the new information (such as actual deposit amount), that would be required to be disclosed under the Proposed Rule. If the final rule made the disclosures items optional, it would encourage additional banks to migrate over time to the new format, without imposing the costs of bank systems changes within a fixed time period.
§ 229.13(g)(1)(ii) – Timing of Notice If the customer has agreed to accept notices electronically, the depositary bank shall send the notice such that the bank may reasonably expect the customer to receive it no later than the first business day following the day	While we support inclusion within the final rule of the ability of financial institutions to provide notices and disclosures required under Regulation CC to customers in electronic format, we have a number of serious concerns, set forth below, with the Proposed Rule's approach to electronic communications. First, the Commentary in the final rule should clarify that there must be an agreement or course of conduct in place between the bank and customer for the communication of notices specifically regarding deposits by means of electronic communications. That is, an agreement that relates solely to communicating electronically credit card statements or bank statements should not constitute an agreement for electronic

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the deposit is made or the facts become known to the depositary bank, whichever is later.	communications of funds availability notices. A bank should not be required to communicate the notice of exception to the customer by means of electronic communications just because the bank is communicating electronically with the customer for other banking services, such as home/online banking, bill payment or credit cards. These are different services at a bank, and each service is not generally linked to the deposit teller system and the back-office deposit processing system. Not all banks can communicate electronically to the customer for all types of notices across all platforms, just because one bank product or service is using electronic communications. For example, a bank may be using a vendor to operate its home/online banking services, and that vendor may control the electronic communications with the customer. In such a case, the bank's deposit processing system may not link directly into that system for electronic communication purposes. Second, even where a bank and its customer have set up a process for electronic communication of notices regarding deposits, we do not support mandating the use of these electronic communications in the final rule. The bank should have the flexibility under the final rule to send paper communication of a notice if necessary or appropriate. Most bank regulations relating to communications are permissive in the use of electronic communications, and not mandatory. Third, we recommend that the final rule should not have a standard for notice timeliness that is dependent on when the customer is expected to receive the notice. Rather, we recommend that the final rule provide that the electronic notice is timely if the financial institution sends the notice not later than the first business day following the banking day of deposit. The financial institution cannot control when a customer is expected to receive an electronic notice. For example, in many cases, a customer receives notices for his/her deposit account in an electronic email box maintained within the home/online banking site of the financial institution. In some cases, customers will not visit this email box for extended periods of time. The notice sent by the institution should still be effective if timely sent by the financial institution (i.e., made available to the customer). Fourth, the Commentary to this section in the final rule should clarify that the electronic notice, if provided by the financial institution to the customer, satisfies the notice obligation. There is no need for the financial institution to send a separate written notice to the customer. We are concerned that the express requirement to send an electronic notice in the Proposed Rule could be read as a separate notice requirement in addition to (and not as substitute for) the paper notice requirement. If the customer has agreed to receive electronic notices, there should be no reason to send an additional notice in paper form.

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§ 229.13(h) – Availability of deposits subject to exceptions Safe harbor for the reasonable hold extension for a deposit of on-us checks remains one business day. Safe harbor for the reasonable hold extension for other checks is reduced to two business days.	The final rule should provide additional time for the safe harbor for non-on-us items, beyond the additional two days set forth in the Proposed Rule. First, there are situations where it will take longer than 4 business days to collect an item, even using electronic collection methods. This may occur, for example, where the item has been fraudulently altered to delay its collection and return (e.g., the item bears a fictitious or non-matching routing number and account) or where there is another problem with the electronic collection or return and manual intervention is required. Second, there will remain a small subset of items that are not eligible for image exchange. If items subject to a deposit hold exception are collected and returned in the paper process, the time period for forward and return exchange may extend beyond 4 business days. ECCHO has surveyed a select number of financial institutions regarding the increased risk of loss to depositary banks from the reduction in the safe harbor time period. Based on this review of the data from these financial institutions, there is the potential for substantial monetary risk to the depositary bank from the reduction of the safe harbor period to under a total of five business days (2 days plus 3 additional days). We have set forth a summary of this survey data in Attachment 1 to this Chart. It is our view that this data strongly supports the conclusion that it is premature to reduce the safe-harbor period to four days as provided in the Proposed Rule. Accordingly, we recommend that the final rule provide a safe harbor of at least a total of five business days.
§ 229.15(b)(1) – Reference to Day of Availability Requires depositary bank to disclose availability of deposit in relation to the banking day the deposit was received. Depending on bank's availability policy, bank may use terms "next business day," or describe the business day after receipt using phrases that include cardinal (#) or ordinal (word) numbers.	We support the general goal of the Proposed Rule to provide notices that consumers will find to be clear and easy to understand. We support the proposed change to this Section which we read as allowing a financial institution to continue to use the approach under current Section 229.15(b)(1) for referencing the day on which funds would be available. The Proposed Rule provides additional optional methods for describing the day on which funds are available. We would not support any change to the final rule that mandated that banks shift to a new approach for describing availability days in either disclosures or notices. If these disclosure changes were to be mandated in the final rule, any marginal improvement in clarity of the disclosures must be weighed against the expectation that implementing a mandated change in the availability disclosure will be complex and require costly reprogramming of numerous bank systems (ATM, teller deposit, back office, etc.). The limited incremental value of mandating a new form of alternative disclosure must be weighed against the expected increases in cost.

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§ 229.16(c)(2)(i) – Notice at time of case-by-case delay Amends the case-by-case notice requirement to require that a case-by-case notice of delayed availability include the total amount of the deposit.	The Proposed Rule requested comment on whether banks found the case-by-case hold option still useful. The final rule should continue to support the ability of banks to impose case-by-case holds on deposited items. Even with the shorter collection time frames as a result of image collection, there are situations where a bank may seek to extend the hold on individual deposited items, such as in a suspected check kiting situation. Our discussion with member banks indicated that banks are still using the case-by-case holds. In addition, some member financial institutions during our review of the Proposed Rule commented that the elimination of the case-by-case hold option may encourage some banks to use the maximum regulatory hold periods for all customers as opposed to giving faster availability, since the depositary bank could not place a case-by-case hold when needed on a particular account. Regarding the Proposed Rule's proposed new informational items for the notice, the final rule should not require the inclusion in the notice of the amount of the deposit in the notice of the case-by-case hold. As noted above in the comment to section 229.13(g)(1)(i), including the full amount of the deposit in the notice raises a number of operational and implementation issues. The placement of the deposit amount on the notice does not materially improve the quality of the notice to the customer such that it would outweigh these operational and implementation difficulties and costs.
§ 229.16(c)(2)(ii) – Timing of Notice for Case-by-Case Delay Use of electronic communications.	Please see our comments above in Section 229.13(g)(1)(i) regarding mandating use of electronic communications and what it means for a customer to have agreed to receive electronic communications.
§ 229.30(a)(1) Sets forth the test for expeditious return of a check by the paying bank. Paying bank shall send returned check expeditiously so that the depositary bank normally would receive the returned check no later than 4pm (local time) on 2nd business day following banking day on which check was presented.	We agree that the general test for expeditious return under the final rule should be the 2-day test as set forth in the Proposed Rule. As noted below, we have a number of comments and concerns relating to how a paying bank determines if an agreement for electronic return is in place that would entitle the depositary bank to expeditious return.

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§ 229.30(a)(1) –Commentary Provides examples of where depositary bank has agreed to receive electronic returns from paying bank. • Direct agreement with paying bank • Depositary bank has agreed to receive returns from a returning bank which holds itself out as willing to accept returns from paying bank and returning bank has agreed to handle items expeditiously. • Same as prior example, but there are two returning banks, and returning bank B has agreed to accept returns from paying bank and agreed to handle returns expeditiously. Returning bank B returns item to returning bank A that has agreement with depositary bank. • Depositary bank and paying bank are members of same clearing house and agreed to electronic returns.	Requirement for Agreement To Receive Electronic Returns We have a concern regarding the second example in the Commentary of when a depositary bank has agreed to accept electronic returns through a returning bank. Under the second example, a depositary bank is deemed to have an agreement for electronic return with the paying bank if the depositary bank has an agreement to receive returns from a returning bank which holds itself out as willing to accept returns from the paying bank and the returning bank has agreed to handle items expeditiously. There is the potential that this approach to an "agreement" could be abused by a depositary bank that only agrees to accept electronic returns from a small returning bank that has limited connections to paying banks and no connection to an image exchange network in which a large number of paying banks participate. In addition, the Proposed Rule does not recognize that it may be difficult or time intensive for a paying bank to determine to which returning bank a depositary bank has connected in order to receive electronic returns. To address this concern, we recommend that the final rule eliminate completely this second proposed example of a depositary bank's agreement to receive electronic returns from a returning bank that holds itself out as willing to accept returns from paying banks. This approach (in the second example) to the definition of an agreement for electronic return exposes the paying bank to a risk that the depositary bank will select a returning bank that, for one reason or another, does not have a connection for electronic returns from the paying bank. It will be impossible, as a technological and a business matter, for the paying bank to establish a new connection for electronic return to that returning bank when the paying bank has been presented an item and only then realizes that the sole means of electronic return is through this small returning bank. It seems more appropriate as a policy and operational matter, that for those depositary banks that do not have a connection to the Federal Reserve Banks for return, the final rule would place the burden on the depositary bank to review its (non-Fed Bank) returning bank arrangements and to determine if the depositary bank has sufficient coverage through its (non-Fed) returning banks for it to receive its returns as electronic returns. We recognize that this approach will provide an incentive for depositary banks to sign-up, at a minimum, with the Federal Reserve for image return services. However, we believe that this approach recognizes the nature of the paper and image return system as it has existed for decades, with the Federal Reserve serving as the primary return channel for financial institutions in the United States, even where the financial institution has alternative returning bank arrangements. In this regard, the final rule could state that a depositary bank has an agreement for electronic return with a particular paying bank, and thus is entitled to expeditious return, only if the depositary bank: • has an agreement for electronic return directly with the paying bank, • has an agreement for electronic return through a returning bank which in turn has an actual agreement in place with the paying bank to accept electronic returns (returning bank is not just "holding itself

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	out" as willing to accept electronic returns), • has an agreement for expeditious return by means of electronic return through the Federal Reserve, regardless of whether or not the paying bank has an arrangement with the Federal Reserve for sending of electronic image returns to the Federal Reserve, or • is a member of a clearing house and depositary bank has agreed to receive electronic returns through that clearing house from the paying bank
§ 229.30(a)(1) – *Commentary* Example of Agreement include situation where depositary bank and paying bank are members of same clearing house and agreed to electronic returns.	We support the use of clearing house rules as a type of agreement for electronic return between the paying bank and the depositary bank. In addition, we recommend that the final rule includes as examples of agreements for electronic return those bilateral or multilateral agreements whereby a bank enters into an arrangement with an image exchange network provider, and as part of that agreement agrees to receive electronic returns from other banks that join the same network. In some cases, these image network providers are not themselves clearing houses. See similar comment in Section 229.2(s) above.
§ 229.30(a)(1) – *Commentary* Paying bank may rely upon list of depositary banks published by the returning bank to determine if depositary bank has agreed to receive items electronically.	Central List of Returning Banks and Depositary Bank Routing Numbers. We recommend that consideration be given under the final rule to obligate a returning bank to publish in certain agreed locations and formats which depositary bank routing numbers the returning bank is willing to accept for electronic return and willing to handle for expeditious return. Consideration should be given to requiring all returning banks to register with a central database or a single website such that there would be a single point of contact for paying banks to determine the appropriate routing for a returned item. This central registry of returning banks could be operated by the private sector, the Federal Reserve or a private sector/Federal Reserve joint project. If this central list of return routing numbers is to be successful, it would require the participation of the Reserve Banks to ensure that the list of routing numbers for electronic image return was as comprehensive as possible, showing all depositary banks and all returning banks associated with various depositary banks. We believe that this list of routing numbers for electronic return would also reduce the number of rejected return items that occur today due to invalid return routing numbers. These rejections for invalid return routing numbers increase the risk of loss to both the paying bank and the depositary bank, as the potential for late return and lifting of deposit holds increases. Agreement For Return That is Limited To Certain Routing Numbers. We recommend that the final rule include additional commentary that clarifies that an effective agreement for electronic return may be limited to certain routing numbers associated with the depositary bank. If the depositary bank uses a routing number for return on an item that is not expressly identified as an effective routing number for return in its

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	agreement with the paying bank, the depositary bank should not be entitled to expeditious return from that paying bank for that item. It is our experience that many bilateral and multilateral agreements for exchange expressly identify those routing numbers that are eligible for electronic image exchange, and the bank check systems will process the item as a paper return, if the routing number is not previously set up in the systems as an electronic return point.
§ 229.30(a)(1) – Commentary Clarifies that, if depositary bank does not receive return because of "operational difficulty" at depositary bank or returning bank, paying bank has still met its expeditious return obligation	We agree with the proposed paragraph that the paying bank is not responsible for delays in return that are caused by operational issues at the returning bank or at the depositary bank. A paying bank cannot control for delays that may occur at these entities. It will encourage further adoption of electronic return processes if paying banks understand that the scope of their responsibility for the item is with respect to their own operations and communications to the returning bank/depositary bank. In addition, this Proposed Rule is analogous to the approach in paper check clearing that places responsibility for timely processing on the depositary bank, once the paying bank has delivered the paper check to the depositary bank.
§ 229.30(a)(3) Clarifies that a paying bank may send a returned check to any bank that handled the check for forward collection if the paying bank is unable to identify the depositary bank.	We agree that the paying bank should have the option of returning an item to any bank that handled the item in the forward presentment if the paying bank cannot identify the depositary bank. Furthermore, we recommend that the Federal Reserve adopt the approach set forth in the Proposed Rule, and that the final rule not address issues relating to a paying bank's selection of one collecting bank indorsement for return from multiple potential collecting bank indorsements. These issues should be, and are being, considered and addressed in standards and rules organizations.
§ 229.30(b)(1) A paying bank need not return a check expeditiously if a depositary bank has not agreed to accept electronic returns from the paying bank under § 229.32(a).	General Comment. We agree with the exception to the obligation for expeditious return if the depositary bank has not agreed to accept electronic returns. See prior comments regarding requirements on the depositary bank to establish an agreement for returns. Additional Exception for Expeditious Return. The final rule should include an additional exception to the expeditious return obligation. The paying bank should not have an expeditious return obligation if the paying bank has received an item (either as an image or a paper check) and the item does not qualify for return as an electronic return under Regulation CC or otherwise does not qualify for electronic return under the rules of a clearing house, image exchange network, or the Federal Reserve Operating Circular #3 which could be used by the paying bank to return the item. There are situations where, through no fault of the paying bank, the item will not qualify for handling as an image return, notwithstanding the existence of an agreement for electronic returns with the depositary bank. In light of the lack of

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	effective methods for timely delivery of the paper item, we believe that Regulation CC should not impose an expeditious return obligation on the paying bank in this scenario. It may be appropriate in the final rule to include a required notice from the paying bank to the depositary bank in a situation where the paying bank is aware that the return will be delayed because the check has to be delivered in paper form, as opposed to electronic form.
§ 229.30(b)(2) - Commentary Unidentifiable Depositary Bank	The current example in the Commentary to Section 229.30(b)(2) appears incorrect, and we ask that the Federal Reserve review it in the context of this rulemaking. The current Commentary states: "In cases where the paying bank is unable to identify the depositary bank, the paying bank may, in accordance with § 229.30(a), send the returned check to a returning bank that agrees to handle the returned check for expeditious return to the depositary bank under § 229.31(a)." If the paying bank is not able to identify the depositary bank from a review of the item or the electronic record (in the case of an electronic collection item), then the paying bank would not be able to determine which returning bank would be willing to accept the item for expeditious return to the (unidentifiable) depositary bank.
§ 229.30(b)(2) – Commentary Clarifies that a paying bank is not deemed "unable" to identify the depositary bank where the depositary bank's indorsement is not in an addenda record associated with the electronic image, but is legibly included within the image of a check presented electronically to the paying bank. Paying bank must retrieve image and review.	We agree with the Proposed Rule's approach for requiring the paying bank to inspect the back of the image to determine if there is a printed depositary bank indorsement, in a situation where the depositary indorsement is not available from the electronic addenda record associated with the image. This approach is consistent with the approach taken today under the ECCHO Rules for determining the appropriate bank to route a return.

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§ 229.30(b)(2) – Commentary (cont'd) Notification to the transferee returning bank of unidentifiable depositary bank in the case of electronic returns.	We are concerned with the Proposed Rule's approach for the paying bank to notify the transferee returning bank of an unidentifiable depositary bank associated with an electronic return. The Proposed Rule states that the paying bank may place the transferee returning bank's routing number in an electronic addendum record reserved for the routing number of the depositary bank. This approach is not consistent with industry practice or standards, and will cause confusion at those returning banks that are also depositary banks. For example, the transferee returning bank may incorrectly identify such an item as its own item because it will see its routing number in the depositary bank location. The transferee returning bank may then take the item out of the transit return process and send it for internal return item processing. This will cause a delay, as the transferee returning bank's staff will only later realize that the item is a transit return, and not an item deposited at the transferee returning bank. We recommend that the final rule continue to permit industry standards, operating circulars, and clearing house rules to either waive the notice requirement for an unidentifiable depositary bank, to adopt the approach suggested in the Proposed Rule, or to establish a different means of notifying the transferee returning bank of the unidentifiable depositary bank.
§ 229.30(c) – Extension of deadline The paying bank's deadline for return would be extended to the time of dispatch if the paying bank uses a means of delivery that would ordinarily reach the depositary bank by 4:00 p.m. on the second business day after the banking day on which the check was presented to the paying bank.	We agree with the approach in the Proposed Rule for providing a paying bank with an extension of time for expeditious return until time of dispatch. Even in the electronic exchange environment, there are items at the paying bank that are rejected from the regular posting and return processing cycle, and must be researched by bank staff during the day following the first posting cycle at the paying bank. This research can extend throughout the day, depending on the number of items that have been rejected that day and/or the reasons for rejection of a particular item. A paying bank should be permitted to satisfy the expeditious return requirement by dispatching the corrected return item to the depositary bank in a manner such that the item will reach the depositary bank by 4pm on the second business day. With regard to the question presented by the Federal Reserve in the Proposed Rule as to whether or not this rule should be altered to require actual timely receipt of the item at the depositary bank, based on a survey of member banks participating in the Commenters' review process, there is support for altering the approach in the Proposed Rule to require that the depositary bank actually receive the returned item by 4:00 p.m. on the second business day after the banking day on which the check was presented to the paying bank. We note that such a change to Regulation CC may require additional implementation time for the paying banks to review procedures and processes for routing.

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Placement of reason for return Paying bank shall indicate on the "front" *(changed from "face")* of the check the return reason and that the check is a returned check.	We support the Proposed Rule and commentary approach for the placement of the return reason on a returned item.
Placement of reason for return Commentary Adds a new example that the requirement for placement of return reason could be met by placing the information on the front of the substitute check as specified by ANS X9.100-140.	We suggest that the reference to industry standard ANS X9.100-140 make it clear that any future amendments to the standard are effective upon release of the amended standard. The Regulation itself does not have to be amended by the Federal Reserve in order for the new standards amendment to take effect. We believe this approach will allow the industry to effectively establish the time line for the transition to new or amended technical standards, and avoid the risk that the standards implementation is delayed as a result of delays in the regulatory process. The final rule could provide that the standard is the ANS X9.100-140 standard, "as may be amended and implemented from time to time by ANS" or similar language.
Refer-to-maker reason for return Commentary States that "refer to maker" is insufficient as a reason for return, because "refer to maker" is an instruction to the recipient of the returned check and not a reason for return. A paying bank may use "refer to maker" in addition to the reason for return.	We are strongly opposed to the Proposed Rule's revision to prohibit a paying bank from using the "refer to maker" return reason on a standalone basis. First, there are in fact situations where the "refer to maker" return reason is the most appropriate reason to be placed on the item, and there are no other return reasons that would better describe the reason for the return. For example, for positive pay items, the drawer customer may want the payee to contact the drawer customer to discuss the item. In many cases with the positive pay systems, the paying bank will not know the factual basis as to why a drawer customer has instructed the bank, through the positive pay system, to return the item. In addition, it will be difficult for the paying bank to require the corporate customers to identify all return reasons with specificity. For example, if a paying bank (or the drawer customer using positive pay) suspects that there is a fraud associated with the item, but the paying bank (or drawer customer) is not confident of the fraud, due to potential liability concerns, the paying bank (or drawer customer using positive pay) will not want to put a "forgery" or "counterfeit" return reason on the returned check. In these situations, the "refer to maker" return reason is appropriate as the return reason will alert the depositing customer that he/she needs to contact the drawer to provide more information regarding the item so that the drawer customer can determine whether there is in fact a fraud on the item. Second, the permissibility of certain return reasons raise a number of issues that are best addressed in industry standards groups, such as the full range of return reasons and related codes/numbers that are used for the return reasons. For example, it may

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	be necessary for the standards groups to review all the return reasons in the context of encouraging paying banks to reduce or eliminate any inappropriate reliance on the "refer to maker" return reason. We have discussed these issues with individuals that participate in various check standards groups that are impacted by return reasons, and they estimate that it would take a minimum of one year to complete the revision of the standards to include new/expanded return reasons and then additional time to obtain approval of the revised standards by the standards groups. It would then take at least another year to two years for financial institutions to implement these revised standards into their systems. Third, requiring banks to reduce or eliminate in all cases the use of the "refer to maker" return reason will require substantial procedural and systems changes at the paying banks. Systems will have to be reprogrammed to input a more specific return reason, and possibly move more items to manual review so that more specific return reasons can be added. There also will be a need for banks to revise the positive pay systems to encourage/require corporate customers to use a different return reason. All of these changes will come at significant time and expense to the banking industry. For all of the above reasons, we strongly recommend that the final rule not prohibit paying banks from using the "refer to maker" return reason, Instead, the financial services industry and the Federal Reserve together should bring this issue to the standards groups and develop an approach to reduce any inappropriate reliance on this return reason.
§ 229.30(e) – Notice in lieu of return -- Commentary Provides that a bank may send a notice in lieu of return only where neither the check itself nor an image of and information related to the check sufficient to create a substitute check is available.	The Proposed Rule requested comment on whether or not the notice in lieu of return should be maintained or deleted. We support maintaining in the final rule the option for a paying bank to send a notice in lieu of return. We also support the approach in the Proposed Rule to expand the use of the notice to situations where the image of the check is not available. The need for the notice in lieu of return does not go away solely because most banks have moved to image exchange and return. There may still be situations where the notice is the only option for the paying bank. For example, the image may not be retrievable from the archive for a technical reason or the image may be unreadable when retrieved, and therefore the paying bank cannot create an electronic return. In addition, as noted above in our comment to Section 229.30(b)(1), it may be appropriate to require a paying bank to send a notice in lieu of return in a situation where the paper item is not eligible for electronic return and a non-expeditious paper return method will be used. We see the potential for future use/growth of the notice in lieu of return to address items that are not eligible for one reason or another for electronic return. Use of notice in these situations could be beneficial to the depositary banks as well as their customers by providing them with an alternative form of electronic return, instead of a

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	potentially slow return of some form of paper replacement item (such as a photo-in-lieu return document). However, a number of financial institutions in the Commenters' review process have expressed concern that there is not a uniform channel for sending the electronic notice in lieu of return to depositary banks. Accordingly, check image exchange operators, including the Federal Reserve Banks, may need to develop messaging and other rules to support this notice in lieu of return. We recommend that the Federal Reserve work with the industry, possibly through the standards groups or the other private sector forums, to develop common standards and formats for the notice in lieu in order to facilitate its use. Additional Informational Items for the Notice. We would support including the MICR line information from the original check and the depositary bank sequence number of the item in the notice of lieu of return where that information is available to the paying bank. These two informational elements are typically helpful to the depositary bank in identifying the item to which the notice relates. We recommend that the Board also give consideration to permitting in the final rule the paying bank to include with the notice in lieu an image that the paying bank may have, even though that image is not sufficient to create an electronic return. The depositary bank may find it useful for research to have at least a partial/incomplete image of the returned item along with the notice in lieu information. We support including an optional image within the notice in lieu of return. ACH Routing Of Notice In Lieu. We do not support the use of a notice in lieu processed through the ACH system. The check and ACH systems at most banks are separate, and a forward check transaction should not have any return or notice that comes back through the ACH system. Such routing increases risk that appropriate bank staff/systems will not receive or process the notice.
§ 229.30(f) – Reliance on routing number Provides that paying bank may rely on any routing number designating the depositary bank in the electronic image of or information related to the check.	We agree with the approach in the Proposed Rule that the paying bank should be entitled to rely on any routing number designating the depositary bank in the image or in the electronic addendum information associated with the image. We also recommend that the final rule permit the paying bank to rely on any routing number designating a collecting bank in the image or in the electronic addendum information associated with the image, in the event there is no depositary bank information identifiable from the item, and the paying bank is seeking to return the item to one of the collecting banks that handled the item in forward exchange. In some cases, the paying bank will not want to return the item directly to the presenting bank, and may seek to return the item to an earlier collecting bank that is more likely to identify the depositary bank. We recommend that the final rule leaves the question of whether the paying bank should look to collecting bank indorsements in any particular order (such as looking at the oldest collecting bank indorsement first) to the clearing house rule/agreement/operating circular. This is primarily an operational level issue that

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	may be changed over time with industry practice and/or developments.
§ 229.31(a)(1) – Commentary A returning bank may return either paper check or electronic return within required time period.	We support the Proposed Rule approach that a returning bank may agree to handle an item for return, but may state that it is not willing to handle the item for expeditious return. We also support the approach in the Proposed Rule that a returning bank may agree to provide expeditious return for just electronic items, and not paper items. Please see our comments to Section 229.30(a)(1) – Commentary.
§ 229.31(a)(3) – Sending unidentified item to bank in forward collection stream Clarifies that if the returning bank is unable to identify the depositary bank with respect to a returned check, it may send the returned check to any bank that handled the check for forward collection.	Please see our comments to Section 229.30(a)(3).
§ 229.31(a)(4) – Qualified return extension Eliminates the extension of time for return under Regulation CC and UCC if returning bank creates a qualified return.	The Regulation should continue to allow a bank to prepare a check for automated return by placing the check in a carrier envelope. There are certain circumstances where the returning bank may not be able to create an electronic return.
§ 229.31(b) – Exceptions to expeditious return of checks Provides that, in addition to the exceptions currently provided in the regulation, the returning bank's duty of expeditious return does not apply if the depositary bank has not agreed to accept	Agreement for Electronic Return. We agree with the general approach that the depositary bank should not be entitled to expeditious return if it has not agreed to receive electronic returns from the paying bank. However, we have a number of concerns with how the Proposed Rule would deem the existence of such an agreement for electronic return in certain circumstances. Please see our full comment on this issue in Section 229.30(a)(1). Unidentifiable Depositary Bank. We agree that the returning bank should not have an obligation for expeditious return of an item, if the paying bank could not identify the

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electronic returns from the paying bank under § 229.32(a). Removes expeditious return requirement for item sent to returning bank by a paying bank that cannot identify the depositary bank.	depositary bank. Even where the returning bank subsequently locates the depositary bank information in its records, it is likely that that manual handling of the item at the returning bank will make it difficult, if not impossible, for the returning bank to return the item within the expeditious return time requirements.
§ 229.31(f) – Reliance on routing number Adds that the returning bank may also rely on any routing number designating the depositary bank in the electronic image or information included in an electronic return.	We agree with the approach in the Proposed Rule. Please see our comment above under Section 229.30.
§ 229.32(a)(1) Proposes three different circumstances under which a depositary bank agrees to accept an electronic return from the paying bank.	Please see our comments to Section 229.30(a)(1) – Commentary.
§ 229.32(a)(1) – *Commentary* For depositary banks that use returning banks to receive electronic returns, provides example of how a returning bank holds itself out as willing to accept electronic returns directly or indirectly from the paying bank. Provides that a depositary bank is "deemed" to have agreement for electronic returns if the returning bank holds itself out as willing to accept electronic returns from the paying bank,	We support the statement that an agreement may occur through clearing house rule to which both depositary bank and paying bank are subject. Please see the discussion in our comment to Section 229.30(a)(1) regarding issues with a depositary bank being deemed to have an agreement with the paying bank, if the paying bank has an agreement with a returning bank that holds itself out as willing to accept returns from the paying bank.

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even if paying bank has no actual agreement with returning bank.	
§ 229.32(a)(2) – Commentary Provides example of email address designated by depositary bank. Provides example of electronic storage location agreed to by depositary bank where returning bank makes electronic return available for the depositary bank to retrieve or review from the storage device in accordance with agreement between the returning bank and depositary bank.	We are concerned with the suggestion in the Proposed Rule that designating an email address could be an appropriate location for return. We have the same concern with an approach that would have IP addresses of depositary banks published for return items. We are not aware of any banks that are using a standard email address or published IP address for receipt of check images. This email box/open IP address approach to image exchange appears unsecure and open to error or fraud. We are aware that banks use email addresses and designated IP addresses subject to prior written agreement to use such email address/IP address, and agreement to security, etc. Please also see our related comment to the definition of "electronic presentment point."
§ 229.32(a)(3) – Separation of electronic returns Would permit a depositary bank to require that electronic returns be separated from electronic collection items.	We support allowing a depositary bank to require that forward electronic collection items be separated from electronic returns. Banks will want to have different procedures to follow for handling forward items, as opposed to return items. There may also be separate financial settlement of forward and return items and processing windows for these items, which will be facilitated by separation of forward and return items.
Current §229.33 Notice of non-payment Deletes requirement that a paying bank provide notice of non-payment of a check in the amount of $2,500 or more.	We support the approach in the Proposed Rule that would eliminate the notice of non-payment. In an all image environment, banks will typically receive the electronic image back within the time in which they would otherwise receive the notice (put another way, the electronic image also would constitute the notice). Getting rid of the notice will encourage those depositary banks that are not on electronic return today to move to electronic return.

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Proposed § 229.33 – Electronic returns and collection items Provides that electronic collection items and electronic returns are subject to the requirements of subpart C as if they were "checks" or "returned checks," unless the subpart provides otherwise.	We agree with this approach in the Proposed Rule. This proposed approach is also consistent with the approach in the ECCHO Rules that establishes that check images are "checks" or "returned checks" under the UCC and other applicable law.
§ 229.34(a) – Transfer and presentment warranties with respect to an electronic collection item or an electronic return Each bank that transfers or presents an electronic collection item or an electronic return warrants that: (1) electronic image accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated and the electronic information contains an accurate record of all MICR line information required for a substitute check under § 229.2(rr) and the amount of the check; and (2) no person will receive a transfer, presentment, or return of, or otherwise be charged for, an electronic collection item, an electronic return, the original	Application of Warranties to Non-Qualifing Items. Please see our comments under the definition of "Electronic Collection Item" for a discussion of why not all image items will qualify as "electronic collection items" or "electronic returns." Banks should have the flexibility under agreement/clearing house rules/Federal Reserve operating circular to exchange items that do not qualify as electronic collection items or electronic returns, without these new Regulation CC warranties applying to such items. Variation of Warranties. Banks should have the flexibility to vary these warranties as between themselves through clearing house rules, operating circular or private agreements, as necessary to support electronic image exchange. For example, banks may determine that they will not create substitute checks from the exchanged images, and therefore the warranty relating to having sufficient information for creation of a substitute check should not apply to these interbank exchanges. Application to Customers. We do not support the extension of these proposed new Regulation CC warranties to the drawer customer or the depositing customer, unless the banks are permitted to vary the application of these warranties to customers through operating circular, clearing house rules or customer agreement. As discussed above, banks should have the flexibility to vary these warranties as necessary to support electronic image exchange. In order for banks to effectively vary these proposed warranty provision, banks either need the authority under Regulation CC to vary the warranties as they apply to the drawer/depositing customer or the warranties should not apply at all under the Regulation to the drawer/depositing customer. In addition, we do not support a paying bank's customer receiving warranties under Regulation CC from collecting banks that present check items to the customer's paying bank. We believe this could encourage a customer to bring an action against a collecting bank on a check image, without the customer first making a claim to the customer's bank. A paying bank's customer should obtain recovery from its own bank, and that bank in turn should seek reimbursement from the other banks in the check collection chain under clearing house rules, Regulation CC warranties and the

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check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid. For electronic collection item, warranty is made to transferee bank, any subsequent collecting bank, the paying bank, and drawer.	like. Liability for Breach of Warranties. Under current Section 229.34(e) of Regulation CC, a bank's liability for damages from a breach of a warranty shall not exceed the consideration received by the bank that presents or transfers a check or returned check, plus interest compensation and expenses related to the check or returned check, if any. However, under the indemnification provisions of the Check 21 Act and Regulation CC, subpart D, a reconverting bank or bank that transfers a substitute check is potentially responsible for consequential damages for losses to subsequent recipients of a substitute check. Because the damages provision of current Section 229.34(e) does not include consequential damages, claims made by a reconverting bank for a breach of the proposed new warranties will not provide the reconverting bank with the ability to recover the potential full range of damages that could incur under Check 21 and Regulation CC, subpart D. Today the clearing house rules and Regulation J provide the reconverting bank with the ability to make a claim for consequential damages to banks that transferred/created the check image prior to the reconverting bank's creation of the substitute check. As a general matter, we would support the continued use of clearing house rules and Regulation J to address those circumstances in which a reconverting bank should be permitted to make a claim for consequential damages to prior banks in the check collection chain. In addition, we strongly oppose any change to the proposed warranties in Section 229.34(a) or to the damages provision of current Section 229.34(e) that would create the potential for customers of a bank to make claims for consequential damages in the context of the receipt of an electronic collection item or electronic return, whether for breach of warranties or otherwise. We do not feel that consequential damages are appropriate in the retail payments context where many of the payments are relatively small and banks are not aware of, and cannot control, the circumstances under which their customers are making payments.
Current § 229.34(b) – Warranty of notice of non-payment Deletes the warranty applicable to the notice of non-payment.	For the reasons discussed above in the comment to Section 229.33, we support the approach in the Proposed Rule that would eliminate the notice of non-payment. We accordingly also support the proposed deletion of the warranty applicable to notice of nonpayment.
Proposed § 229.34(b) Settlement amount, encoding, and offset warranties Encoding warranty is extended to information encoded or	We agree that the final rule should extend the encoding warranties to encoding that occurs after truncation of the paper check to an electronic collection item. Banks today frequently repair and rekey MICR line data after imaging of the paper check.

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provided electronically after issue in the electronic information of an electronic collection item or electronic return.	
Proposed § 229.34(c) – Commentary Transfer and presentment warranties with respect to a remotely created check Amends commentary to clarify that the RCC warranty would apply to both an electronic collection item created from an RCC and an electronic image and information transferred as an electronic collection item created for an RCC.	Application To Images of Paperless RCCs. The Supplementary Information is clear that the new commentary in Section 229.34(c) is intended to clarify that images of paperless RCCs are subject to the RCC warranty. However, the actual text in the commentary is not as clear. We recommend that the commentary be rewritten to be clearer on this point. Application of the RCC Warranty To Bill Payment Company Created RCCs. While the Proposed Rule has not requested comment on the RCC definition directly, we feel it is an appropriate time for the Federal Reserve to reconsider the scope of the current RCC definition, and thereby the scope of the application of the RCC warranty to different types of items. The Federal Reserve may wish to seek public comment in the near future on the potential for a revision to the current RCC definition in Regulation CC as it relates to those items that are created by bill payment companies (and other payment agents acting on behalf of the authorizing customer), and then are used to make a payment to an unrelated third party payee. These items raise different policy and operational issues compared to those RCC items that are printed/made by the payee itself (whether acting on its own behalf or on behalf of the authorizing customer) and deposited with the payee's bank. It is the experience of the industry that these "bill payment RCCs" tend to create more disputes within the check clearing system than those RCCs that are payee created. Some of these additional disputes may be arising from customers of the paying bank who previously authorized the bill payment and then reject the check payment and insist on the RCC warranty claim by the paying bank. Moreover, the application of the RCC warranty in these bill-payment scenarios results in the RCC being posted/adjusted back to the depositary bank and its customer, both of whom did not deal with the entity that created the RCC. When the RCC is returned or adjusted back to the payee's bank, the payee has no ability to provide evidence of authorization (since the payee did not deal with the customer or bill payment company that created the RCC). As a result, it is difficult for the payee to raise a dispute with the bill payment company because the payee is not in privity with, and has no warranty claims against, the bill payment company. For these reasons, the Federal Reserve may want to consider seeking public comment and input on possible changes to the RCC definition.

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§ 229.34(d) – Warranties with respect to a returned check Deletes warranty of return of a check within the deadline specified in Regulation J.	We support not including in Regulation CC terms specified in Regulation J that apply only to items collected or returned through the Reserve Banks.
§ 229.34(e) – Electronic image and information transferred as an electronic collection item or electronic return A bank that transfers or presents an electronic image and related electronic information as if it were an electronic collection item or electronic return makes all the warranties in § 229.34 as if the image and information were an electronic collection item or electronic return.	Application of Transfer Warranties to Paperless Items Generally. We support the approach in the Proposed Rule to apply the warranties under Section 229.34 to electronic images, which are not created from paper items. There are depositary banks today that may be submitting paperless RCCs into the check settlement system, and paying and collecting banks that receive such items should have the benefit of the Regulation CC warranties for such items. Permissible Variation/Waiver. The final rule should clarify that where two or more banks agree to exchange items that do not qualify as "electronic collection items" or "electronic returns" for any reason, the banks may by agreement (including by clearing house rule) vary or waive the application of Section 229.34(e) to the items for all persons interested in the item. For example, if banks want to exchange items that are not substitute check eligible, the sending bank should not be required under this Section to make the Section 229.34(c) warranties relating to having all data necessary to create a substitute check. Please see our comments to Section 229.2(s). Application of Subpart C to Paperless Electronic Collection Items Generally. The Proposed Rule requests comment on whether the Board should "in the future" consider making an electronically created item subject to subpart C, as if it were a "check." We would support application of subpart C of Regulation CC to electronically created items (that is, electronic images not created from an original paper check). We support the application of subpart C of Regulation CC to both paperless RCCs (which are being created and exchanged today by at least a few banks) as well as to the application of paperless items generally (such as a fully electronic item that are created by a drawer customer and delivered to a payee for payment.) With respect to paperless RCCs, as noted in the Proposed Rule, these paperless RCCs have been known to be exchanged between banks over the last few years. These paperless RCCs also have the potential for increased efficiency in certain merchant segments, where the merchant or bank payee can create the RCC in a fully electronic environment without having to print the item out and then image it into an electronic image. Accordingly, by providing equal treatment to paperless RCCs and traditional RCCs under the final rule, Regulation CC will conform the regulation and rules to match the expectations and experience of the banks receiving and processing these paperless RCCs. Given that paperless RCCs are known to exist, at least in limited exchange, and that there is a known business case for reducing processing costs by

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	using paperless RCCs, we recommend that the final rule, at a minimum, cover paperless RCCs as "checks" for purposes of subpart C, even if the Board determines not to cover other types of paperless/fully electronic items under subpart C at this time. In addition to the coverage of paperless RCCs, we generally support the application of subpart C of Regulation CC to the range of fully electronic items, which would include electronic items that are created by the drawer customer and provided to the merchant or other payee for payment. While these customer-initiated paperless items are not in standard usage today, there has been consideration in the industry of offering payment products based on this model, but their development has been impeded by uncertainty about the applicable legal framework for these new products. Amending Regulation CC to provide a certain legal framework for these products will facilitate the development of these new products and other payment system improvements, to the benefit of both the bank providers and consumer and business users of the resulting payment system products. Finally, once the legal framework for paperless items has been established under Regulation CC, the Federal Reserve Banks (via the operating circular) and the image exchange networks (via their exchange agreements) and clearing house rules can, if and when they choose to do so, establish appropriate standards and processes for these items (such as standards and processes to uniquely identify these items from other images created from paper items). Until that time, the operating circulars, image exchange network agreements and clearing house rules likely will prohibit paperless items as non-eligible items under their rules. As a result, providing for coverage under subpart C of Regulation CC will not immediately result in these paperless items being exchanged between financial institutions. However, establishing a legal framework under Regulation CC for paperless items would be an enabling first step in the development of these promising new payment products. If the Federal Reserve Board is unwilling to apply Regulation CC to electronically created items at this time, we encourage the Board to recognize that banks may exchange electronically created items by agreement or clearing house rule, and to monitor such developments to determine whether to cover electronically created items under Regulation CC in the future.
§ 229.35(a) – Indorsement standards; Appendix D – Indorsement, Reconverting-Bank Identification, and Truncating-Bank Identification Standards Requires a depositary bank that transfers an electronic collection item to apply its indorsement to	General Comment. We generally support these changes to the indorsement standards as set forth in the Proposed Rule. Reference to X9-13. Appendix D makes reference to the "American National Standard Specifications for Placement and Location of MICR Printing, X9.13". This standard has been changed and the appropriate reference should be to the X9-100-160 standard. There are a few additional references to the X9-13 standard in the Proposed Rule, and all of these references should be updated in the final rule.

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that item electronically in accordance with ANS X9.100-187, unless the parties otherwise agree. Electronic indorsements shall include: • depositary bank's nine digit routing number • date of indorsement • Other information that does not interfere with readability Provides that a bank that rejects a deposit and creates a substitute check must identify itself on the substitute check. Requires collecting banks and returning banks to apply their indorsements electronically in accordance with ANS X9.100-187, unless the parties otherwise agree.	Please see our comments above in "Section 229.2(s) – Definition of Electronic Collection Item" regarding our views as to the specific reference in Regulation CC to the ANS X9.100-187 standard.
§ 229.35(a) – Commentary If depositary bank includes email address/electronic address in indorsement, the paying bank or returning bank may route the returned check to that address.	We do not believe there is appropriate space or fields in the indorsement record, as established by the industry standards, for an email address to be included. Please also see our related comment to the definition of "electronic presentment point."
§ 229.36(a)(1) -- Receipt of electronic collection items Sets forth two circumstances in which a paying bank is deemed to have agreed to accept an electronic collection item from the presenting bank. (i) directly from the presenting bank. (ii) as otherwise agreed with the presenting	Please see our comments below regarding same-day settlement (SDS) items and whether a paying bank has agreed to only receive electronic SDS items. We have centralized our comments regarding SDS matters below.

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bank.	
§ 229.36(a)(1) – Commentary One example of such an agreement would be where the paying bank and presenting bank are both members of the same check clearing house, under the rules of which the paying bank has agreed to accept electronic collection items from the presenting bank.	We support the reference to agreement through clearing house rules.
§ 229.36(a)(3) – Separation of electronic collection items Permits a paying bank to require that electronic collection items be separated from electronic returns.	We agree with approach in the Proposed Rule. Please see our comments regarding separate SDS items.
§ 229.36(d)(1) and (2) – Same-day settlement Permits presenting bank to present electronic collection item for same day settlement, if the paying bank agrees to receive electronic collection items. §229.36(d)(1). Permits a paying bank to require that checks presented for same-day settlement be presented as electronic collection items to a designated electronic presentment point. § 229.36(d)(2).	As a general matter, the Commenters support the transition to check image exchange for all checks in the United States, both for same day settlement (SDS) checks and for regular check exchanges. The financial services industry has made substantial progress in the last few years in achieving this all image exchange environment. The nation's financial institutions will achieve the highest degree of efficiency in their check operations by being able to eliminate or substantially reduce the amount of resources that must be maintained to process and handle paper check volume as well as image check volume. In addition, customers will benefit from the faster forward and return of checks in an all image exchange environment. However, as noted in greater detail below, the proposed changes to the SDS rules raise substantial questions that were not addressed in the Proposed Rule, and make it difficult for the Commenters and their members to fully evaluate the impact of potential alternatives. Accordingly, the Commenters recommend that the Federal Reserve consider the below comments, and the comments of other persons that comment on this section, and then issue a new Proposed Rule that addresses only the SDS rules. We believe that the policy and operational issues raised by changes to the

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	SDS rules have the potential for substantial impact on the current check collection system and individual banks, and therefore these rule changes should be considered in greater detail, based on a more comprehensive Regulation CC SDS proposal. During the Commenters' review of this section with their member institutions, the following issues/questions were raised: • If agreement of the banks is required for SDS of electronic collection items, how would this Proposed Rule address a paying bank that wants electronic presentment of all of its SDS items, but a collecting bank still prefers (for cost or operational reasons) to present paper SDS items? (See discussion below). • The Proposed Rule appears to give the paying bank the choice as to whether or not it will receive paper for SDS presentment. What if the presenting bank wants to present electronically to the paying bank, but the paying bank is unwilling to enter into the agreement or establish a designated presentment point for electronic SDS items? Does the presenting bank have no recourse? Must it continue with paper presentment of SDS items? • Would the Proposed Rule allow a paying bank to receive SDS items electronically from some presenting banks, and still refuse to set up other presenting banks for SDS item presentment by electronic means? • Consider potential for eventual sunset of SDS presentment. A number of the above questions turn on the appropriate interpretation of Section 229.36(d). Section 229.36(d)(1), as revised in the Proposed Rule, provides that a paying bank must receive SDS items at the electronic presentment point designated by the paying bank, if the paying bank agrees to receive electronic collection items from the presenting bank. This section, in conjunction with Section 229.36(a), can be read as stating that two banks may (but are not required to) exchange SDS items as electronic collection items, by agreement of both parties. Section 229.36(d)(2) states that a paying bank may require that the checks presented to it for SDS be presented as electronic collection items and be presented to the paying bank's electronic presentment point. It is not clear from this section whether or not there must be an agreement in place between the paying bank and the presenting bank, before the paying bank can require electronic presentment. On one hand, it seems a logical reading of Section 229.36 in its entirety, and the Federal Reserve's adopting release, that there must be an agreement between the paying and presenting banks for electronic SDS exchange. On the other hand, section 229.36(d)(2) does not expressly state that there must be an agreement of the banks, and instead refers to a "designated" presentment point for electronic presentment. In addition, if an agreement is required, some banks do not see how the Federal Reserve's goal of allowing a paying bank to have all electronic presentment can be achieved. That is, some collecting banks may insist on presenting paper for SDS.

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	There is a divergence in views among the member institutions surveyed as to how to read these two sections of the Proposed Rule, and what would be the most appropriate approach to the question of whether the paying bank and presenting bank must have an agreement in place for SDS of electronic collection items. Accordingly, this issue should be addressed in a subsequent proposed rulemaking on SDS presentment.
§ 229.36(d)(2) – Same-day settlement Deletes the provision of regulation that permits the paying bank to require same-day settlement items to be separate from other forward item and return items.	Separation of SDS Items. The final rule should permit a paying bank to require that electronic and paper SDS items be presented in cash letters or electronic files that are separated from other forward and return items. We do not agree with the approach in the Proposed Rule that would allow SDS items to be combined with other forward items. Paying banks will need to receive SDS items separate from regular forward items. For example, a paying bank will need to process the SDS items and prepare for settlement on such items on a different time line than it would have to settle for other forward items.
§ 229.37 – Variation by agreement Commentary Includes as an example of permissible variation by agreement the situation where a depositary bank and a paying bank or returning bank agree to send electronic returns, even where the item is available for return.	We support the new examples set forth in the Proposed Rule. The final rule should include an additional example of how banks may vary the warranties for electronic collection items in order to collect items that do not meet standards for electronic collection items.
§ 229.52 – Substitute-check warranties Adds new subsection stating that a bank that rejects a check submitted for deposit and sends back to its customer a substitute check (or a paper or electronic representation of a substitute check) makes the substitute check warranties in § 229.52(a), regardless of whether bank	We support the approach in the Proposed Rule.

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received consideration for the substitute check.	
§ 229.53 – Substitute check indemnity *Commentary* States that a bank that transfers and receives consideration for an electronic collection item or electronic return that is an electronic representation of a substitute check is responsible for providing the substitute check indemnity in § 229.53.	We support the approach in the Proposed Rule.
Effective date Revised subparts A and B take effect 30 days following publication of the final rule. Banks would have 12 months to comply with the amendments to subpart B and the model forms in appendix C. Amendments to subparts C and D become effective six months following publication of the final rule.	The Commenters and their members generally support the six month delayed effective date for subparts C and D of the final rule, provided that the final rule provides substantially more time to implement any changes to the return reason codes, such as the proposed elimination of the stand-alone return reason for "refer to maker." Any changes to the permissible return reason codes under subpart C will require programming and systems changes to the financial institutions' systems and their business customers' systems, and as a result it will take longer than 6 months for the financial institutions and their business customers to fully implement such a change. As noted in the above comments relating to the "refer to maker" reason code, this code is used in bank systems and business customer systems (such as positive pay systems and RDC systems at customer locations). It will be a substantial undertaking, taking possibly up to 24 months, for financial institutions to make all the changes to their systems and to ensure that their business customers have made similar revisions to their systems that use the return reason code. The Commenters request that any changes to the return reason code have a substantially longer delayed effective date. As noted in our prior comment, the Commenters recommend that the final rule not prohibit the "refer to maker" return reason, and that return reason issues be taken up in the industry standards groups instead. Twenty-four months for system changes may seem like a long period of time to implement changes to the return reason codes in the bank systems. However, as the Federal Reserve recognizes, the financial services industry is currently dealing with a number of rulemakings that are impacting bank deposit systems and other bank processes. These rulemakings are limiting resources that the banks have to make changes to systems and procedures and provide staff training.

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Potential future changes to reduce risks to depositary banks	In the Proposed Rule, the Board requested comment on whether it would be desirable to reduce the amount of time afforded to the paying bank to decide whether or not to pay a check that has been presented to it. We do not support reducing the amount of time afforded to the paying bank to decide whether or not to pay a check that has been presented to it. Paying banks have implemented procedures to determine whether to pay or return checks presented to them, based on the existing UCC midnight deadline and other applicable time limitations. Shortening these time periods would be very disruptive and costly to paying banks, and should not be undertaken absent a compelling need which has not been demonstrated.
Alternatives to the Proposed Rule's Proposed Approach for Expeditious Return	A. Responses to Specific Questions in Proposed Rule on Alternative Approaches. The Proposed Rule requested comment on whether there are alternative approaches to revising the expeditious return rule of Regulation CC to encourage electronic returns. Other than the revisions we suggest in our comments above to the agreement requirement for electronic return, we do not have any alternative approaches. We would not support the two alternatives that were noted in the adopting release to the Proposed Rule. That is, we do not support the alternative approaches of: (i) requiring a bank that holds itself out as a returning bank to accept an electronic return from any other returning bank that similarly holds itself out as a returning bank; and (ii) requiring an electronic return to be returned through the forward-collection chain. The former option would appear to us to lock the industry into a specific routing scheme for returns and require a degree of integration between the returning banks that does not exist today. The latter approach would not work without a complete change to the forward exchange process. Many banks that present or exchange items in the forward process are not set up to accept returns and route them back to the depositary bank. This approach would actually delay the return, not move it more expeditiously. B. Potential Alternative Approach to Depository Bank Agreement Requirement – Depositary Bank to Have Electronic Return Capability from Certain Percentage of Paying Banks. As discussed in our comment set forth above in Section 229.30(a)(1) – Commentary, we strongly support the approach described in that comment to require a depositary bank to have an actual agreement for electronic return with the paying bank or otherwise agree to receive return items from the Federal Reserve Banks. However, if that approach is not possible, we would be open to an alternative approach that required the depositary bank to accept electronic returns from a minimum percentage of all paying banks. The current approach in the Propose Rule, that allows the depositary bank to agree with any returning bank that holds itself out as willing to accept electronic returns from a paying bank, does not appropriately

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	recognize the expense and time associated with the paying bank establishing electronic connections to new returning banks. For example, a depositary bank could select a new returning bank that only had limited connections to paying banks or image networks in which many paying banks participated. In this case, most paying banks would have to establish new operational and legal arrangements for electronic return with the new returning bank. This could be inordinately expensive and time consuming. Consideration should be given to requiring that a depositary bank establish a sufficient number of returning banks such that the depositary bank will receive at least a minimum percentage of all of its return items from paying banks that have an established electronic return arrangement in place with such returning banks. For example, the final rule could require that each depositary bank have agreements with one or more returning banks that will allow for at least 75 percent *(number is an example only*) of the depositary bank's return items to be returned electronically by paying banks which have established electronic return arrangements with the selected returning banks. This approach could also include within the percentage paying banks that have return arrangements with returning banks that are connected to other returning banks that can return to the depositary bank. This percentage-based approach would allow a depositary bank to select either a single returning bank with established connections to many paying banks, or a number of returning banks that collectively have established connections with many paying banks, such that the 75 percent *(number is an example only*) threshold requirement is satisfied. The depositary bank itself could monitor its percentage of paying banks to which it has an electronic connection, or the returning banks could monitor the percentages for their depositary bank customers. Depositary banks could report their current percentage return status to the Federal Reserve or otherwise publish the data on an annual basis.
Model Availability Policy Disclosures C-1 through C-5 All proposed funds availability models include statement that depositary bank may charge back after funds are made available (in the event of a returned check).	We are concerned that the new text for all model funds availability disclosures regarding charge back of a check in the event of a return may be too limiting and could be misinterpreted by customers. There are a number of reasons why a depositary bank may charge an item back to the account of the depositing customer. For example, there could be a warranty claim relating to the item that is made days or months after the funds were made available on the account. Also, a deposit could be rejected by the depositary bank after it is reviewed in the bank's back office. These additional reasons for return are typically addressed in the account agreement governing the deposit account. We recommend that the revised model notice be clear that a charge back also may occur for reasons other than the return of a check. For example, the final rule could provide that the model disclosure should state as an alternative: "Bank may have a right to charge back a deposited check, even after availability has been given to you."

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Model Availability Policy Disclosures C-1 through C-5 Additional Comment	Continue a Model Notice That Has Routing Numbers Option. The Proposed Rule expressly requests comment on the actual practices of banks with respect to deposit holds and funds availability. In this regard, many banks provide special/faster availability to their customers for check deposits where the availability is based on the routing number of the deposited check. Even with the move to 2 day availability for all checks, many banks will want to provide faster availability for some checks, based on routing number. The model notices in the final rule should include an example of how a depositary bank provides notice of this approach to availability. Providing a model notice for the bank to use when providing faster availability for certain routing numbers will encourage banks to provide faster funds availability. Without a model notice, some banks may be reluctant to provide faster availability using the routing number approach, and instead would stay with the default rules of 2-day availability for all items so they can continue to rely on the Regulation CC model notices. In addition, to support banks that provide faster availability than required under Regulation CC for certain routing numbers and the use of this proposed new model notice, we recommend that the Federal Reserve maintain the routing number tables in the final rule, so that banks can reference the routing number tables in their notices to their customers.

Comments to Proposed Amendments to Regulation CC Section 229.13(h)
Availability of Deposits Subject to Exceptions

Attachment I - Survey Data Regarding Return Time Periods

Overview: Following is a summary of the results of a survey to determine respresentative arrival rates of unpaid returned checks at the bank of first deposit (BOFD). Ninety-one institutions participated in the survey in which they reported their respective arrival percentages of returns by day beginning with the day-of-deposit and ending with arrivals more than seven days after deposit (DOD >+7 days). This survey focuses on the risk created by the proposed maximum hold on deposited funds of four days and does not focus on the losses that might be created.

Participants: The following chart shows the number of reporting financial institutions receiving returns on each day. Seventy-seven banks reported data for ninety-one banks. Two of the banks reported data for a group of eight banks each. Participants included community banks and large national/regional banks.

Data: Survey participants were asked to select a sample period that would be representative of their typical return experience. Selected sample periods varied by bank. Twenty-five banks surveyed for one month or longer, forty-one banks surveyed one week and eight banks surveyed over a two to three week period.

	Business Days Relative to the Day of Deposit (DOD)								
77 Banks Reporting Data for 91 Banks	**Day of Deposit**	**DOD +1 Day**	**DOD +2 Days**	**DOD +3 Days**	**DOD +4 Days**	**DOD +5 Days**	**DOD +6 Days**	**DOD +7 Days**	**DOD +>7 Days**
# of Banks Reporting Returns Received by Day	4	19	62	71	63	40	23	20	21
% of Banks Reporting Returns Received by Day	5.19%	24.68%	80.52%	92.21%	81.82%	51.95%	29.87%	25.97%	27.27%

Comments: According to this survey, the percentage of banks receiving returns beyond DOD +3 days is as high as 81.82% on DOD +4. Banks reported that when deposited funds are held for four days, they are made available at the beginning of the day on DOD +4. Returns arrrive on DOD +4 after the beginning of the day and after the release of funds. This timing difference creates additional risk on DOD +4. Using the proposed four day maximum hold, 52% would have additional risk on DOD +5 and 27% of the banks would have additional risk on DOD +>7.

	Business Days Relative to the Day of Deposit (DOD)									
10 Banks Reporting	**Day of Deposit**	**DOD +1 Day**	**DOD +2 Days**	**DOD +3 Days**	**DOD +4 Days**	**DOD +5 Days**	**DOD +6 Days**	**DOD +7 Days**	**DOD +>7 Days**	**Total**
Annualized Value of Returns Received by Day in $ Million	$ 7.4	$ 2,412.1	$ 9,707.6	$ 14,958.2	$ 3,944.7	$ 1,926.2	$ 291.1	$ 262.1	$ 472.4	$ 33,981.9
% of Total Values by Day	0.02%	7.10%	28.57%	44.02%	11.61%	5.67%	0.86%	0.77%	1.39%	100.00%
>DOD +3 days Yrly in $ Millions					$6,896.5					20.29%
>DOD +4 days Yrly in $ Millions						$2,951.8				8.69%
>DOD +5 days Yrly in $ Millions							$1,025.6			3.02%

Participants: Ten of the nine-one banks that participated in this survey also participate in another ongoing survey that includes the number of actual image returns received by each of the ten.

Data / Calculations: Using the arrival percentage rates for each of the ten and the actual number of image returns for each bank over a representative one month period, an estimate of the volume of return arrivals was calculated by day. This method used only the image returns rather than all returns and therefore should underestimate the total volume of returns. Each month the CheckImage Collaborative collects the volume and value of check images cleared and returned. The CheckImage Collaborative is cosponsored by ECCHO and the Federal Reserve Retail Product Office. The data sources for the CheckImage Collaborative are the Federal Reserve, The Clearing House, Viewpointe and a number of local and regional clearing organizations and include data on approximately 10,000 routing transit numbers that receive image returns. According to the CheckImage Collaborative reports, in recent months the volume of returned images averaged approximately 60 million items per month for an aveger of $1,131 per return. Applying that average dollar amount for image returns across the industry to the arrival volumes by day, the dollars of return items were estimated by day.

Comments: According to this estimation, approximately $34 billion per year in image returns are received by these ten banks and approximately $6.9 billion per year arrive at the BOFD beyond DOD +3 days. $6.9 billion is more than 20% of all dollars received as returned images. By comparison, the $34 billion represented in this survey is approximately 52% of the total CheckImage Collaborative amount. If the maximum hold period were DOD +5 days instead of DOD +4 days, additional risk to the BOFD could be reduced by almost $4 billion per year or 57% for the 10 banks in the survey.

Summary: This survey shows that a significant percentage of the banks surveyed received returned unpaid checks beyond the proposed safe harbor maximum hold period of DOD +4 days for deposits. This survey also shows the annual arrival of returns totaling $6.9 billion for the ten banks included in this survey could be reduced by almost $4 billion per year if the safe harbor period was set at DOD +5 days.