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**MEMORANDUM**

June 1, 2017

To Our Clients and Friends

Re: Amendments to the Check Collection and Return Provisions in Regulation CC

The Federal Reserve Board (Board) has amended check collection and return requirements under Regulation CC (*Availability of Funds and Collection of Checks*) to facilitate the banking industry's ongoing transition to a fully-electronic check collection and return process. The amendments will take effect on July 1, 2018. The Board also is requesting public comment for 60 days on an amendment to Regulation CC's existing liability provisions to provide that, in cases of doubt in a dispute, a substitute or electronic check will be presumed to be altered instead of forged.

Highlights of the Final Amendments to Check Collection and Return Requirements.

- *Expeditious Return Requirement:* The amended rule requires that all returned checks, both paper and electronic, must satisfy a modified version of the current rule's "two-day test" for expeditious return. Paper and electronic checks must be returned to the depository bank (i.e., the first bank in to which the check is transferred) in a manner such that the check would normally be received by the depository bank no later than 2 p.m. (previously 4 p.m.) on the second business day following the banking day on which the check was presented to the paying bank. The amended rule protects the paying bank from liability for failing to meet this requirement if the depository bank does not arrange for the return of checks to the depository bank electronically by "commercially reasonable means."
- *Notice of Non-Payment:* The amended rule applies the notice of non-payment requirement to electronic checks as well as paper checks, and increases the dollar threshold for which notice of non-payment is required to \$5,000. The amended rule changes (i) the time for receipt by the depository bank to 2 p.m. (previously 4 p.m.), (ii) the delivery standard to parallel the new expeditious return standard discussed above, and (iii) certain content requirements for the notice.
- *Extension of Regulation CC to Cover Electronic Checks:* Electronic checks (e.g., electronic images of an original paper check) are brought within the coverage of Regulation CC. They will be treated the same as paper checks for all purposes unless otherwise noted.
- *New Warranties for Electronic Checks:* The amended rule creates new warranties that will apply to the exchange of electronic checks. These include a warranty by the transferring bank that there will be no duplicate payment of the electronic check and that

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the electronic image of the check accurately represents all of the information from the front and back of the paper check. These warranties may be varied by agreement of the exchanging banks.

- *New Indemnities for Electronically Created Items (ECIs)*: New indemnities are created for ECIs, which are check-like items created in electronic form that never existed in paper form. The new indemnities cover losses caused by the fact that (i) the ECI was not derived from a paper check, (ii) the ECI was not authorized by the account holder, or (iii) a subsequent bank pays an item that has already been paid. However, ECIs are not “electronic checks” under the amended rule and therefore are not subject to the other provisions of Regulation CC, such as the Regulation CC expeditious return or warranty provisions discussed above.
- *New Indemnity for Duplicate Payment Arising from Remote Deposit Capture (RDC)*: A new indemnity is added to protect a second depository bank that received a deposit of the paper check that was subsequently returned unpaid because the check had been previously deposited at another depository bank using a RDC service. Under this indemnity, the second depository bank that received the paper check will be able to recover from the other depository bank that received the check using the RDC service.
- *Same-Day Settlement Rule*: The current same-day settlement rule for paper checks, which requires paying banks to accept for presentment and settle for certain paper checks, was not extended to electronic checks. As a result, the presentment process for electronic checks remains subject to agreement of the exchanging banks.
- *Creation of Substitute Check for Rejected ATM Deposits*: The amended rule clarifies that when a depository bank rejects a paper check submitted for deposit, such as through an ATM, and sends a substitute check back to its customer, the depository bank is deemed to make the warranty and indemnity for substitute checks under Regulation CC.

The Board also proposes to adopt a presumption that a check has been altered when there is a dispute between banks as to whether (a) the dollar amount or the payee on a substitute check or electronic check has been altered or (b) the substitute check or electronic check is derived from a forged original check. The Board is also considering whether the alteration presumption should apply to a claim that the date of the check was altered, and whether that presumption should apply if the bank claiming the presumption destroyed the original paper check. Comments on this proposed presumption are requested within sixty (60) days of publication in the Federal Register, which is expected to occur shortly.

Copies of the final and proposed rules are available on our website at <http://www.schwartzandballen.com/news.html>

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox, Heidi Wicker, or Magda Gathani at (202) 776-0700.