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**MEMORANDUM**

June 4, 2021

To Our Clients and Friends

Re: Federal Reserve Board Requests Comment on Proposed Rule in Connection with FedNow<sup>SM</sup> Service

The Federal Reserve Board is proposing a rule to specify the terms and conditions applicable to funds transfers through the Federal Reserve's FedNow Service. The FedNow Service will be a new interbank 24x7x365 real-time gross settlement payment service which will support instant payments in the United States. FedNow will operate separately from the Federal Reserve's Fedwire Funds Service. Comments are due 60 days after publication in the *Federal Register*.

The purpose of the proposed rule is to bring FedNow transactions within the scope of the Board's Regulation J,<sup>1</sup> which applies to funds transfers through Fedwire. The proposed rule establishes a new subpart C of Regulation J which:

- Applies UCC Article 4A (Funds Transfers) to all FedNow Service transfers.
- Requires a beneficiary bank participating in the FedNow Service to make funds available to the beneficiary immediately after it has accepted the payment order. However, the rule would not provide customers or any other party (other than a Federal Reserve Bank) with a private right of action for the failure of a FedNow participant to meet the availability requirement.
- Provides real-time settlement finality for FedNow transfers.
- Provides that subpart C will apply to transfers over the Service that meet the definition of an "electronic fund transfer" under the Electronic Fund Transfer Act (because FedNow will accommodate consumer use). However, the EFTA would control in the event of an inconsistency.
- Specifies the parties subject to proposed subpart C, including senders, receiving banks, beneficiaries, and Federal Reserve Banks.
- Authorizes Federal Reserve Banks to issue an operating circular for the FedNow Service, detailing more specific terms and conditions governing the Service.

A copy of the proposed rule is available on our website at <http://schwartzandballen.com/news.html>.

For more information, please call Gilbert Schwartz, Robert Ballen, Heidi Wicker, or Victor Razon at (202) 776-0700.

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<sup>1</sup> 12 C.F.R. Part 210, Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire.