



May 14, 2018

*Via Electronic Delivery*

Ann E. Misback, Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, DC 20551

Re: Docket No. R-1599 and RIN 7100-AE98; Regulation J: Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire

Dear Ms. Misback:

The Clearing House Payments Company, L.L.C., which includes the Electronic Check Clearing House Organization ("ECCHO"); the American Bankers Association; the Credit Union National Association; and the National Association of Federally-Insured Credit Unions ("the Associations")<sup>1</sup> respectfully submit this comment letter to the Board of Governors of the Federal Reserve (the "Board") in response to the Board's notice and request for comment on proposed modifications to Regulation J that were published in the *Federal Register* on March 15, 2018 (the "Proposal").<sup>2</sup>

## **I. Executive Summary**

### **A. Overview of the Proposal**

On May 31, 2017, the Federal Reserve Board released amendments to Regulation CC intended to reflect the virtually all electronic check collection system.<sup>3</sup> Among other things, the amendments created a regulatory framework for the collection and return of electronic items by defining the terms "electronic check" and "electronic returned check," established "Check-21-like warranties" for electronic checks and electronic returned checks (i.e., warranties that a bank will not be asked to pay an item twice and that the electronic image and electronic information are sufficient to create a substitute check), and applied existing paper-check warranties to electronic checks and electronic returned checks. These revisions to Regulation CC become effective July 1, 2018.

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<sup>1</sup> Please see Appendix 1 for a description of each of the Associations that have signed this letter.

<sup>2</sup> Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire, 83 Fed. Reg. 11431 (March 15, 2018).

<sup>3</sup> Availability of Funds and Collection of Checks, 82 Fed. Reg. 27552 (June 15, 2017).

The Board is now proposing to amend Regulation J (Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire) to “clarify and simplify certain provisions of Subpart A of Regulation J, remove obsolete provisions, and align the rights and obligations of sending banks, paying banks, and Federal Reserve Banks (Reserve Banks) with the Board’s recent amendments to Regulation CC.” The Proposal would accomplish this by, for example, incorporating defined terms and other provisions from Regulation CC into Regulation J by reference.

The Board is also proposing amendments to Subpart B of Regulation J (regarding Fedwire) to “clarify that terms used in financial messaging standards, such as ISO 20022, do not confer legal status or responsibilities.”

## **B. Summary of The Associations’ Comments**

The Associations generally support the Board’s proposed changes to Subpart A of Regulation J. We agree with the approach the Board has taken in the Proposal to align the defined terms, warranties and indemnities in Regulation J for electronic items with the new defined terms, warranties and indemnities for electronic checks and electronic returned checks in amended Regulation CC. We believe that this approach will help to improve consistency between, and reduce unnecessary duplication within, the two regulations. With respect to the warranties and indemnities that would be made by the Reserve Banks under the Proposal, however, the Associations believe that Regulation J should clearly state the Reserve Banks make the Regulation CC electronic check warranties to the same recipients (including drawer and owner of the check) as is set forth in Regulation CC.

In addition, we support the Board’s proposal to explicitly state that the term “item” does not include an electronically created item (“ECI”) as defined in Regulation CC, which will further clarify the existing Regulation J prohibition on sending ECIs to the Reserve Banks for processing as an image of a check. Finally, we support the other changes and clarifications to Subpart A of Regulation J that the Board has proposed.

We also agree with proposed changes to Subpart B of Regulation J that would clarify that terms used in financial messaging standards, such as ISO 20022, do not confer legal status or responsibilities.

## **II. Discussion**

### **A. Alignment with Regulation CC Amendments Addressing Electronic Checks**

#### **1. Definitions**

The Board proposes to amend the Regulation J definitions of “check,” “returned check” and “item” to align with the new terminology that the Board adopted in amended Regulation CC. Specifically, the Board proposes to amend the definition of “check” in Regulation J, which is currently defined as a draft as defined in the U.C.C. drawn on a bank and payable on demand, to instead mean a “check” and an “electronic check” as those terms are defined in Regulation CC.<sup>4</sup> As the Board notes, the

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<sup>4</sup> Effective July 1, 2018, Regulation CC will define “electronic check” and “electronic returned check” to mean an electronic image of, and electronic information derived from, a paper check or paper returned check, respectively, that— (1) is sent to a receiving bank pursuant to an agreement between the sender and the receiving bank; and (2)

change would “align the terminology in the two regulations.” The Board also proposes to amend the Regulation J definition of “returned check,” currently defined as “a cash item or a check as defined in 12 CFR 229.2(k) returned by a paying bank,” to delete the reference to “check as defined in 12 CFR 229.2(k).” The proposed definition of “returned check” would instead refer to the new definition of “electronic returned check” in Regulation CC. In addition, the Proposal would revise the definition of “item,” which is a term that currently includes an “electronic item”<sup>5</sup> and is used in Regulation J to refer to the instruments and electronic images that the Reserve Banks handle. The revised definition of “item” would delete the reference to “electronic item” and include a reference to a “check” as defined in Regulation J, which under the proposed change discussed above would include both a “check” and an “electronic check” as defined in Regulation CC.

We support the approach the Board has taken in the Proposal to align the defined terms in Regulation J with the same terms in amended Regulation CC. Incorporating the Regulation CC definitions by reference into Regulation J will help to improve consistency between, and reduce unnecessary duplication within, the two regulations. This regulatory consistency will assist banks and their customers in the understanding and application of these new defined terms and the related warranties and indemnities under amended Regulation CC and proposed Regulation J.

## **2. Warranties and Indemnities for Electronic Checks**

Under amended Regulation CC, a bank that transfers or presents an electronic check or electronic returned check and receives a settlement or other consideration for it makes warranties: (i) regarding the accuracy of the electronic image, and that the electronic information includes an accurate record of all MICR line information required for a substitute check under 12 C.F.R. § 229.2(aaa) and the amount of the check, and (ii) that no bank will be asked to pay the item twice.<sup>6</sup> The Board proposes to eliminate duplicative provisions of Regulation J by removing the “Check 21-like warranties currently provided under Regulation J by the sender and the Reserve Banks”<sup>7</sup> and to instead “require the sender to make all applicable warranties and indemnities set forth in Regulation CC and the U.C.C.”<sup>8</sup> The Board explains that these proposed changes “would streamline Regulation J, align § 210.5(a) with the Regulation CC provisions that set out warranties and indemnities for electronic checks, and ensure a seamless chain of warranties for the items handled by the Reserve Banks.”

The Proposal would make similar changes to eliminate duplicative Regulation J provisions with respect to the warranties and indemnities provided by the Reserve Banks when presenting an electronic

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Conforms with ANS X9.100-187, unless the Board by rule or order determines that a different standard applies or the parties otherwise agree. 12 C.F.R. 229.2(ggg) (effective July 1, 2018).

<sup>5</sup> Currently, Regulation J defines “electronic item” to mean “[a]n electronic image of an item described [12 C.F.R. § 210.2 (i)(1)(i)], and information describing that item, that a Reserve Bank agrees to handle as an item pursuant to an operating circular.”

<sup>6</sup> Amended Regulation CC, 12 C.F.R. § 229.34(a) (effective July 1, 2018).

<sup>7</sup> Sections 210.5(a)3-4 of Regulation J provide that for electronic items, the sender and the Reserve Banks “make warranties (1) as set forth in the Uniform Commercial Code (U.C.C.) and Regulation CC as if the electronic item were subject to their terms; and (2) similar to those made for substitute checks under the Check 21 Act.”

<sup>8</sup> Proposed 12 C.F.R. § 210.5(a)(3). The Board further explains that the “proposal would retain the existing requirement that the sender make all warranties set forth in and subject to the terms of U.C.C. 4-207 for an electronic check as if it were an item subject to the U.C.C.”

check to a paying bank or returning an electronic returned check to the depository bank.<sup>9</sup> The Proposal also would make similar changes to rely on the Regulation CC warranties and indemnities for electronic checks when a paying bank is returning an electronic returned check through the Reserve Banks.<sup>10</sup>

The Associations support the approach the Board has taken in the Proposal to align Regulation J with Regulation CC by incorporating the electronic check warranties, indemnities and certain other provisions of amended Regulation CC by reference. We agree with the Board's view that this approach will reduce duplication and improve consistency between Regulation J and Regulation CC. This approach will assist banks and their customers in the understanding and application of these new electronic check warranties and indemnities under amended Regulation CC. Furthermore, this approach to electronic check warranties and indemnities in Regulation J will assure a uniform and consistent application of warranties and indemnities to electronic checks in those situations where an electronic check is exchanged through multiple arrangements (both Reserve Bank and private sector) before presentment to the paying bank.

The Clearing House is taking a similar approach with respect to revising the ECCHO Rules, which are private sector rules that govern the exchange of check images between ECCHO members. In particular, the ECCHO Rules are being revised to incorporate the amended Regulation CC defined terms, warranties and indemnities related to electronic checks and electronic returned checks by reference, and to delete ECCHO Rule provisions that are duplicative or no longer necessary in light of the Regulation CC amendments.

With respect to the Regulation CC "image quality warranty"<sup>11</sup> that would be incorporated into Regulation J by reference under proposed sections 210.5(a)(3) (applicable to a sending bank) and 210.6(b)(3) (applicable to a Reserve Bank), the Associations recommend that the Board acknowledge that the holding from *First American Bank v. Federal Reserve Bank of Atlanta, Citizens Bank, N.A., And David M. Goodson*, 842 F. 3d 487, is consistent with the relevant Regulation CC commentary regarding the information from a truncated paper check that must be included in an electronic check for purposes of the image quality warranty. Attached as Appendix 2, the Associations have provided suggested commentary to Regulation J that the Board may consider adopting regarding this issue.

### **3. Recipients of Reserve Bank Warranties for Electronic Checks**

Under the Proposal, the Reserve Bank "makes to the subsequent collecting bank and to the paying bank all of the warranties and indemnities set forth in and subject to the terms of Subpart C and D of part 229 of this chapter (Regulation CC) and Article 4 of the U.C.C."<sup>12</sup> A similar provision is provided

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<sup>9</sup> Proposed 12 C.F.R. § 210.6(b)(3).

<sup>10</sup> Proposed 12 C.F.R. § 210.12(c).

<sup>11</sup> Under amended 12 C.F.R. § 229.34(a)(1)(i) (effective July 1, 2018) a bank that transfers or presents an electronic check/electronic returned check and receives settlement or other consideration warrants that "[t]he 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 includes an accurate record of all MICR line information required for a substitute check under § 229.2(aaa) and the amount of the check ..."

<sup>12</sup> Proposed 12 C.F.R. § 210.6(b)(3).

with respect to the return of electronic returned checks by the Reserve Bank in which the Regulation CC warranties only flow to recipient banks.<sup>13</sup>

This proposed Regulation J approach to the persons that receive the electronic check warranties from the Reserve Banks is more limited than the persons that receive the electronic check warranties under amended Regulation CC. Proposed Regulation J does not extend these electronic check warranties to the drawer of the check (on the forward side) or the owner of the check (on the return side). In contrast, under amended Regulation CC, each transferor bank that transfers an electronic check makes the warranties provided under Section 229.34(a)(1) to subsequent collecting banks, the paying bank and the drawer. On the return side, the returning bank and paying bank make the electronic returned check warranties under Section 229.34(a)(1) to the depository bank and the owner of the check.<sup>14</sup>

It is unclear from the Proposal whether or not it is the intent of the Proposal to exclude the Reserve Banks from making any electronic check warranty to the drawer of the check (on the forward side) or the owner of the check (on the return side). We note that Regulation J provides that the Reserve Bank does not assume any liability with respect to an item or its proceeds...“except as provided under subparts C and D of Regulation CC.”<sup>15</sup> This Section 210.3(a) provision could be read broadly as meaning that the Reserve Bank is also liable to drawers/owners for the Regulation CC warranties, although such a reading of Regulation J is unclear under the Proposal. It is our view that Regulation J should clearly state the Reserve Banks make the Regulation CC electronic check warranties to the same recipients (including drawer and owner of the check) as is set forth in Regulation CC. This approach in Regulation J would be consistent with the policy and liability approach reflected in Regulation CC that the new electronic check warranties apply to drawers and owners of checks. For example, in the supplementary information to the Regulation CC amendments, the Board explained that it “believes extending the warranties to the drawer of the check and the owner of the returned check is important to maintain a consistent chain of Check-21-like warranties regardless of whether the check is in the form of an electronic check or a substitute check. The final rule provides protection for drawers and owners from harm that is usually beyond their control, such as harm resulting from illegible images or incorrect MICR lines.”<sup>16</sup>

Furthermore, this approach to the recipients of the Reserve Bank’s Regulation CC electronic check warranties would provide greater parity between the Reserve Bank and the private sector collecting and returning banks that handle electronic checks. For example, generally it is not possible for private sector collecting banks to effectively limit the scope of recipients of the electronic check warranties under Regulation CC, because the private sector collecting banks cannot form an agreement with each drawer of a check to waive or modify the Regulation CC electronic check warranties. Furthermore, if it is the intent of the Board to limit the recipients of Reserve Banks’ electronic check warranties, the Board should provide its analysis of why it is appropriate from a legal and competitive perspective for the Reserve Banks to have more limited legal obligations for the electronic check warranties under Regulation J compared to private sector collecting banks under Regulation CC.

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<sup>13</sup> Proposed 12 C.F.R. § 210.12(e)(1).

<sup>14</sup> Regulation CC, 12 C.F.R. § 229.34(a)(2).

<sup>15</sup> Proposed 12 C.F.R. § 210.6(b)(2)(iv).

<sup>16</sup> 82 Fed. Reg. 27552, 27566-67.

The Board has broad authority under Section 609(c) of the Expedited Funds Availability Act (EFAA) to regulate any aspect of the check payments system to carry out the provisions of the EFAA, including the collection and clearing of checks. The Associations would support the Board's use such EFAA authority to require that the Reserve Banks provide in Regulation J the same scope and recipients of the new electronic check warranties as provided under Regulation CC.

#### **4. Operating Circular Warranties and Indemnities**

The Proposal authorizes the Reserve Banks to include in the Operating Circular warranties and indemnities addressing the sending of items and non-cash items that the Reserve Banks have agreed to handle.<sup>17</sup> The Proposal would also require a sender to make any warranties or indemnities regarding the sending of items that the Reserve Banks include in an operating circular issued in accordance with proposed § 210.3(a).<sup>18</sup> The purpose of this Proposal provision is "to ensure that only items and any noncash items the Reserve Banks have agreed to handle will be sent to the Reserve Banks."<sup>19</sup>

The Associations support the approach to revise Regulation J to allow the Reserve Banks to address warranties and indemnities for eligible items and non-cash items in the Operating Circular. This approach provides an appropriate degree of flexibility for the Reserve Banks to address questions regarding eligible items at the Operating Circular level, rather than requiring an amendment at the Regulation J level.

#### **5. Electronically Created Items (ECIs)**

The revisions to Regulation CC establish new indemnities regarding electronically-created items. Regulation CC defines electronically created item as "an electronic image that has all the attributes of an electronic check or electronic returned check but was created electronically and not from a paper check."<sup>20</sup> As the Board notes, because there is no paper check corresponding to an ECI, "the warranties, indemnities, and other provisions of Regulation CC would not apply to those items."<sup>21</sup> The new indemnities for ECIs in Regulation CC shift liability for certain ECI-related losses to the depository bank, and are intended to protect banks that receive ECIs during the check collection process.<sup>22</sup> As the Board notes in the Proposal to amend Regulation J, "ECIs can be difficult to distinguish from electronic images of paper checks. As a practical matter, a bank receiving an ECI often handles it as if it were derived from a paper check." Because banks that receive ECIs generally do not have the ability to distinguish them

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<sup>17</sup> Proposed 12 C.F.R. § 210.3(a).

<sup>18</sup> Proposed 12 C.F.R. § 210.5(a)(4).

<sup>19</sup> 83 Fed. Reg. 11431, 11434.

<sup>20</sup> Under 12 CFR 229.34(g), a bank transferring an ECI indemnifies each transferee bank, any subsequent collecting bank, the paying bank, and any subsequent returning bank against any loss, claim, or damage that results from (i) the fact that ECI was not derived from a paper check, (ii) that an ECI was not authorized by the account holder; or (iii) a subsequent bank pays an item that has already been paid.

<sup>21</sup> 83 Fed. Reg. 11431, 11432.

<sup>22</sup> The commentary to Regulation CC explains that "[t]he paying bank's losses [under this indemnity] include losses arising from Regulation E non-compliance caused by the receipt of an electronically-created item." Comment 229.34(g)-2.

from electronic images derived from paper checks, banks cannot practically reject ECIs when presented for processing and payment.

Under current Regulation J, Reserve Banks are not allowed to handle an ECI because an ECI does not meet the definition of an “item” under the UCC which requires a written instrument.<sup>23</sup> Under the Proposal, the Board would further clarify this existing prohibition by amending the definition of “item” in Subpart A of Regulation J to explicitly state that the term “item” does not include an ECI as defined in Regulation CC. The Proposal would also explicitly state that Reserve Banks may require in the Operating Circular that a sender warrant that such sender will only send those “items” and “noncash items” that the Reserve Bank has agreed to accept, and to indemnify the Reserve Bank for any loss resulting from the sender’s failure to do so.<sup>24</sup> We note that Federal Reserve Operating Circular #3 currently provides that a bank sending data to a Reserve Bank for collection or return as an “electronic item” warrants to each Reserve Bank that handles the data that the data was captured from a paper check. Further, a sending bank indemnifies the Reserve Banks against any loss that results if this warranty is breached.<sup>25</sup>

The Board requested comment on “possible implications that this clarification and change related to ECIs in Regulation J may have on financial institutions or the industry more broadly.” The Associations support this aspect of the Proposal, as we believe it is important to protect banks that receive ECIs during the check collection process from damage or loss arising from the receipt of the ECI. We believe that it is appropriate for Regulation J to explicitly address the sending of ECIs to the Reserve Banks, and that the Proposal provides added clarity regarding the “items” that are eligible for exchange through the Reserve Banks and the responsibility for losses associated with the exchange of images that are not derived from paper checks.

The Board also requested comment on “whether, and to what extent, the Board should consider amending Regulation J as part of a future rulemaking to permit the Reserve Banks to accept ECIs.” The Associations do not support any additional rulemaking from the Board to permit Reserve Banks to accept ECIs. Allowing the collection of ECIs through the Reserve Banks would not alter ECIs’ lack of legal status under check law.<sup>26</sup> We note that the inability to identify and distinguish ECIs presents an ongoing challenge for the industry. Any change to Regulation J that would allow collection of ECIs through the

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<sup>23</sup> The UCC defines “Writing” and “written” to mean “printing, typewriting, or any other intentional reduction to tangible form.” Uniform Commercial Code § 1-201(43).

<sup>24</sup> Proposed 12 C.F.R. § 210.5(a).

<sup>25</sup> Section 2.3 of Operating Circular #3 states that “a sender that sends data to a Reserve Bank for collection or return as an electronic item under this Operating Circular warrants to each Reserve Bank that handles the data that the data is an electronic item as described in paragraph 1.3(d) of this Circular.” Federal Reserve Banks Operating Circular #3 (Collection of Cash Items and Returned Checks), [http://www.frbservices.org/files/regulations/pdf/operating\\_circular\\_3\\_07122012.pdf](http://www.frbservices.org/files/regulations/pdf/operating_circular_3_07122012.pdf). The circular further explains that “[d]ata sent to a Reserve Bank in the form of an electronic item is not an ‘electronic item’ unless the data was captured from a check. By definition, the check from which the data was captured must be paper.” (Emphasis added.)

<sup>26</sup> The UCC defines “check” to mean “a draft, other than a documentary draft, payable on demand and drawn on a bank.” UCC § 3-104(f). “Draft” is defined to mean a negotiable instrument that is an “order,” which is a “written instruction to pay money signed by the person giving the instruction.” See *id.* § 3-104(e) and § 3-104(a)(8). “Writing” and “written” are defined to include “printing, typewriting, or any other intentional reduction to tangible form.” *Id.* § 1-201(43).

Reserve Banks would expose financial institutions to risks relating to ECIs' lack of legal status that banks cannot effectively mitigate given the practical challenges with identification and rejection.

## 6. Settlement and Payment

The Board proposes to revise certain settlement provisions of Regulation J “to remove references to cash and other specified forms of settlement (e.g., cashier’s checks or certified checks) and instead state that the Reserve Banks may settle by a debit to an account on the Reserve Bank’s books, or another form of settlement acceptable to the Reserve Banks.”<sup>27</sup> The Board explains that “the Reserve Banks’ current practice is generally to settle for items by debit to an account on the Reserve Bank’s books[,]” that the use of cash is rare and “typically only done in emergency situations.”<sup>28</sup>

We support this aspect of the Proposal given that the use of cash for settlement is rare, and agree with the Board’s view that cash settlement in emergency situations “could be covered by a provision allowing ‘other form of settlement to which the Reserve Bank agrees.’”<sup>29</sup>

## 7. Legal Status of Terms used in Financial Messaging Standards

The Board states that Reserve Banks plan to migrate to the ISO 20022 financial messaging standard for the Fedwire Funds Service. Because ISO 20022 “employs terminology that differs in key respects from that used in U.S. funds-transfer law, including Regulation J,” the Board proposes to amend Subpart B of Regulation J to “clarify that terms used in financial messaging standards, such as ISO 20022, do not confer or connote legal status or responsibilities.” The proposed language further states that Regulation J, Article 4A of the U.C.C., and the Reserve Banks’ operating circulars govern the rights and obligations of the parties to the Fedwire Funds Service.

The Associations support this aspect of the Proposal and agree that certain ISO 20022 terminology is inconsistent with how those terms are utilized in U.S. funds transfer law. We note that The Clearing House’s Real-Time Payment system (RTP) also uses the ISO 20022 messaging standard and that the RTP Operating Rules incorporate a similar clarifying provision.<sup>30</sup> The Clearing House intends to

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<sup>27</sup> See Proposed Sections 210.9(b)(5), (c), (d), (e), (f).

<sup>28</sup> 83 Fed. Reg. 11431, 11433

<sup>29</sup> *Id.*

<sup>30</sup> Specifically, Section I.D. states that As stated in Rule II(A) of these RTP Operating Rules, Participants are obligated to comply with the RTP Technical Specifications, which include messaging specifications and terminology that are based on the “ISO 20022 Financial Services – Universal financial industry message scheme.” The terminology used in the RTP Technical Specifications and in Payment Messages, Payment Message Responses, and Non-payment Messages, including, without limitation, the terms “agent,” “creditor,” and “debtor” (as such terms are used in the ISO 20022 Financial Services – Universal financial industry message scheme) shall have no legal effect on the status or nature of an RTP Payment or the relationship of a Participant, Sender, or Receiver with respect to any other party to an RTP Payment. Notwithstanding the terms used in the RTP Technical Specifications and Payment Messages and Non-payment Messages, the RTP Participation Rules, these RTP Operating Rules, and Applicable Law, including defined terms, establish the legal rights and obligations of (i) Participants, with respect to their participation in the RTP System, and (ii) Participants, Senders, and Receivers with respect to RTP Payments. To the extent that there is any inconsistency between the RTP Technical Specifications, Payment Messages, Payment Message Responses, and Non-payment Messages and the RTP Participation Rules and these RTP Operating Rules, the RTP Participation Rules and these RTP Operating Rules shall govern.



make a similar change to the rules governing use of The Clearing House Interbank Payment System (“CHIPS”), which also will adopt the ISO 20022 messaging format.

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Thank you for your consideration and review of these comments. If you have any questions or wish to discuss this letter, please do not hesitate to contact any of the commenters using the contact information provided below.

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## **Appendix 1**

### **Information Regarding the Associations**

#### **American Bankers Association**

The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits and extend more than \$9 trillion in loans.

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

The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Payments Company L.L.C. owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by building a new, ubiquitous, real-time payment system. The Payments Company is the only private-sector ACH and wire operator in the United States, clearing and settling nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume. The Payments Company also operates ECCHO, the national provider of private sector check image exchange rules. The Payments Company's affiliate, The Clearing House Association L.L.C., is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system.

#### **Credit Union National Association**

CUNA is the nation's largest trade association representing state and federal credit unions, which serve 110 million members.

#### **National Association of Federally-Insured Credit Unions**

The National Association of Federally-Insured Credit Unions is the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions. NAFCU membership is direct and provides credit unions with the best in federal advocacy, education and compliance assistance.

## Appendix 2

### Suggested Comment Regarding the Regulation CC Image Quality Warranty / *First American Bank v. Federal Reserve Bank of Atlanta, Citizens Bank, N.A., And David M. Goodson*

The Regulation J warranties for electronic checks incorporate the warranties provided under Regulation CC for electronic checks. Under Section 229.34(a)(1)(i) of Regulation CC each bank that transfers an electronic check warrants that “the 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 includes an accurate record of all MICR line information required for a substitute check under § 229.2(aaa) and the amount of the check.” In order to meet the accuracy requirement, this warranty does not require that the electronic check capture those characteristics of the paper check, such as watermarks, microprinting, or other physical security features, that cannot survive the imaging process. See Regulation CC, Official Staff Commentary Section 229.34(a)-2 (electronic check warranties correspond to the warranties made by a bank that transfers, presents, or returns a substitute check); and Regulation CC, Official Staff Commentary Section 229.51(a)-3 (a substitute check need not capture other characteristics of the check, such as watermarks, microprinting, or other physical security features that cannot survive the imaging process or decorative images, in order to meet the accuracy requirement.) See also First American Bank v. Federal Reserve Bank of Atlanta, Citizens Bank, N.A., and David M. Goodson, 842 F. 3d 487 (Appeals Court held that a security warning box on a paper check was not “information” from the paper check for purposes of the Reserve Bank’s Regulation J warranty that the electronic check image “accurately represents all of the information” from the truncated paper check.)