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must be given. A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft or returned check fees after invoking the reasonable cause exception under §229.13(e).

4. *Model C–14 One-time notice for large deposit and redeposited check exception holds.* This model satisfies the notice requirements of §229.13(g)(2) concerning nonconsumer accounts.

5. *Model C–15 One-time notice for repeated overdraft exception hold.* This model satisfies the notice requirements of §229.13(g)(3).

6. *Model C–16 Case-by-case hold notice.* This model satisfies the notice required under §229.16(c)(2) when a bank with a case-by-case hold policy imposes a hold on a deposit. This notice does not require a statement of the specific reason for the hold, as is the case when a §229.13 exception hold is placed. A bank may specify the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit when funds will be available. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a case-by-case hold.

7. *Model C–17 Notice at locations where employees accept consumer deposits and Model C–18 Notice at locations where employees accept consumer deposits (case-by-case holds).* These models satisfy the notice requirement of §229.18(b). Model C–17 reflects an availability policy of holds to statutory limits on all deposits, and Model C–18 reflects a case-by-case availability policy.

8. *Model C–19 Notice at automated teller machines.* This model satisfies the ATM notice requirement of §229.18(c)(1).

9. *Model C–20 Notice at automated teller machines (delayed receipt).* This model satisfies the ATM notice requirement of §229.18(c)(2) when receipt of deposits at off-premises ATMs is delayed under §229.19(a)(4). It is based on collection of deposits once a week. If collections occur more or less frequently, the description of when deposits are received must be adjusted accordingly.

10. *Model C–21 Deposit slip notice.* This model satisfies the notice requirements of §229.18(a) for deposit slips.

11. *Models C–22 through C–25 generally.* Models C–22 through C–25 provide models for the various notices required when a consumer who receives substitute checks makes an expedited recredit claim under §229.54 for a loss related to a substitute check. The Check 21 Act does not provide banks that use these models with a safe harbor. However, the Board has published these models to aid banks' efforts to comply with §229.54(e).

12. *Model C–22 Valid Claim Refund Notice.* A bank may use this model when crediting the entire amount or the remaining amount of a consumer's expedited recredit claim after determining that the consumer's claim is valid. This notice could be used when the bank provides the consumer a full recredit based on a valid claim determination within ten days of the receipt of the consumer's claim or when the bank recredits the remaining amount of a consumer's expedited recredit claim by the 45th calendar day after receiving the consumer's claim, as required under §229.54(e)(1).

13. *Model C–23 Provisional Refund Notice.* A bank may use this model when providing a full or partial expedited recredit to a consumer pending further investigation of the consumer's claim, as required under §229.54(e)(1).

14. *Model C–24 Denial Notice.* A bank may use this model when denying a claim for an expedited recredit under §229.54(e)(2).

15. *Model C–25 Reversal Notice.* A bank may use this model when reversing an expedited recredit that was credited to a consumer's account under §229.54(e)(3).

[Reg. CC, 60 FR 51672, Oct. 3, 1995, as amended by Reg. CC, 62 FR 13816, Mar. 24, 1997; 64 FR 59613, Nov. 3, 1999; 68 FR 52078, Sept. 2, 2003; 68 FR 53672, Sept. 12, 2003; 69 FR 47317–47328, Aug. 4, 2004; 70 FR 71225, Nov. 28, 2005]

## APPENDIX F TO PART 229—OFFICIAL BOARD INTERPRETATIONS; PREEMPTION DETERMINATIONS

### *Uniform Commercial Code, Section 4–213(5)*

Section 4–213(5) of the Uniform Commercial Code (''U.C.C.'') provides that money deposited in a bank is available for withdrawal as of right at the opening of business of the banking day after deposit. Although the language ''deposited in a bank'' is unclear, arguably it is broader than the language ''made in person to an employee of the depositary bank'', which conditions the next-day availability of cash under Regulation CC (§229.10(a)(1)). Under Regulation CC, deposits of cash that are not made in person to an employee of the depositary bank must be made available by the second business day after the banking day of deposit (§229.10(a)(2)). Therefore, this provision of the U.C.C. may call for the availability of certain cash deposits in a shorter time than provided in Regulation CC.

This provision of the U.C.C., however, is subject to Section 4–103(1), which provides, in part, that ''the effect of the provisions of this Article may be varied by agreement * * *.'' (The Regulation CC funds availability requirements may not be varied by agreement.) U.C.C. Section 4–213(5) supersedes the Regulation CC provision in §229.10(a)(2), but a depositary bank may not agree with its customer under section 4–

103(1) of the Code to extend availability beyond the time periods provided in §229.10(a) of Regulation CC.

*California*

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the ''Act'') and subpart B (and in connection therewith, subpart A) of Regulation CC preempt the provisions of California law concerning availability of funds. This preemption determination specifies those provisions of the California funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

California has four separate sets of regulations establishing maximum availability schedules. The regulations applicable to commercial banks and branches of foreign banks located in California (Cal. Admin. Code tit. 10, §§10.190401–10.190402) were promulgated by the Superintendent of Banks. The regulations applicable to savings banks and savings and loan associations (Cal. Admin. Code tit. 10, §§106.200–106.202) were adopted by the Savings and Loan Commissioner. The regulations applicable to credit unions (Cal. Admin. Code tit. 10, section 901) and to industrial loan companies (Cal. Admin. Code tit. 10, section 1101) were adopted by the Commissioner of Corporations.

All the regulations were adopted pursuant to California Financial Code section 866.5 and California Commercial Code section 4213(4)(a), under which the appropriate state regulatory agency for each depository institution must issue administrative regulations to define a reasonable time for permitting customers to draw on items received for deposit in the customer's account. California Financial Code section 867 also establishes availability periods for funds deposited by cashier's check, certified check, teller's check, or depository check under certain circumstances. Finally, California Financial Code section 866.2 establishes disclosure requirements.

The Board's determination with respect to these California laws and regulations governing the funds availability requirements applicable to depository institutions in California are as follows.

Commercial Banks and Branches of Foreign Banks

Coverage

The California State Banking Department regulations, which apply to California state commercial banks, California national banks, and California branch offices of foreign banks, provide that a depositary bank shall make funds deposited into a deposit account available for withdrawal as provided in Regulation CC with certain exceptions. The funds availability schedules in Regulation CC apply only to *accounts* as defined in Regulation CC, which generally consist of transaction accounts. The California funds availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts (other than time accounts), as defined in the Board's Regulation D (12 CFR 204.2(d)). (Note, however, that under §229.19(e) of Regulation CC, *Holds on other funds,* the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC in certain circumstances.)

Availability Schedules

*Temporary schedule.* Regulation CC provides that, until September 1, 1990, nonlocal checks must be made available for withdrawal by the seventh business day after the banking day of deposit, except for certain nonlocal checks listed in appendix B–1, which must be made available within a shorter time (by the fifth business day following deposit for those California checks listed). Under the temporary schedule in the California regulations, a depositary bank with a four-digit routing symbol of 1210 (''1210 bank'') or of 1220 (''1220 bank'') that receives for deposit a check drawn on a nonlocal, in-state commercial bank or foreign bank branch[1] must make the funds available for withdrawal by the fourth business day after the day of deposit. The California regulations provide that 1210 and 1220 banks must make deposited checks drawn on nonlocal in-state thrifts (defined as savings and loan associations, savings banks, and credit unions) available by the fifth business day after deposit. In addition, California law provides that all other depositary banks must make deposited checks drawn on a nonlocal in-state commercial bank or foreign bank branch available by the fifth business day after deposit and checks drawn on nonlocal in-state thrifts available by the

[1] The California regulation uses the term *paying bank* when describing the institution on which these checks are drawn, but does not define *paying bank* or *bank.* Regulation CC's definitions of *paying bank* and *bank* include savings institutions and credit unions as well as commercial banks and branches of foreign banks. However, because the California regulation makes separate provisions for checks drawn on savings institutions and credit unions, the Board concludes that the term *paying bank,* as used in the California regulation, includes only commercial banks and foreign bank branches.

sixth business day after deposit. To the extent that these schedules provide for shorter holds than Regulation CC and its appendix B–1, the state schedules supersede the federal schedules.[2] For example, the California four-day schedule that applies to checks drawn on in-state nonlocal commercial banks or foreign bank branches and deposited in a 1210 or 1220 bank would be shorter than and would supersede the federal schedules.

The California regulations do not specify whether the state schedules apply to deposits of checks at nonproprietary ATMs. Under the temporary schedules in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal by the seventh business day following deposit. To the extent that the California schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in §229.11(d).

*Permanent schedule.* Regulation CC provides that, as of September 1, 1990, nonlocal checks must be made available for withdrawal by the fifth business day after the banking day of deposit. Under the permanent schedule in the California regulations, a depositary bank with a four-digit routing symbol of 1210 or of 1220 that receives for deposit a check drawn on a nonlocal, in-state commercial bank or foreign bank branch must make the funds available for withdrawal by the fourth business day after the day of deposit. These state schedules provide for shorter hold periods than and thus supersede the federal schedules.

*Second-day availability.* Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

*Availability at start of day.* The California regulations do not specify when during the day funds must be made available for withdrawal. Section 229.19(b) of Regulation CC provides that funds must be made available at the start of the business day. In those cases where federal and state law provide for holds for the same number of days, to the extent that the California regulations allow funds to be made available later in the day than does Regulation CC, the federal law would preempt state law.

*Exceptions to the availability schedules.* Under the state preemption standards of Regulation CC (see §229.20(c) and accompanying Commentary), for deposits subject to the state availability schedules, a state exception may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability schedule limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. If no state exceptions exist, then no exceptions holds may be placed on deposits covered by state schedules. Thus, to the extent that California law provides for exceptions to the California schedules that supersede Regulation CC, those exceptions may be applied in order to extend the state availability schedules up to the federal availability schedules or such later time as is permitted by a federal exception.

### Disclosures

California law (Cal. Fin. Code §866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal.

Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. California Financial Code §866.2 requires disclosures that differ from those required by Regulation CC and, therefore, is preempted to the extent that it applies to *accounts* as defined in Regulation CC. The state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

[2] Appendix B–1 of Regulation CC provides that the federal schedules will be the same as the California schedules (5 days) in the following cases: A depositary bank bearing a 1210 routing number receiving for deposit checks bearing a 3220 or a 3223 routing number, and a depositary bank bearing a 1220 routing number receiving for deposit checks bearing a 3210 routing number. In the cases where federal and state law are the same, the state law is not preempted by, nor does it supersede, the federal law.

### Savings Institutions

#### Coverage

The California Department of Savings and Loan regulations, which apply to California savings and loan associations and California savings banks, provide that a depositary bank shall make funds deposited into a transaction or non-transaction account available for withdrawal as provided in Regulation CC. The funds availability schedules in Regulation CC apply only to *accounts* as defined in Regulation CC, which generally consist of transaction accounts. The California funds availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts as defined in the Board's Regulation D (12 CFR 204.2(d)). (Note, however, that under §229.19(e) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC in certain circumstances.)

#### Availability Schedules

*Second-day availability*. Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

*Temporary and permanent schedules.* Other than the provisions of Section 867 discussed above, California law incorporates the Regulation CC availability requirements with respect to deposits to accounts covered by Regulation CC. Because the state requirements are consistent with the federal requirements, the California regulation is not preempted by, nor does it supersede, the federal law.

#### Disclosures

California law (Cal. Fin. Code §866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal. Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. To the extent that California Financial Code §866.2 requires disclosures that differ from those required by Regulation CC and apply to *accounts* as defined in Regulation CC (generally, transaction accounts), the California law is preempted by Regulation CC.

The Department of Savings and Loan regulations provide that for those non-transaction accounts covered by state law but not by federal law, disclosures in accordance with Regulation CC will be deemed to comply with the state law disclosure requirements. To the extent that the Department of Savings and Loan regulations permit reliance on Regulation CC disclosures for transaction accounts and to the extent the state regulations survive the preemption of California Financial Code §866.2, they are not preempted by, nor do they supersede, the federal law. The state law continues to apply to savings accounts and other non-transaction accounts not governed by Regulation CC disclosure requirements.

### Credit Unions and Industrial Loan Companies

Each credit union and federally-insured industrial loan company that maintains an office in California for the acceptance of deposits must make funds deposited by check available for withdrawal in accordance with the following table:

| | Availability | |
|---|---|---|
| | Credit Union | Industrial Loan Company |
| $100 or less checks; U.S. Treasury checks; state/local gov't checks. | 1st day ..... | 1st day |
| On us checks; cashier's/certifies/teller's/depository checks. | 2nd day ..... | 2nd day |
| In-state checks ..... | 6th day ..... | 6th day |
| out-of-state checks ..... | 10th day ..... | 12th day |

NOTE: These time periods are stated in terms of availability for withdrawal not later than the Xth business day following the banking day of deposit to facilitate comparison with Regulation CC. State regulations are stated in terms of availability at the start of the business day subsequent to the number of days specified in the regulation.

#### Coverage

The California law and regulations govern the availability of funds to ''demand deposits, negotiable order of withdrawal draft accounts, savings deposits subject to automatic transfers, share draft accounts, and all savings deposits and share accounts, other than time deposits.'' (California Financial

Code section 886(b)) The federal preemption of state funds availability laws only applies to *accounts* subject to Regulation CC, which generally includes transaction accounts. Thus, the California funds availability regulations continue to apply to deposits in savings and other accounts (such as accounts in which the account-holder is another bank) that are no *accounts* under Regulation CC. (Note, however, that under §229.19(e) of Regulation CC, *Holds on other funds,* the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC in certain circumstances.)

The California law applies to any *Item* (California Financial Code section 866.5 and California Commercial Code section 4213(4)(a)). The California Commercial Code defines *item* to mean *any instrument for the payment of money even though it is not negotiable* * * * (Cal. Com. Code section 4104(g)). This term is broader in scope than the definition of *check* in the Act and Regulation CC. The Commissioner's regulations, however, define the term *item* to include checks, negotiable orders of withdrawal, share drafts, warrants, and money orders. As limited by the state regulations, the state law applies only to instruments that are also *checks* as defined in §229.2(k) of Regulation CC.

Availability Schedules

*Temporary schedule.* The California regulations provide that in-state nonlocal checks must be made available for withdrawal not later than the sixth business day following deposit. This time period is shorter than the seventh business day availability required for nonlocal checks under §229.11(c) of Regulation CC, although it is not shorter than the schedules for nonlocal checks set forth in §229.11(c)(2) and appendix B–1 of Regulation CC. Thus, the state scheduled for in-state nonlocal checks supersede the federal schedule to the extent that they apply to an item payable by a California institution that is defined as a nonlocal check under Regulation CC, and is not subject to reduced schedules under §229.11(c)(2) and appendix B–1.

Under the California regulations, credit unions and industrial loan companies must provide next-day availability to first-indorsed items issued by any federally-insured institution. This regulatory requirement, however, has been superseded by section 867 of the California Financial Code, which requires depository institutions to make funds deposited by cashier's check, teller's check, certified checks, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. This requirement became effective January 1, 1988.

The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued for remittance purposes. To the extent that the state second business day availability requirement applies to cashier's and teller's checks issued for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

The California regulations do not specify whether they apply to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the start of the seventh business day after deposit. To the extent that the California schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in §229.11(d).

*Permanent schedule.* Under the California regulations, credit unions and industrial loan companies must provide next-day availability to first-indorsed items issued by any federally-insured institution. This regulatory requirement, however, has been superseded by section 867 of the California Financial Code, which requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. This requirement became effective January 1, 1988.

The Regulation CC next-day availability requirement for cashier's and teller's checks applies only to those checks issued for remittance purposes. To the extent that the state second business day availability requirement applies to cashier's and teller's checks issued for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

*Next-day availability.* Credit unions and industrial loan companies in California are required to give next-day availability to items drawn by the State of California or any of its departments, agencies, or political subdivisions. California law supersedes the fedeal law in that the state law does not condition next-day availability on receipt at a staffed teller station or use of a special deposit slip.

California credit unions and industrial loan companies must provide second business day availability to checks drawn on the depositary bank. Regulation CC requires next-day availability for checks deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank if both branches are located in the same state or the same check processing region. Thus, generally, the Regulation CC rule for availability of on us checks preempts the California regulations. To the extent, however, that an on us check is (1) drawn on an out-of-state branch of the depositary bank

that is not in the same check processing region as the branch in which it was deposited, or (2) deposited at an off-premises ATM or another facility of the depositary bank that is not considered a branch under federal law, the state regulation supersedes the Regulation CC availability requirements.

*Exceptions to the availability schedules.* California law provides exceptions to the state availability schedules for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state availability schedule (e.g., in-state nonlocal checks under the temporary schedule; cashier's or teller's checks that are not deposited with a special deposit slip or at a staff teller station), the state exceptions may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with §229.13(g) of Regulation CC.

*Business day/banking day*. The definitions of *business day* and *banking day* in the California regulations are preempted by the Regulation CC definition of those terms. Thus, for determining the permissible hold under the California schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of *business days* following the *banking day* of deposit.

Disclosures

California law (Cal. Fin. Code section 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires a depository institution to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal.

Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. California Financial Code section 866.2 requires disclosures that differ from those required by Regulation CC, and therefore is preempted to the extent that it applies to *accounts* as defined in Regulation CC. The state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

*Connecticut*

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the ''Act'') and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt provisions of Connecticut law relating to the availability of funds. This preemption determination specifies those provisions of the Connecticut funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

In 1987, Connecticut amended its statute governing funds availability (Conn. Gen. Stat. section 36–9v), which requires Connecticut depository institutions to make funds deposited in a checking, time, interest, or savings account available for withdrawal with specified periods.

Generally, the Connecticut statute, as amended, provides that items deposited in a checking, time, interest, or savings account at a depository institution must be available for withdrawal in accordance with the following table:

| | *Availability* |
|---|---|
| On us checks | 2nd day |
| In-state checks | 4th day |
| Out-of-state checks | 6th day |

Exceptions to the schedules are provided for items received for deposit for the purpose of opening an account and for items that the depositary bank has reason to believe will not clear. The Connecticut statute also requires availability policy disclosures to depositors in the form of written notices and notices posted conspicuously at each branch.

Coverage

The Connecticut statute governs the availability of funds deposited in savings and time accounts, as well as *accounts* as defined in §229.2(a) of Regulation CC. The federal preemption of state funds availability requirements only applies to *accounts* subject to Regulation CC, which generally consist of trasaction accounts. Regulation CC does not affect the Connecticut statute to the extent that the state law applies to deposits in savings and other accounts (including transaction accounts where the account holder is a bank, foreign bank or the U.S. Treasury) that are not *accounts* under Regulation CC.

(Note, however, that under §229.19(e) of Regulation CC, *Holds on other funds,* the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC, in certain circumstances.)

The Connecticut statute applies to *items* deposited in accounts. This term encompasses instruments that are not defined as *checks* in Regulation CC (§229.2(k)), such as nonnegotiable instruments, and are therefore not subject to Regulation CC's provisions governing funds availability. Those items that are subject to Connecticut law but are not subject to Regulation CC will continue to be covered by the state availability schedules and exceptions.

Availability Schedules

*Temporary schedule.* Connecticut law provides that certain checks that are nonlocal under Regulation CC must be available in a shorter time (sixth business day after deposit for checks payable by depository institutions not located in Connecticut) than under the federal regulation (seventh business day after deposit under the temporary schedule for nonlocal checks). Accordingly, the Connecticut law supersedes Regulation CC with respect to nonlocal checks (other than checks covered by appendix B–1) deposited in *accounts* until the federal permanent availability schedules take effect on September 1, 1990.

The Connecticut statute does not specify whether it applies to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the start of the seventh business day after deposit. To the extent that the Connecticut schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in §229.11(d).

*Exceptions to the availability schedule.* The Connecticut law provides exceptions for items received for deposit for the purpose of opening new accounts and for items that the depositary bank has reason to believe will not clear. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state availability schedule (e.g., nonlocal out-of-state checks under the temporary schedule), the state exceptions may be used to extend the state availability schedule (of six business days) to meet the federal availability schedule (of seven business days). Once the deposit is held up to the federal availability schedule limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer, in accordance with §229.13(g) of Regulation CC.

Disclosures

The Connecticut statute (Conn. Gen. Stat. Section 36–9v(b)) requires written notice to depositors of an institution's check hold policy and requires a notice of the policy to be posted in each branch.

Regulation CC preempts state disclosure requirements concerning funds availability that relate to *accounts* that are inconsistent with the federal requirements. The state requriements are different from, and therefore inconsistent with, the federal disclosure rules. (§229.20(c)(2)). Thus, the Connecticut statute is preempted by Regulation CC to the extent that these disclosure provisions apply to *accounts* as defined by Regulation CC. The Connecticut disclosure rules would continue to apply to accounts, such as savings and time accounts, not governed by the Regulation CC disclosure requirements.

*Illinois*

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act and subpart B, and, in connection therewith, subpart A, of Regulation CC, preempt provisions of Illinois law relating to the availability of funds. Section 4–213(5) of the Uniform Commercial Code as adopted in Illinois (Illinois Revised Statutes Chapter 26, paragraph 4–213(5), enacted July 26, 1988) provides that:

Time periods after which deposits must be available for withdrawal shall be determined by the provisions of the federal Expedited Funds Availability Act (Title VI of the Competitive Equality Banking Act of 1987) and the regulations promulgated by the Federal Reserve Board for the implementation of that Act.

Section 4–213(5) of the Illinois law does not supersede Regulation CC; and, because this provision of Illinois law does not permit funds to be made available for withdrawal in a longer period of time than required under the Act and Regulation, it is not preempted by Regulation CC.

*Maine*

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the ''Act'') and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt the provisions of Maine law concerning the

availability of funds. This preemption determination addresses the relation of the Act and Regulation CC to the Maine funds availability law. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

In 1985, Maine adopted a statute governing funds availability (Title 9–B MRSA section 241(5)), which requires Maine financial institutions to make funds deposited in a transaction account, savings account, or time account available for withdrawal within a reasonable period. The Maine statute gives the Superintendent of Banking for the State of Maine the authority to promulgate rules setting forth time limitations and disclosure requirements governing funds availability.

The Superintendent of Banking issued regulations implementing the Maine funds availability statute, effective July 1, 1987 (Regulation 18(IV)), and adopted amendments to this regulation, effective September 1, 1988. Under the revised regulation, funds deposited to any deposit account in a Maine financial institution must be made available for withdrawal in accordance with the Act and Regulation CC (Regulation 18–IV(A)(1)). The state regulation provides that an institution's funds availability policies for accounts subject to Regulation CC be disclosed in a manner consistent with the Regulation CC requirements. Funds availability policies for accounts not subject to Regulation CC must be disclosed in accordance with the state regulation (Regulation 18–IV(A)(2)).

Coverage

The Maine law and regulation govern the availability of funds to any deposit account, as defined in the Board's Regulation D (12 CFR 204.2(a)). This coverage is broader than the *accounts* covered in Regulation CC. The Maine law continues to apply to all deposit accounts, including those that are not accounts under Regulation CC. (Note, however, that under §229.19(e) of Regulation CC, *Holds on other funds,* the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC, in certain circumstances.)

Availability Schedules and Disclosures

The Maine regulation incorporates the Regulation CC availability and disclosure requirements with respect to deposits to accounts covered by Regulation CC. Because the state requirements are consistent with the federal requirements, the Maine regulation is not preempted by, nor does it supersede, the federal law.

*Massachusetts*

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the ''Act'') and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt provisions of Massachusetts law relating to the availability of funds. This preemption determination addresses the relationship of the Act and Regulation CC to the Massachusetts funds availability law. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

In 1988, Massachusetts amended its statute governing funds availability (Mass. Gen. L. ch. 167D, section 35), to require Massachusetts banking institutions to make funds available for withdrawal and disclose their availability policies in accordance with the Act and Regulation CC. The Massachusetts law, however, provides that ''local originating depository institution'' is to be defined as any originating depository institution located in the Commonwealth.

Coverage

The Massachusetts statute governs the availability of funds deposited in ''any demand deposit, negotiable order of withdrawal account, savings deposit, share account or other asset account.'' Regulation CC applies only to *accounts* as defined in §229.2(a). Regulation CC does not affect the Massachusetts statute to the extent that the state law applies to deposits in savings and other accounts (including transaction accounts where the account holder is a bank, foreign bank, or the U.S. Treasury) that are not *accounts* under Regulation CC. (Note, however, that under §229.19(e) of Regulation CC, *Holds on other funds,* the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC, in certain circumstances.)

Availability Schedules

The Massachusetts definition of *local originating depository institution* (local paying bank in Regulation CC terminology) requires that in-state checks that are nonlocal checks under Regulation CC be made available in accordance with the Regulation CC local schedule. The Massachusetts law supersedes Regulation CC under the temporary and permanent schedule with respect to nonlocal checks payable by banks located in Massachusetts and deposited into *accounts.* Regulation CC preempts the Massachusetts law, however, to the extent the state law does not define banks located outside of Massachusetts, but in the same check processing

region as the paying bank, as *local originating depository institutions.*

Disclosures

The Massachusetts regulation incorporates the Regulation CC disclosure requirements with respect to both accounts covered by Regulation CC and savings and other accounts not governed by the federal regulation. Because the state requirements are consistent with the federal requirements, the Massachusetts regulation is not preempted by, nor does it supersede, the federal law. The Massachusetts disclosure rules would continue to apply to accounts not governed by the Regulation CC disclosure requirements.

*New Jersey*

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the ''Act'') and subpart B (and in connection therewith, subpart A) of Regulation CC preempt the provisions of New Jersey law concerning disclosure of a bank's funds availability policy. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

New Jersey does not have a law or regulation establishing the maximum time periods within which funds deposited by check or electronic payment must be made available for withdrawal. New Jersey does, however, have regulations concerning the disclosure of a banking institution's availability policy (N.J.A.C. 3:1–15.1 *et seq.*).

Disclosures

New Jersey law requires every banking institution (defined as any state or federally chartered commercial bank, savings bank, or savings and loan association) to provide written disclosure to all holders of and applicants for deposit accounts which describes the institution's funds availability policy. Institutions must also disclose to their customers any significant changes to their availability policy.

Regulation CC preempts state disclosure requirements concerning funds availability that relates to *accounts* that are inconsistent with the federal requirements. The state requirements are different from, and therefore inconsistent with, the federal disclosure rules. (§229.20(c)(2)). Thus, the New Jersey statute (N.J.A.C. sections 3:1–15.1 *et seq.*) is preempted by Regulation CC to the extent that these disclosure provisions apply to *accounts* as defined by Regulation CC. The New Jersey disclosure rules would continue to apply to other *deposit accounts,* as defined by New Jersey law, including money market accounts and savings accounts established by a natural person for personal or family purposes, which are not governed by the Regulation CC disclosure requirements.

*New York*

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the ''Act'') and subpart B (and in connection therewith, subpart A) of Regulation CC, preempt the provisions of New York law concerning the availability of funds. This preemption determination addresses the relation of the Act and Regulation CC to the New York funds availability law. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

In 1983, the New York State Banking Department, pursuant to section 14–d of the New York Banking law, issued regulations requiring that funds deposited in an account be made available for withdrawal within specified time periods, and provided certain exceptions to those availability schedules. Part 34 of the New York State Banking Department's General Regulations established time frames within which commercial banks, trust companies, and branches of foreign banks (*banks*); and savings banks, savings and loan associations, and credit unions (*savings institutions*) must make funds deposited in customer accounts available for withdrawal.

The Banking Department amended part 34, effective September 1, 1988, generally to exclude accounts covered by Regulation CC from the scope of the state regulation. Part 34.4 (a)(2) and (b)(2) of the revised New York rules, however, continue to apply to checks deposited to accounts, as defined in Regulation CC. These provisions require that the proceeds of nonlocal checks payable by a New York institution be made available for withdrawal not later than the start of the fourth business day following deposit, if deposited in a bank, or the fifth business day following deposit, if deposited in a savings institution. The revised regulation also provides that, with respect to savings accounts and time deposits, New York institutions could elect to comply with either the state or federal availability and disclosure requirements.

This preemption determination supersedes the determination issued by the Board on August 18, 1988 (53 FR 32357 (August 24, 1988)).

Coverage

The New York law and regulation govern the availability of funds in savings accounts

and time deposits, as well as *accounts* as defined in §229.2(a) of Regulation CC. The New York law continues to apply to deposits to savings accounts and time deposits that are not accounts under Regulation CC. (Note, however, that under §229.19(e) of Regulation CC, *Hold on other funds,* the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC, in certain circumstances.)

The New York law and regulation apply to *items* deposited to accounts. Part 34.3(e) defines *item* as *a check, negotiable order of withdrawal or money order deposited into an account.* The Board interprets the definition of *item* in New York law to be consistent with the definition of *check* in Regulation CC (§229.2(k)).

Availability Schedules

The provisions of New York law governing the availability of in-state nonlocal items provide for shorter hold than is provided under Regulation CC, and supersede that federal availability requirements. With the exception of these provisions, the New York regulation does not apply to deposits to accounts covered by Regulation CC.

*Temporary schedule.* The time periods for the availability of in-state nonlocal checks, contained in part 34.4 (a)(2) and (b)(2), are shorter that the seventh business day availability required for nonlocal checks under §229.11(c) of Regulation CC, although they are not necessarily shorter than the schedules for nonlocal checks set forth in §229.11(c)(2) and appendix B–1 of Regulation CC. Thus, these state schedules supersede the federal schedule to the extent that they apply to an item payable by a New York bank or savings institution that is defined as a nonlocal checks under Regulation CC and the applicable state schedule is less than the applicable schedule specified in §229.11(c) and appendix B–1.

*Permanent schedule.* The New York schedule for banks supersedes the Regulation CC requirement in the permanent schedule, effective September 1, 1990, that nonlocal checks be made available for withdrawal by the start of the fifth business day following deposit, to the extent that the in-state checks are defined as nonlocal under Regulation CC, and the Regulation CC schedule for nonlocal checks is not shortened under §229.12(c)(2) and appendix B–2 of Regulation CC. In addition, the New York schedule for savings institutions supersedes the Regulation CC time period adjustment for withdrawal by cash or similar means in the permanent schedule, to the extent that the in-state checks are defined as nonlocal under Regulation CC, and the Regulation CC schedule for nonlocal checks is not shortened under §229.12(c)(2) and appendix B–2.

*Exceptions to the availability schedules.* New York law provides exceptions to the state availability schedules for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions (part 34.4). The state exceptions apply only with respect to deposits of in-state nonlocal checks that are subject to the state availability schedule. For these deposits, the depositary bank may invoke a state exception and place a hold on the deposit up to the federal availability schedule limit for that type of deposit. Once the federal availability schedule limit is reached, the depositary bank may further extend the hold under any of the federal exceptions that apply to that deposit. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with §229.12(g) of Regulation CC.

Disclosures

The revised New York regulation does not contain funds availability disclosure requirements applicable to accounts subject to Regulation CC.

*Rhode Island*

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the ''Act'') and subpart B (and in connection therewith, subpart A) of Regulation CC, supersede provisions of Rhode Island law relating to the availability of funds. This preemption determination specifies those provisions in the Rhode Island funds availability law that supersede the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

In 1986, Rhode Island adopted a statute governing funds availability (R.I. Gen. Laws tit. 6A, sections 4–601 through 4–608), which requires Rhode Island depository institutions to make checks deposited in a personal transaction account available for withdrawal within certain specific periods. Commercial banks and thrift institutions (mutual savings banks, savings banks, savings and loan institutions and credit unions) must make funds available for withdrawal in accordance with the following table:

| | Commercial banks | Thrift institutions |
|---|---|---|
| Treasury checks, Rhode Island Government checks, first-indorsed. | 2nd ..... | 2nd |
| In-state cashier's checks less than $2,500. | 2nd ..... | 2nd |
| On-us checks ..... | 2nd ..... | 3rd |

| | Commercial banks | Thrift institutions |
|---|---|---|
| In-state clearinghouse checks | 3rd | 4th |
| In-state nonclearinghouse checks | 5th | 6th |
| 1st or 2nd Federal Reserve District checks (out-of-state). | 7th | 7th |
| Other checks | 9th | 10th |

NOTE: These time periods are stated in terms of availability for withdrawal not later than the Xth business day following the banking day of deposit to facilitate comparison with Regulation CC. State regulations are stated in terms of availability at the start of the business day subsequent to the number of days specified in the regulation.

The Rhode Island statute also provides restrictions and exceptions to the schedules and requires institutions to make certain disclosures to their customers.

Coverage

The Rhode Island statute governing the availability of funds deposited in *personal transaction accounts,* a term not defined in the statute. The federal law would continue to apply to *accounts,* as defined in §229.2(a), that are not *personal transaction accounts.*

The Rhode Island statute applies to *items,* defined as checks, negotiable orders of withdrawal, or money orders. The Board interprets the definition of item to be consistent with the definition of *check* in Regulation CC (§299.2(k)).

Availability Schedules

*Temporary schedule.* Rhode Island law requires availability for certain checks in the same time as does Regulation CC. Thus, in these instances, the federal law does not preempt the state law. Rhode Island law requires commercial banks (but not thrift institutions) to make checks payable by a depositary institution that uses the same in-state clearing facility as the depositary bank available for withdrawal on the third business day following the day of the deposit. This is the same time period contained in Regulation CC for local checks payable by a bank that is a member of the same local clearinghouse as the depositary bank. (The Board views the definition of *the same in-state clearing facility* as having the same meaning as the term *the same check clearinghouse association* in the federal law's provision that allows banks to limit the customer's ability to withdraw cash on the third business day if the local check being deposited is payable by a bank that is not a member of the same local clearinghouse as the depositary bank.) Since the Rhode Island law and the federal law both require the funds to be made available no later than the third business day, the state law is not preempted by the federal law.

The Rhode Island law also requires commercial banks and savings institutions to make checks payable by a depository institution located in the First or Second Federal Reserve District (outside of Rhode Island) available on the seventh business day following deposit. To the extent that this provision applies to checks payable by institutions located outside the Boston check processing region, it provides for availability in the same time as required for nonlocal checks under the temporary federal schedule, and thus is not preempted by the federal law.

The Rhode Island statute does not specify whether it applies to deposits of checks at nonproprietary ATMs. Under the temporary schedule in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal at the opening of the seventh business day after deposit. To the extent that the Rhode Island schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule.

*Exceptions to the availability schedules.* The Rhode Island law contains exceptions for reason to doubt collectibility or ability of the depositor to reimburse the depositary bank, for new accounts, for large checks, and for foreign checks. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state availability schedule, the state exceptions may be used to extend the state availability schedule to meet the federal availability schedule. Once the deposit is held up to the federal availability schedule limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. Thus, if the state and federal availability schedules are the same for a particular deposit, both a state and a federal exception must be applicable to that deposit in order to extend the hold beyond the schedule. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer, in accordance with §229.13(g) of Regulation CC.

*Business day/banking day.* The Rhode Island statute defines *business day* as excluding Saturday, Sunday and legal holidays. This definition is preempted by the Regulation CC definitions of *business day* and *banking day.* Thus, for determining the permissible hold under the Rhode Island schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of *business days* following the *banking day* of deposit.

Disclosures

The Rhode Island statute requires written notice to depositors of an institution's check hold policy and requires a notice on deposit

slips. Regulation CC preempts state disclosure requirements concerning funds availability that relate to accounts that are inconsistent with the federal requirements. The state reuirements are different from, and therefore inconsistent with, the federal rules. (§229.20(c)(2)) Thus, Regulation CC preempts the Rhode Island disclosure requirements concerning funds availability.

*Wisconsin*

Background

The Board has been requested, in accordance with §229.20(d) of Regulation CC (12 CFR part 229), to determine whether the Expedited Funds Availability Act (the Act) and subpart B (and in connection therewith, subpart A) of Regulation CC preempt the provisions of Wisconsin law concerning availability of funds. This preemption determination specifies those provisions of the Wisconsin funds availability law that are not preempted by the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4–213(5), pertaining to availability of cash deposits.)

Wisconsin Statutes sections 404.213(4m), 215.136, and 186.117 require Wisconsin banks, savings and loan associations, and credit unions, respectively, to make funds deposited in accounts available for withdrawal within specified time frames. Generally, checks drawn on the U.S. Treasury, the State of Wisconsin, or on a local government located in Wisconsin must be made available for withdrawal by the second day following deposit. (The law governing commercial banks determines availability based on banking day; the laws governing savings and loan associations and credit unions determine availability based on business days.) In-state and out-of-state checks must be made available for withdrawal within five days and eight days following deposit, respectively. Exceptions are provided for new accounts and reason to doubt collectibility. In addition, Wisconsin Statutes section 404.103 permits commercial banks to vary these availability requirements by agreement.

Coverage

Wisconsin law defines *account*, with respect to the rules governing commercial banks, as *any account with a bank and includes a checking, time, interest or savings account* (Wisconsin Statutes section 404.104(1)(a)). The statutes relating to the funds availability requirements applicable to savings and loan associations and credit unions do not define the term *account*. The Federal preemption of state funds availability requirements applies only to *accounts* subject to Regulation CC, which generally consist of transaction accounts. Regulation CC does not affect the Wisconsin law to the extent that the state law applies to deposits in savings, time, and other accounts (including transaction accounts where the account holder is a bank, foreign bank, or the U.S. Treasury) that are not *accounts* under Regulation CC. (Note, however, that under §229.19(e) of Regulation CC, *Holds on Other Funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC in certain circumstances.)

The Wisconsin statute applies to *items* deposited in accounts. This term encompasses instruments that are not defined as *checks* in Regulation CC (§229.2(k)), such as nonnegotiable instruments, and are therefore not subject to Regulation CC's provisions governing funds availability. Those items that are subject to Wisconsin law but are not subject to Regulation CC will continue to be covered by the state availability schedules and exceptions.

Availability Schedules

*Temporary schedule.* The Wisconsin statute requires that in-state nonlocal checks be made available for withdrawal not later than the fifth day following deposit (Wisconsin Statutes sections 404.213(4m)(b)(2); 215.136(2)(b); 186.117(2)(b)). This time period is shorter than the seventh business day availability required for nonlocal checks under §229.11(c) of Regulation CC, although it is not shorter than the schedules for nonlocal checks set forth in §229.11(c)(2) and appendix B–1 of Regulation CC. Thus, the state schedule for in-state nonlocal checks supersedes the Federal schedule to the extent that it applies to an item payable by a Wisconsin bank that is defined as a nonlocal check under Regulation CC and is not subject to reduced schedules under §229.11(c)(2) and appendix B–1.

*Permanent Schedule.* Under the Federal permanent availability schedule, nonlocal checks must be made available for withdrawal not later than the fifth business day following deposit. The fifth day availability requirement for in-state items in the Wisconsin statute supersedes the Regulation CC time period adjustment for withdrawal by cash or similar means in the permanent schedule, to the extent that the in-state checks are defined as nonlocal under Regulation CC.

*Next-day availability*. Under the Wisconsin statute, the proceeds of state and local government checks must be made available for withdrawal by the second day following deposit, if the check is endorsed only by the person to whom it was issued (Wisconsin Statutes sections 404.213(4m)(b)(1); 215.136(2)(b); and 186.117(2)(a)). Regulation CC requires next-day availability for these checks if they are (1) deposited in an account

of a payee of the check, (2) deposited in a depositary bank located in the same state as the state or local government that issued the check, (3) deposited in person to an employee of the depositary bank, and (4) deposited with a special deposit slip, if the depositary bank informed its customers that use of such a slip is a condition to next-day availability. Under the Federal law, if a state or local government check is not deposited in person to an employee of the depositary bank, but meets the other conditions set forth in §229.10(c)(1)(iv), the funds must be made available for withdrawal not later than the second business day following deposit. The Wisconsin statute supersedes Regulation CC to the extent that the state law does not permit the use of a special deposit slip as a condition to receipt of second-day availability.

*Exceptions to the schedules.* Wisconsin law provides exceptions to the state availability schedules for new accounts (those opened less than 90 days) and reason to doubt collectibility (Wisconsin Statutes sections 404.213(4m)(b); 215.136(2); and 186.117(2)). The state availability law also permits commercial banks to vary the funds availability requirements by agreement (Wisconsin Statute section 404.103(1)). In all cases where the Federal schedule preempts the state schedule, only the Federal exceptions apply. For deposits that are covered by the state availability schedule (e.g., in-state nonlocal checks), a state exception must apply in order to extend the state availability schedule up to the Federal availability schedule. Once the deposit is held up to the Federal availability limit under a state exception, the depositary bank may further extend the hold only if a Federal exception can be applied to the deposit. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with §229.13(g) of Regulation CC.

*Business day/banking day.* The definitions of *business day* and *banking day* in the Wisconsin statutes are preempted by the Regulation CC definition of those terms. For determining the permissible hold under the Wisconsin schedules that supersede the Regulation CC schedule, deposits are considered available for withdrawal on the specified number of *business days* following the *banking day* of deposit.

Wisconsin law considers funds to be deposited, for the purpose of determining when they must be made available for withdrawal, when an item is ''received at the proof and transit facility of the depository.'' For the purposes of this preemption determination, funds are considered deposited under Wisconsin law in accordance with the rules set forth in §229.19(a) of Regulation CC.

Disclosures

The Wisconsin statute does not require disclosure of a bank's funds availability policy. The state law does require, however, that a bank give notice to its customer if it extends the time within which funds will be available for withdrawal due to the bank's doubt as to the collectibility of the item (Wisconsin Statutes sections 404.213(4m)(b); 215.136(2); and 186.117(2)).

Regulation CC preempts state disclosure requirements concerning funds availability that relate to *accounts* that are inconsistent with the Federal requirements. The state requirement is different from, and therefore inconsistent with, the Federal disclosure rules (§229.20(c)(2)). Thus, the Wisconsin statute is preempted by Regulation CC to the extent that the state notice requirement applies to *accounts* as defined by Regulation CC. The Wisconsin requirement would continue to apply to accounts, such as savings and time accounts, not governed by the Regulation CC disclosure requirements.

[53 FR 32356, Aug. 24, 1988, as amended at 53 FR 44328, Nov. 2, 1988; 53 FR 47524, Nov. 22, 1988; 53 FR 51748, Dec. 23, 1988; Reg. CC, 54 FR 13838, Apr. 6, 1989; 55 FR 11358, Mar. 28, 1990; 60 FR 51703, Oct. 3, 1995]

# PART 230—TRUTH IN SAVINGS (REGULATION DD)

Sec.

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APPENDIX A TO PART 230—ANNUAL PERCENTAGE YIELD CALCULATION

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SUPPLEMENT I TO PART 230—OFFICIAL STAFF INTERPRETATIONS

AUTHORITY: 12 U.S.C. 4301 *et seq.*

SOURCE: 57 FR 43376, Sept. 21, 1992, unless otherwise noted.