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responsible for damages under paragraph (a) of this section, to the extent that the check is not returned to the depositary bank through the payable through bank as quickly as the check would have been required to be returned under § 229.30(a) had the bank by which the check is payable—

(i) Received the check as paying bank on the day the payable through bank received the check; and

(ii) Returned the check as paying bank in accordance with § 229.30(a)(1).

Responsibility under this paragraph shall be treated as negligence of the bank by which the check is payable for purposes of paragraph (c) of this section.

(e) *Timeliness of action.* If a bank is delayed in acting beyond the time limits set forth in this subpart because of interruption of communication or computer facilities, suspension of payments by a bank, war, emergency conditions, failure of equipment, or other circumstances beyond its control, its time for acting is extended for the time necessary to complete the action, if it exercises such diligence as the circumstances require.

(f) *Exclusion.* Section 229.21 of this part and section 611 (a), (b), and (c) of the EFA Act (12 U.S.C. 4010 (a), (b), and (c)) do not apply to this subpart.

(g) *Jurisdiction.* Any action under this subpart may be brought in any United States district court, or in any other court of competent jurisdiction, and shall be brought within one year after the date of the occurrence of the violation involved.

(h) *Reliance on Board rulings.* No provision of this subpart imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, regardless of whether the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason after the act or omission has occurred.

[53 FR 19433, May 27, 1988, as amended by Reg. CC, 54 FR 13850, Apr. 6, 1989; 54 FR 32047, Aug. 4, 1989; 69 FR 47311, Aug. 4, 2004]

§ 229.39 Insolvency of bank.

(a) *Duty of receiver.* A check or returned check in, or coming into, the possession of a paying, collecting, depositary, or returning bank that suspends payment, and which is not paid, shall be returned by the receiver, trustee, or agent in charge of the closed bank to the bank or customer that transferred the check to the closed bank.

(b) *Preference against paying or depositary bank.* If a paying bank finally pays a check, or if a depositary bank becomes obligated to pay a returned check, and suspends payment without making a settlement for the check or returned check with the prior bank that is or becomes final, the prior bank has a preferred claim against the paying bank or the depositary bank.

(c) *Preference against collecting, paying, or returning bank.* If a collecting, paying, or returning bank receives settlement from a subsequent bank for a check or returned check, which settlement is or becomes final, and suspends payments without making a settlement for the check with the prior bank, which is or becomes final, the prior bank has a preferred claim against the collecting or returning bank.

(d) *Preference against presenting bank.* If a paying bank settles with a presenting bank for one or more checks, and if the presenting bank breaches a warranty specified in § 229.34(c) (1) or (3) with respect to those checks and suspends payments before satisfying the paying bank's warranty claim, the paying bank has a preferred claim against the presenting bank for the amount of the warranty claim.

(e) *Finality of settlement.* If a paying or depositary bank gives, or a collecting, paying, or returning bank gives or receives, a settlement for a check or returned check and thereafter suspends payment, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of a certain time or the happening of certain events.

[Reg. CC, 53 FR 19433, May 27, 1988, as amended at 57 FR 46973, Oct. 14, 1992; Reg. CC, 62 FR 13810, Mar. 24, 1997]

§ 229.40 Effect of merger transaction.

(a) *In general.* For purposes of this subpart, two or more banks that have