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engaged in a merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

(b) *Merger transactions on or after July 1, 1998, and before March 1, 2000.* If banks have consummated a merger transaction on or after July 1, 1998, and before March 1, 2000, the merged banks may be considered separate banks until March 1, 2001.

[Reg. CC, 53 FR 19433, May 27, 1988, as amended at 64 FR 14577, Mar. 26, 1999]

§ 229.41 Relation to State law.

The provisions of this subpart supersede any inconsistent provisions of the U.C.C. as adopted in any state, or of any other state law, but only to the extent of the inconsistency.

§ 229.42 Exclusions.

The expeditious-return (§§ 229.30(a) and 229.31(a)), notice-of-nonpayment (§ 229.33), and same-day settlement (§ 229.36(f)) requirements of this subpart do not apply to a check drawn upon the United States Treasury, to a U.S. Postal Service money order, or to a check drawn on a state or a unit of general local government that is not payable through or at a bank.

[Reg. CC, 62 FR 13810, Mar. 24, 1997]

§ 229.43 Checks payable in Guam, American Samoa, and the Northern Mariana Islands.

(a) *Definitions.* The definitions in § 229.2 apply to this section, unless otherwise noted. In addition, for the purposes of this section—

(1) *Pacific island bank* means an office of an institution that would be a bank as defined in § 229.2(e) but for the fact that the office is located in Guam, American Samoa, or the Northern Mariana Islands;

(2) *Pacific island check* means a demand draft drawn on or payable through or at a Pacific island bank, which is not a check as defined in § 229.2(k).

(b) *Rules applicable to Pacific island checks.* To the extent a bank handles a Pacific island check as if it were a check defined in § 229.2(k), the bank is subject to the following sections of this part (and the word ''check'' in each such section is construed to include a Pacific island check)—

(1) § 229.31, except that the returning bank is not subject to the requirement to return a Pacific island check in an expeditious manner;

(2) § 229.32;

(3) § 229.34(c)(2), (c)(3), (d), (e), and (f);

(4) § 229.35; for purposes of § 229.35(c), the Pacific island bank is deemed to be a bank;

(5) § 229.36(d);

(6) § 229.37;

(7) § 229.38(a) and (c) through (h);

(8) § 229.39(a), (b), (c) and (e); and

(9) §§ 229.40 through 229.42.

[Reg. CC, 62 FR 13810, Mar. 24, 1997, as amended at 70 FR 71225, Nov. 28, 2005]

Subpart D—Substitute Checks

AUTHORITY: 12 U.S.C. 5001–5018.

SOURCE: 69 FR 47311, Aug. 4, 2004, unless otherwise noted.

§ 229.51 General provisions governing substitute checks.

(a) *Legal equivalence.* A substitute check for which a bank has provided the warranties described in § 229.52 is the legal equivalent of an original check for all persons and all purposes, including any provision of federal or state law, if the substitute check—

(1) Accurately represents all of the information on the front and back of the original check as of the time the original check was truncated; and

(2) Bears the legend, ''This is a legal copy of your check. You can use it the same way you would use the original check.''

(b) *Reconverting bank duties.* A bank shall ensure that a substitute check for which it is the reconverting bank—

(1) Bears all indorsements applied by parties that previously handled the check in any form (including the original check, a substitute check, or another paper or electronic representation of such original check or substitute check) for forward collection or return;

(2) Identifies the reconverting bank in a manner that preserves any previous reconverting bank identifications, in accordance with ANS X9.100–140 and appendix D of this part; and

(3) Identifies the bank that truncated the original check, in accordance with ANS X9.100–140 and appendix D of this part.

(c) *Applicable law.* A substitute check that is the legal equivalent of an original check under paragraph (a) of this section shall be subject to any provision, including any provision relating to the protection of customers, of this part, the U.C.C., and any other applicable federal or state law as if such substitute check were the original check, to the extent such provision of law is not inconsistent with the Check 21 Act or this subpart.

§ 229.52 Substitute check warranties.

(a) *Content and provision of substitute check warranties.* A bank that transfers, presents, or returns a substitute check (or a paper or electronic representation of a substitute check) for which it receives consideration warrants to the parties listed in paragraph (b) of this section that—

(1) The substitute check meets the requirements for legal equivalence described in § 229.51(a)(1)–(2); and

(2) No depositary bank, drawee, drawer, or indorser will receive presentment or return of, or otherwise be charged for, the substitute check, the original check, or a paper or electronic representation of the substitute check or original check such that that person will be asked to make a payment based on a check that it already has paid.

(b) *Warranty recipients.* A bank makes the warranties described in paragraph (a) of this section to the person to which the bank transfers, presents, or returns the substitute check or a paper or electronic representation of such substitute check and to any subsequent recipient, which could include a collecting or returning bank, the depositary bank, the drawer, the drawee, the payee, the depositor, and any indorser. These parties receive the warranties regardless of whether they received the substitute check or a paper or electronic representation of a substitute check.

§ 229.53 Substitute check indemnity.

(a) *Scope of indemnity.* A bank that transfers, presents, or returns a substitute check or a paper or electronic representation of a substitute check for which it receives consideration shall indemnify the recipient and any subsequent recipient (including a collecting or returning bank, the depositary bank, the drawer, the drawee, the payee, the depositor, and any indorser) for any loss incurred by any recipient of a substitute check if that loss occurred due to the receipt of a substitute check instead of the original check.

(b) *Indemnity amount*—(1) *In general.* Unless otherwise indicated by paragraph (b)(2) or (b)(3) of this section, the amount of the indemnity under paragraph (a) of this section is as follows:

(i) If the loss resulted from a breach of a substitute check warranty provided under § 229.52, the amount of the indemnity shall be the amount of any loss (including interest, costs, reasonable attorney's fees, and other expenses of representation) proximately caused by the warranty breach.

(ii) If the loss did not result from a breach of a substitute check warranty provided under § 229.52, the amount of the indemnity shall be the sum of—

(A) The amount of the loss, up to the amount of the substitute check; and

(B) Interest and expenses (including costs and reasonable attorney's fees and other expenses of representation) related to the substitute check.

(2) *Comparative negligence.* (i) If a loss described in paragraph (a) of this section results in whole or in part from the indemnified person's negligence or failure to act in good faith, then the indemnity amount described in paragraph (b)(1) of this section shall be reduced in proportion to the amount of negligence or bad faith attributable to the indemnified person.

(ii) Nothing in this paragraph (b)(2) reduces the rights of a consumer or any other person under the U.C.C. or other applicable provision of state or federal law.

(3) *Effect of producing the original check or a sufficient copy*—

(i) If an indemnifying bank produces the original check or a sufficient copy, the indemnifying bank shall—

(A) Be liable under this section only for losses that are incurred up to the