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Via electronic submission

May 14, 2018

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

Docket No. R-1599; RIN 7100-AE98 - Proposed Rule and Comment Request for Re:

Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers

Through Fedwire

Dear Ms. Misback:

The Independent Community Bankers of America (ICBA)¹ welcomes the opportunity to provide comment on the Federal Reserve Board System's (Board) proposed amendments to Regulation J (Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire). ICBA is supportive of this proposal and believes that the contemplated changes will reduce the potential for confusion and inconsistency. However, ICBA does stress the importance and value of electronically-created items (ECI) and urges the Board to engage stakeholders in the near future to explore the potential for an ECI framework separate from Regulation E (Electronic Fund Transfers) requirements.

¹ The Independent Community Bankers of America®, the nation's voice for nearly 5,700 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With nearly 52,000 locations nationwide, community banks employ 760,000 Americans, hold \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.3 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at www.icba.org.

Background

In 2017, the Board finalized amendments to Regulation CC (Availability of Funds and Collection of Checks) that provided paper-check- like indemnities and warranties for "electronic checks" and "electronic returned checks." ICBA supported those amendments.

The Board is proposing amendments to Regulation J (Reg J). Among other changes, the amendments would revise Reg J terminology and procedures to conform to Regulation CC (Reg CC) changes effective July 1, 2018, including the newly-defined terms "electronic checks" and "electronic returned checks." The Board's proposed amendments would also remove obsolete provisions and align the rights and obligations of sending banks, paying banks, and Federal Reserve Banks (Reserve Banks). Regarding electronically-created items (ECls)², the proposed revisions would prohibit returned ECls through the Reserve Banks and thereby, effectively prohibit the forward collection of ECls as there is no private sector alternative for processing returned checks. Lastly, the Board is proposing amendments regarding Fedwire to clarify that terms used in financial messaging standards, such as ISO 20022, do not confer legal status or responsibilities.

ICBA Comments

ICBA generally supports the Board's proposed amendments, which will increase consistency between Reg CC and Reg J. By making conforming changes to Reg J, the Board will add further certainty to the payments system by ensuring a chain of warranties and indemnities.

Regarding the treatment of ECIs, ICBA supports the Board's proposed application of indemnities and warranties. Given the fact that ECIs are difficult to distinguish from electronic images of paper checks, ICBA agrees that depository banks are best positioned to know whether an item is electronically created and supports depository banks indemnifying each transferee bank when the ECI (1) is not derived from a paper check, (2) was unauthorized, or (3) was transferred or presented for payment more than once.

While there is uncertainty regarding the legality of ECIs and the appropriate body of governing law, the payments system stakeholders – consumers, businesses and financial institutions – need a mechanism in place to support the return of ECIs, particularly ECIs not authorized by the

² Regulation CC defines an 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."

account holder or ECIs previously paid once these items are in the check clearing system. Therefore, ICBA urges the Federal Reserve not to prohibit the return of ECIs.

The Board is also seeking feedback on whether it should seek a revision of Reg J in a future rulemaking to allow Reserve Banks to clear ECIs. While ICBA is supportive of payments system improvement, we urge the Board to first convene a group of stakeholders to achieve consensus on the appropriate legal framework governing ECIs before undertaking a potential rulemaking. ICBA believes the Board is in the best position to facilitate such discussions given its proven effectiveness as an inter-industry convener

As you consider stakeholder feedback, or should you have any questions, please do not hesitate to contact me (<u>michael.emancipator@icba.org</u>, 202-821-4469) or Cary Whaley, First Vice President, Payments and Technology Policy at (<u>cary.whaley@icba.org</u>, 202-821-4449).

Sincerely,

/s/

Michael Emancipator
Assistant Vice President and Regulatory Counsel