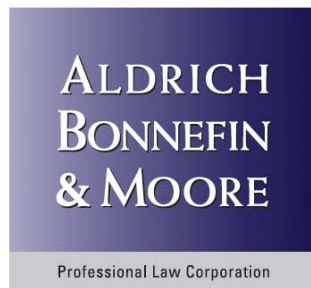


Mark E. Aldrich
Janet M. Bonnefin
Mark A. Moore
Robert K. Olsen
Eric G. Baron
Keith R. Forrester



Susan P. Somuri
Jill C. Kovar
Michael N. Delune
Anne M. McEvilly
Tricia E. Engelhardt

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Regulation CC – Consolidation of Check Processing to Cleveland; Change in Terms and Other Matters

At our recent BCG Negotiable Instruments Seminar, there was discussion of compliance issues under Regulation CC as a result of the Federal Reserve's consolidation of all check processing regions into Cleveland. As you know, the final consolidation is set to occur on February 26th, a Friday. This means that March 1st (the following Monday) will be the first banking day for most banks, associations and credit unions in which the U.S. will have one and only one Federal Reserve check processing region. As a practical matter, this means that as of March 1, 2010, all checks will be local checks (or next day items, if they qualify for next day treatment).

Compliance issues under Regulation CC can include:

1. Initial disclosure. Under Section 229.17 of Regulation CC, banks and others covered by the regulation are required to provide its funds availability disclosure to a potential customer. Many use "Model Form C-3 – Next-Day Availability, Case-by-Case Holds to Statutory Limits, and Section 229.13," or a variation on this. We've attached a PDF of this Model Form, and you can see two places where changes might occur as of March 1st (or earlier if you wish to change your funds availability schedule earlier). We've marked these in red.

First, you'll see that in the Section "Longer Delays May Apply" there is a disclosure regarding the maximum hold period for case-by-case holds. The model reads: "Depending on the type of check that you deposit, funds may not be available until the fifth business day after the day of your deposit." Second, in the same Section you'll see the disclosure of when funds are normally available when an exception hold is imposed. The model says: "They will generally be available no later than the (number) business day after the day of your deposit."

With only one check processing region starting March 1, there will be only "local checks" and the hold period for case-by-case holds will be a maximum of two days. So this part of the Model Form disclosure would change – it would be "until the second business day ..."

Second, the exception hold period will be shorter as of March 1st, once all checks are local. This part of the Model Form would change, depending on what you used as the

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“(number)”. Most banks seem to have put 11, since the maximum hold for non-local checks was 11 business days. As a technical matter, you should have put – and as of March 1st you should still put – the time actually used by your bank for holds, so it might not have been 11 and the new number might not be seven. In any case, however, since we’re moving to no non-local checks, the maximum time is going to be seven (the local check maximum when invoking an exception hold). This may affect your initial disclosure, but you’ll need to look at the form you actually use to see if there is or isn’t a change.

2. Change in terms. The changes in your initial disclosure will be a “change in terms” under Section 229.18(e), in our view. So you will need to send a change in terms notice to your current consumer customers. Under Section 229.18(e), this change in terms notice can be sent “not later than 30 days after implementation of the change,” since the change is one that “expedites the availability of funds.” Just to emphasize, the change in terms notice requirement applies to your “consumer accounts,” but you can of course also provide a notice to your non-consumer account holders. In our view, you should consider this, since otherwise there can be difficulties created by the idea that the Regulation CC document is both a federally mandated disclosure and a contract between the bank and the non-consumer customer.

3. Branch and ATM signage. First, as to branches (or, more technically, any “location where [an] employee receive[s] deposits”). Section 229.18(b) of Regulation CC requires a bank to post a notice that sets forth the time periods for funds deposited to a consumer account. The standard form for this notice is at Model Form C-18 if your bank makes funds available next day but subject to a case-by-case exception. This may need to be changed, since it says there may be a delay in some cases and, if so, “funds will generally be available by the fifth business day after the day of deposit.” The “fifth” would change to “second.”

Second, as to ATMs. The ATM signage rules are under Section 229.18(c) and are somewhat more flexible, requiring only that a bank “post or provide a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal.” Your ATM signage may need to change, depending on what you have actually posted. That is to say, while there is no need for the ATM signage to include specific availability times, some banks have. If you have, or if your signage is otherwise affected by the consolidation, you may need to change the signage to make it accurate.

4. Hold utilities. The hold notices (both case-by-case and exception) will change, given that there will not be any “non-local” checks.

5. Account analysis. Some banks may need to conform their account analysis programs to the shorter local schedules. This isn’t a disclosure issue. Rather, it is a function of what the account analysis agreement says. If the agreement between you and your customer promises that analysis credit will be calculated by applying a rate to “available funds,” you will want to confirm that “available funds” are calculated based using local check schedules instead of local/non-local checks.

If you have questions, please feel free to call Mark Moore, Susan Somuri or Anne McEvelly at BCG (800-742-3600).

C-3 – Next-Day Availability, Case-by-Case Holds to Statutory Limits, and §229.13 Exceptions

Your Ability To Withdraw Funds

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. **Depending on the type of check that you deposit, funds may not be available until the fifth business day after the day of your deposit.** The first \$100 of your deposits, however, may be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. **They will generally be available no later than the (*number*) business day after the day of your deposit.**

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.