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Overview

Although negotiable instruments may be collected in a number of ways, a bank must act in good faith,[1] and use ordinary care[2] throughout the collection process. If a Federal Reserve Bank (Bank) is the collecting bank, it is subject to the provisions of Federal Reserve Board Regulation J, which preempts the Uniform Commercial Code (U.C.C.).[3] The provisions of Federal Reserve Board Regulation J[4] regarding the collection of checks are binding on all banks in the collection process of any item that has been handled, presented, or forwarded by a bank. The bank, like a collecting bank under the U.C.C., acts only as an agent in the collection of an item.[5] However, the Federal Reserve Bank is an agent of only the sender of the item, unlike the collecting bank under the U.C.C., which is the agent of the owner of the item.[6]

This article first examines and analyzes Subpart A of Regulation J, which was promulgated by the Federal Reserve Board to govern Federal Reserve Bank check clearing and the collection of negotiable instruments. Secondly, the article examines the transfer of funds under Subpart B of Regulation J. Through a discussion of Subparts A and B of Regulation J and the respective operation of each subpart, this article will explain the operation of the regulation and note aspects that are different or which conflict with U.C.C. §4, which also sets forth the duties and responsibilities of the collecting, depository and payor banks.

Check Clearing and Collection Under the Federal Reserve System - Regulation J, Subpart A

The promulgation of Subpart A of Regulation J by the Federal Reserve Board was designed to give the banking system a direct, expeditious, and economical system for the collection of checks. Subpart A sets forth the terms and conditions under which the Banks will receive checks for collection from member banks or other depositors, and present checks to paying banks. The regulation also allows Banks to issue operating circulars,[7] and procedures for collecting checks. The regulation and operating circulars are regarded as contracts between the Federal Reserve System, its member banks and other depositors,[8] and, as specifically provided in U.C.C. § 4-103, constitute agreements that can vary the effects of U.C.C. provisions concerning bank deposits and collections.[9]

When a non-Federal Reserve Bank sends a Bank a check, it authorizes the receiving Federal Reserve Bank and all subsequent collecting banks to handle the check in accordance with the provisions of Regulation J and the operating circulars of the Bank.[10] A sender also warrants its own authority to give authorization, and agrees that the provisions of Subpart A of Regulation J and the operating circulars, where applicable, will govern the sender-bank relationship with respect to the handling of the check and its proceeds.[11] Each sender also warrants, to each Bank that handles the check, that it has good title to the check and that the check has not been materially altered.[12]

The Bank will act as the agent of the check sender until the time it has actually received payment for the check, and has made the proceeds available for use by the sender.[13] The Bank will not act as an agent for an owner or holder of a check other than the sender.[14] When it presents or sends for presentment and payment, or forwards any check, the Bank warrants to a subsequent collecting bank and the paying bank that it has good title to the check or is authorized to collect it.

A paying bank becomes accountable for the amount of each check received by it from or through a Bank if it keeps the checks after the close of the banking day on which the check is received, unless it pays or remits the check.[15] Payment or remittance is acceptable in the form of (1) a debit to an account on the books of the Bank, (2) cash, or (3) any other form of payment or remittance deemed acceptable by the Bank.[16] Unless the Federal Reserve Bank presents the check for immediate payment over the counter, a paying bank may revoke settlement before it has finally paid the check if the paying bank returns the check before midnight of the next banking day following the banking day of receipt.[17]

If the Bank does not receive payment in any of the stated forms, the amount of the check may be 'charged back' to the sender, even if the check cannot be produced.[18] Should the Bank not actually receive payment and finally collect the funds of any check for which it has given credit subject to payment, the amount of the check will also be 'charged back' to the sender, even if the check cannot be returned.[19]

Credit for checks presented for clearing is made through entries to member bank reserve accounts in accordance with a payment schedule which is published in the various Federal Reserve Banks' operating circulars. Immediate credit is given for all qualified regional checks, and one or two day deferred credit is given for checks payable at banks located in other Federal Reserve Districts. Member banks using the check clearing and collection system of the Federal Reserve System have the option of charging debits and credits arising from check clearings to their own reserve account or to a member correspondent bank's reserve account. Non-member banks do not have the option, and must charge their activity to a member correspondent bank's reserve account.[20]

Since the time actually taken to collect a check may be longer than that provided for in the deferred payment schedule, the crediting of the sender's account often occurs before the account of the drawee bank is debited. This amount of credit, representing checks not yet collected but for which credit has been given to the accounts of depositing banks is called "float." Because the extension of Federal Reserve credit through float has a random effect on the availability of reserves, it hampers the measurement of the money supply. Therefore, Federal Reserve System operations are geared to holding the float to the lowest possible level by speeding up the check settlement process. In order to handle items more quickly the banks have developed Magnetic Ink Character Recognition (MICR), which is preprinted on each check. Another method used by the Federal Reserve Board is High Dollar Group Sort (HDGS), which enables the collecting bank to deposit checks drawn on a limited, preselected group of payor institutions.

Those checks that are not handled by the Federal Reserve System are cleared by local clearinghouse associations, by large correspondent banks, or by direct exchange. However, most of the checks cleared in the nation enter directly or indirectly into the Federal Reserve Clearing-System after "on us"[21] and locally clearing checks are moved. In 1979, Federal Reserve offices that processed checks handled over 15.9 billion items.[22]

Case Illustration— Wire Notification of Dishonor

The issue of wire notification has been decided in a number of cases dealing with the midnight deadline, failure to comply with the wire advice requirement, and questions relating to potential bank liability. In *Nassau Trust Co. v. Banker's Trust Co.*,[23] a payor bank gave timely notice of dishonor but was not excused from liability because the bank failed to return the check before the "midnight deadline." In *Nassau*, the court stated that under 12 C.F.R. § 210.2:

> A paying bank that receives a cash item from or through a Federal Reserve Bank ... and that pays or remits for such item ... shall have the right to recover any payment or remittance so made, if before it has finally paid the item, it returns the item before midnight of its banking day next following the banking day of receipt ....[24]

The defendant suggested that wire notice of dishonor was sufficient. However, the court deferred to operating letters issued by the Federal Reserve Bank, thereby showing support for Regulation J. The court in *Nassau* relied on the holding in *Colorado Nat'l Bank v. First Nat'l Bank and Trust Co.*[25] which stated that "wire advice" is not a substitute or alternative to a return of any item. Therefore, under 12 C.F.R. § 210.12(c), a payor bank is responsible for giving notice of dishonor by providing notice to the depository bank, and returning the item unpaid prior to the midnight deadline.

"a payor bank is responsible for giving notice of dishonor..."

In *Bank of Wyandotte v. Woodrow*,[26] an action was brought by the depository bank, Bank of Wyandotte, against the drawer, Woodrow, who had stopped payment of his check given to plaintiff's customer. Woodrow counterclaimed against the Bank of Wyandotte for delay in communicating wired advice of nonpayment of a separate check drawn on it which was payable to Woodrow. The court's holding stated that the Bank of Wyandotte might potentially be liable to Woodrow for the delay, however, no loss was found to have resulted from such delay. The court added, that if the bank had wired advice before the midnight deadline, notification would not have reached Woodrow until the following day, and in these exact circumstances such action would not have prevented the loss incurred by Woodrow. However, in some cases the Bank may not be liable for failing to wire advice of nonpayment as required by § 210.12(c)(1). Where the Bank had not received notice of nonpayment from the bank to which the check had been sent by the Bank and from which the check was returned as missent, the bank will not be liable for failure to comply with the wire advice requirement.[27]

In *Security Bank and Trust Co. v. Federal Nat'l Bank and Trust Co.*,[28] a Federal Reserve operating letter requiring a payor bank to wire notice of nonpayment of any item of $2,500 or more, received from a Federal Reserve bank for payment, was held to be an agreement under U.C.C. § 4-103. It was held that the agreement altered U.C.C. § 4-301 for timeliness of dishonor. Factually, in *Security Bank*, the payor bank which received delivery of a check on Saturday and gave wire notice of dishonor of the check before midnight of the following Tuesday, did give notice of dishonor before the U.C.C. § 4-301 midnight deadline. However, the court held that the agreement between the banks altered the U.C.C. provisions requiring "written notice of dishonor."[29] Thus the petitioner prevailed.

Liability to Remote Parties

Other cases have dealt with Bank liability to remote parties. The collection aspect of Regulation J declares that the Bank shall not have, nor assume, any liability of the sender with respect to any item, except for lack of good faith or failure to exercise ordinary care.[30] This regulation also defines "sender" as "a member bank, a nonmember clearing bank, a Federal Reserve Bank, an international organization, or a foreign correspondent."[31] In *Colonial Cadillac v. Shawmut Merchant's Bank*,[32] the federal district court for Massachusetts, applied the provisions of the Regulation J.[33] The court held that the Bank is not liable for delayed notice of dishonor to the nonbank payee of a draft that was sent by the payee's bank for collection to the Bank. The court stated that the Bank was not liable to the payee because that party was not a "sender" under Regulation J. In a similar case, the federal 5th circuit held that the Bank was not liable to the payee-depositor of a check for alleged negligence in collecting the check, which consisted of failing to give timely notice of return and failing to make reasonable attempts to collect the amount of the check.[34] In *Childs v. Federal Reserve Bank*,[35] the court applied 12 C.F.R. § 210.6(a)(1) stating that the Bank owed no duty to the owner of the item who had deposited the item in view of the lack of agency status. *Childs* examined the power of the Federal Reserve System Board of Governors, under 12 U.S.C. § 248(i), to carry out and perform its check collection and clearinghouse functions. The court concluded that Regulation J severs the agency relationship between a reserve bank and the owner of an item in the collection process.

In *Appliance Buyer's Credit Corp. v. Prospect Nat'l Bank of Peoria*,[36] the court examined the timeliness of wire notice and the liability of the Bank in relation to the U.C.C., while illustrating the application of variation of agreement between Federal Reserve regulations and the U.C.C. In *Appliance Buyers*, a depository bank failed to give timely notice of dishonor of two checks that had been sent through the Bank to a payor bank. The Bank proceeded to dishonor the item. The court held that the depositor had to show a loss or damage resulting from the failure to give timely notice. Thus, the court ruled that the rule for damages for delay under U.C.C. § 4-212(1) was measured by U.C.C. § 4-103(5). More importantly, the court concluded that besides application of the U.C.C. for damages, the owner of the item could not maintain an action against the Bank for negligent handling because 12 C.F.R. § 210.2(e) states that the Bank does not act as the agent for the owner, but only on behalf of the sender of the item. Although application of U.C.C. § 4-202(3) would conflict this holding, the court applied U.C.C. § 4-103 providing for the modification of the U.C.C. sections by Regulation J. Thus, the court limited the liability of the reserve banks by excluding all remote parties from obtaining damages directly from reserve banks for their alleged negligence in collection.

Interaction between Regulation J and Uniform Commercial Code; Variation of Agreements - U.C.C. § 4-103

Because the Federal Reserve regulations, operating letters, and clearinghouse rules have the effect of agreements, whether or not assented to, a variety of cases have arisen which illustrate application of the Federal Reserve regulations and the U.C.C. 12 C.F.R. § 210.3(b) clearly states that rules for collecting items and settling balances in the collections of checks, under Regulation J, are binding on all banks in the collection process with respect to any item that they have handled, which have been presented or forwarded by a Bank. One example where the Federal Reserve Board regulations have taken precedent is in the area of non-member banks. Although one may argue that non-member banks should enjoy the privilege of escaping the regulatory arm of the Federal Reserve System, the courts have ruled that Regulation J governs the collection of checks and other

> ***"Regulation J governs . . . collection . . . by member and non-member banks."***

items by member and non-member banks. In *Community Bank v. Federal Reserve Bank*,[37] the Court of Appeals held that U.C.C. § 4-103(2) bound non-member banks to the 1972 amendments to Regulation J. The regulation required settlement in immediately available funds and also advanced the time within which the payor bank must settle checks. This regulation directly conflicted with the practice of settlement by draft on another bank allowable under U.C.C. § 4-211. The argument in *Community Bank* was that the Federal Reserve Board could not amend the U.C.C. The court in focusing on the time and manner of the collection of the checks prior to and after adoption of Regulation J stated:

> Prior to the amendments, payor banks became accountable if they failed to settle for demand items before midnight of the banking day of receipt, and settlements made earlier could be revoked prior to the midnight deadline. The amendments to Regulation J advance the settlement *time* to the *close* of the banking day of receipt, and only if settlement is made prior to this time may it be revoked before midnight of the banking day of receipt. The amendments also affect the *manner* in which settlement may be made by eliminating drafts drawn on other banks as permissible forms of settlement.[38]

The court reasoned that speeding up the process enables the Bank to pass earlier credit to the depositor bank, thereby reducing float. Clearly, § 210.9(a) (1) of Regulation J makes the payor bank accountable if it fails to settle for demand items before the close of its banking day of receipt. Although there was a clear conflict between the California law and the Federal Reserve regulations, the court reconciled this problem by applying U.C.C. § 4-103(1), which provided for the variation of agreements, and U.C.C. § 4-103(2), stating that, "Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements ... whether or not specifically assented to by all parties interested in the items handled."

Agreements that can be made between the respective banks will be observed as binding under U.C.C. § 4-103, however, only in some instances has the defense of variation of agreements between banks been validated. In *Catalina Yachts v. Old Colony Bank and Trust Co.*,[39] the court examined an agreement entered into by a Federal Reserve Bank, a payor bank, and a Federal Reserve member bank, acting as a correspondent bank for the non-member payor bank. The checks were drawn on the payor bank and cleared through the Federal Reserve Bank. The checks were picked up each day by the corresponding bank, processed by the same bank's computer on that day, and delivered to the payor bank on the following banking day. The agreement between the non-member payor bank and the correspondent bank altered the provisions of U.C.C. §4-104(1)(h) and § 4-301 with respect to the midnight deadline for the return of the unpaid items. The agreement, the court determined, was the type contemplated by U.C.C. § 4-103, which authorizes such agreements, thereby altering the provisions of the U.C.C.

However, in *Kane v. American Nat'l Bank and Trust Co.*,[40] the Federal Reserve regulations and circulars were held to be inapplicable because the collections of items were not within the Federal Reserve collection channels and therefore did not relieve the payor bank of liability under U.C.C. § 4-302. In *Bank Leumi Trust Co. of New York v. Bank of Mid-Jersey*,[41] a payor bank failed to pay or return the item presented to it before the midnight deadline because of pencil marks on the check and an encoding error which made computer processing impossible. The court held that subsequent reception by a Bank, which failed to charge the bank's account, and held the item past the midnight deadline, and accepted the payor's bank's "Disclaimer of Late Return" did not constitute a variance of the normal U.C.C. §4 provisions, which displaced the code provisions under § 4-103(2). The court decided that the Bank's actions of not charging the bank's account with the amount of the check did not amount to a regulation, operating letter or clearinghouse rule, but was merely a balancing of the bank's books. Likewise, *Yeiser v. Bank of Adamsville*[42] decided the issue of a payor's bank liability when a timely return of a check for insufficient funds was not accompanied by wire advice of nonpayment as required by the circular.[43] The *Yeiser* court held that the Federal Reserve requirement of "wire advice" was not intended as a substitute or alternative to the return of the item, which under U.C.C. § 4-301 was the primary method of revoking settlement. The court decided that the circular did not constitute an agreement which varied the terms of U.C.C. § 4-301, allowable under U.C.C. § 4-103(1) and (2).

Problems

In Subpart A of Regulation J there are still problems that increase the probability of loss for both any bank and the Federal Reserve System. First, float, which allows the private sector to gain an asset (available funds) in exchange for a non-interest asset (a deposited check from which funds are not available) must be decreased so the Treasury does not have to raise large amounts of revenue to replace the distributed funds.[44] Hence, new amendments to Regulation J to shorten collection and settlement time would reduce float.

Second, 12 C.F.R. § 210.12(c) (1) requires notification of nonpayment of an item greater than $2,500, the previous level was $1,000. Before the increase in the dollar limit, participation in the program was approximately fifty percent, whereas present participation has decreased to only thirty-five percent.[45] Although there is a labor problem in establishing this notification procedure, strict adherence would diminish the bank's exposure to risk of loss while maintaining the high fiduciary duty owed to both customers and stockholders.

Conclusion and Recommendations

In an effort to shorten the gap of time before settlement of the item, Congress has recently addressed a number of potential improvements to the check processing system in the Competitive Equality Banking Act of 1987 ("CEBA"),[46] § 609. The instituting of methods to diminish the time between the notice and return of the item is prescribed in § 609(b)(3), which calls for incentives to institutions to return items more promptly, and in § 609(b)(4), which suggests automated processing of unpaid checks. Moving the deadline for settlement forward is suggested by CEBA in § 609(b)(6), which limits time to one business day in the determination of whether to pay the item. Sections 609(5), (7), and (9) focus on the desire to clear checks faster and make decisions regarding payment of items within a shorter amount of time by eliminating unnecessary endorsements, making all checks eligible to be returned through the Federal Reserve System, and permitting returned checks to be forwarded to the receiving depository institutions. Furthermore, a direct wire notification coupled with the previously mentioned sections of CEBA would lessen the amount of float required due to the shortened time periods of settlements between banks.

Another possible rectification of these problems would be to redefine "sender" in Regulation J so as to parallel the definition in the U.C.C. The redefining would make the bank liable to the owner of the item, and would effectively overrule the *Childs* decision. Additionally, new amendements could be proposed that would unite the regulation and the U.C.C. in an effort to effectuate the goals of quicker notification and diminished risk exposure.

"new amendments to Regulation J . . . would reduce float."

Wire Transfer of Funds — Regulation J, Subpart B

In electronic fund transfers the Federal Reserve System expands Regulation J, by establishing rules under which the reserve banks could electronically accept and deliver both credit and debit transfers over the national communication network. During 1979, the Federal Reserve Wire Network which is designed to handle substantial transfers and to discourage small transfers, handled 35 million transactions valued at $64 trillion dollars. The Federal Reserve System's involvement in the transfer of a bank's reserve account, under 12 U.S.C. § 248, promulgated Subpart B to Regulation J for the purpose of dealing with the wire transfer of funds. Subpart B sets forth the rights and obligations of member banks and Federal Reserve Banks in connection with the transfer of funds by wire. Subpart B, similar to Subpart A, also allows for the Bank to issue operating circulars to govern the details of transfer of funds operations.[47]

Transfer of Funds Under the Federal Reserve System — Regulation J, Subpart B

Subpart B of Regulation J requires that the Bank initially request the Federal Reserve to collect an amount on the same day as the request. The Federal Reserve would immediately give the requesting bank the requisite credit to its account, and then use the communication network to notify the commercial bank that a certain amount is to be collected, thereby debiting the bank's reserve account. The Federal Reserve has various systems for different organizations under Subpart B: Fedwire, Bank Wire, Clearing House Interbank Payment System (CHIPS), Society for Worldwide International Financial Telecommunications (SWIFT), and Clearing House Electronic Settlement System (CHESS). With each system there are three types of messages that are handled: transfers of reserve account balances from one member bank to another, transfers of United States government and federal agency securities, and administrative and research information. The transfer of reserve account balances between member banks deals with funds derived from the purchasing and selling of federal funds, funds from correspondent bank balances and funds to other members on behalf of the customer. When transfers are made to the other member banks they may take the form of purchasing or selling of commercial paper, bonds, securities, or could be the replenishment of corporate demand deposits.[48] Requests can be made by telephone, while advice of the transaction is made on the member banks' daily summary reserve statement. Each member bank receives daily statements detailing the preceding day's reserve account activity. If the transferor fails to object by written notification within ten calendar days after notification of the debit, the debit is deemed approved by the transferor.[49]

Case Illustration

In *Delbrueck & Co. v. Manufacturers Hanover Trust Co.*,[50] the court dealt with the responsibility of banks to their customers in executing fund transfers ordered by telex or cable. In *Delbrueck*, the German banking partnership, Delbrueck & Company, telex-ordered its New York bank, Manufacturers Hanover, to transfer $12.5 million to the account of Herstaat at Chase Manhattan Bank, for the following day. The transfer order was released by Manufacturers through the CHIPS system six minutes after an office in another part of Manufacturers learned of the Herstaat failure earlier that morning. The next twenty-four hours were characterized by a flurry of messages between Delbrueck and the two New York banks. Delbrueck sued to recover from Manufacturers for its negligence in the handling of the matter. The court held that there was insufficient time to act on the information received six minutes before the transfer between Manufacturers and Delbrueck. Compounded by Delbrueck's telexing Manufacturers regarding another transfer, the court held Delbrueck contributorily negligent, requiring Delbrueck to share with Manufacturers equally in the responsibility for actions taken and not taken.

Problems

Although the electronic fund transfer would aid in accelerating collection and settlement of items, at the same time the system has created some problems. Security and error problems could be created by "computer criminals." Through the use of computers and financial sheets, computer oriented criminals would be able to abscond with a sizeable amount of money and then reprogram the computer to erase any tracks made by the criminal. Further problems arise if banks implement electronic processing and transmitting of checks by using high-speed impulses of computer communication systems instead of checking the back of each check for signature similarities. This causes the dilemma of how a computer will be able to detect a counterfeit electronic impulse as opposed to a signature.

Besides possible malfunctioning, there are antitrust questions concerning access and participation in deciding whether thrift institutions, credit unions, or corporations should have direct access. How to set standards and formats covering the exchange of magnetic tape or other information carried at the automated clearinghouse is yet to be determined. Another dilemma concerns the cost of exchanging data and similar information. Finally, the unresolved question of the development of customer indemnification agreements, price fixing and uniform services still remains unresolved.[51] In dealing with the malfunctions and antitrust problems certain areas can be handled by the U.C.C.:

> (1) Fixing of responsibility for MICR printing or encoding errors; (2) errors or omissions in full line rehabilitation of MICR check rejects or return items; (3) electronic communication or processing incidents, such as: (a) omissions or failure to carry out instructions, (b) time limits for reporting errors in bank statements, (c) no return or paid items, (d) definition of *item* to include electronic debits and credits, (e) errors in telecommunication of related information, and (f) validation of instructions, etc.; (4) fraud-proof identification of user and authority for the electronic debit order; (5) protection of the customer's right of privacy; and (6) those incidental to the long transition period when both paper and paperless electronic processing will be used....[52]

Regarding potential computer crimes there are violent crimes against computer systems, robbery or assault of users, insider crime, unauthorized use, and theft of valuable computer-stored assets.[53]

Conclusions and Recommendations

In an effort to reduce the potential for loss involved in the electronic movement of money, the Federal Reserve Board has taken several positive steps. In 1982, the Federal Reserve Board established the Federal Advisory Council/Thrift Institutions Advisory Council Payments Systems Committee to consider the issue of payment system risk. In 1983, the Federal Financial Institutions Examination Council adopted a uniform procedures manual for the examination of fund transfer activities of depository institutions on large-dollar wire transfer network. This new procedure is designed to disclose deficiencies in the internal credit and operational controls of those institutions participating on the Federal Reserve networks. In 1984, CHIPS imposed a maximum amount of net payments it would accept from each of the other participants over CHIPS.

"electronic fund transfer would aid in accelerating collection and settlement of items..."

The previously discussed Federal Reserve System measures attempt to cover all possible entrances and exits into and out of the computer. The regulation and constant surveillance of the wire network could initially deter potential abusers of the system until a better method can be employed. Although there is a statute that sets forth the duties and responsibilities of the parties, further work should be done in monitoring the methods of these transfers through the electronic network. A new security system of some type would best serve the field of electronic transfers. Additionally, more case law in the above area would also aid in the interpretation of Subpart B of Regulation J because the trend of legislatures and courts is that wire transfers are not governed by the U.C.C.[54] Thus, further court determination as to the application and ramifications of Subpart B will clearly outline and define Subpart B of Regulation J, so to firmly set its effects and expected results.

Summary

Analysis of Regulation J through Subparts A, check collection and processing, and Subpart B, electronic transfer of funds, indicates that there are still problems that must be addressed to decrease the risk of loss which the Federal Reserve Bank exposes itself to in its everyday activities. To shorten the time gap, and thereby allow earlier notification and decrease the amount of float the Treasury is asked to provide, a legal restructuring of check collection and subsequent transfer of funds is suggested. One answer to these problems would be the creation of a new Uniform Commercial Code provision, specifically designed to provide a legal structure of clearly defined general rules to govern the various relationships of the parties to paperless entries and electronic payment transactions between Federal Reserve Banks and non-member banks. The obvious advantage would be one productive endeavor as opposed to an attempt to add patches and sectionalized amendments to the rules. Promulgation of patchwork rules designed for the paper based negotiable instrument payment mechanism has started to occur as evidenced by the Competitive Equality Bank Act of 1987. Rather than having the U.C.C. govern check processing and collection by electronic fund transfers, perhaps a better alternative would be the establishment of such a system by contract as designed by the parties. At present, the relationship between the bank and its customers under the Uniform Commercial Code, superseded in part by application of Regulation J, creates unnecessary problems that can be avoided by uniform procedures among all parties.

NOTES

[1] U.C.C. § 4-103(1) (1987).
[2] U.C.C. § 4-103(3) (1987).
[3] U.C.C. § 4-103(2) (1987).
[4] 12 C.F.R. § 210.1 (1987).
[5] 12 C.F.R. § 210.6(a) (1) (1982); U.C.C. § 4-201 (1) (1972).
[6] 12 C.F.R. § 210.3(b) (1987).
[7] 12 C.F.R. § 210.3(a) (1987).
[8] 12 C.F.R. § 210.3(b) (1987).
[9] *Community Bank v. Federal Reserve Bank of San Francisco,* 500 F.2d 282 (9th Cir. 1974).
[10] 12 C.F.R. § 210.5 (1987).
[11] 12 C.F.R. § 210.3(b) (1987).
[12] 12 C.F.R. § 210.5 (1987).
[13] 12 C.F.R. § 210.6 (1987).
[14] 12 C.F.R. § 210.5 (1987).
[15] *Id.*
[16] 12 C.F.R. § 210.6 (1987).
[17] 12 C.F.R. § 210.12 (1987).
[18] 12 C.F.R. § 210.13 (1987).
[19] 12 C.F.R. § 210.12 (1987).
[20] Summers, *Correspondent Services, Federal Reserve Services, and Cash Management Policy,* Economic Review, Federal Reserve Bank of Richmond 32-33 (November/December 1978).
[21] "on us" checks are checks which a payee deposits at the drawee banks.
[22] Board of Governors of the Federal Reserve System, 1979 Annual Report 300 (1979).
[23] 28 U.C.C. Rep. Serv. (Callaghan) 1440 (1980).
[24] *Id.* at 1441.
[25] 459 F.Supp 1366 (W.D. Mich. 1978).
[26] 394 F.Supp. 550 (W.D. Mo. 1975).
[27] *United States Fidelity and Guaranty Co. v. Federal Reserve Bank,* 590 F.Supp. 486 (S.D.N.Y. 1984).
[28] 19 U.C.C. Rep. Serv. (Callaghan) 211 (1976).
[29] U.C.C. § 4-301 (1)(b) (1972).
[30] 12 C.F.R. § 210.6(a) (1987).
[31] 12 C.F.R. § 210.2(e) (1987).
[32] 488 F.Supp. 283 (D. Mass. 1980).
[33] 12 C.F.R. § 210.6(a) (1) (1987).
[34] *Childs v. Federal Reserve Bank,* 719 F.2d 812 (5th Cir. 1983).
[35] *Id.*
[36] 708 F.2d 290 (7th Cir. 1983).
[37] 500 F.2d 282 (9th Cir. 1974).
[38] *Id.* at 283. (emphasis in original)
[39] 497 F.Supp. 1227 (D. Mass. 1980).
[40] 21 Ill. App. 3d 1046 (1974).
[41] 29 U.C.C. Rep. Serv. (Callaghan) 1566 (1980).
[42] 614 S.W.2d 338 (Tenn. 1981).
[43] *Id.* at 340.
[44] Wolkowitz, Reducing Federal Reserve Float, 65 Federal Reserve Bulletin 944-46 (1979).
[45] D. Sith, Return Item Notification Procedures, p. 3.
[46] Pub. L. No. 100-86, § 609, 10 Stat. 552 (1987).
[47] 12 C.F.R. § 210.27(a) (1987).
[48] 4 J. Reitman, Banking Law §§ 82.02[4], 82-17 (1986).
[49] 12 C.F.R. § 210.34 (1987).
[50] 464 F.Supp. 989 (S.D.N.Y. 1979), *aff'd* 609 F.2d 1047 (2nd Cir. 1979).
[51] Vergar; Negotiable Instruments and The Payment Mechanism, American Institute of Banking 248-49 (1976).
[52] *Id.* at 250. (emphasis in original).
[53] Vergar:, Latent Legal Repercussions in Electronic Financial Services and Transactions, 5 Comp. L. J. 177, 194 (1984).
[54] 15 U.S.C. §§ 1693. *See also Eura Corp. v. Swiss Banking Corp.,* 673 F.2d 951 (7th Cir. 1982) *rev'g* 522 F.Supp. 820 (N.D. Ill. 1981); *Delbrueck and Co. v. Manufacturers Hanover Trust Co.,* 609 F.2d 1047 (2nd Cir. 1979).

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Regulation
(continued from page 13)

DeWaters stated, there are too many potential due process problems with a consolidated hearing and thus the State Police would face too great a risk of reversal on appeal.

[53] 424 U.S. 319 (1976).
[54] *Id.* at 335.
[55] *See* 2 K. Davis, Administrative Law Treatise § 13:12 (2d ed. 1979) [hereinafter Davis]; H. Friendly, *Some Kind of Hearing,* 123 U. Pa. L. Rev. 1267 (1975).
[56] Md. State Gov. Code Ann. §§ 10-101 to 10-803 (1984 & Supp. 1987); *see also* Model State Admin. Procedure Act, 14 U.L.A. 357 (1980 & Supp. 1988).
[57] *See generally* J. Nowak, R. Rotunda, & J. Young, Constitutional Law § 13.5(d) (3d ed. 1986); Davis, *supra* note 55, § 11:6.
[58] *Garrity v. New Jersey,* 385 U.S. 493, 500 (1967).
[59] 53 Md. App. 623, 455 A.2d 446, *cert. denied,* 296 Md. 111 (1983).
[60] *Id.* at 626-27, 455 A.2d at 448-49.
[61] 50 Md. App. 276, 278-81, 437 A.2d 672, 676-79 (1981), *cert. denied,* 292 Md. 639 (1982).
[62] *Id.* at 281, 437 A.2d at 676; *accord State v. Hernandez,* 163 N.J. Super. 283, 394 A.2d 883, 885 (1978) ("[t]here are too many opportunities for error"); *see also State v. Watson,* 397 So. 2d 1337, 1339-42 (La. 1981), *cert. denied,* 454 U.S. 903 (1982) (procedure discouraged because of lack of necessary guidelines).
[63] 51 Md. App. 234, 442 A.2d 196, *cert. denied,* 293 Md. 617 (1982).
[64] *Id.* at 239, 442 A.2d at 199.
[65] Whenever the procedures are questionable and pose a due process issue, courts do not give their usual deference to the judgment of the administrative agency, unless there has been an express delegation of authority to so act. In *Greene v. McElroy,* 360 U.S. 474, 506-07 (1959), the Supreme Court rejected the argument of the Secretary of Defense that security interests permitted a relaxation of procedureal safeguards. Moreover, even if the procedures were otherwise constitutional, they were questionable enough that the Court would not defer to the agency without an express delegation of authority to conduct such a procedure. Chief Justice Warren stated: "[The eight cited Supreme Court cases] reflect the Court's concern that traditional forms of fair procedure not be restricted by implication or without the most explicit action by the [legislature], even in areas where it is possible that the Constitution presents no inhibition." *Id.* at 508.
[66] 301 U.S. 232 (1937).
[67] *Id.* at 304-05 (citations omitted).
[68] *Hannah v. Larche,* 363 U.S. 420, 442 (1960).
[69] 446 U.S. 238 (1980).
[70] *Id.* at 292; *accord In re Murchison,* 349 U.S. 133, 136 (1955) ("to perform its high function in the best way 'justice must satisfy the appearance of justice' ").
[71] 16 Wash. App. 668, 558 P.2d 254 (1977).
[72] 558 P.2d at 256-57.
[73] Md. State Gov. Code Ann. §§ 10-101 to 10-803.
[74] *See supra* notes 9-14 and accompanying text.
[75] *Kaufman v. Taxicab Bureau, Baltimore City Police Dep't,* 236 Md. 476, 204 A.2d 521 (1964), *cert. denied,* 382 U.S. 849 (1965).
[76] Md. State Gov. Code Ann. § 10-207(b) (emphasis added).
[77] *See Howard County v. Bay Harvestore System,* 60 Md. App. 19, 23, 478 A.2d 1172, 1173-74 (1984); *see also United States v. L.A. Tucker Truck Lines,* 349 U.S. 33, 38 (1952) (any defect in the appointment of members of a hearing board in validates the action of that board under the APA).
[78] Md. State Gov. Code Ann. § 10-213(a)(1).
[79] *See id.* § 10-213(d).
[80] *Scarborough,* 50 Md. App. at 279, 437 A.2d at 674-75 (quoting *State v. Corsi,* 86 N.J. 172, 430 A.2d 210 (1981)); *see* Gaynes, Two Juries/One Trial Panacea of Judicial Economy or Personification of Murphy's Law, 5 Am. J. Trial Adv. 285 (1981) ("but for the most unusual case, the ever present need for judicial economy is outweighed by requirements of due process and fundamental justice").
[81] 279 Md. 74, 367 A.2d 924 (1976).
[82] 392 U.S. 273 (1968); *see also Griffin v. California,* 380 U.S. 609, *reh'g denied,* 381 U.S. 957 (1965).
[83] Md. Ann. Code art. 27, § 733.
[84] 73 Md. App. 604, 535 A.2d 955 (1988).
[85] *Id.* at 613, 535 A.2d at 959.
[86] Record at 1-5 to 1-6.

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For other articles addressing the rights of law enforcement officers, see Warnken, Smith v. Howard County, Permanent Injunction Against "Chilling" Fifth Amendment Rights, *17 U. Balt. L. Forum 3 (No. 3, 1987); Warnken,* The Law Enforcement Officers' Privilege Against Compelled Self-Incrimination, *16 U. Balt. L. Rev. 452 (1987).*