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**M E M O R A N D U M**

March 2, 2005

To Our Clients and Friends

Re: Federal Reserve Proposed Amendments to  
Regulation CC Regarding Remotely Created Checks

The Board of Governors of the Federal Reserve (the “Board”) has released for public comment proposed amendments regarding remotely created checks to Regulation CC, which governs funds availability and check processing, and the related Board commentary (the “Proposal”). The Proposal defines “remotely created checks” and creates transfer and presentment warranties, under which liability for loss due to unauthorized remotely created checks would lie ultimately with the depository bank, as opposed to the paying bank. Comments on the Proposal will be due 60 days after publication in the Federal Register.

A remotely created check is generally utilized in transactions where a customer does not actually sign a check but rather authorizes a payee to draw a check on the customer’s checking account. The remotely created check states that the customer authorized the check or the customer’s name is printed or typed on the check. The Proposal would define “remotely created check” as a check that is drawn on a customer account at a bank, is created by the payee, and does not bear a signature in the format agreed to by the paying bank and the customer. The definition would include checks created by remote payees or their agents (e.g., telemarketers and their service providers) and would apply to checks drawn on either consumer or non-consumer accounts.

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Under the Proposal's warranty provisions, a bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants to the transferee bank, any subsequent collecting bank, and the paying bank that the person on whose account the remotely created check is drawn authorized the issuance of the check according to the terms stated on the check. The warranties are given only by banks and apply only to subsequent banks in the chain of collection. The warranty provisions are intended to address the current lack of uniformity in the treatment of remotely created checks under state laws, including those states that have adopted, in various forms, the warranties for remotely created checks set forth in recent amendments to the Uniform Commercial Code.

In addition to requesting comment on the specific proposed revisions to Regulation CC, the Board also is requesting comment on alternative or additional approaches to addressing the risks associated with remotely created checks. In this regard, the Board has requested comment on the possibility of extending the midnight deadline for the return of unauthorized remotely created checks and/or requiring a special MICR line identifier for such checks.

A copy of the rule can be found on our web site at [http://www.schwartzandballen.com/whats\\_new.html](http://www.schwartzandballen.com/whats_new.html).

If you have any questions, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.