

May 13, 2018

Ann E. Misback, Secretary  
Board of Governors of the  
Federal Reserve System  
Washington, DC 20551

Via email to: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Re: Docket No. R-1599 / RIN No. 7100 AE 98:  
Regulation J – Collection of Checks and Other Items by Federal Reserve Banks  
and Funds Transfers Through Fedwire – Proposed Amendments

Dear Madam:

The undersigned parties (the “Commenters”) respectfully submit this joint comment letter to the Federal Reserve Board (the “Board”) regarding its proposed revisions to Regulation J (the “Proposed Rule”). The Commenters<sup>i</sup> support the replacement of paper payments with electronic payments and oppose the creation of artificial barriers that stifle innovation in the evolution and enhancement of the check payment system. The Commenters favor allowing free market forces to determine which payment types and payment features are most valuable to users of the system. The Federal Reserve has previously espoused allowing the market to decide in lieu of premature regulation.<sup>ii</sup>

We applaud the Board’s efforts to improve and enhance the various U.S. payments systems, such as with the Check Clearing for the 21<sup>st</sup> Century Act (“Check 21”), *Payment System Improvement – Public Consultation Paper, Strategies for Improving the U.S. Payment System* and The Faster Payments Task Force. The Commenters wholeheartedly subscribe to the Board’s objectives for the payment systems’ achievement of greater efficiency and value for the U.S. economy and all stakeholders.<sup>iii</sup>

In its *Payment System Improvement – Public Consultation Paper*, the Federal Reserve illuminated its updated vision as including improvements in efficiency from end-to-end, stating, “End-to-end means from the point of payment origination to the point of receipt...”<sup>iv</sup> The Commenters endorse this re-envisioning, but believe that the proposed prohibition in Regulation J of Electronically Created Items (“ECIs”) undermines the Board’s salutary purpose.

Check 21 encouraged electronification to improve the check system.<sup>v</sup> As a result, the system transitioned in record time from an all paper-based system to one that is almost entirely electronic.<sup>vi</sup> The U.S. check system is highly efficient and continues to be invaluable to the U.S. economy as evidenced by: (1) the value of check payments in 2016 equaled approximately 147% of the 2016 U.S. Gross Domestic Product,<sup>vii</sup> and (2) U.S. businesses make more payments via check than any other payment type.<sup>viii</sup>

The Commenters project that businesses would readily adopt electronic payments if they could foresee sufficient savings to justify their front-loaded, transitional investment. Payment options other than paper checks have been available over the past several decades, but none have

yet gained the broad acceptance of businesses.<sup>ix</sup> The transition from paper checks to electronic check images has been largely limited to inter-bank exchanges, whereas ECIs offer the opportunity to complete the transition end-to-end.

The Federal Reserve's joint efforts with the private sector following the passage of Check 21 was an unprecedented success, eliminating each year many billions of dollars of expense from the system and accelerating check clearing times.<sup>x</sup> The Proposed Rule follows a different tack, and would discourage the continued evolution of the check system to an end-to-end, all-electronic payment system, effectively depriving users of the significant savings<sup>xi</sup> that would become available with a complete transition from paper payments to electronic payments. The Commenters believe that the Proposed Rule to restrict ECIs by regulation is antagonistic to the Board's objective of creating a better payment system and works against evolving market interests.<sup>xii</sup> The Commenters support the approach taken in Regulation CC that defines ECIs and creates a new indemnification but does not restrict the market's use of ECIs.

Many checks are cleared through the services of the Federal Reserve's Retail Product Office, and most unpaid, return checks are cleared through the Federal Reserve. As there is currently no private sector alternative and replication of the existing return system by the private sector would be impractical, a prohibition on ECIs through the Federal Reserve would effectively discourage ECIs for both the forward collection side and the return side. For this reason, a regulatory prohibition on ECIs through the Federal Reserve would depress free market forces and thwart the Federal Reserve's objective of improving the payment system.

The Commenters recommend: (1) removing the restrictions on ECIs from the final revisions to Regulation J,<sup>xiii</sup> and (2) beginning active discussions with the Commenters<sup>xiv</sup> as to how the Board might assist stakeholders in enhancing the payment system used by businesses more than twice as often as any other.<sup>xv</sup>

Thank you for this opportunity to comment on the proposed revisions to Regulation J. The undersigned representatives of the Commenters are at your disposal to answer any questions there may be concerning this letter.

Commenters

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About Commenters

**About All My Papers**

All My Papers, Inc. (All My Papers) develops and distributes software for Check Image Cash Letter (X9/ICL) files used in Check Image Exchange based on the X9-100.187 ANSI standard and the FRB Reg. CC Rules. All My Papers is a Texas Corporation, and is now part of the 3Core Software family of companies.

All My Papers' software is used by most of the large and mid-size financial institutions (over 500 FIs and greater than 50% of the top 50 banks) in the United States as well as many foreign institutions, along with software development shops around the world supporting the financial industry.

**About Bankers' Bank of the West**

The second independent bankers' bank formed in the United States, Bankers' Bank of the West provides high-quality products and services as well as deep industry expertise to more than 300 community bank clients in the western states and Great Plains region. Our primary service area includes Arizona, Colorado, Idaho, Iowa, Montana, Nebraska, New Mexico, Nevada, South Dakota, Utah, Washington and Wyoming.

**About Bridge Community Bank**

Bridge Community Bank is an employee-owned community bank located in east central Iowa. The Bank was chartered in 1903. Bridge was an early adopter of check imaging technology in 1995, adopted remote check deposits in 2001, and sent the first Check 21 FedForward file in December 2004. The bank was early to recognize the efficiencies of less paper and the advantages for its customers of digitizing paper checks.

**About Kalypton**

Kalypton is a UK-based technology provider in the process of establishing a US subsidiary. Our Tereon real-time transaction processing software was the subject of a proposal to the Federal Reserve's Faster Payments Task Force in partnership with ECCHO. That proposal was highly regarded for its ability to deliver services of multiple types and within existing regulation. We strongly believe that the market should evolve as dictated by the customer base and to the benefit of all stakeholders. We strongly believe that regulation should ensure that technology can support that objective where possible.

### **About Midwest Independent Bank**

MIB is a “bankers’ bank” which provides a wide array of correspondent banking services to close to 525 financial institutions throughout the Midwest. Based in Jefferson City, Missouri, MIB’s banking services are provided exclusively to financial institutions. The website for MIB is [www.mibanc.com](http://www.mibanc.com).

### **About RemoteDepositCapture.com**

RemoteDepositCapture.com is the de facto trade association for the Remote Deposit Capture Industry. Over 250,000 unique visitors from thousands of financial institutions, solution providers and businesses visit the website every year. From educational webinars, topical research and original news and analysis, to solution directories, business tools and access to knowledge experts, RemoteDepositCapture.com is the only information and services portal devoted to RDC and Payments. Visit [RemoteDepositCapture.com](http://RemoteDepositCapture.com) to learn more.

### **About RWC Consulting Group**

The RWC Consulting Group was created by bankers for bankers. We provide business support, financial services support and risk management services by supplying expert resources on demand to Financial Institutions, FinTechs, Corporate Treasury, AR and AP Departments and Federal Government agencies.

### **About The Bankers Bank**

The Bankers Bank exists for one reason: to provide the highest quality of correspondent services to community banks. The bank directly serves Oklahoma and Texas with over 300 financial institutions, and indirectly provides correspondent banking systems to over 3,000 banks across the U.S.

### **About Third Party Payments Processors Association**

The Third Party Payment Processors Association (TPPPA) is a not-for-profit membership association. TPPPA members are payment processors and banks that sponsor payment processors into the various payments systems. The Association supports all manner of payment processing and has created industry best practices for both payment processors and banks that address holistic risk and compliance management with emphasis on BSA/AML compliance and compliance with Consumer Protection laws and regulations applicable to the industries for which our members process payments. The TPPPA was formed in 2013 and currently has 29 payment processor members and 19 bank members. 10 of our bank members are community banks and nine are regional banks. Seven of our bank members are on NACHA’s top 50 Originators in 2017. The TPPPA advocates on behalf of payment processors, their banks, and the businesses and consumers who benefit from responsible payment processing. Our moto is *Payments Excellence and Integrity Through Compliance*.

### **About Tiller Endeavors, LLC – To steer the course, you need a Tiller!**

Tiller Endeavors is committed to creating value for businesses through the transition of business payments from paper payments to electronic payments. Now that the check system is virtually 100% electronic between banks, it is time to allow businesses to finally achieve significant savings by electronifying the last paper processes, those between the end users.

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David Walker has more than 40 years in the banking industry, including electronic check exchange rules, industry advocacy, check certification program, ACH operations, wire operations, funds management trading operations, Federal Reserve and Due From balance management, customer balance and controlled disbursement reporting, ACH and wire product management, daylight overdraft management and IT systems for wire and balance reporting.

Phyllis Meyerson has almost 45 years in the banking industry, including electronic check exchange rules and standards, industry advocacy, check certification program, ACH operations, ACH programing, product management for ACH, Wire Transfer and Balance Reporting.

### **About United Bankers Bank**

United Bankers' Bank was founded in 1975 with the vision to level the competitive playing field by providing community banks with a full range of innovative correspondent services.

United Bankers' Bank is proud to be the nation's first and the upper Midwest's largest Bankers' Bank, serving over 1,000 community banks from the Pacific Northwest to the Great Lakes.

## Endnotes

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<sup>i</sup> The Commenters' organizations serve more than 5,000 financial institutions across the United States. For additional information please see the About descriptions.

<sup>ii</sup> Federal Reserve Bank of Atlanta, August 8, 2013, Re: *Telemarketing Sales Rule, 16 CFR Part 310, Project No. R411001*, "A Premature ban on their [RCPOs, remotely created payment orders; e.g. ECIs] use in the telemarketing context may limit their use elsewhere as they would be stigmatized as a "risky" form of payment."

<sup>iii</sup> Payments System Policy Advisory Committee, "The Committee's purview includes...Strategies and policies to foster the long-term safety, efficiency, and accessibility of the U.S. dollar payments system..."

*Policies: The Federal Reserve in Payment Systems, issued 1984 and revised 1990*, "It is recognized that the most significant further gains in payment efficiency are likely to come from the application of advances in electronic technology...The Federal Reserve will continue to promote the use of electronics in providing payment services where it can demonstrate that this technology will enhance the efficiency or effectiveness of its services."

<sup>iv</sup> *Payment System Improvement – Public Consultation Paper*, September 10, 2013 "Federal Reserve Bank Strategic Direction in Payments - The Federal Reserve Banks updated their strategic direction in payments in 2012. At the heart is a vision to improve the speed and efficiency of the U.S. payment system from end-to-end over the next decade while maintaining a high level of safety and accessibility. End-to-end means from the point of payment origination to the point of receipt, including payment notification and reconciliation. This vision was crafted based on both Federal Reserve Bank internal analysis of payment evolution and external consultation with stakeholders."

<sup>v</sup> *Congressional record – H9084*, "...(b) Purposes [of the Check 21 Act]. – (3) [is] to improve the overall efficiency of the Nation's payment system..."

<sup>vi</sup> Press Release, May 31, 2017, Federal Reserve Board announces final amendments to Regulation CC and requests public comment on an additional proposed amendment, "The final amendments update Regulation CC to reflect the evolution of the nation's check collection system from one that is largely paper-based to one that is virtually all electronic."

<sup>vii</sup> Bureau of Economic Analysis, Department of Commerce. Check Image Collaborative.

<sup>viii</sup> *Treasury Management Monitor 2016*, Phoenix-Hecht. Phoenix-Hecht reported that of the almost 1,500 businesses that responded to its 2016 survey, midsize businesses used check payments 3.3 times more often than the next largest payment type and large businesses used check payments 1.4 times more often than the next largest payment option.

*Payment System Improvement – Public Consultation Paper, September 10, 2013*, "The following are the key gaps and opportunities identified: Check writing persists because checks have important attributes, including ubiquity and convenience, which are not well replicated by electronic alternatives for some transactions..."

*Payment System Improvement – Public Consultation Paper, September 10, 2013*, "The challenge for the industry is to provide a payment system for the future that combines the valued attributes of legacy payment methods – convenience, safety, and universal reach at low cost to the end user – with new

technology that enables faster processing, enhanced convenience, and the extraction and use of valuable information that accompanies payments.”

<sup>ix</sup> 2016 Electronic Payments – Association of Financial Professionals. Reported that the almost 500 businesses that responded to its triennial survey of businesses use of payments that the percent of business payments made using paper checks increased from 50% to 51% from 2013 to 2016.

Phoenix-Hecht 2016 Treasury Management Monitor reported that check was the payment of choice more than twice as often as the next most used payment type.

<sup>x</sup> Anecdotal information from bankers across the nation suggest that the most checks now clear the same day that they are deposited. Estimates for most checks range from a low of about 65% to a high of about 85% of checks clear the same day.

<sup>xi</sup> 2016 Federal Reserve Payments Study – Estimated the number of B2B payments at 5.3 billion during 2016. The Association of Financial Professionals’ 2016 *Electronic Payments* reported that the median cost of a business to issue and receive a paper check was \$4.57 and the median cost of initiating and receiving an ACH was \$.11 to \$.25 per payment. Assuming that the cost of an ECI would approximate the cost of an ACH, the savings for businesses would be approximately \$4.32 ( $\$4.57 - \$.25 = \$4.32$ ) per payment. Assuming 5.3 billion B2B payments, the potential business savings with full implementation of ECIs for just B2B payments would be approximately \$23 billion per year.

Payment System Improvement – *Public Consultation Paper, September 10, 2013*, “Desired Outcomes...Desired outcome 3: Over the long run, greater electronification and process improvements have reduced the average end-to-end (societal) costs of payment transactions and resulted in innovative payment services that deliver improve value to consumers, businesses, and governments.”

Federal Reserve Retail Payment Risk Form. *A Summary of the Electronic Payment Order Forum*, March 2013, “Participants cited lower costs of EPOs [ECIs] compared to checks, resulting from eliminating the paper in the origination of the payment order, eliminating payment processing and mail float, and eliminating postage and mail-related supplies. Participants also noted lower costs that result from reducing fraud through positive authorization by the payer, eliminating mail interception, and enabling quicker fraud detection through a faster deposit scenario. In addition, participants noted the advantage of ubiquity with EPOs that arises from mass use of checking accounts, especially by the business sector, and the ability to reach a large population by not requiring the account information of the intended recipient.”

<sup>xii</sup> *Policies: The Federal Reserve in Payment Systems, issued 1984 and revised 1990*, “The Federal Reserve will continue to promote the use of electronics in providing payment services where it can demonstrate that this technology will enhance the efficiency or effectiveness of its services.”

Federal Reserve Retail Payment Risk Forum. *A Summary of the Electronic Payment Order Forum*. “On March 28, 2013, the Federal Reserve Bank of Atlanta hosted an Electronic Payment Order (EPO) [ECI] Forum with payments industry participants, including banks, nonbank payment service providers, retailers, and regulators.”

“The payment industry participants recognize that a ubiquitous and fast credit push payment system is needed. However, implementing such a system would be a long-term effort and would add another payment system to a market that already has a plethora of payment systems. In the meantime, proponents of the EPO [ECI] see the opportunity to use existing technology to wring out efficiencies in an already-existing check process system.”



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<sup>xiii</sup> *Federal Reserve System 12 CFR Part 210, Regulation J: Docket No. R-1599, RIN 7100 AE 98, Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfer Through Fedwire – “Currently, neither Regulation CC nor Regulation J explicitly address the sending of ECIs to the Reserve Banks. However, the definition of item in Regulation J as currently drafted does not encompass ECIs and therefore does not allow for the handling of ECIs by the Reserve Banks. Regulation J defines an item, in part, as “an instrument or a promise or order to pay money, whether negotiable or not” that meets several other requirements. The terms “instrument,” “promise,” and “order” are defined under the U.C.C. as requiring a writing. Because they never existed in tangible form and therefore do not qualify as writings, ECIs are not “items” as currently defined in Regulation J. To provide greater clarity, the Board proposed to amend the definition of “item” in subpart A of Regulation J to explicitly state that the term does not include an ECI as defined [in] Regulation CC.”*

<sup>xiv</sup> The Commenters recognize the Federal Reserve held limited discussions beginning in 2013 with a small number of organizations to discuss fully electronic checks (EPOs/ECIs). Those discussions ended abruptly in 2014. None of the Commenters serving more than 5,000 institutions were included in those discussions.

<sup>xv</sup> Phoenix-Hecht, *Treasury Management Monitor 2016*.

Payments System Policy Advisory Committee, “The Committee’s purview includes...Collaboration with private-sector payments system providers and users to reduce risk and improve efficiency in retail and wholesale payment, clearing, and settlement systems...”

Payment System Improvement – *Public Consultation Paper, September 10, 2013*, “The Federal Reserve Banks see one of their roles as bringing the industry together to foster coordination and, where appropriate, to drive payment system improvement.”

Payment System Improvement – *Public Consultation Paper, September 10, 2013*, “The U.S. payment system is undergoing a remarkable period of change driven by rapid adoption of technology and evolving end-user expectations. Going forward, opportunity exists to improve speed and efficiency of payments and to maintain payment system safety in the face of escalating threats. The Federal Reserve Banks believe that collaboration and engagement with the industry is the foundation of any enduring strategic improvements to the U.S. payment system.”

Governor Jerome H. Powell, October 18, 2017 - *Financial Innovation: A World in Transition*. “I believe a collaborative approach ensures that change is designed by those whose commitment and expertise are needed to improve the payment system.”

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Ann E. Misback, Secretary  
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Via email to: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Re: Docket No. R-1599 / RIN No. 7100 AE 98:  
Regulation J – Collection of Checks and Other Items by Federal Reserve Banks  
and Funds Transfers Through Fedwire – Proposed Amendments

Dear Madam:

Tiller Endeavors, LLC respectfully submits this addendum to the group comment letter that it filed via email on May 13, 2018. The purpose of the addendum is to add other signatories (“Commenters”) to the original letter and is not intended to replace the original letter but rather to supplement it.

Thank you for the opportunity to supplement additional Commenters.

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#### About Commenters

##### **About Change Healthcare**

Change Healthcare is one of the largest independent healthcare IT companies in the United States, Change Healthcare services customers across the continuum of care. The Change Healthcare Intelligent Healthcare Network is used to process clinical, administrative, and financial transactions among hundreds of thousands of healthcare industry stakeholders (physicians, hospitals, and other providers as well as commercial and government payers), including processing over \$2 trillion in claims annually.

We distributed approximately \$130 Billion of B to B payments from approximately 1400 health plans to approximately 1 million different healthcare providers last year. Additionally, last year over \$70 Billion of these payments were delivered as check payments. We are all aware that one of the biggest challenges facing our nation is the rising cost of healthcare. The

biggest opportunity to reduce costs in healthcare is to reduce administrative costs, so anything that converts paper transactions to electronic is significant. This facilitates faster transfer of information, elimination of mail costs, increased accuracy, etc.

The recommendations in the Tiller Endeavors' letter are certainly applicable to our industry where AR and AP systems are geared to checks, the density of the data does not easily translate to existing credit transactions, there is some concern about enrolling for credit transactions and giving bank account information to hundreds of different plans on the chance that they will at some point make a payment is not ideal for some healthcare providers. The facilitation of electronic checks that clear via the check clearing system, addresses many of these concerns.

### **About Republic Bank of Chicago**

Republic Bank of Chicago is a family-owned institution dedicated to serving our local communities. Our iconic rotunda building at 6501 S. Pulaski opened in 1964 and today remains an active branch. From day one, we have concentrated on what matters most: our customers. The focus of providing our customers with the products and services they need has allowed them—and Republic Bank of Chicago—to thrive.

Over the years, we have expanded our financial services, reinvested in our communities, and grown to 19 locations across Chicagoland. We are proud to call Chicago home and embrace our city's heritage of innovation, hard work, and entrepreneurship.

We recognize the importance of being a fiscally sound bank, especially in this current economic environment. With \$196.1 million in capital strength and a capital-to-asset ratio of over 9.97%, we exceed the federal definition for a "well capitalized" bank. We expect to work hard for the next 50 years and beyond to help our customers meet their goals. As of March 31, 2018, our total assets equaled almost \$2 billion.

Every day we dedicate ourselves to providing outstanding customer service to all of our business, retail and commercial customers. For additional information please visit, <https://republicbank.com/about/>.