

(3) The identity and order of the parties under paragraph (b)(1) of this section determine the relationships and the rights and liabilities of the parties under this subpart, part 229 of this chapter (Regulation CC), and the Uniform Commercial Code. An initial sender's Administrative Reserve Bank that is deemed to handle an item is also deemed to be a sender with respect to that item. The Reserve Banks that are deemed to handle an item are deemed to be agents or subagents of the owner of the item, as provided in § 210.6(a) of this subpart.

(c) *Checks received at par.* The Reserve Banks shall receive cash items and other checks at par.

[Reg. J, 62 FR 48171, Sept. 15, 1997; Reg. J, 69 FR 62558, Oct. 27, 2004]

§ 210.5 Sender's agreement; recovery by Reserve Bank.

(a) *Sender's agreement.* The warranties, authorizations, and agreements made pursuant to this paragraph may not be disclaimed and are made whether or not the item bears an indorsement of the sender. By sending an item to a Reserve Bank, the sender does all of the following.

(1) *Authorization to handle item.* The sender authorizes the sender's administrative Reserve Bank and any other Reserve Bank or collecting bank to which the item is sent to handle the item (and authorizes any Reserve Bank that handles settlement for the item to make accounting entries), subject to this subpart and to the Reserve Banks' operating circulars, and warrants its authority to give this authorization.

(2) *Warranties for all items.* The sender warrants to each Reserve Bank handling the item that—

(i) The sender is a person entitled to enforce the item or authorized to obtain payment of the item on behalf of a person entitled to enforce the item;

(ii) The item has not been altered; and

(iii) The item bears all indorsements applied by parties that previously handled the item, in paper or electronic form, for forward collection or return.

(3) *Warranties for all electronic items.* The sender makes all the warranties set forth in and subject to the terms of 4-207 of the U.C.C. for an electronic

item as if it were an item subject to the U.C.C. and makes the warranties set forth in and subject to the terms of § 229.34(c) of this chapter for an electronic item as if it were a check subject to that section.

(4) *Warranties for electronic items that are not representations of substitute checks.* If an electronic item is not a representation of a substitute check, the sender of that item warrants to each Reserve Bank handling the item that—

(i) The electronic image portion of the item accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated; the information portion of the item contains a record of all MICR-line information required for a substitute check under § 229.2(aaa) of this chapter; and the item conforms to the technical standards for an electronic item set forth in an operating circular; and

(ii) No person will receive a transfer, presentment, or return of, or otherwise be charged for, the electronic item, the original item, or a paper or electronic representation of the original item such that the person will be asked to make payment based on an item it already has paid.

(5) *Sender's liability to Reserve Bank.*

(i) Except as provided in paragraph (a)(5)(ii) of this section, the sender agrees to indemnify each Reserve Bank for any loss or expense sustained (including attorneys' fees and expenses of litigation) resulting from—

(A) The sender's lack of authority to make the warranty in paragraph (a)(1) of this section;

(B) Any action taken by the Reserve Bank within the scope of its authority in handling the item; or

(C) Any warranty or indemnity made by the Reserve Bank under § 210.6(b) of this subpart, part 229 of this chapter, or the U.C.C.

(ii) A sender's liability for warranties and indemnities that the Reserve Bank makes for a substitute check, a paper or electronic representation thereof, or any other electronic item is subject to the following conditions and limitations—

(A) A sender of an original check shall not be liable under paragraph

(a)(5)(i) of this section for any amount that the Reserve Bank pays under subpart D of part 229 of this chapter or under §210.6(b)(3) of this subpart, absent the sender's agreement to the contrary;

(B) Nothing in this subpart alters the liability of a sender of a substitute check or paper or electronic representation of a substitute check under subpart D of part 229 of this chapter; and

(C) A sender of an electronic item that is not a representation of a substitute check shall not be liable for any amount that the Reserve Bank pays under subpart D of part 229 of this chapter or §210.6(b)(3)(ii) of this subpart that is attributable to the Reserve Bank's own lack of good faith or failure to exercise ordinary care.

(b) *Sender's liability under other law.* Nothing in paragraph (a) of this section limits any warranty or indemnity by a sender (or a person that handled an item prior to the sender) arising under state law or regulation (such as the U.C.C.), other federal law or regulation (such as part 229 of this chapter), or an agreement with a Reserve Bank.

(c) *Recovery by Reserve Bank.* If an action or proceeding is brought against (or if defense is tendered to) a Reserve Bank that has handled an item, based on:

(1) The alleged failure of the sender to have the authority to make the warranty and agreement in paragraph (a)(1) of this section;

(2) Any action by the Reserve Bank within the scope of its authority in handling the item; or

(3) Any warranty or indemnity made by the Reserve Bank under section 210.6(b) of this subpart, part 229 of this chapter, or the U.C.C.,

(d) *Methods of recovery.* (1) The Reserve Bank may recover the amount stated in paragraph (b) of this section by charging any account on its books that is maintained or used by the sender (or by charging a Reserve Bank sender), if—

(i) The Reserve Bank made reasonable written demand on the sender to assume defense of the action or proceeding; and

(ii) The sender has not made any other arrangement for payment that is acceptable to the Reserve Bank.

(2) The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged under this paragraph (c) may recover from its sender in the manner and under the circumstances set forth in this paragraph (c). A Reserve Bank's failure to avail itself of the remedy provided in this paragraph (c) does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (a)(3) of this section.

(e) *Security interest.* When a sender sends an item to a Reserve Bank, the sender and any prior collecting bank grant to the sender's Administrative Reserve Bank a security interest in all of their respective assets in the possession of, or held for the account of, any Reserve Bank to secure their respective obligations due or to become due to the Administrative Reserve Bank under this subpart or subpart C of part 229 of this chapter (Regulation CC). The security interest attaches when a warranty is breached or any other obligation to the Reserve Bank is incurred. If the Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the sender or prior collecting bank, or if the sender or prior collecting bank suspends payments or is closed, the Reserve Bank may take any action authorized by law to recover the amount of an obligation, including, but not limited to, the exercise of rights of set off, the realization on any available collateral, and any other rights it may have as a creditor under applicable law.

[45 FR 68634, Oct. 16, 1980, as amended at 51 FR 21745, June 16, 1986; Reg. J, 59 FR 22965, May 4, 1994; 62 FR 48171, Sept. 15, 1997, Reg. J, 69 FR 62558, Oct. 27, 2004]

EFFECTIVE DATE NOTE: At 70 FR 71224, Nov. 28, 2005, §210.5, was amended by revising paragraph (a)(3), effective July 1, 2006. For the convenience of the user, the revised text is set forth as follows:

§210.5 Sender's agreement; recovery by Reserve Bank.

(a) * * *

(3) *Warranties for all electronic items.* The sender makes all the warranties set forth in and subject to the terms of 4-207 of the U.C.C. for an electronic item as if it were an item subject to the U.C.C. and makes the

warranties set forth in and subject to the terms of § 229.34(c) and (d) of this chapter for an electronic item as if it were a check subject to that section.

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§ 210.6 Status, warranties, and liability of Reserve Bank.

(a)(1) *Status.* A Reserve Bank that handles an item shall act as agent or subagent of the owner with respect to the item. This agency terminates when a Reserve Bank receives final payment for the item in actually and finally collected funds, a Reserve Bank makes the proceeds available for use by the sender, and the time for commencing all actions against the Reserve Bank has expired.

(2) *Limitations on Reserve Bank liability.* A Reserve Bank shall not have or assume any liability with respect to an item or its proceeds except—

(i) For the Reserve Bank’s own lack of good faith or failure to exercise ordinary care;

(ii) As provided in paragraph (b) of this section; and

(iii) As provided in subparts C and D of Regulation CC.

(3) *Reliance on routing designation appearing on item.* A Reserve Bank may present or send an item based on the routing number or other designation of a paying bank or nonbank payor appearing in any form on the item when the Reserve Bank receives it. A Reserve Bank shall not be responsible for any delay resulting from its acting on any designation, whether inscribed by magnetic ink or by other means, and whether or not the designation acted on is consistent with any other designation appearing on the item.

(b) *Warranties and liability.* The following provisions apply when a Reserve Bank presents or sends an item.

(1) *Warranties for all items.* The Reserve Bank warrants to a subsequent collecting bank and to the paying bank and any other payor that—

(i) The Reserve Bank is a person entitled to enforce the item (or is authorized to obtain payment of the item on behalf of a person that is either entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item);

(ii) The item has not been altered; and

(iii) The item bears all indorsements applied by parties that previously handled the item, in paper or electronic form, for forward collection or return.

(2) *Warranties for all electronic items.* The Reserve Bank makes all the warranties set forth in and subject to the terms of 4–207 of the U.C.C. for an electronic item as if it were an item subject to the U.C.C. and makes the warranties set forth in and subject to the terms of § 229.34(c) of this chapter for an electronic item as if it were a check subject to that section.

(3) *Warranties and indemnity for electronic items that are not representations of substitute checks.* (i) If the electronic item is not a representation of a substitute check, the Reserve Bank warrants to the bank to which it transfers or presents that item that—

(A) The electronic image portion of the item accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated; the information portion of the item contains a record of all MICR-line information required for a substitute check under § 229.2(aaa) of this chapter; and the item conforms to the technical standards for an electronic item set forth in an operating circular; and

(B) No person will receive a transfer, presentment, or return of, or otherwise be charged for, the electronic item, the original item, or a paper or electronic representation of the original item such that the person will be asked to make payment based on an item it already has paid.

(ii) If the item is an electronic item that is not a representation of a substitute check—

(A) Except as provided in paragraph (b)(3)(ii)(B) of this section, the Reserve Bank agrees to indemnify the bank to which it transfers or presents the electronic item (the recipient bank) for the amount of any losses that the recipient bank incurs under subpart D of part 229 of this chapter for an indemnity that the recipient bank was required to make under subpart D of part 229 of this chapter in connection with a substitute check later created from the electronic item.