checks, certified checks, teller's checks, and, for the purposes of the new account exception only, traveler's checks. The first \$5,000 of funds deposited to a new account on any one banking day by these check deposits must be made available for withdrawal in accordance with § 229.10(c). Thus, the first \$5,000 of the proceeds of these check deposits must be made available on the first business day following deposit, if the deposit is made in person to an employee of the depositary bank and the other conditions of next-day availability are met. Funds must be made available on the second business day after deposit for deposits that are not made over the counter, in accordance with § 229.10(c)(2). (Proceeds of Treasury check deposits must be made available on the first business day after deposit, even if the check is not deposited in person to an employee of the depositary bank.) Funds in excess of the first \$5,000 deposited by these types of checks on a banking day must be available for withdrawal not later than the ninth business day following the banking day of deposit. The requirements of § 229.10(c)(1)(vi) and (vii) that "on us" checks and the first \$100 of a day's deposit be made available for withdrawal on the next business day do not apply during the new account period.

3. Representation by Customer. The depositary bank may rely on the representation of the customer that the customer has no established account relationship with the bank, and has not had any such account relationship within the past 30 days, to determine whether an account is subject to the new account exception.

C. 229.13(b) Large Deposits

- 1. Under the large deposit exception, a depositary bank may extend the hold placed on check deposits to the extent that the amount of the aggregate deposit on any banking day exceeds \$5,000. This exception applies to local and nonlocal checks, as well as to checks that otherwise would be made available on the next (or second) business day after the day of deposit under § 229.10(c). Although the first \$5,000 of a day's deposit is subject to the availability otherwise provided for checks, the amount in excess of \$5,000 may be held for an additional period of time as provided in § 229.13(h). When the large deposit exception is applied to deposits composed of a mix of checks that would otherwise be subject to differing availability schedules, the depositary bank has the discretion to choose the portion of the deposit to which it applies the exception. Deposits by cash or electronic payment are not subject to this exception for large deposits.
- 2. The following example illustrates the operation of the large deposit exception. If a customer deposits \$2,000 in cash and a \$9,000 local check on a Monday, \$2,100 (the proceeds of the cash deposit and \$100 from the local check deposit) must be made available for withdrawal on Tuesday. An additional \$4,900 of the proceeds of the local check must be available for withdrawal on Wednesday in accordance with the local schedule, and the remaining \$4,000 may be

held for an additional period of time under the large deposit exception.

3. Where a customer has multiple accounts with a depositary bank, the bank may apply the large deposit exception to the aggregate deposits to all of the customer's accounts, even if the customer is not the sole holder of the accounts and not all of the holders of the customer's accounts are the same. Thus, a depositary bank may aggregate the deposits made to two individual accounts in the same name, to an individual and a joint account with one common name, or to two joint accounts with at least one common name for the purpose of applying the large deposit exception. Aggregation of deposits to multiple accounts is permitted because the Board believes that the risk to the depositary bank associated with large deposits is similar regardless of how the deposits are allocated among the customer's accounts.

D. 229.13(c) Redeposited Checks

- 1. The Act gives the Board the authority to promulgate an exception to the schedule for checks that have been returned unpaid and redeposited. Section 229.13(c) provides such an exception for checks that have been returned unpaid and redeposited by the customer or the depositary bank. This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c).
- 2. This exception addresses the increased risk to the depositary bank that checks that have been returned once will be uncollectible when they are presented to the paying bank a second time. The Board, however, does not believe that this increased risk is present for checks that have been returned due to a missing indorsement. Thus, the exception does not apply to checks returned unpaid due to missing indorsements and redeposited after the missing indorsement has been obtained, if the reason for return indicated on the check (see § 229.30(d)) states that it was returned due to a missing indorsement. For the same reason, this exception does not apply to a check returned because it was postdated (future dated), if the reason for return indicated on the check states that it was returned because it was postdated, and if it is no longer postdated when redeposited.
- 3. To determine when funds must be made available for withdrawal, the banking day on which the check is redeposited is considered to be the day of deposit. A depositary bank that made \$100 of a check available for withdrawal under \$229.10(c)(1)(vii) can charge back the full amount of the check, including the \$100, if the check is returned unpaid, and the \$100 need not be made available again if the check is redeposited.

E. 229.13(d) Repeated Overdrafts

1. The Act gives the Board the authority to establish an exception for "deposit accounts which have been overdrawn repeatedly." This paragraph provides two tests to determine what constitutes repeated overdrafts. Under the first test, a customer's accounts are considered repeatedly overdrawn if, on six banking days within the preceding six months, the available balance in any account held by the customer is

- negative, or the balance would have become negative if checks or other charges to the account had been paid, rather than returned. This test can be met based on separate occurrences (e.g., checks that are returned for insufficient funds on six different days), or based on one occurrence (e.g., a negative balance that remains on the customer's account for six banking days). If the bank dishonors a check that otherwise would have created a negative balance, however, the incident is considered an overdraft only on that day.
- 2. The second test addresses substantial overdrafts. Such overdrafts increase the risk to the depositary bank of dealing with the repeated overdrafter. Under this test, a customer incurs repeated overdrafts if, on two banking days within the preceding six months, the available balance in any account held by the customer is negative in an amount of \$5,000 or more, or would have become negative in an amount of \$5,000 or more if checks or other charges to the account had been paid.
- 3. The exception relates not only to overdrafts caused by checks drawn on the account, but also overdrafts caused by other debit charges (e.g. ACH debits, point-of-sale transactions, returned checks, account fees, etc.). If the potential debit is in excess of available funds, the exception applies regardless of whether the items were paid or returned unpaid. An overdraft resulting from an error on the part of the depositary bank, or from the imposition of overdraft charges for which the customer is entitled to a refund under §§ 229.13(e) or 229.16(c), cannot be considered in determining whether the customer is a repeated overdrafter. The exception excludes accounts with overdraft lines of credit, unless the credit line has been exceeded or would have been exceeded if the checks or other charges to the account had been paid.
- 4. This exception applies to local and nonlocal checks, as well as to checks that otherwise would be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank places or extends a hold under this exception, it need not make the first \$100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii).

F. 229.13(e) Reasonable Cause To Doubt Collectibility

1. In the case of certain check deposits, if the bank has reasonable cause to believe the check is uncollectible, it may extend the time funds must be made available for withdrawal. This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank places or extends a hold under this exception, it need not make the first \$100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii). If the reasonable cause exception is invoked, the bank must include in the notice to its customer, required by § 229.13(g), the reason that the bank believes that the check is uncollectible.