

## MEMORANDUM

To: Subscribers to *Clarks' Guide to Electronic Check Collection*

From: A.S. Pratt & Sons

Subject: Highlights

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The enclosed update includes new and revised pages reflecting recent developments, including:

- **Remote Deposit Capture: The New Product That Continues to Rocket Along.** In Chapter 10, we review the explosive growth of remote deposit capture (RDC), which really took off after the enactment of Check 21. The latest development is the use of digital camera/cellphones as a way to image checks and deposit them remotely. In this way, the market for the RDC product may be expanded beyond business customers to consumers.
- **What are the Key Legal Issues Surrounding Remote Deposit Capture?** Chapter 10 also takes a close look at the legal framework governing RDC. What federal laws apply? How do the funds availability rules of Regulation CC apply to RDC? Does the UCC apply to the collection of imaged checks originated through remote deposit capture? These issues are in their infancy.
- **What Impact Might RDC Have on Check Fraud Litigation?** In Chapter 10, we provide a hypothetical check fraud case where the checks at issue were imaged by a dishonest bookkeeper of the corporate payee, who then sent the electronic files to the bank and converted the proceeds. How do the fraud loss allocation rules of the UCC apply differently than if remote deposit capture were not used? These are cutting-edge problems that are bound to come up increasingly in check fraud litigation.
- **Check Fraud: Is It a Counterfeit or an Alteration?** In Chapter 2, we analyze another in a line of judicial opinions dealing with the increasingly fuzzy distinction between “counterfeit” checks that are created digitally and “altered” checks where the fraudster “washes” the payee line or amount on the original paper check. The distinction is critical because the rules of the UCC allocate check fraud loss very differently for counterfeit checks and altered checks. This is a hot area of litigation fueled by desktop publishing technology.
- **FRB Revises Operating Circular No. 3 to Disclaim Liability for E-Checks Where Data Is Captured from the Internet.** On July 15, 2008, the Federal Reserve Board amended Operating Circular No. 3 (Collection of Cash Items and Returned Checks) to address an emerging practice of creating images of checks that were not originally captured from the paper items. The amendment to OC3 was necessary to protect the FRB as a collecting bank for these newfangled items. This important amendment is discussed in Chapter 8.
- **FRB Amends Regulation E to Eliminate Receipts for Small ATM and Debit Card Transactions.** In Chapter 7, we review the new amendments to Regulation E that exempt e-payment transactions of \$15 or less from the requirement that the consumer be given a written receipt. We discuss the arguments pro and con, and how the \$15 threshold for debit card receipts should have the effect of encouraging the growth of debit card transactions at the point of sale.
- **New FRB Study Highlights Shift from Paper Checks to Electronic Payments.** In Chapter 1, we report on a new study by the Federal Reserve Board that addresses the continuing fall of paper checks and rise of electronic payments. The report makes it clear, however, that checks continue to be an important payment system — particularly for businesses. Moreover, more and more checks are now

subject to image exchange and conversion to ACH debits — it's just that the paper check doesn't go all the way through the collection process.

- **Wachovia Sanctioned in Customer Scam Involving Remotely Created Checks.** Chapter 5 discusses a new animal in the payment systems zoo—the remotely created check (RCC). These checks are often generated by telemarketers through MICR information they obtain from the consumer over the phone. These RCCs don't bear the accountholder's signature; instead, the signature block includes text such as "Authorized by your depositor, no signature required." Chapter 5 analyzes a leading judicial decision from Pennsylvania involving Wachovia as the depository bank for thousands of these checks. As a follow-up to that case, in April 2008 the OCC sanctioned Wachovia for its role as depository for a payment processor that served as an intermediary for a number of apparently dishonest telemarketers. The regulatory development, along with the Pennsylvania case, show the risks for banks in handling RCCs.
- **Is Remote Deposit Capture Allowing Paper Checks to Live Longer?** In Chapter 10, we summarize an interesting article by the founder of [remotedepositcapture.com](http://remotedepositcapture.com). The article concludes that remote deposit capture is extending the life of checks because it eliminates all their disadvantages.