

# Summary Table of Contents

## **Part I: Introduction**

Chapter 1: Stepping into the UCC Environment

Chapter 2: Negotiable Instruments: Defining Terms

## **Part II: Rights and Obligations Under the UCC**

Chapter 3: Liabilities and Warranties of the Parties to an Instrument

Chapter 4: Credit Union/Member Relationship Under UCC Article 4

Chapter 5: Special Problems with Share Drafts and Member Accounts

Chapter 6: Stop Payments

## **Part III: Collections and Funds Availability**

Chapter 7: The Collection Process

Chapter 8: Regulation CC and Regulation J: Funds Availability and the Collection of Items

## **Part IV: BSA, Funds Transfers, Privacy, and Share Insurance**

Chapter 9: Article 4A: Fund Transfers

Chapter 9A: Electronic Fund Transfers — Regulation E

Chapter 9B: Automated Clearinghouse Network

Chapter 9C: The Bank Secrecy Act

Chapter 9D: The Office of Foreign Assets Control

Chapter 10: Privacy and Confidentiality

Chapter 10A: Share Insurance

Chapter 11: Check Fraud

Chapter 12: Share Draft Account Types, Fees, and ATM Fees

**Part V: Appendices** (Available Only on CD)

Appendix A: UCC Articles 3, 4, and 4A as Adopted by the State of Connecticut

Appendix B1: Regulation CC: Availability of Funds and Collection of Checks  
12 CFR 229

Appendix B2: Check 21 Act

Appendix C: Regulation J: Collection of Checks and Other Items by Federal Reserve  
Banks and Funds Transfer Through Fedwire 12 CFR 210

Appendix D: Bank Secrecy Act Financial Recordkeeping and Reporting of Currency and  
Foreign Transactions 31 CFR 103

Appendix E: Guidance on Financial Privacy

Appendix F: Regulation E: Electronic Fund Transfer Act 12 CFR 205

Appendix G: NCUA Brochure — Your Insured Funds

Appendix H: Federal Reserve Bank Operating Circulars

Appendix I: Guidance on Foreign Transactions

Appendix J: BSA AML Examination Manual

## Contents

|                                |     |
|--------------------------------|-----|
| About the Author.....          | iii |
| Acknowledgments.....           | v   |
| How to Use This Manual.....    | vii |
| Summary Table of Contents..... | xi  |

### Part I: Introduction

#### Chapter 1 Stepping into the UCC Environment

|   |        |
|---|--------|
| Introduction.....   | 1 — 1  |
| The Unique Nature of Credit Unions.....   | 1 — 2  |
| History of Credit Unions.....   | 1 — 2  |
| Operating Principles.....   | 1 — 3  |
| Role of Credit Unions.....  | 1 — 5  |
| Relationship to Uniform Commercial Code.....  | 1 — 5  |
| Interpreting the UCC in the Context of the FCUA and NCUA Rules and Regulations..... | 1 — 6  |
| The Effect of Other Laws and the Account Agreement on the UCC.....                  | 1 — 8  |
| Basic Accounts.....   | 1 — 10 |
| Types of Accounts.....  | 1 — 10 |
| Share Accounts.....   | 1 — 11 |
| Share Draft Accounts.....   | 1 — 12 |
| Share Certificate Accounts.....   | 1 — 13 |
| Other Share Accounts.....   | 1 — 14 |
| Joint Accounts.....   | 1 — 15 |
| Fiduciary Accounts.....   | 1 — 17 |
| Trust Accounts.....   | 1 — 18 |
| Individual Retirement Accounts (IRAs).....  | 1 — 21 |
| Accounts Accessed by a Power of Attorney.....                                       | 1 — 23 |
| Custodial or Uniform Transfers to Minors Act Accounts.....                          | 1 — 24 |
| Accounts Held by a Corporation, Partnership, or Unincorporated Association.....     | 1 — 24 |
| Deceased Members' Accounts.....   | 1 — 25 |
| Procedures and Documentation.....   | 1 — 26 |
| Basic Documentation.....  | 1 — 26 |

|   |         |
|---|---------|
| Checklist for All Accounts .....  | 1 — 27  |
| The Signature Card .....  | 1 — 27  |
| TIN Certification.....  | 1 — 28  |
| The Account Agreement.....  | 1 — 29  |
| Special Considerations for Certain Types of Accounts.....                                   | 1 — 31  |
| Joint Accounts.....   | 1 — 31  |
| Checklist for Joint Accounts .....  | 1 — 31  |
| Accounts Accessed by a Power of Attorney .....  | 1 — 32  |
| Checklist for Accounts Accessed by a Power of Attorney .....                                | 1 — 32  |
| Trust Accounts .....  | 1 — 33  |
| Checklist for Trust Accounts .....  | 1 — 33  |
| Deceased Members' Accounts.....   | 1 — 34  |
| Checklist for Deceased Members' Accounts .....  | 1 — 35  |
| Accounts Held by a Corporation, Partnership, or Unincorporated Association .....            | 1 — 36  |
| Checklist for Accounts Held by Organizations.....   | 1 — 36  |
| Signing in Representative Capacity .....  | 1 — 36  |
| Share insurance.....  | 1 — 37  |
| Exhibit 1.1: Sample Power of Attorney .....   | 1 — 39  |
| Exhibit 1.1A: Power of Attorney Affidavit and Indemnification .....                         | 1 — 42a |
| Exhibit 1.2: Sample Declaration of Trust .....  | 1 — 43  |
| Exhibit 1.3: Sample Letter of Administration.....   | 1 — 45  |
| Exhibit 1.4: Sample Corporate Resolution.....   | 1 — 47  |
| Exhibit 1.5: Form W-9: Request for Taxpayer Identification Number<br>and Certification..... | 1 — 48  |
| Exhibit 1.6: Instructions for the Requestor of Form W-9 .....                               | 1 — 52  |

## Chapter 2

### Negotiable Instruments: Defining Terms

|  |        |
|--|--------|
| Introduction .....   | 2 — 1  |
| The History of Checks.....                                       | 2 — 1  |
| Why Should Credit Unions Care About Negotiable Instruments?..... | 2 — 2a |
| Defining Negotiable Instruments .....                            | 2 — 3  |
| Orders.....  | 2 — 5  |
| Promises .....   | 2 — 5  |
| Requirements for Negotiable Instruments.....                     | 2 — 6  |
| Unconditional Promise or Order .....                             | 2 — 6  |
| Fixed Amount of Money.....                                       | 2 — 7  |
| Signed by the Maker or Drawer .....                              | 2 — 7  |
| Payable to Bearer or to Order .....                              | 2 — 8  |
| Payable on Demand or at a Definite Time.....                     | 2 — 10 |
| Writings That Are Not Negotiable Instruments .....               | 2 — 11 |

|  |         |
|--|---------|
| Case Study: <i>Meridian Bank v. Merchants Express Money Order Co.</i> ,<br>34 UCC Rep. Serv. 2d 18 (Pa. Ct. Com. Pl., November 26, 1997) ..... | 2 — 12  |
| Negotiation and Transfer of a Negotiable Instrument .....  | 2 — 12a |
| Negotiation .....  | 2 — 13  |
| Transfer of an Instrument .....  | 2 — 14  |
| Parties to a Negotiable Instrument .....   | 2 — 14  |
| Exhibit 2.1: Sample Share Draft .....  | 2 — 15  |
| The Person to Whom an Instrument Is Payable .....  | 2 — 15  |
| Case Study: <i>Purina Mills, Inc. v. Security Bank &amp; Trust</i> , 29 UCC Rep.<br>Serv. 2d 1260 (Michigan 1996) .....                        | 2 — 18  |
| Case Study: <i>J.R. Simplot, Inc. v. Knight</i> , 40 UCC Rep. Serv. 2d 57<br>(Washington, 1999) .....  | 2 — 18a |
| Indorsers .....  | 2 — 18a |
| Special Indorsements .....   | 2 — 19  |
| Blank Indorsements .....   | 2 — 19  |
| Restrictive Indorsements .....   | 2 — 20  |
| Case Study: <i>Spencer v. Sterling Bank</i> , 35 UCC Rep. Serv. 2d 398<br>(Cal. App., May 11, 1998) .....                                      | 2 — 20  |
| Acceptors .....  | 2 — 20a |
| Accommodation Party .....  | 2 — 21  |
| Enforcement of Instruments and Rights of Holders in Due Course .....   | 2 — 23  |
| Persons Entitled to Enforce an Instrument .....  | 2 — 23  |
| Holders in Due Course .....  | 2 — 24  |
| Taking the Instrument for Value .....  | 2 — 25  |
| Good Faith .....   | 2 — 26  |
| Taking the Instrument Without Notice .....   | 2 — 26  |
| Instrument Not Obviously Irregular or Incomplete .....   | 2 — 28  |
| Case Study: <i>Dalton &amp; Marberry, P.C. v. NationsBank, N.A.</i> , 34 UCC Rep.<br>Serv. 2d 748 (Mo. App. February 3, 1998) .....            | 2 — 29  |
| The FTC Holder in Due Course Rule .....  | 2 — 30  |

## Part II: Rights and Obligations Under the UCC

### Chapter 3

#### Liabilities and Warranties of the Parties to an Instrument

|  |       |
|--|-------|
| Introduction .....                                     | 3 — 1 |
| The Key to Liability on an Instrument: Signature ..... | 3 — 2 |
| Signature by Representative .....                      | 3 — 3 |
| Liability of Representative .....                      | 3 — 3 |

|   |         |
|---|---------|
| Checks.....   | 3 — 4   |
| Exhibit 3.1: Sample Check.....  | 3 — 4   |
| Unauthorized Signature.....   | 3 — 5   |
| Remotely Created Checks.....  | 3 — 6   |
| The Liability of Each Party on a Negotiable Instrument.....   | 3 — 7   |
| Maker of a Note.....  | 3 — 7   |
| Issuer of a Cashier's Check.....  | 3 — 8   |
| Case Study: <i>In re Lee &amp; Ota; Hall-Mark Electronics Corporation v. Sims</i> ,<br>26 UCC Rep. Serv. 2d. 386 (Ninth Circuit 1995).....                | 3 — 9   |
| Case Study: <i>Associated Carriages, Inc. v. International Bank of Commerce</i> ,<br>43 UCC Rep. Serv. 2d. 489 (TX App. 2000).....                        | 3 — 10  |
| Drawer.....   | 3 — 11  |
| Elements of Dishonor of Drafts.....   | 3 — 11  |
| Liability of the Drawer.....  | 3 — 12  |
| Exceptions to a Drawer's Liability.....   | 3 — 14  |
| Liability of Indorser.....  | 3 — 14  |
| Dishonor of Notes.....  | 3 — 15  |
| Notice of Dishonor.....   | 3 — 16  |
| Exceptions to an Indorser's Liability.....  | 3 — 16  |
| Liability of an Acceptor.....   | 3 — 17  |
| Case Study: <i>Plough Healthcare Products, Inc. v. NBD Bank, N.A.</i> ,<br>28 UCC Rep. Serv. 2d. 948 (Michigan 1995).....                                 | 3 — 18  |
| Liability of an Accommodation Party.....  | 3 — 19  |
| Other Forms of Liability Under UCC Article 3.....   | 3 — 20  |
| Warranties.....   | 3 — 20  |
| Transfer Warranties.....  | 3 — 20  |
| Presentment Warranties.....   | 3 — 22  |
| Exhibit 3.2: Sample Share Draft.....  | 3 — 23  |
| Case Study: <i>First National Bank of Chicago v. MidAmerica Federal<br/>Savings Bank</i> , 37 UCC Rep. Serv. 2d. 1104 (Ill. App., February 11, 1999)..... | 3 — 24  |
| Conversion.....   | 3 — 24  |
| Lost, Stolen, or Destroyed Cashier's, Teller's, or Certified Checks.....  | 3 — 25  |
| Exhibit 3.3: Treasurer's Check Declaration of Loss/Stop Payment.....  | 3 — 28  |
| Checklist of Liability.....   | 3 — 29  |
| Discharge From Liability on an Instrument and Exceptions to Liability.....  | 3 — 30  |
| Discharge by Acceptance.....  | 3 — 30  |
| Simple Contract Discharge.....  | 3 — 31  |
| Discharge by Payment.....   | 3 — 31  |
| Discharge by Cancellation or Renunciation.....  | 3 — 32  |
| Discharge by Accord and Satisfaction of an Obligation by Use of an Instrument.....  | 3 — 32  |
| Case Study: <i>Johnston v. First Union Nat. Bank</i> , 58 UCC Rep. Serv. 2d 522<br>(Supreme Court of Virginia, January 13, 2006).....                     | 3 — 35  |
| Case Study: <i>Commonwealth of Virginia v. Wills</i> , 27 UCC Rep. Serv. 2d 926<br>(City of Richmond Circuit Court, 1995).....                            | 3 — 36a |
| Checklist of Events That Discharge a Member's Liability on an Instrument.....   | 3 — 37  |

|  |        |
|--|--------|
| Discharge of the Underlying Obligation for Which an Instrument Is Taken .....  | 3 — 38 |
| Certified, Cashier’s, and Teller’s Checks .....  | 3 — 38 |
| Case Study: <i>Fifth Third Bank v. Jones</i> , 64 UCC Rep Serv 2d 187 (Colorado<br>Court of Appeals, Div III, July 12, 2007) ..... | 3 — 39 |
| Notes and Uncertified Checks .....   | 3 — 39 |
| Case Study: <i>Long v. Cuttle Construction Co.</i> , 34 UCC Rep Serv 2d 418 (Cal App,<br>January 8, 1998) .....                    | 3 — 40 |

## Chapter 4

### Credit Union/Member Relationship Under UCC Article 4

|   |         |
|---|---------|
| Introduction .....  | 4 — 1   |
| Key Definitions Under Article 4 .....   | 4 — 2   |
| When a Credit Union May Charge a Member’s Account .....   | 4 — 2   |
| Signatures, Indorsements, and Altered Share Drafts .....  | 4 — 4   |
| Forged Drawer’s Signature .....   | 4 — 4   |
| Facsimile Signatures .....  | 4 — 5   |
| Missing Drawer Signature .....  | 4 — 6   |
| No-Signature Checks .....   | 4 — 6   |
| Forged Indorsement .....  | 4 — 7   |
| Case Study: <i>May-Li Barke, M.D., Inc. v. Liberty Bank &amp; Trust Co.</i> ,<br>38 UCC Rep. Serv. 2d. 139 (Okl. App., March 8, 1999) .....   | 4 — 8   |
| Missing Indorsements .....  | 4 — 8   |
| For Deposit Only .....  | 4 — 9   |
| Case Study: <i>Whitney National Bank v. Safety Guide of Alabama LLC</i> , 67 UCC<br>Rep. Serv. 2d 343 (United States District Court, M.D. Alabama Northern<br>Division, 2008) ..... | 4 — 9   |
| Altered Share Drafts .....  | 4 — 10  |
| Overdrafts .....  | 4 — 11  |
| Statutory Lien .....  | 4 — 11  |
| Use of Social Security Deposits to Cover Overdrafts .....   | 4 — 13  |
| Overdraft Protection .....  | 4 — 14  |
| Stolen Share Drafts .....   | 4 — 16  |
| Post-Dated Share Drafts .....   | 4 — 16a |
| Refusal to Pay Based on Terms of Instrument .....   | 4 — 16a |
| Share Drafts That Are Stale or Paid After Death or Incompetence .....   | 4 — 17  |
| Stale Share Drafts .....  | 4 — 17  |
| Share Drafts Paid After Death or Incompetence .....   | 4 — 18  |
| Checklist for Determining Whether Share Drafts Are Properly Payable .....   | 4 — 19  |
| Member’s Duties and Responsibilities to the Credit Union .....  | 4 — 19  |
| Member’s Duty to Use Ordinary Care .....  | 4 — 19  |
| Member’s Duty to Discover and Report Unauthorized Signature or Alteration .....   | 4 — 21  |

|   |         |
|---|---------|
| Case Study: <i>Stowell v. Cloquet Co-op Credit Union</i> , 31 UCC Rep. Serv 2d. 623 (Minnesota, 1997).....                                    | 4 — 22  |
| Case Study: <i>First Place Computers, Inc., v. Security National Bank of Omaha, Nebraska</i> , 31 UCC Rep. Serv. 2d 843 (Nebraska, 1997)..... | 4 — 23  |
| Credit Union's Steps to Recover on a Forged Share Draft or Check .....  | 4 — 24a |
| Member's Duty as an Indorser of a Share Draft or Check .....  | 4 — 25  |
| Member's Duty as Indorser of a Credit Union Loan Draft .....  | 4 — 25  |
| Checklist of Member's Duties.....   | 4 — 26  |
| Exhibit 4.1: Credit Union Share Draft Account Agreement .....   | 4 — 27  |
| Exhibit 4.1A: Sample Deposit Account Agreement .....  | 4 — 31  |
| Exhibit 4.2: NCUA Final Rule on Statutory Liens .....   | 4 — 45  |
| Exhibit 4.3: Part 701 Organization and Operations of Federal Credit Unions .....  | 4 — 47  |
| Exhibit 4.4: NCUA Legal Opinion Letter on Share Account Overdrafts .....  | 4 — 48  |
| Exhibit 4.5: NCUA Legal Opinion Letter on Overdrawing an Account to Enforce a Statutory Lien.....   | 4 — 50  |
| Exhibit 4.6: Sample Overdraft Policy for Share Draft Accounts .....   | 4 — 52  |
| Exhibit 4.7: Sample Overdraft Protection Credit Agreement .....   | 4 — 54  |
| Exhibit 4.8: NCUA Letter to Credit Unions O5-CU-03 .....  | 4 — 60  |
| Exhibit 4.9: NCUA Overdrafts and Staff Interpretation .....   | 4 — 81  |

## Chapter 5

### Special Problems with Share Drafts and Member Accounts

|   |        |
|---|--------|
| Introduction .....  | 5 — 1  |
| Signatures and Indorsements on Member Share Drafts .....  | 5 — 1  |
| Duty to Compare Signatures .....  | 5 — 1  |
| Case Study: <i>Halla v. Norwest Bank Minnesota, N.A.</i> , 39 UCC Rep. Serv. 2d 1104 (Minnesota, 1999).....                                     | 5 — 3  |
| Case Study: <i>Bank of Texas v. VR Electric Inc.</i> , 67 UCC Rep. Serv. 2d. 713 (Court of Appeals of Texas, Houston, 1st District, 2008) ..... | 5 — 3  |
| Signatures on Traveler's Checks.....  | 5 — 4  |
| Indorsements on Checks Payable to Two or More People.....   | 5 — 5  |
| Case Study: <i>Tri-County Nat. Bank v. Greenpoint Credit, LLC</i> , 59 UCC Rep. Serv. 2d 259 (Court of Appeals of Kentucky, April 7, 2006)..... | 5 — 6  |
| Signatures for Fiduciary Account Share Drafts .....   | 5 — 6  |
| Case Study: <i>County of Macon v. Edgcomb</i> , 27 UCC Rep. Serv. 2d. 1328 (Illinois Appellate Court, 4th District, 1995).....                  | 5 — 7  |
| Signatures on a Credit Union's Own Share Drafts.....  | 5 — 9  |
| Charging a Member's Account for Share Draft Discrepancies .....   | 5 — 12 |
| Differences in Amount and Words on a Share Draft .....  | 5 — 12 |
| Exhibit 5.1: Sample Share Draft .....   | 5 — 13 |
| Altered Share Drafts.....   | 5 — 13 |

|  |        |
|--|--------|
| Forgery of Drawer/Member’s Signature .....   | 5 — 14 |
| Forged Indorsement .....   | 5 — 14 |
| Stale Share Drafts.....  | 5 — 15 |
| Refusal to Pay Based on Terms of Instrument.....   | 5 — 15 |
| Joint Owners Who Want to Restrict Each Other’s Access to the Account.....  | 5 — 16 |
| Effect of a Divorce Decree on Joint Accounts.....  | 5 — 16 |
| Disputed Ownership of Funds.....   | 5 — 17 |
| Check Fraud .....  | 5 — 17 |
| Case Study: <i>First National Bank in Harvey v. Colonial Bank</i> , 28 UCC Rep. Serv. 2d 290 (Illinois 1995) ..... | 5 — 19 |
| Cashing Checks for Nonmembers.....   | 5 — 22 |
| Exhibit 5.2: NCUA Opinion 99-0653 Cashing Checks for Nonmembers .....  | 5 — 24 |
| Exhibit 5.3: NCUA Opinion 01-0226 Cashing of U.S. Government Checks for Nonmembers .....                           | 5 — 26 |

## Chapter 6 Stop Payments

|  |        |
|--|--------|
| Introduction .....   | 6 — 1  |
| Stop Payment Orders on Member Share Drafts .....   | 6 — 2  |
| Who Can Request a Stop Payment on a Share Draft?.....  | 6 — 2  |
| How Must a Stop Payment Be Ordered? .....  | 6 — 4  |
| Oral vs. Written Stop Payment Orders.....  | 6 — 4  |
| Describing the Share Draft with Reasonable Certainty .....   | 6 — 5  |
| Exhibit 6.1: Stop Payment Order Form .....   | 6 — 7  |
| Exhibit 6.2: Stop Payment Request Form.....  | 6 — 8  |
| Timeliness of the Stop Payment.....  | 6 — 9  |
| How Long Is a Stop Payment Order Effective?.....   | 6 — 10 |
| Case Study: <i>Morgan Guaranty Trust Company of New York v. Hauser</i> 22 UCC Rep. Serv. 2d 851.....                         | 6 — 11 |
| What Is the Credit Union’s Liability for Failing to Honor a Binding Stop Payment Order?.....                                 | 6 — 12 |
| Case Study: <i>Gentner &amp; Co., Inc. v. Wells Fargo Bank</i> , 40 UCC Rep. Serv. 2d. 38 (Cal. App., December 9, 1999)..... | 6 — 13 |
| What if There Is an Agreement Between a Financial Institution and a Nonconsumer? .....                                       | 6 — 14 |
| Case Study: <i>Triffin v. First Union Bank, N.A.</i> , 38 UCC Rep. Serv. 2d. 160 (N.J. App., March 9, 1999).....             | 6 — 14 |
| Stopping Payment on Checks Converted to ACH Debits .....   | 6 — 14 |
| Stop Payment Orders on Credit Union Share Drafts.....  | 6 — 15 |
| Case Study: <i>Weldon v. Trust Co. Bank of Columbus N.A.</i> , 35 UCC Rep. Serv. 2d 1291 (Ga. App., March 20, 1998).....     | 6 — 16 |

|  |         |
|--|---------|
| Case Study: <i>MidAmerica Bank FSB v. Charter One Bank</i> , 65 UCC Rep. Serv. 2d 890 (Appellate Court of Illinois, Second District, 2008) Illinois Supreme Court Opinion No. 106804 dated March 19, 2009. | 6 — 16a |
| Checklist for Stop Payments  | 6 — 16a |
| Liability of a Credit Union for Wrongfully Dishonoring an Item   | 6 — 17  |
| Who May Claim Wrongful Dishonor?   | 6 — 18  |
| What Is the Liability of the Credit Union?   | 6 — 18  |
| When Can a Credit Union Make the Decision to Dishonor a Share Draft Based on Insufficient Funds in the Member's Account?   | 6 — 19  |
| Events That Suspend a Credit Union's Duty to Pay a Member's Share Draft  | 6 — 20  |
| A Member's Stop Payment Order  | 6 — 20  |
| Stale Checks   | 6 — 20  |
| Case Study: <i>Scott D. Leibling P.C. v. Mellon PSFS (N.J.) N.A.</i> , 35 UCC Rep. Serv. 3d 590 (N.J. Super. Ct., May 4, 1998).  | 6 — 21  |
| Share Draft from a Member Who Was Recently Deceased or Declared Incompetent  | 6 — 21  |
| Case Study: <i>Republic National Bank v. Johnson</i> , 622 So. 2d 1015 (Fla. App. 3 Dist. 1993)  | 6 — 22  |
| Member's Bankruptcy  | 6 — 22  |
| The Effect of Bankruptcy on the Payment of a Check   | 6 — 23  |
| Priorities in the Member's Share Draft Account   | 6 — 24  |
| Posting Checks to a Member's Account   | 6 — 25  |
| Case Study: <i>Joshlyn Daniels v. PNC Bank, N.A.</i> , Ohio Court of Appeals No. C-990291 (Ohio, 1999)   | 6 — 25  |

## Part III: Collections and Funds Availability

### Chapter 7 The Collection Process

|  |       |
|--|-------|
| Introduction   | 7 — 1 |
| General Principles of the Collection Process   | 7 — 2 |
| Credit Union Responsibilities as a Depository Bank, Collecting Bank, and Payor Bank Under Article 4              | 7 — 4 |
| Credit Unions as Depository Banks and Collecting Banks   | 7 — 4 |
| Duty of Ordinary Care  | 7 — 4 |
| Warranties   | 7 — 5 |
| Case Study: <i>Christensen Aviation Inc. v. State Bank, N.A.</i> , 44 UCC Rep. Serv. 2d. 213, (Okla. App., 2001) | 7 — 6 |
| Medium and Time of Settlement  | 7 — 8 |

|  |        |
|--|--------|
| Charge Back.....   | 7 — 9  |
| Case Study: <i>DNI Nevada, Inc. v. Med. Path Medical Lab Inc.</i> , 43 UCC Rep. Serv. 2d. 1041, (N.J. Super., 2001).....                 | 7 — 10 |
| Checklist .....  | 7 — 11 |
| Credit Unions as Payor Banks.....  | 7 — 11 |
| Final Payment .....  | 7 — 11 |
| The Midnight Deadline .....  | 7 — 12 |
| Credit Union’s Responsibility as Payor Bank for Late Return of Item .....  | 7 — 14 |
| Case Study: <i>Bufman Organization v. Federal Deposit Insurance Corporation</i> , 29 UCC Rep. Serv. 2d 905 (Eleventh Circuit, 1996)..... | 7 — 15 |
| Terminating, Suspending, or Modifying a Credit Union’s Duty to Pay an Item .....   | 7 — 16 |
| Checklist .....  | 7 — 17 |

**Chapter 8**  
**Regulation CC and Regulation J:**  
**Funds Availability and the Collection of Items**

|  |        |
|--|--------|
| Introduction .....   | 8 — 1  |
| The Definitional Context of Reg CC .....   | 8 — 1  |
| Duties of a Credit Union in Making Funds Available for Withdrawal .....            | 8 — 5  |
| Deposits Subject to Next-Day Availability .....                                    | 8 — 6  |
| Cash Deposits.....   | 8 — 6  |
| Electronic Payments.....   | 8 — 6  |
| Certain Check Deposits.....  | 8 — 7  |
| Deposits Subject to the Availability Schedule of Section 229.12 .....              | 8 — 7  |
| Local Checks and Certain Other Checks .....  | 8 — 8  |
| Nonlocal Checks .....  | 8 — 8  |
| Exceptions to the Funds Availability Schedules .....                               | 8 — 9  |
| Payment of Interest and Disclosure Requirements Under Reg CC .....                 | 8 — 11 |
| The Payment of Interest/Dividends.....   | 8 — 12 |
| Disclosure Requirements.....   | 8 — 12 |
| Specific Availability Policy Disclosure .....                                      | 8 — 12 |
| Additional Disclosure Requirements .....   | 8 — 13 |
| Reg CC Preemption of State Laws Regarding Funds Availability and Disclosures ..... | 8 — 14 |
| Modifying the UCC in the Area of Funds Availability.....                           | 8 — 14 |
| Modifying Other State Law Funds Availability and Disclosure Requirements.....      | 8 — 14 |
| Modifying the UCC in Forward Collection and Return of Checks .....                 | 8 — 15 |
| Expeditious Return of Returned Checks .....  | 8 — 15 |
| Two-Day/Four-Day Test.....   | 8 — 16 |
| The Forward-Collection Test .....  | 8 — 16 |
| Extension of the Midnight Deadline .....   | 8 — 18 |

|  |         |
|--|---------|
| Modifying the Concept of Final Payment .....                               | 8 — 18  |
| Notice of Nonpayment .....   | 8 — 19  |
| Returning Checks Electronically .....                                      | 8 — 20  |
| Warranties .....   | 8 — 21  |
| Transfer Warranty .....  | 8 — 21  |
| Warranty of Notice of Nonpayment.....                                      | 8 — 22  |
| Warranty of Settlement Amount, Encoding, and Offset .....                  | 8 — 22  |
| Check Indorsement Standards.....   | 8 — 23  |
| Subpart D — Substitute Checks.....   | 8 — 26  |
| Substitute Check Requirements .....  | 8 — 26  |
| Substitute Check Warranties and Indemnification.....                       | 8 — 27  |
| Substitute Check Indemnification.....                                      | 8 — 27  |
| Consumer Protection Provisions.....  | 8 — 27  |
| Consumer Awareness.....  | 8 — 28  |
| Regulatory Goal.....   | 8 — 28  |
| Common Compliance Problems by Financial Institutions.....                  | 8 — 29  |
| Checklist.....   | 8 — 30b |
| Provisions of Reg J Regarding Collection of Checks and Other Items Through |         |
| Federal Reserve Banks .....  | 8 — 30b |
| Definitions.....   | 8 — 30c |
| Sending Items to Federal Reserve Banks .....                               | 8 — 31  |
| Presenting an Item for Payment .....                                       | 8 — 32  |
| Settlement and Payment.....  | 8 — 32  |
| Cash Items.....  | 8 — 32  |
| Noncash Items.....   | 8 — 33  |
| Return of Cash Items and Handling of Returned Checks .....                 | 8 — 33  |
| Amendments to Regulation J .....   | 8 — 34  |
| New Definitions .....  | 8 — 34  |
| Sending Items to Federal Reserve Banks — § 210.4.....                      | 8 — 34  |
| Settlement and Payment — § 210.9.....                                      | 8 — 36  |
| Return of Cash Items and Returned Checks — § 210.12 .....                  | 8 — 36  |
| About Operating Circular 3 of the Federal Reserve Bank .....               | 8 — 36  |
| Exhibit 8.1: Notice of Delayed Availability of Funds .....                 | 8 — 38  |
| Exhibit 8.2: Sample Funds Availability Policy.....                         | 8 — 39  |
| Exhibit 8.3: Substitute Check Warranty or Indemnity Claim Form .....       | 8 — 46  |
| Exhibit 8.4: Substitute Check Denial of Claim.....                         | 8 — 49  |
| Exhibit 8.5: Substitute Check Notice of Valid Claim and Refund.....        | 8 — 50  |
| Exhibit 8.6: Substitute Check Notice of Provisional Refund.....            | 8 — 51  |
| Exhibit 8.7: Substitute Check Reversal of Refund.....                      | 8 — 52  |
| Exhibit 8.8: Substitute Check Policy Disclosure: Check 21 .....            | 8 — 53  |
| Exhibit 8.9: Federal Reserve Board: What You Should Know About Your        |         |
| Checks.....  | 8 — 56  |
| Exhibit 8.10: Federal Reserve Board: Check 21 Consumer Guide.....          | 8 — 58  |
| Exhibit 8.11: Federal Reserve Board: Frequently Asked Questions About      |         |
| Check 21 .....   | 8 — 60  |

|   |         |
|---|---------|
| Exhibit 8.11A: Federal Reserve Board: Restructuring of the Check Processing Operations of the Federal Reserve .....                                   | 8 — 70  |
| Exhibit 8.11B: Federal Reserve Board: Restructuring of the Check Processing Operations in the Twelfth District .....                                  | 8 — 73  |
| Exhibit 8.11C: Federal Reserve Board: Restructuring of the Check Processing Operations in the Ninth and Tenth Districts .....                         | 8 — 75  |
| Exhibit 8.11D: Federal Reserve Board: Restructuring of the Check Processing Operations in Utica, NY.....  | 8 — 80  |
| Exhibit 8.11E: Tenth and Eleventh District Consolidation.....   | 8 — 87  |
| Exhibit 8.11F: Sixth and Eighth District Consolidation .....  | 8 — 93  |
| Exhibit 8.11G: First and Third District Consolidation.....  | 8 — 100 |
| Exhibit 8.11H: Fourth District Consolidation.....   | 8 — 104 |
| Exhibit 8.11I: Sixth District Consolidation.....  | 8 — 108 |
| Exhibit 8.11J: Seventh District Consolidation .....   | 8 — 113 |
| Exhibit 8.11K: Sixth and Eighth District Consolidation.....   | 8 — 117 |
| Exhibit 8.11L: Fifth and Sixth District Consolidation .....   | 8 — 121 |
| Exhibit 8.11M: Third and Fifth District Consolidation .....   | 8 — 125 |
| Exhibit 8.11N: Tenth, Eleventh and Twelfth District Consolidation.....  | 8 — 127 |
| Exhibit 8.11O: Fourth and Ninth District Consolidation.....   | 8 — 133 |
| Exhibit 8.12: Federal Reserve Board: Compliance with Regulation CC.....   | 8 — 137 |
| Exhibit 8.13: Federal Reserve Board: Applying Funds Availability Rules .....  | 8 — 142 |
| Exhibit 8.14: Regulation CC — Expedited Funds Availability Act .....  | 8 — 144 |
| Exhibit 8.15: Regulation CC Examination Objectives and Procedures .....   | 8 — 145 |
| Exhibit 8.16: Change in Federal Reserve Bank Operating Circular 3 Regarding the Reserve Banks’ Handling of Electronically Created Payment Orders..... | 8 — 161 |

## **Part IV: BSA, Funds Transfers, Privacy, and Share Insurance**

### **Chapter 9**

#### **Article 4A: Fund Transfers**

|  |       |
|--|-------|
| Introduction .....   | 9 — 1 |
| Parameters and Key Definitions Under Article 4A .....  | 9 — 2 |
| A Member’s Duties in Issuing a Payment Order to a Credit Union and the Options of the Credit Union When Faced with a Request to Wire Funds ..... | 9 — 5 |
| Timing of an Order.....  | 9 — 5 |
| Security Procedures.....   | 9 — 5 |
| Case Study: <i>Braga Filho v. Interaudi Bank</i> , 65 UCC Rep Serv 2d 1038 (United States District Court, S. D. New York, April 16, 2008) .....  | 9 — 7 |
| The Credit Union’s Power to Decide .....   | 9 — 7 |

|  |        |
|--|--------|
| Member's Duty in Identifying Intermediary or Beneficiary's Bank .....  | 9 — 8  |
| Member's Duty and Credit Union's Rights Regarding Identification of Beneficiary .....  | 9 — 9  |
| Case Study: <i>Corfan Banco Asuncion Paraguay v. Ocean Bank</i> , 35 UCC Rep. Serv. 2d. 1320 (Fl. App. 3d., June 10, 1998) .....                   | 9 — 10 |
| Obligations of a Credit Union Once It Has Accepted the Member's Request to Transfer Funds .....  | 9 — 10 |
| General Duties and Obligations .....   | 9 — 11 |
| Erroneous Execution of a Payment Order .....   | 9 — 11 |
| Liability for Late or Improper Execution or Failure to Execute a Payment Order .....   | 9 — 13 |
| How Payment Is Received Upon the Issuance and Receipt of a Payment Order by the Credit Union as Receiving Bank and as the Beneficiary's Bank ..... | 9 — 14 |
| Obligation of the Member to Pay the Credit Union (as Receiving Bank) .....   | 9 — 14 |
| Refusal of Beneficiary's Bank to Accept a Payment Order .....  | 9 — 15 |
| Sender Not Obligated to Pay When Security Procedure Not Followed .....   | 9 — 15 |
| Acceptance of the Payment Order by the Credit Union (as Beneficiary's Bank) .....  | 9 — 16 |
| Obligation of the Credit Union (as Beneficiary's Bank) to Pay and Give Notice to Beneficiary .....   | 9 — 16 |
| Miscellaneous Payment Order Issues .....   | 9 — 17 |
| Death or Incompetence of Member as Sender .....  | 9 — 17 |
| Cancellation or Amendment of an Order .....  | 9 — 17 |
| Case Study: <i>Cumis Insurance Society, Inc., v. Citibank, N.A.</i> , 29 UCC Rep. Serv. 2d 915 (US District Court, SD NY, 1996) .....              | 9 — 18 |
| Levy of Account by Creditor; Right of Setoff by Credit Union .....   | 9 — 20 |
| Order in Which Payment Orders May Be Charged to or Withdrawn from Account .....  | 9 — 22 |
| Article 4A Applicability to Fedwire Transfers Under Regulation J .....   | 9 — 22 |
| Case Study: <i>Donmar Enterprises, Inc., v. Southern National Bank of North Carolina</i> , 27 UCC Rep. Serv. 2d 941 (Fourth Circuit, 1995) .....   | 9 — 23 |
| About Operating Circular 6 of the Federal Reserve Bank .....   | 9 — 24 |
| Conclusion .....   | 9 — 24 |
| Exhibit 9.1: Sample Wire Transfer Policy .....   | 9 — 26 |
| Exhibit 9.2: NCUA Legal Opinion Letter 02-0250 .....   | 9 — 33 |
| Exhibit 9.3: Funds Transfer Request Form .....   | 9 — 39 |
| Exhibit 9.4: Funds Transfer Agreement .....  | 9 — 41 |

## Chapter 9A

### Electronic Fund Transfers — Regulation E

|  |        |
|--|--------|
| Introduction .....                         | 9A — 1 |
| Key Definitions Under Regulation E .....   | 9A — 2 |
| Scope of EFTA and Regulation E .....       | 9A — 4 |
| What Is an Electronic Fund Transfer? ..... | 9A — 4 |

|   |         |
|---|---------|
| What Is Not an Electronic Fund Transfer?.....   | 9A — 5  |
| Preauthorized Transfer Exemption for Small Credit Unions .....  | 9A — 6  |
| Access Devices and Electronic Terminals.....  | 9A — 7  |
| What Is an Access Device? .....   | 9A — 7  |
| Issuance of Access Devices.....   | 9A — 7  |
| Electronic Terminals .....  | 9A — 8  |
| General Disclosure Requirements .....   | 9A — 8  |
| The Liability of a Member for Unauthorized EFT .....  | 9A — 9  |
| What Is an Unauthorized EFT? .....  | 9A — 9  |
| Case Study: <i>Russell v. First of America Bank-Michigan, N.A.</i> ,<br>(Western District Mich. 1988) ..... | 9A — 10 |
| Timely Notice Given vs. Timely Notice Not Given .....   | 9A — 11 |
| What Constitutes Notification? .....  | 9A — 13 |
| Initial Disclosures.....  | 9A — 13 |
| Change in Terms Notice and Error Resolution Notice.....   | 9A — 14 |
| Change in Terms Notice.....   | 9A — 14 |
| Error Resolution Notice .....   | 9A — 15 |
| Receipts and Notices at Electronic Terminals and Periodic Statements .....                                  | 9A — 15 |
| Receipts at Electronic Terminals.....   | 9A — 15 |
| Imposition of ATM Fees .....  | 9A — 16 |
| Proposed Revisions to Regulation E Relating to Overdraft Protection Plans .....                             | 9A — 18 |
| Periodic Statements.....  | 9A — 18 |
| Preauthorized EFTs .....  | 9A — 19 |
| Preauthorized EFTs to an Account.....   | 9A — 20 |
| Preauthorized EFTs from an Account.....   | 9A — 20 |
| Right to Stop Payment of a Preauthorized EFT .....  | 9A — 21 |
| Electronic Check Conversions and Computer-Initiated Transfers .....   | 9A — 22 |
| Procedures for Resolving Errors .....   | 9A — 23 |
| Definition of an Error.....   | 9A — 23 |
| Reporting an Error.....   | 9A — 24 |
| Credit Union Duty to Investigate .....  | 9A — 24 |
| What if No Error or a Different Error Occurred?.....  | 9A — 25 |
| Checklist for Resolving EFT Errors.....   | 9A — 25 |
| Regulation D and EFTs .....   | 9A — 26 |
| Preemption of Inconsistent State Laws .....   | 9A — 26 |
| Record Retention Requirements.....  | 9A — 27 |
| Common Compliance Violations by Financial Institutions .....  | 9A — 27 |
| Conclusion.....   | 9A — 28 |
| Exhibit 9A.1: Sample Electronic Fund Transfer Disclosure and Agreement .....                                | 9A — 29 |
| Exhibit 9A.2: NCUA Legal Opinion Letter 01-1050.....  | 9A — 48 |
| Exhibit 9A.3: Reserved .....  | 9A — 49 |
| Exhibit 9A.4: Regulation E — Electronic Fund Transfers .....  | 9A — 50 |
| Exhibit 9A.5: Regulation E Objectives and Procedures .....  | 9A — 51 |
| Exhibit 9A.6: Federal Reserve Final Rule on Payroll Card Accounts and<br>Regulation E.....                  | 9A — 58 |

|   |         |
|---|---------|
| Exhibit 9A.7: Electronic Fund Transfers .....                 | 9A — 83 |
| Exhibit 9A.8: Electronic Fund Transfers: Proposed Rules ..... | 9A — 94 |

## **Chapter 9B**

### **Automated Clearinghouse Network**

|  |          |
|--|----------|
| ACH History .....  | 9B — 2   |
| Key Definitions .....  | 9B — 3   |
| Participants in an ACH Transaction .....   | 9B — 5   |
| ACH Services .....   | 9B — 6   |
| Direct Deposit .....   | 9B — 7   |
| Preauthorized Debits .....   | 9B — 8   |
| Relationships Between the ACH Participants .....   | 9B — 10  |
| Originator and Receiver .....  | 9B — 10  |
| Originator and ODFI .....  | 9B — 11  |
| ODFI and ACH Operator .....  | 9B — 12  |
| ACH Operator and RDFI .....  | 9B — 13  |
| RDFI and Receiver .....  | 9B — 13  |
| Prenotifications .....   | 9B — 14  |
| Notifications of Change .....  | 9B — 15  |
| ACH Entry Returns .....  | 9B — 15  |
| Reversing ACH Entries .....  | 9B — 16  |
| Point of Purchase Entries .....  | 9B — 16  |
| Returning POP Entries .....  | 9B — 16  |
| Stop Payment on POP Entries .....  | 9B — 17  |
| Warranties .....   | 9B — 17  |
| Governing Regulation .....   | 9B — 17  |
| Member Use of ACH to Purchase Goods or Services Over the Internet .....                            | 9B — 17  |
| New NACHA Operating Rule on International ACH Transactions .....                                   | 9B — 18  |
| Risks and Examination Concerns for Compliance Officers .....                                       | 9B — 18a |
| Conclusion .....   | 9B — 20  |
| Exhibit 9B.1: Sample Financial Agency Agreement .....  | 9B — 21  |
| Exhibit 9B.2: Sample ACH Credit and Debit Authorization Agreements .....                           | 9B — 40  |
| Exhibit 9B.3: Friendly Federal Credit Union Automated Clearinghouse<br>Origination Agreement ..... | 9B — 42  |
| Exhibit 9B.4: Sample Unauthorized ACH Debit Affidavit .....  | 9B — 50  |
| Exhibit 9B.5: Automated Clearinghouse Compliance Checklist .....                                   | 9B — 51  |
| Exhibit 9B.6: FRB Joint Letter on New NACHA Rules .....  | 9B — 57  |

## Chapter 9C The Bank Secrecy Act

|   |          |
|---|----------|
| Bank Secrecy Act Reporting and Recordkeeping Requirements .....                           | 9C — 1   |
| Conducting a BSA/AML Risk Assessment .....  | 9C — 3   |
| Establishing and Monitoring a BSA Policy .....  | 9C — 4   |
| Reporting and Recordkeeping for Certain Currency Transactions .....                       | 9C — 6   |
| Suspicious Activity Reports.....  | 9C — 6   |
| Currency Transaction Reports .....  | 9C — 12  |
| Other BSA Recordkeeping and Reporting Requirements .....                                  | 9C — 14a |
| Sale of Monetary Instruments for \$3,000 or More .....                                    | 9C — 14a |
| Extensions of Credit.....   | 9C — 14b |
| Collecting and Retaining Information Regarding Certain Funds Transfers.....               | 9C — 14c |
| Administrative Rulings.....   | 9C — 17  |
| Anti-Money Laundering Guidelines.....   | 9C — 18  |
| USA PATRIOT Act .....   | 9C — 19  |
| Customer Identification Procedures .....  | 9C — 20  |
| Information Sharing .....   | 9C — 21  |
| Checklist to Identify Potential Abuses .....  | 9C — 21  |
| Money Laundering .....  | 9C — 21  |
| Offshore Transactions .....   | 9C — 23  |
| Wire Transfers.....   | 9C — 23  |
| Linked Financing/Brokered Transactions .....  | 9C — 24  |
| Third-Party Obligations.....  | 9C — 25  |
| Credit Cards and Electronic Fund Transfers .....  | 9C — 25  |
| Miscellaneous.....  | 9C — 26  |
| Exhibit 9C.1: Bank Secrecy Act Policy .....   | 9C — 27  |
| Exhibit 9C.1A: FinCEN Completion of Form 104 FAQs.....                                    | 9C — 46  |
| Exhibit 9C.1B: FinCEN Ruling 2005-6 Suspicious Activity Reporting.....                    | 9C — 49  |
| Exhibit 9C.1C: Suspicious Activity Report .....   | 9C — 50a |
| Exhibit 9C.1D: Currency Transaction Report.....   | 9C — 50f |
| Exhibit 9C.1E: Designation of Exempt Person Form .....                                    | 9C — 50j |
| Exhibit 9C.1F: Monetary Instruments Form.....   | 9C — 50l |
| Exhibit 9C.2: FinCEN Expands E-Filing System.....   | 9C — 51  |
| Exhibit 9C.2A: Retirement of FinCEN BSA Magnetic Media Filing Program.....                | 9C — 52a |
| Exhibit 9C.2B: Magnetic Media Retirement Questions and Answers.....                       | 9C — 52b |
| Exhibit 9C.3: Unauthorized Disclosure of Suspicious Activity Reports .....                | 9C — 53  |
| Exhibit 9C.4: Suspicious Activity Report Guidance.....                                    | 9C — 54  |
| Exhibit 9C.5: NCUA Regulatory Alert to Credit Unions No. 06-RA-07 .....                   | 9C — 57  |
| Exhibit 9C.6: NCUA Letter to Credit Unions No. 03-CU-16.....                              | 9C — 60  |
| Exhibit 9C.6A: Letter to Region II Federal Credit Unions on Common BSA<br>Violations..... | 9C — 101 |
| Exhibit 9C.6B: Bank Secrecy Act Compliance Letter.....                                    | 9C — 103 |

|  |            |
|--|------------|
| Exhibit 9C.7: FinCEN Interpretive Guidance on the Unitary Filing of OFAC Reports .....   | 9C — 121   |
| Exhibit 9C.7A: Request by Law Enforcement for Financial Institutions to Maintain Accounts .....  | 9C — 126   |
| Exhibit 9C.7B: Suspicious Activity Report Supporting Documentation .....   | 9C — 126b  |
| Exhibit 9C.7C: Suspicious Activity Report Depository Institution .....   | 9C — 126e  |
| Exhibit 9C.7C1: Guidance on Filing Suspicious Activity Reports Regarding the Proceeds of Foreign Corruption .....  | 9C — 126g  |
| Exhibit 9C.7D: Bank Secrecy Act Amendments — Exemptions from the Requirement to Report Transactions in Currency .....  | 9C — 126i  |
| Exhibit 9C.7D1: Reporting of Currency Transactions for Sole Proprietorships and Legal Entities Operating Under a “Doing Business As” Name .....  | 9C — 126l  |
| Exhibit 9C.7D2: Currency Transaction Reporting (CTR) Requirement Education Pamphlet .....  | 9C — 126n  |
| Exhibit 9C.7E: Interagency Statement on Enforcement of Bank Secrecy Act/ Anti-Money Laundering Requirements .....  | 9C — 126r  |
| Exhibit 9C.7F: The 2007 Version of Bank Secrecy Act/Anti-Money Laundering Examination Manual .....   | 9C — 126bb |
| Exhibit 9C.8: Federal Reserve Board Guidance on Transactions Involving Proceeds of Foreign Official Corruption .....   | 9C — 126dd |
| Exhibit 9C.8A: Bank Secrecy Act Compliance FAQs .....  | 9C — 142   |
| Exhibit 9C.8B: Guidance to Financial Institutions on the Repatriation of Currency Smuggled into Mexico from the United States .....  | 9C — 154   |
| Exhibit 9C.9: Sample Customer Identification Procedures .....  | 9C — 156   |
| Exhibit 9C.10: Sample Customer Identification Procedures Notice .....  | 9C — 162   |
| Exhibit 9C.11: FinCEN FAQs: Final CIP Rule .....   | 9C — 163   |
| Exhibit 9C.12: BSA Examination Procedures for CIPs .....   | 9C — 177   |
| Exhibit 9C.13: 314(a) Audit Trail Form .....   | 9C — 187   |
| Exhibit 9C.14: Regulatory Alert .....  | 9C — 188   |
| Exhibit 9C.15: SAR Common Errors Guidance .....  | 9C — 190   |
| Exhibit 9C.16: Guidance on Filing Suspicious Activity Reports Regarding Loan Modification/Foreclosure Rescue Scams .....   | 9C — 195   |
| Exhibit 9C.17: Financial Crimes Network: Confidentiality of Suspicious Activity Reports .....  | 9C — 201   |
| Exhibit 9C.18: Guidance on Supporting Information Suitable for Determining the Portion of a Business Customer’s Annual Gross Revenues That is Derived from Activities Ineligible for Exemption for Currency Transaction Reporting Requirements ..... | 9C — 217   |
| Exhibit 9C.19: Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations — Exemptions from the Requirement to Report Transactions in Currency .....  | 9C — 221   |

## Chapter 9D The Office of Foreign Assets Control

|   |         |
|---|---------|
| Introduction .....  | 9D — 1  |
| The OFAC SDN, PLC and Blocked Persons List .....  | 9D — 3  |
| Blocking and Rejecting Accounts and Transactions .....  | 9D — 3  |
| License to Release Funds .....  | 9D — 4  |
| Reporting Procedures .....  | 9D — 4  |
| Compliance with OFAC Regulations .....  | 9D — 4  |
| Civil and Criminal Liability for Noncompliance with OFAC .....  | 9D — 7  |
| OFAC Assistance .....   | 9D — 7  |
| Conclusion .....  | 9D — 8  |
| Exhibit 9D.1: Sample OFAC Policy .....  | 9D — 8a |
| Exhibit 9D.2: NCUA Letter to Credit Unions 01-CU-25 .....   | 9D — 25 |
| Exhibit 9D.3: OFAC Press Release and OFAC Guidelines for Compliance<br>with Sanctions List .....                  | 9D — 30 |
| Exhibit 9D.4: OFAC Memorandum of Understanding with Federal<br>Regulatory Agencies .....                          | 9D — 38 |
| Exhibit 9D.5: Guidance on Entities Owned by Persons Whose Property and<br>Interests in Property Are Blocked ..... | 9D — 43 |
| Exhibit 9D.6: OFAC Interim Final Rule .....   | 9D — 44 |

## Chapter 10 Privacy and Confidentiality

|  |         |
|--|---------|
| Introduction .....                                   | 10 — 1  |
| The Right to Financial Privacy Act .....             | 10 — 1  |
| General Prohibitions Under RFPA .....                | 10 — 2  |
| Gaining Access to a Member’s Financial Records ..... | 10 — 3  |
| Member Authorization .....                           | 10 — 3  |
| Administrative Subpoena or Summons .....             | 10 — 4  |
| Judicial Subpoena .....                              | 10 — 5  |
| Search Warrants .....                                | 10 — 6  |
| Formal Written Request .....                         | 10 — 6  |
| Certification of Compliance with RFPA .....          | 10 — 7  |
| Delayed Notification .....                           | 10 — 7  |
| Member Right to Challenge Request .....              | 10 — 8  |
| Exceptions to RFPA Requirements .....                | 10 — 8  |
| Reimbursement .....                                  | 10 — 10 |
| Civil Liability .....                                | 10 — 10 |

|   |         |
|---|---------|
| Financial Institution Data Match .....  | 10 — 10 |
| Pretext Phone Calling .....   | 10 — 11 |
| Confidentiality Requirements Under the Standard Federal Credit Union Bylaws.....  | 10 — 13 |
| Privacy of Member Financial Information .....   | 10 — 14 |
| General .....   | 10 — 14 |
| Definitions.....  | 10 — 15 |
| Notice Requirements .....   | 10 — 16 |
| Notice Content .....  | 10 — 17 |
| Exceptions to Notice and Opt Out Requirements .....   | 10 — 18 |
| Restriction on Sharing Member Account Number .....  | 10 — 19 |
| Member Information Security Program .....   | 10 — 20 |
| Definitions.....  | 10 — 20 |
| Development and Implementation of Information Security Program.....   | 10 — 21 |
| Proper Disposal of Consumer Information .....   | 10 — 23 |
| Response Programs for Unauthorized Access to Member Information and<br>Member Notice.....   | 10 — 23 |
| Exhibit 10.1: Sample Judicial and Civil Subpoenas .....   | 10 — 24 |
| Exhibit 10.2: Sample Certificate of Compliance .....  | 10 — 29 |
| Exhibit 10.3: Sample Request for Financial Information and<br>Reimbursement Form.....   | 10 — 31 |
| Exhibit 10.4: NCUA Regulatory Alert on the Personal Responsibility<br>and Work Opportunity Reconciliation Act of 1996.....  | 10 — 32 |
| Exhibit 10.5: NCUA Letter to Credit Unions Regarding Identity Theft<br>(No. 00-CU-02).....  | 10 — 37 |
| Exhibit 10.6: NCUA-GCO — Confidentiality Bylaw (96-0343) 4/96 .....   | 10 — 43 |
| Exhibit 10.7: NCUA-GCO — Shared Branch Facilities and Article XIX,<br>Section 2, of the Bylaws (93-0610) 7/93 .....   | 10 — 45 |
| Exhibit 10.8: NCUA-GCO — Publication of Bankrupt Members' Names<br>(90-0816) 11/90 .....  | 10 — 47 |
| Exhibit 10.9: NCUA-GCO — Member Access to Records (90-0235) 3/90.....   | 10 — 49 |
| Exhibit 10.10: NCUA-GCO — Disclosure of Bankruptcy or Loan Loss<br>Information on FCU Board Nominees 10/88.....   | 10 — 51 |
| Exhibit 10.11: NCUA Opinion Letter Re: Confidentiality of Member's Records ...  | 10 — 54 |
| Exhibit 10.12: NCUA Legal Opinion Letter 01-0525 Re: Limits on Disclosing<br>Account Numbers .....  | 10 — 55 |
| Exhibit 10.13: Member Information Confidentiality Agreement .....   | 10 — 58 |
| Exhibit 10.14: NCUA Rules and Regulations: Part 716 — Privacy of Consumer<br>Financial Information.....   | 10 — 59 |
| Exhibit 10.15: Sample Privacy Policy Statement .....  | 10 — 76 |
| Exhibit 10.16: NCUA Legal Opinion Letter Regarding Timing of Annual<br>Notices and Verification of Funds Under NCUA's Consumer Privacy<br>Regulation, Part 716..... | 10 — 80 |
| Exhibit 10.17: NCUA Rules and Regulations Part 748 .....  | 10 — 82 |
| Exhibit 10.18: Privacy of Member Financial Information Policy.....  | 10 — 91 |
| Exhibit 10.19: Sample Procedures for Safeguarding Member Information.....   | 10 — 95 |

Exhibit 10.20: NCUA Part 717, Subpart I on Disposal of Consumer Information ..... 10 — 110

## **Chapter 10A Share Insurance**

Share Insurance Coverage for Specific Member Accounts ..... 10A — 1

    Basic Share Insurance ..... 10A — 1

    Insurance of Individual and Joint Accounts ..... 10A — 1

    Insurance of Special Accounts ..... 10A — 2

        Exhibit 10A.1: NCUA Interim Final Rule on Share Insurance Coverage for Revocable Trust Accounts ..... 10A — 6

        Exhibit 10A.2: NCUA Brochure ..... 10A — 33

        Exhibit 10A.3: Educating Members on Share Insurance Coverage ..... 10A — 35

        Exhibit 10A.4: NCUA Media Release ..... 10A — 37

        Exhibit 10A.5: NCUA Final Rule — Official Insurance Sign and Official Advertising Statement ..... 10A — 39

        Exhibit 10A.6: NCUA Final Rule — The Display of Official Sign and Temporary Share Insurance Increase ..... 10A — 46

        Exhibit 10A.7: NCUA Final Rule — Accuracy of Advertising and Notice of Insured Status ..... 10A — 59

        Exhibit 10A.8: NCUA PowerPoint Presentation “NCUA Share Insurance and You” ..... 10A — 72

        Exhibit 10A.9: NCUA Share Insurance FAQ’s Questions and Answers ..... 10A — 89

        Exhibit 10A.10: NCUA Legal Opinion Letter 08-0718 — Section 529 College Savings Account Plans ..... 10A — 92

        Exhibit 10A.11: NCUA Legal Opinion Letter 08-0840 — Interest on Lawyers Trust Accounts ..... 10A — 94

## **Chapter 11 Check Fraud**

What Is Check Fraud? ..... 11 — 1

Common Check Fraud Schemes ..... 11 — 2

    Checks Stolen from the Mail ..... 11 — 2

    Altered Checks ..... 11 — 3

    Counterfeit Checks Deposited into Accounts ..... 11 — 3

    Theft of Personal Identification and Checks ..... 11 — 4a

    Reported Check Fraud Cases ..... 11 — 5

|  |          |
|--|----------|
| Check Kiting .....   | 11 — 7   |
| Counterfeit Checks Cashed by Organized Groups.....                               | 11 — 7   |
| New Account Fraud .....  | 11 — 8   |
| Closed Account Fraud.....  | 11 — 9   |
| Embezzlement Fraud.....  | 11 — 9   |
| Telemarketing Fraud.....   | 11 — 10  |
| Recent Fraud Scam Trends .....   | 11 — 10  |
| How To Spot A Bad Check.....   | 11 — 10b |
| Protection From Check Fraud .....  | 11 — 12  |
| Preventive Measures.....   | 11 — 14  |
| General Internal Controls.....   | 11 — 14  |
| Internal Controls to Prevent Check Fraud by Insiders .....                       | 11 — 15  |
| Education and Training .....   | 11 — 15  |
| Teller Training .....  | 11 — 16  |
| New Account Representative Training.....   | 11 — 17  |
| Check Security Features.....   | 11 — 18  |
| Regulation CC And Additional Check Fraud Programs .....                          | 11 — 19  |
| Regulation CC.....   | 11 — 19  |
| Data Sharing.....  | 11 — 20  |
| Credit Union Remedies For Recovering Dishonored Checks .....                     | 11 — 20  |
| Insurance Coverage.....  | 11 — 20  |
| Criminal and Civil Remedies for Check Fraud.....                                 | 11 — 21  |
| Conclusion.....  | 11 — 21  |
| Exhibit 11.1: OCC Bulletin 2007-2 Fraudulent Cashier's Checks .....              | 11 — 23  |
| Exhibit 11.2: FTC Brochure: "Giving the Bounce to Counterfeit Check Scams" ..... | 11 — 28  |
| Exhibit 11.3: NCUA Fraud Alert 08-Fraud-01, HELOC Account Fraud.....             | 11 — 32  |
| Exhibit 11.4: NCUA Fraud Alert 08-Fraud-02, Vishing Fraud.....                   | 11 — 34  |

## Chapter 12

### Share Draft Account Types, Fees, and ATM Fees

|  |        |
|--|--------|
| Introduction .....   | 12 — 1 |
| Account Types.....   | 12 — 1 |
| State Rules and Regulations Affecting Fees.....  | 12 — 2 |
| NCUA Rules and Regulations Affecting Fees .....  | 12 — 3 |
| Case Study: <i>NNDJ Inc. v. Comerica Incorporated</i> , 66 UCC Rep Serv. 2d. 781<br>(United States District Court, E.D. Michigan, 2008)..... | 12 — 3 |
| Case Study: <i>NNDJ Inc. v. National City Bank</i> , 65 UCC Rep. Serv. 2d. 963<br>(United States District Court, E. D. Michigan, 2008).....  | 12 — 4 |
| Truth in Lending and Share Draft Fees .....  | 12 — 4 |

|   |        |
|---|--------|
| Truth in Savings and Share Draft Fees .....         | 12 — 5 |
| Initial Disclosures.....                            | 12 — 5 |
| Types of Fees Disclosed.....                        | 12 — 6 |
| Periodic Statements .....                           | 12 — 7 |
| Dividend Payments .....                             | 12 — 8 |
| Exhibit 12.1: Share Draft Account Disclosures ..... | 12 — 9 |

**Part V: Appendices  
(Available Only on CD)**

(The Appendices are available on the accompanying CD.)

|              |   |
|--------------|---|
| Appendix A:  | UCC Articles 3, 4, and 4A as Adopted by the State of Connecticut  |
| Appendix B1: | Regulation CC: Availability of Funds and Collection of Checks 12 CFR 229  |
| Appendix B2: | Check 21 Act  |
| Appendix C:  | Regulation J: Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfer Through Fedwire 12 CFR 210 |
| Appendix D:  | Bank Secrecy Act Financial Recordkeeping and Reporting of Currency and Foreign Transactions 31 CFR 103                    |
| Appendix E:  | Guidance on Financial Privacy   |
| Appendix F:  | Regulation E: Electronic Fund Transfer Act 12 CFR 205   |
| Appendix G:  | NCUA Brochure — Your Insured Funds  |
| Appendix H:  | Federal Reserve Bank Operating Circulars  |
| Appendix I:  | Guidance on Foreign Transactions  |
| Appendix J:  | BSA AML Examination Manual  |