From: Marten L. Hirsch

Proposal: 1419 (RIN 7100-AD76) - Reg E - Electronic Fund Transfer

Subject: Reg E - EFT

Comments:

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Name: Marten L Hirsch
Affiliation: Clearshift (US) Company
Category of Affiliation: Commercial
Address: 1319 Rutland Lane
City: Wynnewood
State: PA
Country: UNITED STATES
Zip: 19096
PostalCode:

Comments:
RE: Regulation E; Electronic Fund Transfers [R-1419] Ladies and Gentlemen, We are writing to raise our concerns regarding the proposed rules published on May 23, 2011 (76 Fed.Reg. No. 99) implementing Section 1073 of The Dodd-Frank Wall Street Reform and Consumer Protection Act. We are establishing a money service business to serve both businesses and consumers making international transfers of foreign currency. Our business model is all about transparency, yet it is precisely the Dodd Frank Act transparency requirements that pose a problem for us. The Dodd Frank Act seeks to achieve transparency by requiring the precise disclosure of exchange rates and net amounts to be delivered. As an aside, the usefulness of this disclosure to the consumer assumes that the consumer is provided a time stamp of the trade (which is not required by the proposed rules) and has the tools and ability to benchmark the disclosed exchange rate for fairness. Our pricing model is to peg the exchange rate to an official daily central bank rate that cannot be manipulated, that can be easily checked and where no time stamp is necessary to check the fairness of the rate. Naturally, the central bank rate used must be one that is not yet published (e.g., tomorrow's rate), otherwise, sophisticated customers would be able to perform a riskless arbitrage to take advantage of changes in the interbank market rates since the last published daily central bank rate. Therefore, we disclose to customers that their exchange rate will always be the official exchange rate less (or plus) a disclosed fixed offset, i.e., the commission. This is precisely the exchange rate pricing method used by Directo a Mexico. While the comments to the proposed rules clearly include Directo a Mexico in exception 205.32(b)(1), offering an alternative basis for exchange rate disclosure, we are concerned that a fair reading of that exception would not cover us. While we take comfort from our conversation with Treasury staff that our model would seem to be compliant with the proposed rules, we would like to see the issue addressed more directly. The "permanent exception" contemplates scenarios where it is technically impossible to determine the final exchange rate before the payment is made, due to a legal or systematic impediment. It

does not clearly contemplate the situation where the consumer and remittance transfer provider knowingly agree to choose a central bank rate of the type described in 32(c)(1). Section 32(b)(2) (i.e., the "permanent exception") contemplates: "if a remittance transfer provider cannot determine the exact amounts because (1) The laws of the recipient country do not permit, or (2) The method by which transactions are made in the recipient country does not permit, such determination." We request clarification of the Board's position on the aforementioned central bank rate scenario by making any of the following changes: (1) adding our scenario to the comments, (2) making minor text changes, (3) by adding an additional explicit exception or scenario such as "The consumer and remittance provider explicitly agreed to use an independent reference rate not as of yet published at the time of the order" or (4) by defining the exchange rate disclosure 32(b)(1)(iv) as either a nominal rate or a rate method such as the one described in section 32(c)(1) (i.e., produced by an independent or governmental body on a regular basis using a disclosed fixed methodology and published promptly in a public medium). In addition, we must point out that the alternative basis for exchange rate disclosure in section 32(c)(1)(i) seems to be arbitrarily limited to transfers delivered via "international ACH". In our business model, local ACH from an affiliate in the country of delivery may be used, among other methods of delivery. It seems that the language was aimed at Directo a Mexico, which transfers the funds via an international ACH with the exchange rate computed by the central bank, but why should it be limited to their method of operation? If a competitor offered the exact same rate methodology as Directo a Mexico but delivered the funds via local ACH or local bank wire, they should be able use the same method for exchange rate disclosure. Similarly, the temporary exception only covers wires from an insured institution, but does not relate to wires sent from an international bank account of the remittance provider or one of its affiliates. Sincerely, Marten L. Hirsch Clearshift (US) Company