Meeting Between Federal Reserve Staff and Representatives of The Clearing House January 31, 2011

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Summary: Staff from the Federal Reserve Board had a conference call with representatives of The Clearing House and its members to discuss the remittance transfer provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Using prepared materials, representatives of The Clearing House discussed the application of the Electronic Fund Transfer Act and Article 4A-108 of the Uniform Commercial Code to wire transfers, error resolution, disclosure of fees, provision of storefront disclosures in foreign languages, and the scope of the legislation.

Attached below is a copy of the presentation that The Clearing House provided to Federal Reserve Board staff to guide discussion during the meeting.

Comments Regarding Section 1073 of the Dodd-Frank Act: Remittance Transfer Requirements

Introduction: Section 1073 of the Dodd-Frank Act ("Section 1073") amends the Electronic Fund Transfer Act ("EFTA") by adding new requirements applicable to remittance transfers. These new requirements are now codified as section 919 of the EFTA.

Effective Date for Disclosure Requirements and Clarification of Certain Points through the Rulemaking Process:

- *Disclosure Requirements Should be Effective Only After Final Rules are Issued*: Section 919(a) requires that certain disclosures be made in connection with remittance transfer transactions. Further, Section 919(a) expressly states that institutions must make these disclosures "as required in [section 919(a)] and in accordance with rules prescribed by the Board" and that these disclosures are "[s]ubject to rules prescribed by the Board."[1] While the timeframe is not altogether clear, we strongly advocate that these new disclosure requirements become effective *only after* the Board of Governors of the Federal Reserve System (the "Fed") issues final rules elucidating the disclosures required to be provided. We believe that this approach would ensure that covered institutions have the requisite clarity to develop disclosures that include the precise information that needs to be disclosed, as outlined by the Fed, and that such disclosures are consistent across the industry.

- *Certain Points Needing Clarification through the Rulemaking Process:* We note that there are a number of specific elements of the remittance transfer disclosure requirements that should be clarified before institutions develop their remittance transfer disclosures. Without this clarity and guidance, institutions may develop disclosures that would need to be significantly revised once final rules are issued, which would be expensive and could require numerous systems changes. Furthermore, without the clarity and guidance provided by a final rule, disclosures that individual institutions may develop are not likely to be consistent across the industry, which would be confusing for remittance transfer customers. Some specific elements of the remittance transfer disclosures that we believe need clarification through a final rulemaking prior to the disclosure requirement becoming effective include:

  - *Fees to be Disclosed*: While we believe that only the fees charged by a remittance transfer provider are required to be disclosed, our members seek clarity regarding whether the fees charged by intermediary institutions and/or beneficiary banks also need to be included in the mandatory disclosures. This point is discussed in more detail below.

[1] EFTA, sec. 919(a)(1)-(2), (4).

- *Disclosures for Telephone, Text and Email Transactions*: The way in which institutions may satisfy the disclosure requirements for transactions initiated by, or conducted entirely through, telephonic means is, at this point, unclear. Here we note that Section 1073 authorizes the Fed to issue rules regarding disclosures for telephone transactions and specifies what the Fed *may* allow in this context. However, Section 1073 does not go further to provide institutions with any assurances regarding the ways in which the disclosure requirements *would* be satisfied for telephonic remittance transfers. We further note that Section 1073 does not address the way in which remittance transfer providers may satisfy disclosure requirements for transactions that may be initiated by, or conducted entirely through, text messages and email, as discussed below.

- *Applicability to Other Services*: It is unclear whether the remittance transfer disclosure requirements will apply to the transmission of value to a recipient's prepaid cell service or other prepaid product in another country, which is also discussed below.

- *Definition of Small Value Transactions*: Section 1073 exempts "small-value transactions" from the definition of remittance transfer, but this term must be defined by rule. Accordingly, institutions do not currently have any guidance on the transaction threshold for this exemption, as discussed below.

- *Commercial vs. Retail Customer*: Also as discussed below, final rules should provide clarity that the remittance transfer disclosure requirements apply only to transactions where the designated recipient is a natural person and not to transactions with commercial entities.

- *Same Treatment as Other Compliance Obligations*: To be consistent with the way in which the other subsections of section 919 become effective, section 919(a) should become effective only after implementing regulations become final. That is, the other affirmative compliance obligations imposed by Section 1073 require that implementing rules be issued by the Fed in order for the compliance obligation to become effective. For example:

    - The Fed must issue rules in order for the requirement that institutions post notice in storefront and possibly internet locations to become effective;

    - The Fed must issue rules in order for the remittance transfer error resolution requirements to become effective; and

    - The Fed is also required to issue rules regarding appropriate cancellation and refund policies that institutions may adopt with respect to remittance transfer transactions.

- *Conclusion*: We strongly recommend that section 919(a) become effective only after the Fed issues final rules to ensure that the disclosures institutions develop satisfy legal and regulatory requirements, are consistent across the industry, minimize customer confusion, and minimize the burden that institutions would experience by developing disclosures prior to the issuance of final rules and later needing to revamp those disclosures and corresponding systems.

- *Compliance Date*: Because Section 1073 involves significant new obligations, we strongly urge the Fed to set the compliance date for one year from the date the final rules are issued. The industry needs to be afforded adequate time to build systems that ensure that disclosures are properly provided in each case and that the amounts presented in the disclosures (including total to be received by the recipient, currency conversions and fees) are accurately presented.

- *Questions*: Does the Fed have (a) a target date for issuance of such rules and (b) a projected date by which covered institutions will be expected to be in full compliance?

Scope of Coverage of Section 1073

- *Disclosure Requirements Should Apply Only Where a Remittance Transfer is Specifically Requested by the Sender*: Section 1073 seeks to regulate sender-initiated remittance transfers, that is, transfers that have been "requested by the sender." Accordingly, we believe that the requirements of Section 1073 only apply to transactions where the customer specifically requests an electronic funds remittance transfer. In other words, if a customer requests funds be sent but does not specify the means to be used to effect that transfer, then the disclosure requirements applicable solely to remittance transfers should not apply simply because the bank may elect to use an electronic funds transfer to send the funds (as opposed to sending a wire or a check, and notably both of which are excluded from Regulation E coverage).

- *Recipients of Prepaid Value Should Not Trigger Disclosure or Other Section 1073 Requirements*: We assert that the requirements of Section 1073 should not apply to circumstances where a customer has not expressly requested a transfer, such as situations where prepaid cell value or stored value products are transmitted to recipients in another country. In fact, we believe that such circumstances do not trigger affirmative compliance obligations because the plain language of Section 1073 specifically states that a designated recipient "shall not be deemed to be a consumer for purposes of the Act." Accordingly, since designated recipients are not consumers and the means of transfer is the recipient accessing funds and applying them to stored value products, then no affirmative compliance obligations should apply to such circumstances.

Defining Designated Recipient

- *The Term "Designated Recipient" Should Be Limited to Natural Person(s) and Not Corporate Entities and Only Apply to Situations Where the Remittance Transfer Provider Knows the Designated Recipient is in Another Country*: We strongly recommend that the new requirements applicable to remittance transfer transactions be applied only where the designated recipient is a natural person. Limiting the term "designated recipient" in this manner would be consistent with the definition of the term "sender," which covers consumers (and not commercial entities). Furthermore, given the legislative intent behind Section 1073 and the costs and burdens associated with the disclosure requirements, we believe that the consumer protections required by Section 1073 should be applied only to natural persons. Moreover, the term "designated recipient" means any person "*located in a foreign country* and identified by the sender as the authorized recipient of a remittance transfer to be made by a remittance transfer provider…." However, it is important to note that remittance transfer providers are not always aware of the physical location of the recipient of a funds transfer. Thus, in cases where the remittance transfer provider does not know the recipient's location, the provider would not know whether or not remittance transfer disclosures need to be provided. Accordingly, we recommend that the term "designated recipient" refer to only those recipients that the remittance transfer provider knows are located outside of the United States.

Disclosures

- *Foreign Language Translation Requirements Should Apply Only to Disclosures*: Section 1073 requires that disclosures be provided in English and each of the foreign languages principally used by the remittance transfer provider. We believe that this requirement should be applied only to the disclosure requirements. Further, we do not believe that information outside of the mandatory disclosures should be required to be translated into other languages. For example, advertising materials (particularly for national advertising campaigns) should not be required to be translated into *every* language in which a remittance transfer provider may conduct business because this would be quite burdensome, expensive and would not offer consumer protection proportional to such significant burdens and costs.

- *Only the Remittance Transfer Provider's Fees Should be Included in the Remittance Transfer Disclosures*: In the disclosures to be provided to the sender, institutions are required to include the amount of transfer and other fees "charged by the remittance transfer provider for the remittance transfer." We conclude from the plain language of the statue that only the fees charged by the remittance transfer provider need to be disclosed and, moreover, that fees charged by intermediary institutions and beneficiary banks are not required to be disclosed. However, disclosures must also specify "the amount of currency that will be received by the designated recipient…." In disclosing the amount of currency to be received by the designated recipient, we assume that remittance transfer providers will not be expected to provide an amount that reflects fees that may be charged by intermediary institutions and beneficiary banks. Specifically, remittance transfer providers do not and cannot know the amount of the fees that intermediary institutions and beneficiary may charge for a variety of reasons, including that (a) the provider may not be aware of all intermediary institutions involved in executing a particular funds transfer (and notably, the process of using intermediaries between and among financial institutions to execute an international transaction is subject to change); and (b) the provider will not know the amount of the fees that intermediary institutions and beneficiary banks may charge (and notably, any fees that may be charged by intermediaries are likewise subject to change). It is excessively burdensome to require remittance transfer providers to monitor changes in intermediary institution relationships, as well as any fees these intermediaries and beneficiaries *may* charge if they were to become involved in a particular remittance transfer. Accordingly, we strongly urge the Fed to allow the disclosure provided to the sender to reflect only the fees to be charged by the bank sending the remittance transfer.[2] We believe that this is the best approach to take in order to ensure accurate disclosures are provided to senders while avoiding significant burdens to sending institutions that would be involved in monitoring the fees of both intermediary institutions and beneficiary banks. Otherwise, if the initiating bank were required to disclose all intermediary and beneficiary bank fees, the bank would need to first identify all potential intermediary banks and then monitor the fees of all intermediaries and beneficiary banks and constantly revise disclosures, which would be an ongoing and burdensome obligation. Such a significant burden could impact the types of products available to consumers. Thus, we advocate that the sending institution not be required to disclose the specific amounts of fees charged by intermediary institutions and beneficiary banks.

- *<u>Estimating Accurate Currency Conversion Rates and Transaction Dates Will Present A Significant Challenge to Remittance Transfer Providers</u>*: Along the same lines as the intermediary fees discussed above, we note that providing accurate currency conversions in the disclosures will present a significant challenge to remittance transfer providers. While we appreciate that Dodd-Frank allows for some margin of error in estimating the currency conversion rate in the disclosure, we do not believe such margin of error is enough to ensure accurate disclosures. Specifically, currency conversion rates can fluctuate significantly throughout the course of a day. Thus, in order for a remittance transfer provider to provide an accurate currency conversion rate, it would need to be able to do so in real time. However, the provider cannot predict the time of day in which the remittance transfer it initiates will be completed (and accordingly the currency converted), nor could it predict what the currency rate would be at that point in time. Thus, it would be extremely difficult in many situations to provide an accurate estimate of the currency conversion rate, especially one that is within the margin of error provided for under Dodd-Frank. The uncertainty relating to currency exchange rates, coupled with the fees that could be deducted by intermediary and beneficiary banks, make it difficult to provide "the amount of currency that will be received by the designated recipient." Similarly, factors such as these, which are unknown to the remittance transfer provider, make it difficult to estimate a promise date in many circumstances.

- *<u>What is the Purpose of the Five Year Exemption</u>*: Section 1073 includes a five year expiration clause for the provisions relating to accuracy of the estimated total amount to be received by the designated recipient. We would like to discuss the purpose of this exemption.

- *<u>Institutions Should Be Afforded Flexibility in Satisfying Disclosure Requirements For Text Message- and E-mail-Initiated Transfers</u>*: With respect to remittance transfers initiated by

[2] The disclosures could also include a statement that the transmission of funds could involve intermediary institutions that may also charge fees and that such fees may reduce the amount that the designated recipient will ultimately receive. We note that this is similar to the estimate that Section 1073 allows institutions to make with respect to currency conversions . In addition, this approach is also similar to the Regulation DD disclosure requirement (12 CFR 230.8(c)(5)) that "fees could reduce earnings on the account" when an APY is stated in an advertisement.

text message or email, we strongly advocate for an approach that affords institutions flexibility in satisfying the mandatory disclosure requirements. Specifically, for text message- and email-initiated transfers, institutions should be able to satisfy disclosure requirements by providing disclosures via text, email or physical mail. We note that email and physical mail may be preferable due to the length of the disclosures that need to be provided and the fact that text message limitations may make providing disclosures via text difficult, if not impossible, in many cases. Accordingly, institutions should have flexibility to determine the method that will most effectively and efficiently ensure that the remittance transfer sender receives the mandatory disclosures.

Small Value Transaction Exemption

- Section 1073 exempts "small-value transactions" from the definition of remittance transfer. Section 1073 further provides that the term "small-value transaction" will be determined by rule. We would like to discuss the way in which this term should be defined.

Storefront Notice

- *We Do Not Believe That A Storefront or Internet Notice Would Truly Benefit Consumers*: Section 1073 includes a provision that would allow – but does not require – the Fed to issue regulations that would require institutions to post notice in storefront and possibly internet locations. We do not believe that this permissive portion of the statute would further the consumer protection objectives of Section 1073. In particular, we believe that such notice is likely to be overlooked by customers, especially given the number of notices currently required to be posted in physical locations and online, and the low volume of remittance transfer transactions relative to other products and services offered by many remittance transfer providers. Moreover, posting a new notice will be costly – whether at a storefront location or on a website – and thus would need to be carefully studied in order to determine whether the cost of posting such notice would result in notice being effectively provided to the consumer. Accordingly, we strongly advocate that the Fed exercise its authority to not issue such regulations. Further, if the Fed decides to pursue this issue, we strongly advocate for a thoughtful study and analysis (as required by Dodd-Frank) in order to determine whether posting another storefront and internet notice would be warranted and would provide consumer protections that would outweigh the burden involved with satisfying such a requirement. Moreover, Section 1073 specifies that, if notices were required, they would need to include a description of a "model remittance transfer for one or more amounts, as the [Fed] may determine, which notice shall show the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged…." However, currency conversion rates change throughout each day. Thus, in order for such notice to remain accurate, the notice would need to be updated throughout the day to reflect the ongoing changes to currency exchange rates. It would be incredibly burdensome and costly for institutions to keep such notices updated throughout the day with accurate currency conversion information. Furthermore, the information in the notice would not necessarily translate to the transaction that the customer would conduct (*e.g.*, the consumer may be seeking to remit funds in a different type of currency than used in the model notice example).

- *<u>If Providers are Required to Post Notices, We Do Not Believe That Notices Should Be Required to Be Provided in Foreign Languages</u>*: Dodd-Frank only addresses translation into foreign languages in the context of *disclosures* to be provided to the senders of remittance transfers. More to the point, Dodd-Frank does not contemplate translation of storefront and internet notices into foreign languages. Accordingly, we believe that the Fed should mirror this approach in issuing rules regarding storefront and internet notices (if it should even decide to issue such rules) by *not* requiring notices be posted in each of the foreign languages principally used by the remittance transfer provider. Specifically, requiring translation of notices would be overly burdensome in that it would be costly to comply with, and could take up a sizeable amount of space in storefront and internet locations. We do believe such burdens would outweigh the benefit to consumers, especially since (as addressed above), we do not believe that such notice would provide much benefit to consumers. Accordingly, consistent with the plain language of Section 1073, we strongly recommend that storefront and internet notices be required only in English.

- *<u>If Providers are Required to Post Notices, We Do Not Believe that Notice Should Be Posted Anywhere Other Than the Storefront and Internet Locations Where Remittance Transfers Are Initiated</u>*: We advocate that any impending rules requiring the posting of notice in storefront locations and possibly the internet be applicable to *only* the locations where remittances may be initiated. In other words, notices should not be required in *all* locations operated by the sending institution. We believe that this approach would avoid customer confusion by ensuring that customers receive the notice only in locations where relevant services are offered. However, we reiterate that, for the reasons discussed above, even this notice requirement would be incredibly burdensome and expensive, especially for locations where remittance transfers are only occasionally transacted. Moreover, in many areas of the country customers do not typically send remittance transfers, and requiring providers to post such burdensome notices may not result in providing a great deal of useful information to consumers. Thus, imposing a requirement that providers post notice could impact the economic ability and willingness of institutions to provide remittance transfers.

<u>Remittance Transfers With Respect to Other Laws</u>

- *<u>Remittance Transfers That Are Not Also Electronic Funds Transfers Should Not be Considered to be "Governed by" the EFTA</u>*: UCC Article 4A-108 states that it will not apply to a funds transfer any part of which is governed by the EFTA. However, remittance transfers that are not also electronic funds transfers are not truly "governed by" the EFTA. Therefore, in order to ensure certainty under state law, the final rules implementing Section 1073 should make clear that for purposes of UCC Article 4A, remittance transfers that are not also electronic funds transfers should not be considered to be "governed by" the EFTA in whole or in part for purposes of state law.

- *<u>Defining Error</u>*: While the EFTA includes unauthorized electronic fund transfers within the definition of the term "error," we believe that for purposes of remittance transfer transactions, the term "error" should not encompass unauthorized electronic funds transfers. This is particularly significant in determining which party (the remittance transfer sender or provider) bears the risk of loss in unauthorized transactions. Specifically, certain types of funds transfers, such as wires (which are excluded from coverage under Regulation E), could be subject to UCC Article 4A criteria to determine whether a bank or its customer is to bear the risk of loss associated with an unauthorized transaction. More specifically, under UCC Article 4A, the risk of loss for an unauthorized funds transfer can be shifted to the bank's customer (in this case the sender). To do so, the bank and its customer must agree to the use of a commercially reasonable security procedure to authenticate that payment instructions received by the bank are the instructions of the bank's customer, provided the parties follow such security procedure.

- *This Approach Appears Consistent With Our Reading of Section 1073*: Section 1073 provides that if a remittance transfer is not an electronic fund transfer, it is not subject to sections 905 through 913 of the EFTA. This should mean that the EFTA's provisions that limit a consumer's liability for unauthorized transfers, which are set forth in section 909 of the EFTA, have no application to remittance transfers that are not also electronic fund transfers. Accordingly, the error remediation provisions of Section 1073, which would require a consumer to be made whole with respect to any error found to have occurred, should not extend to unauthorized remittance transfers, because such transfers are not covered by the consumer liability provisions of section 909 of the EFTA. To define an "error" in a manner that encompasses unauthorized remittance transfers would, therefore, be contrary to the expressed intent of Section 1073 and would upend the allocation of loss provisions of UCC Article 4A and will add uncertainty in the place of well-developed legal standards.