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By E-mail: regs.comments@federalreserve.gov

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No R-1419 RIN 7100-AD76—Electronic Fund Transfers

Dear Ms. Johnson,

UBS AG, New York Branch (“New York Branch”) and UBS Financial Services Inc. (UBSFS and together with the New York Branch, “UBS”) respectfully submit to the Board of Governors of the Federal Reserve System (“Board”) the following comments in response to the Board’s proposed amendments to Regulation E regarding remittance transfers (the “Proposed Rule”).¹ We appreciate the opportunity to comment on the Proposed Rule.²

Background

The New York Branch is an uninsured federal branch of UBS AG, a foreign bank under the International Banking Act that has elected treatment by the Board as a financial holding company. UBSFS, an indirect subsidiary of UBS AG, is a broker-dealer registered with the U.S. Securities and Exchange Commission (“SEC”).

As a courtesy to its clients, UBS processes international wire transfers of funds debited from its clients’ UBS accounts to commercial and consumer recipients in foreign countries. UBS provides international wire transfer services as an ancillary service to its customers, but does not separately advertise or market its wire transfer services, nor does UBS perform wire transfers for non-customers. The international wire transfers initiated by UBS generally are requested by affluent individuals for purposes of moving funds between the customers’ own accounts or to transfer funds to foreign recipients, including to pay for

¹ Electronic Fund Transfers, 76 Fed. Reg. 29902 (May 23, 2011) (to be codified at 12 C.F.R. pt. 205).

² As the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“DFA”) transfers rulemaking authority for the Electronic Fund Transfer Act (“EFTA”) to the Consumer Financial Protection Bureau (“Bureau”) effective July 21, 2011, we recognize that the Bureau is likely to issue the final rule regarding remittance transfers, and that all comment letters will be forwarded to the Bureau. Accordingly, we respectfully direct our comments to both the Board and the Bureau, as appropriate.



purchases from foreign providers of goods and services or in connection with overseas real estate transactions. The consumers for whom UBS initiates international wire transfers generally are sophisticated, affluent individuals who are well-versed in their funds transfer options and opt for wire transfers initiated by UBS for the convenience of having funds transferred directly from their UBS accounts, frequently on a same-day basis. The vast majority of international wire transfers processed by UBS are for at least \$1,000, and many are for tens of thousands, or even millions, of dollars.

Wire transfers processed by UBS are processed through an “open network” whereby UBS sends a one-way payment message to a correspondent bank, which then routes the payment information through a series of intermediary institutions and, ultimately, to the designated recipient’s institution for deposit into the recipient’s account. The wire transfers processed by UBS are distinguishable from the typical “closed network” remittance transfer, where the funds remain within one network and the provider controls the transfer end-to-end, either directly or through agent relationships. By contrast to such closed network providers, which have substantial access to and control over information regarding an entire transaction, UBS has no control over, and little insight into, the path taken by the payment instructions it sends. As a result, UBS has little to no access to information regarding the details of the transaction beyond its direct relationships with its correspondents. In fact, in most cases, UBS has no way of even knowing the currency in which funds will be received by the designated recipient (i.e., in which currency the recipient’s account is denominated), let alone the conversion rate to be used by the institution converting the currency or any fees or taxes that may be assessed along the way.³

Attached as Exhibit A is a simplified illustration showing the typical payment flow for a wire transfer processed by UBS, together with an explanation of the steps.

Discussion

The Proposed Rule was published pursuant to Section 1073 of the DFA, which amended the EFTA by adding a new Section 919 that establishes a disclosure and error resolution regime for consumers who use “remittance transfer providers” to send remittances to recipients located in foreign countries.

As wire transfers are not a core aspect of UBS’s business and UBS does not transfer funds in the same manner as a traditional remittance transfer provider, UBS faces significant operational hurdles to complying with the requirements of the Proposed Rule. Those operational hurdles, together with the legal uncertainty as to the application of Article 4A of the Uniform Commercial Code described more fully in the comment letter separately submitted by The Clearing House, would likely force UBS to restrict, or even eliminate, its wire transfer services to foreign countries in circumstances covered by the Proposed Rule.

³ UBS will only convert the funds debited from the customer’s account prior to sending a wire transfer if the customer expressly requests the conversion. More commonly, any necessary currency conversion is processed by the institution at which the designated recipient’s account is held, since that institution is in the best position to identify the currency in which the recipient’s account is denominated.

At a minimum, the operational hurdles would likely result in UBS increasing the fees it charges customers for wire transfers and delaying the processing of such wire transfers.

In an effort to avoid such an impact to its customers, UBS offers the following comments and suggestions regarding the Proposed Rule, which would lessen the associated compliance burden and permit UBS to continue to meet the wire transfer needs of its customers. Each of these comments is discussed in greater detail below. We also note that there are a number of other issues with the Proposed Rule that are beyond the scope of the most critical items identified below. We therefore would like to voice our support for the comment letters being separately submitted by The Clearing House and the Institute of International Bankers.

- The Proposed Rule is overly broad in scope and applies to numerous transactions not generally understood in the industry to be “remittance transfers.” The Proposed Rule is unduly burdensome, particularly with respect to remittance transfer providers that operate in an open network and do not control the remittance transfer process end-to-end. Accordingly, the Board should exercise its authority under the DFA and the EFTA generally to grant exceptions for transactions where the burden of providing the required disclosures would outweigh the benefit provided by the disclosures. Specifically, the Board should: (i) expand the temporary exception for insured institutions to include branches and agencies of foreign banks and registered broker-dealers, and make such temporary exception permanent; and (ii) expand the permanent exception for certain methods by which remittance transfers are made in certain foreign countries to include international wire transfers.
- The proposed definition of “business day” is unnecessary and unclear, and should be eliminated.
- The proposed definition of “sender” should authorize a provider to use the primary address on the consumer’s account with the provider for purposes of determining the consumer’s location.
- The proposed definition of “designated recipient” should be revised to exclude the sender of a remittance transfer and commercial entities.
- The proposed definition of “remittance transfer” should exclude (i) high-dollar transactions; (ii) the transfer of the proceeds of an extension of credit from the remittance transfer provider (or its affiliate) to the sender; and (iii) transfers initiated by registered broker-dealers in connection with securities transactions.
- A remittance transfer provider should only be required to disclose an exchange rate it uses, as distinguished from a rate used by other institutions processing the transfer.

- A remittance transfer provider should be permitted to rely on a sender's representation regarding the currency in which the transfer will be received. If the sender makes no such representation, the provider should be permitted to assume that the sending and receiving currencies are the same.
- It would be challenging for remittance transfer providers to attempt to monitor all foreign tax laws worldwide for purposes of estimating taxes applicable to a remittance transfer. For the sake of accuracy, efficiency and consistency, the Board, Bureau, or another appropriate entity should maintain this information for reference by remittance transfer providers.
- Receipts for transactions conducted entirely by telephone should be subject to the same foreign-language disclosure requirements as transactions conducted by other methods.
- The manner and timing of telephone receipts should be clarified.
- Broker-dealer remittance transfer providers should be permitted to comply with SEC guidance regarding electronic disclosures.
- A remittance transfer provider's error resolution responsibilities with respect to estimated amounts should be limited to confirming that the estimation was accurately displayed.
- A sender's error resolution remedies should not permit a sender to obtain a refund for a tax or fee rightfully charged by an institution other than the remittance transfer provider where the provider used good faith efforts to identify (or estimate) and disclose all such amounts.
- A uniform, mandated right to cancel a remittance transfer and obtain a refund of all amounts paid is unnecessary and unduly burdensome. Remittance transfer providers should be permitted to implement cancellation policies appropriate to their individual business models and customer bases.

I. Exceptions to Required Disclosures

As drafted, the Proposed Rule is overly broad and would apply to numerous transactions not generally understood in the industry to be remittance transfers. As the Board acknowledged in the Supplementary Information to the Proposed Rule, “[t]raditional remittance transfers often consist of consumer-to-consumer payments of low monetary value.”⁴ The Board further acknowledged that “[t]raditionally, consumers send remittance transfers through a money transmitter operating through its own store or through an agent The money transmitter sends an instruction to a specified payout location or locations in the recipient’s country”⁵ The reach of the Proposed Rule is far broader, however, and

⁴ 76 Fed. Reg. at 29902.

⁵ *Id.* at 29903.

would encompass the generally large dollar wire transfer services offered by UBS—wire transfers initiated at the request of sophisticated, high net worth individuals and processed through an open network where UBS has no knowledge of the majority of the information that the Proposed Rule would require UBS to disclose. In the Supplementary Information, the Board cited various sources estimating the aggregate value of remittance transfers from the United States in recent years, with totals ranging from \$12 billion to \$48.3 billion.⁶ While the Board acknowledged that these estimates vary greatly in part because of differences in the scope of transactions included in the calculation, it is clear that none of these estimates is high enough to have included all of the transactions included in the scope of the Proposed Rule, such as wire transfers and ACH transfers to foreign recipients. According to the Board’s recent report to Congress on the use of the ACH system for international transfers, international ACH transfers alone totaled \$46 billion in 2010.⁷ Thus, the estimates cited by the Board in the Supplementary Information to the Proposed Rule would represent a mere fraction of the total value of “remittance transfers” from the U.S. as defined in the Proposed Rule.

As explained above, unlike traditional money transmitters who deal primarily with cash-to-cash remittances and operate a closed network of agent locations, banks and broker-dealers who send wire transfers through an open network have no control over, and little to no insight into, the route the funds will take, the fees or taxes deducted from those funds along the way, the exchange rate used to convert those funds (or whether the funds will be converted at all), or the timing of the availability of those funds to the recipient, as all of those factors are dependent upon terms and conditions negotiated between and among the recipient, the beneficiary institution, and various intermediary institutions with whom the sending institution has no relationship.

To even attempt to obtain such information from institutions with which it has no correspondent relationship, UBS would need to send an authenticated SWIFT message to the designated recipient’s institution and each intermediary institution (assuming UBS is able to identify the intermediary institutions through which the payment instructions will pass) requesting the currency in which the recipient’s account is denominated, the exchange rate to be used by the recipient’s institution, and all fees and taxes to be deducted by the recipient and intermediary institutions. However, the accuracy and associated value to the consumer of the disclosures provided by UBS under the Proposed Rule would be dependent upon the cooperation of, and the accuracy of information provided by, the recipient and intermediary institutions. Such institutions would be under no obligation to respond to UBS’s request for information in a timely manner or at all. Moreover, this process would require UBS to establish a SWIFT relationship with each such institution prior to sending a SWIFT message. Such a direct relationship is entirely voluntary and could be rejected by any of the institutions involved in processing a wire transfer.

In theory, UBS could also try to contact the recipient and intermediary institutions directly by telephone (again, assuming UBS is able to identify all of the intermediary

⁶ *Id.* at 29902.

⁷ Federal Reserve, Report to the Congress on the Use of the Automated Clearinghouse System for Remittance Transfers to Foreign Countries 5 (2011).

institutions) in an effort to identify someone at each such institution to provide the necessary information, but such a procedure would be unworkable in practice. First, foreign institutions do not publish telephone contact information for their wire rooms, making even the mere establishment of contact extraordinarily challenging. In addition, this approach presents the same accuracy and cooperation limitations presented by a SWIFT message, as well as significant practical impediments, the least of which are language barriers and time-difference considerations. Even if UBS could reach someone in the wire department of such an institution and was able to find a common language in which to communicate, applicable privacy laws or the institution's privacy policies likely would prohibit the institution from discussing a specific transaction and the fees and taxes that would apply to the transaction. If an institution rejects UBS's attempts to establish a SWIFT relationship or fails to respond to the authenticated SWIFT message initiated by UBS, or if UBS is unable to obtain the necessary information by placing telephone calls to the institutions, the Proposed Rule would provide UBS with no alternative means for complying with the disclosure requirements. Presumably, UBS would be forced to decline to process the wire transfer requested by the consumer.

While Section 919 of the EFTA is written quite broadly, Section 904(c) of the EFTA (as amended by the DFA) authorizes the Board, in prescribing regulations under the EFTA, to include "such classifications, differentiations, or other provisions, and . . . provide for such adjustments and exceptions for any class of electronic fund transfers or remittance transfers, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, . . . or to facilitate compliance therewith."⁸ Indeed, it is worth noting in this regard that the DFA specifically amended Section 904(c) to add the reference to "remittance transfers,"⁹ confirming the Congressional intent that the Board, and the Bureau as successor, have the ability to address statutory deficiencies related to remittance transfers. In addition, Section 904(a) of the EFTA requires the Board to conduct a cost-benefit analysis and to "demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs" of the regulations, including the costs to consumers.¹⁰ The Board cited its authority under Sections 904(a) and (c) throughout the Supplementary Information to the Proposed Rule, and appears to have implemented a cost-benefit analysis in exempting low-value transactions of \$15 or less from coverage under the Proposed Rule. However, we believe the cost estimates made by the Board with respect to compliance obligations for transactions in excess of \$15 substantially understate the likely cost of implementation of the Proposed Rule. A much more detailed cost study should be undertaken before such draconian measures are considered further, and the Board should use its Section 904(c) authority to extend the statutory exemptions in a manner that will help address the mismatch between the spirit and substance of the Proposed Rule on the one hand and the type of funds transfers handled by UBS on the other.

⁸ 15 U.S.C. § 1693b(c).

⁹ See DFA § 1073(a)(2).

¹⁰ 15 U.S.C. § 1693b(a).

A. *Temporary Exception for Insured Institutions Should Be Expanded and Extended*

At a minimum, the temporary exception that would be granted to insured depository institutions under Section 205.32(a) of the Proposed Rule, permitting such institutions to use estimates, should be expanded to include other highly-regulated entities, namely uninsured branches and agencies of foreign banks and registered broker-dealers. Section 205.32(a) would permit insured depository institutions to estimate certain amounts required to be disclosed if the provider cannot determine the exact amounts for reasons beyond its control, and if the remittance transfer is sent from the sender's account with the institution. In the Supplementary Information, the Board recognizes that this exception is intended to avoid immediate disruption of remittance transfer services offered by insured institutions using international wire transfers and to permit such institutions the time necessary to reach agreements and modify systems to provide accurate disclosures.¹¹ However, the Proposed Rule and the Board's discussion in the Supplementary Information do not address the fact that other providers who process international wire transfers, including broker-dealers and uninsured branches and agencies of foreign banks, will have the same difficulties and will also be forced to curtail services without such relief.

Although the DFA itself provides an express exemption only for insured depository institutions, a simple review of the language of new Section 919(a)(4) of the EFTA cannot be the end of the analysis. As explained above, the DFA also amended Section 904(c) to expressly provide the Board with additional exemptive authority to address statutory anomalies like this one, where entire classes of transactions or institutions would otherwise be subject to burdensome requirements without commensurate consumer benefit. In this case, there is no policy or regulatory justification for distinguishing between highly-regulated institutions based on deposit insurance status for purposes of the ability to estimate amounts which the provider is unable to determine because the "remittance" will take the form of a wire transfer. Whether or not the sender's account with the provider is insured, the ability to estimate exchange rates, fees, and taxes applicable to the transfer is critical for all providers of wire transfer services, whether the provider is an insured depository institution, the branch of a foreign bank regulated by the Office of the Comptroller of the Currency or a registered broker-dealer regulated by the SEC. Although the wire transfer itself may be processed by an insured depository institution affiliate and/or other intermediaries, it is the branch or broker-dealer that takes the wire order and is in no better position than any insured depository institution to obtain information necessary to make the disclosures required by the Proposed Rule. Accordingly, just as the Board exercised its Section 904(c) authority to expand the exception as articulated in the DFA to include estimates of amounts received by the recipient in U.S. dollars, so too should the Board expand the exception to include transfers initiated by uninsured branches and agencies of foreign banks and registered broker-dealers.

In addition, this temporary exception should be made permanent or, at a minimum, extended until 2020. The Proposed Rule and the Board's discussion in the Supplementary Information assume that providers that are unable to determine exchange rates, fees, and

¹¹ 76 Fed. Reg. at 29922.

taxes applied by other institutions as of the effective date of a final rule will be able to develop relationships or network changes to accurately determine such amounts within the next four years. Such advances are very unlikely. Even if providers are able to establish additional correspondent relationships and direct the path of their payment transactions along those institutions within the open network system, such relationships do not afford a provider any additional control over the currency exchange rate used, or fees charged, by the correspondent bank. Moreover, exchange rates often change multiple times per day, and some institutions may treat their exchange rates as proprietary information. Given the practical impediments to the free access to information envisioned by the Proposed Rule, the likely effect of the sunset provision would be to reduce the availability of remittance transfer services available to consumers as providers lose the protection of this exception and reduce or eliminate their remittance transfer services. Accordingly, at a minimum, the Board should take advantage of the full authority expressly granted under the DFA to extend the exemption by rule for a 10 year period from the date of enactment of the DFA.

B. Permanent Exception for Certain Methods By Which Transactions Are Made Should Be Expanded To Include Wire Transfers

Section 205.32(b)(2) of the Proposed Rule would permit a remittance transfer provider to provide estimates for certain of the disclosures required by Section 205.31(b) if the provider cannot determine the exact amounts because the method by which transactions are made in the recipient country does not permit such a determination. The Board explicitly excluded international wire transfers from this exception as it interpreted the exception to apply only to remittances sent via international ACH on terms negotiated by the U.S. government and the government of a recipient country where the exchange rate is set after the transfer is sent. We believe that the Board read this exception too narrowly, and we urge the Board to expand the exception to include international wire transfers.

“Open network” wire and ACH systems both involve the use of intermediary institutions to complete a funds transfer, and both are methods where it is particularly difficult to know the exact amounts of taxes, fees, exchange rates, and other charges imposed by correspondent banks and governments because the sending institution does not directly transmit funds to the receiving institution. Accordingly, both are methods by which transactions are made to a foreign country that do not permit the provider to know the amount of currency that will be received by the designated recipient.

The Board’s explanation for failing to apply the statutory exemption to wire transfers does not comport with the statute or the underlying public policy. First, the Board argues that wire transfers should not be exempt because they provide a common method of delivery outside the U.S. rather than a method of delivery that is specific to a country or group of countries. Nothing in the statute refers to the exemption applying only to unique methods of delivery, however. To the contrary, the statute refers to “the method by which transactions are made in the recipient country . . .,” without reference to whether that same method is used by a provider in other countries or in all countries. Furthermore, to the extent that there is overlap between the temporary exemption and the permanent one, that is not a sufficient justification for reading into the permanent exemption a limitation that does not appear in the statutory language. Because wire transfers have the same operational characteristics as ACH

transfers, we urge the Board to expand this permanent exception to apply to wire transfers as well.

II. Definitions Applicable to Proposed Rule

A. *The Definition of “Business Day” Is Unnecessary*

The definition of “business day” in proposed Section 205.30(b) is unnecessary and unclear. As the Board recognized in the Supplementary Information, Regulation E contains an existing definition of “business day” in Section 205.2(d). Nothing in the DFA requires a separate definition nor suggests that the existing definition of “business day” is inappropriate with respect to remittance transfers. Although the Board expressed concern in the Supplementary Information about the existing definition’s application to non-financial institutions, the Board’s proposal goes well beyond the obvious solution of extending the application of the existing definition to non-financial institution providers of remittance transfers.

In addition to being unnecessary, the proposed definition of “business day” is unclear. Proposed Section 205.30(b) defines a “business day” as any day on which a remittance transfer provider accepts funds for sending remittance transfers, but provides no guidance regarding when a provider “accepts funds” for purposes of this definition when the sender already has an account at the institution. For example, does a provider “accept funds” when the sender provides the necessary instructions for sending the remittance transfer, such as through a telephone or internet service, even if the institution is not otherwise open for business for the purposes of execution of such instructions? We respectfully suggest that it does not, and we urge the Board to eliminate the additional, unclear definition of “business day” in favor of the existing and familiar Regulation E definition of “business day” in Section 205.2(d).

B. *The Definition of “Sender” Should Reference the Address on the Account*

Section 305.30(f) of the Proposed Rule defines a “sender” as a consumer “in a state” who requests a remittance transfer provider to send a remittance transfer to a designated recipient. However, the Proposed Rule and accompanying commentary do not describe how a remittance transfer provider should determine whether a consumer is “in a state,” particularly with respect to transactions conducted over the telephone or electronically. Nor does the Proposed Rule address whether a consumer who lives abroad but requests a remittance transfer while traveling in the U.S. is a “sender” under the Proposed Rule.

At a minimum, the Proposed Rule should permit remittance transfer providers who are processing remittance transfers from their customers’ accounts to determine a consumer’s location by reference to the primary address listed on the account. Remittance transfer providers are unlikely to be able to determine with any accuracy where customers are calling from or where electronic instructions originated, and it would be impractical and unnecessary to expect providers to undertake any significant effort to determine the location of a consumer. Accordingly, authorizing providers to make this determination based on the primary address listed on an account would give providers a clear, uniform, and easy-to-

apply method for determining whether a consumer is a “sender” under the Proposed Rule and, accordingly, whether the disclosure requirements of Proposed Section 205.31 apply.

C. *The Definition of “Designated Recipient” Should Be Limited*

The proposed definition of a “designated recipient” is overly broad in light of the consumer protection purpose of the EFTA generally and the new remittance transfer rules contained in Section 919 specifically. As discussed above, the typical remittance transfer—for which the new remittance transfer rules are most beneficial—is a low-value, consumer-to-consumer cash transfer. However, the broad scope of the proposed definition of “designated recipient” unnecessarily covers commercial (rather than consumer) recipients and transfers into an overseas account also owned by the sender. The additional protections of the Proposed Rule provide significantly less value in the context of a sender moving funds among his or her own accounts, or a sender remitting funds to a commercial entity abroad, and are outweighed by the associated compliance burden.

Although the statute similarly defines “designated recipient” broadly enough to encompass commercial recipients, the statute was intended to address a very specific perceived problem, namely that the typical remittance transfer customers—unsophisticated consumers sending funds to family members abroad—did not fully understand the fees and taxes applicable to their funds transfers and the calculation of the amounts received by the recipients. There is no indication that Congress was similarly concerned about commercial transfers, such as international payments by sophisticated consumers to foreign businesses to consummate purchases of fine art or real estate. Such an international payment to a foreign business is a distinctly different type of transaction where the funds transfer is ancillary to the underlying purchase, and the entire transaction is conducted between sophisticated parties that consider a multitude of factors in determining how to handle their international purchase transactions. Similarly, a sender who transfers funds among his or her own accounts in multiple countries is a sophisticated consumer and is not part of the population to which the statute is aimed.

We urge the Board to exercise its authority under Section 904(c) of the EFTA to exclude the sender of remittance transfer and commercial recipients from the definition of “designated recipient”, thereby restricting the Proposed Rule’s application to consumer-to-consumer transfers and bringing the Proposed Rule closer in line with the most common remittance transfer scenario.

D. *High-Value Transactions Should Be Excluded From Definition of “Remittance Transfer”*

As discussed above and as recognized by the Board, remittance transfers typically are low-value transactions, and the statute is designed to ensure that unsophisticated senders who make such low-value transfers have adequate information and other protections. Even in such cases, the Board acknowledges that the costs of compliance with the Proposed Rule outweigh the benefits with respect to very low-value transactions by excluding transactions of \$15 or less from coverage under the Proposed Rule. We urge the Board to similarly exclude high-value transactions of at least \$1,000 from the definition of “remittance transfer”

in Section 205.30(d)(2) because the benefits of providing additional protections to consumers sending significant sums is outweighed by the material costs of compliance described in this letter. While we believe the Board should exempt all such high-value transactions from the definition of a “remittance transfer,” at a minimum, such high-value transactions should be exempt where initiated from the sender’s account with the remittance transfer provider.

It is particularly appropriate for the Board to exempt wire transfers of at least \$1,000 from the requirements of the Proposed Rule (if not wire transfers altogether) because wire transfers are frequently used for transactions other than remittance transfers as the term is traditionally understood, and the compliance burden on providers of wire transfer services would significantly outweigh the consumer benefits of including wire transfers of at least \$1,000 within the scope of the Proposed Rule.

E. *Wire Transfers of Loan Proceeds Should Be Excluded From Definition of “Remittance Transfer”*

The Board’s discussion in the Supplementary Information suggests that the proposed definition of a “remittance transfer” would extend to a wire transfer of the proceeds of an extension of credit made by the provider (or an affiliate of the provider) to the sender.¹² This is an unwarranted extension of the concept of a remittance transfer well beyond what is required by the statutory language.

The nature and character of such a transaction is distinctly different from a transaction where the sender presents cash to a remittance transfer provider or funds are debited from the sender’s deposit account. Although the statute does provide that a covered “remittance transfer” is broader than an “electronic fund transfer” under the EFTA, that is because Congress wanted to cover the core remittance business, where cash is delivered for transfer without the sender have an account with the remittance transfer provider. Nothing in the statute indicates that Congress also wanted to extend the concept further to cover the delivery of the proceeds of extensions of credit in foreign countries, such as in the case of a sophisticated client who wants to draw on a secured or unsecured personal line of credit to make payments on obligations in foreign countries. If the Board wants to be clear that the use of a credit card to purchase a money transfer from a traditional remittance transfer provider is covered by the regulation, it should do so without taking this approach to an illogical extreme with respect to any transfer of loan proceeds disbursed to a designated recipient located in a foreign jurisdiction. We urge the Board to clearly exempt from coverage as a remittance transfer any disbursement of loan proceeds to a designated recipient located in a foreign jurisdiction.

F. *Securities Transactions Should Be Excluded From Definition of “Remittance Transfer”*

Section 205.3(c)(4) of Regulation E provides that a transfer of funds for purposes of purchasing or selling a security or commodity that is regulated by the SEC or the Commodity Futures Trading Commission or that is purchased or sold through a registered broker-dealer

¹² *Id.* at 29932.

or a futures commission merchant is not an “electronic fund transfer” for purposes of Regulation E.¹³ This exemption recognizes that the transfer of funds is merely incidental to an underlying, separately regulated transaction—the purchase and sale of a security or commodity—and, thus, need not be additionally regulated by the Board as an electronic fund transfer. For the same reasons, a similar exemption from the definition of a “remittance transfer” in Proposed Section 205.30(d) should be adopted for an international remittance transfer processed in connection with a purchase or sale of a security.

By way of example, UBSFS processes approximately 10,000 wire transfers per month from limited-purpose brokerage accounts that are maintained in connection with the stock option plan administration services offered by UBSFS. The only function of these accounts is to permit an employee to hold and trade stock acquired through stock options. Funds may only be transferred out of such accounts to other accounts held by the employee and, except in exceptional circumstances, may not be sent to third-party recipients. As the Proposed Rule is currently drafted, those wire transfers may be considered “remittance transfers” subject to the required disclosures. However, such transfers are merely incidental to an underlying, regulated securities sale which results in an available cash balance and, thus, fall outside the intended scope of Section 1073 of the DFA. Accordingly, these transactions should be exempt from the definition of a “remittance transfer” just as they would be exempt from the definition of an “electronic fund transfer” if they were subject to direct debit instructions.

While the securities transaction exemption from the definition of “electronic fund transfer” is statutory,¹⁴ and Section 919 of the EFTA lacks a similar statutory exemption from the definition of “remittance transfer,” nothing in Section 1073 of the DFA suggests that Congress intended to bring such remittance transfers within the scope of Section 919. Absent clear Congressional intent to cover such transactions, it would be appropriate for the Board to use its Section 904(c) authority to grant an exemption for securities transactions in Section 205.30 that parallels the exemption in Section 205.3(c)(4). Such parallel exemptions would permit registered broker-dealers such as UBSFS to take a single, consistent compliance position with respect to the treatment of the proceeds of a securities sale under both the electronic fund transfer and remittance transfer aspects of Regulation E and would not result in any additional risk to consumers.

III. Content, Form and Timing of Disclosures

A. *A Provider Should Only Be Required to Disclose an Exchange Rate Applied by the Provider*

EFTA Section 919(a)(2)(A)(iii) requires a remittance transfer provider to include in the pre-payment disclosures “any exchange rate to be used *by the remittance transfer provider* for the remittance transfer . . .” (emphasis added). While Proposed Section 205.31(b)(1)(iv) echoes the statutory reference to an exchange rate “used by the provider,” proposed comment 31(b)(1)(iv)-1 broadens the disclosure requirement by requiring that a

¹³ 12 C.F.R. § 205.3(c)(4).

¹⁴ 15 U.S.C. § 1693a(6).

provider disclose an exchange rate “[i]f the designated recipient will receive funds in a currency other than the currency in which it will be transferred” This comment appears to require a provider to disclose an exchange rate applied by another institution involved in processing a remittance transfer.

Not only is proposed comment 31(b)(1)(iv)-1 internally inconsistent with the plain language of Section 205.31(b)(1)(iv), but it is inconsistent with the plain language of the statute. Moreover, as discussed above, this requirement would impose a significant and unjustified burden on participants in an open network, where the currency in which the funds will be received and the exchange rate applied by the recipient’s institution are elements that cannot be determined with any degree of certainty by the institution that initiates the remittance transfer. Accordingly, proposed comment 31(b)(1)(iv)-1 should be deleted or revised to clarify that remittance transfer providers are only required to disclose exchange rates applied by the providers and need not disclose exchange rates that may be applied by another institution processing the remittance transfer.

B. *A Provider Should Be Permitted to Rely on a Sender’s Representation Regarding Currency*

To the extent a remittance transfer provider is required to disclose an exchange rate in connection with a remittance transfer, the provider should be expressly permitted to rely on the representations of the sender regarding the currency in which the funds will be received. As discussed above, in an open network, the institution initiating a remittance transfer is not in a position to independently determine or verify the currency in which the recipient’s account is denominated. Since the provider does not hold the recipient’s account and does not maintain a correspondent banking relationship with the recipient’s institution, the provider will not have direct access to such information. Nor would it be advisable for the provider to assume that the account is denominated in the official currency of the destination country, as many institutions permit foreign-denominated accounts. Rather, the provider is dependent upon the sender to identify the correct currency, just as the provider is dependent upon the sender to correctly identify the recipient and the recipient’s account information. For that reason, the provider should be permitted to make disclosures predicated on the representations made by the sender regarding the destination currency, and should be protected from a sender’s claim of error on the basis of the recipient receiving the funds in another currency (and, thus, the provider disclosing an incorrect exchange rate or failing to disclose the exchange rate associated with a subsequent conversion). Similarly, if the sender fails to specify a destination currency, the provider should be permitted to assume that the remittance transfer will be received in the same currency in which it is sent. Any other approach would inequitably shift the risk of the sender’s error to the provider.

C. *The Board Should Maintain Foreign Tax Information On Which Providers May Rely*

Section 205.32(c)(4) of the Proposed Rule specifies the requirements for estimating (to the extent a provider meets the requirements to estimate) the amount of taxes imposed on a remittance transfer in the recipient country that are calculated based on a percentage of the amount transferred. UBS processes wire transfers to all countries where U.S. law permits

and, as a practical matter, it will be very challenging for UBS to monitor for changes in foreign tax laws worldwide, as UBS apparently would be required to do under this section. The Proposed Rule appears to assume that remittance transfer providers have a certain base knowledge of foreign tax laws and the resources to monitor legislative developments in every country to which the provider's customers might seek to transmit funds. The practical effect of this requirement might be that UBS and other providers reduce the list of countries to which they will transmit wire transfers, at the inconvenience of, and cost to, consumers.

Accordingly, we propose that the Board, Bureau, or other appropriate federal entity establish and update a database or other source of foreign tax law information upon which remittance transfer providers may rely for purposes of complying with the disclosure requirements contained in the Proposed Rule. We believe that the federal government is in the best position to monitor this information, and a central database would ensure the most accurate, reliable and consistent estimates.

D. *Receipts For Telephone Transactions Should Be Subject To Same Foreign-Language Requirements As Receipts For Other Transactions*

Section 205.31(g)(3) of the Proposed Rule would require that, for transactions conducted entirely over the telephone, receipts are subsequently provided in both English and, if applicable, in the foreign language primarily used by the sender to conduct the transaction, regardless of whether such language is primarily used by the provider to advertise, solicit, or market remittance transfers. UBS believes this requirement is an unjustified broadening of the statutory requirement, and would ultimately lead to consumer inconvenience as providers will be driven to limit the languages in which they will converse with consumers to avoid triggering additional foreign-language disclosure requirements.

Section 919(b) of the EFTA requires only that disclosures be provided in English and in each foreign language principally used by the provider or its agents to advertise, solicit, or market the services at the same office. As mentioned above, UBS does not advertise, solicit, or market its wire transfer services in any foreign languages. Although UBS routinely conducts business with its clients in the clients' numerous native languages as a customer convenience where multilingual staff is available to assist the client, clients understand that they are dealing with an English-speaking, U.S. operation. These customers currently receive all legal disclosures regarding their accounts and transactions in English without complaint about any language barrier. There is no reason to treat remittance transfer receipts for telephone orders with these clients any differently than if they had come into a branch office: if UBS is not affirmatively marketing a foreign language-based service, it should not, as provided in the DFA, have to provide disclosures in such foreign languages. It would be extremely burdensome to require UBS to prepare receipts in all such languages, simply because it has made its best efforts to accommodate client needs and ensure that clients are properly understood. Accordingly, we ask the Board to conform the foreign-language receipt requirements for telephone transactions to the foreign-language requirements for transactions conducted through other methods.

E. *Manner and Timing of Receipts For Telephone Account Transfers Should Be Clarified*

Section 205.31(e)(2) of the Proposed Rule permits a remittance transfer provider to provide the receipt required by Proposed Section 205.31(b)(2) on or with the sender's next regularly scheduled periodic statement, or within 30 days after payment is made if a periodic statement is not required, for a transaction that is conducted entirely over the telephone and involves the transfer of funds from the sender's account with the provider. We support the Board's recognition of the administrative cost and consumer inconvenience of generating separate receipts and providing those at the time of payment, and we appreciate the flexibility provided to remittance transfer providers to include the receipt information with the sender's periodic statement. However, the variations in administrative procedures employed by remittance transfer providers may make it difficult for all providers to implement this process in a uniform manner. For example, some providers may utilize separate third-party vendors to generate and mail their periodic statements, which may make it difficult to incorporate the receipt into the statement.

For this reason, we propose that remittance transfer providers be permitted to provide such a receipt by: (i) printing it on the sender's next periodic statement; (ii) printing it on a separate page, but delivering it to the sender together with his or her next periodic statement; or (iii) printing and delivering it separately from the periodic statement, but generating and delivering it to the sender on or about the same date as the sender's next periodic statement. This flexibility would permit a remittance transfer provider to provide the required receipt in a manner that best fits its administrative procedures and acknowledges any preferences expressed by the sender regarding receipt of account-related disclosures. In addition, because a sender may request a remittance transfer too close in time to the date of the next periodic statement to permit inclusion in the statement, or different statement cut-off dates may apply for remittance transfers than for other account activity, the Proposed Rule should permit a remittance transfer provider to provide the receipt by *the later of* the next periodic statement date or 30 days after the sender pays for the remittance transfer.

F. *Registered Broker-Dealer Providers Should Be Permitted to Comply With SEC Guidance Regarding Electronic Disclosures*

Proposed comment 31(a)(2)-1 provides that, with respect to electronic requests for remittance transfers, receipts that are provided electronically must be provided in a manner that complies with the Electronic Signatures in Global and National Commerce Act ("E-SIGN Act"). However, registered broker-dealers separately follow the SEC guidance regarding the electronic delivery of disclosures and securing customer consent, which may not be entirely consistent with the E-SIGN Act requirements. Rather than require broker-dealers to re-solicit consumers regarding the electronic delivery of notices with an E-SIGN Act-compliant notice and consent process, the Proposed Rule should permit broker-dealers to rely on their existing consents and electronic disclosure practices that comply with the SEC electronic disclosure guidance. The purpose of the E-SIGN Act requirements is to ensure that consumers understand their rights to receive disclosures in writing, the technology requirements needed to receive and store those disclosures electronically, and how to modify their electronic delivery elections. Those objectives are equally satisfied through compliance

with the SEC guidance regarding electronic disclosures. Moreover, to the extent the broker-dealer's customers already are receiving disclosure electronically, the likely effect of soliciting an additional E-SIGN Act-compliant consent is increased consumer confusion and inconvenience.

Although Section 919(a)(3)(B) of the EFTA requires a remittance transfer provider to comply with the E-SIGN Act requirements when providing receipts electronically for transactions conducted electronically, the Board could determine under Section 904(c) of the EFTA that a limited exception is appropriate for registered broker-dealers with existing, SEC-compliant electronic disclosure practices. Such a limited exception would not be inconsistent with the intent of Section 919 of the EFTA or the E-SIGN Act.

IV. Error Resolution and Cancellation Rights

A. *Error Resolution For Estimates Should Be Limited To Confirming Estimation Was Accurately Displayed*

Section 205.33 of the Proposed Rule would implement new error resolution procedures for remittance transfers and establish certain error resolution remedies. Section 205.33 would, among other things, require a remittance transfer provider to investigate a sender's claim of error, and, at the sender's election, refund amounts to the sender, make additional amounts available to the designated recipient, or refund fees for an untimely delivery of a remittance transfer to the designated recipient.

These procedures and remedies are inappropriate where a provider employs estimates in providing the required disclosures. A remittance transfer provider that qualifies to provide estimates pursuant to Section 205.32 and complies with Section 205.32(c) in calculating such estimates, should not be liable to a sender for any discrepancy between the estimated amounts and actual amounts. The provider's liability for error resolution with respect to amounts that were estimated should be limited to verifying that the estimation was correctly displayed in the disclosures based on the reasonable estimation process used by the provider at the time. The provider should not have any further obligation to conduct an investigation into the ultimate value of the estimated exchange rate, fees and taxes, and/or amount received by the designated recipient, nor should the provider be required to refund any amounts to the sender or make any additional sums available to the recipient. Requiring any further action on the part of the provider would significantly limit the usefulness of the underlying exception permitting the provider to disclose estimated amounts. In addition, as a practical matter, a provider that qualifies to estimate disclosures does so because the provider is unable to determine the exact amounts to be disclosed. In such an instance, the provider would face similar practical impediments in attempting to investigate any claimed error. There is no reason to think that a provider that is unable to accurately determine in advance the conversion rate to be applied by the recipient's bank or the fees to be deducted by the recipient's bank would be able to determine such amounts after completion of the transfer.

Although the Proposed Rule attempts to provide some protection in this regard by providing an exception for estimates from the claim of error at Section 205.33(a)(iii), this protection is incomplete. For example, a sender who is confused by the difference between

estimates initially presented and the funds ultimately delivered may claim a “computational” error under Section 205.33(a)(ii), yet there is no exception for estimates in that provision. Accordingly, we ask the Board to provide more generally for an exception from the error resolution obligations of a provider with respect to amounts estimated under Section 205.32.

B. *A Sender’s Refund Remedies Should Be Limited Where Provider Acted in Good Faith*

Section 205.33 of the Proposed Rule defines an “error” to include a computation or bookkeeping error made by a remittance transfer provider relating to the remittance transfer. The Board noted in the Supplementary Information that such an error includes a circumstance where a remittance transfer provider fails to disclose all fees that will be imposed in connection with a transfer.¹⁵ Since a sender’s potential error resolution remedies include obtaining a refund of an amount appropriate to resolve an error, a provider could be liable to a sender for the amount of a fee or tax rightfully imposed by another institution if the provider failed to anticipate all such fees and taxes, even where the provider made a good faith effort to identify all such fees and taxes. This remedy would permit a sender to capitalize on the complexity of the open network system used for wire transfers (where the chances of an error likely will be higher than in the closed network used by money transmitters), resulting in a windfall for the sender.

To appropriately balance the costs and benefits of the required disclosures, and to prevent senders from obtaining essentially fee-free wire transfer services at the cost of remittance transfer providers, a remittance transfer provider that processes wire transfers should have an obligation only to use good faith efforts to determine or estimate, as appropriate, the amounts charged by other institutions with which it has no agency relationship. We propose that a remittance transfer provider should not be liable for refunding to a sender the amount of any fees or taxes that the provider was unable to identify and disclose, despite its good faith efforts.

C. *Cancellation and Refund Rights Are Unnecessary and Unduly Burdensome*

Section 205.34 of the Proposed Rule would permit a sender to cancel a remittance transfer, and receive a full refund of all amounts paid to the provider, within one business day after the sender pays for the remittance transfer, provided that the sender’s cancellation request is sufficiently specific and the funds have not been picked up by the designated recipient or deposited into the designated recipient’s account. As the Board recognized in the Supplementary Information, this cancellation and refund right is particularly problematic with respect to wire transfers, which generally cannot be cancelled once the payment order has been accepted.¹⁶ As a result, providers of wire transfers, such as UBS, may choose to wait to execute a payment order until the cancellation period has passed, virtually eliminating a customer’s ability to make same-day wire transfers.

¹⁵ 76 Fed. Reg. at 29927.

¹⁶ *Id.* at 29933.



As this cancellation and refund right is likely to have unintended consequences in the form of delaying the processing of wire transfers and inconveniencing consumers, UBS encourages the Board to reconsider this sweeping right. Section 919 merely requires the Board to issue final rules regarding “appropriate remittance transfer cancellation and refund policies for consumers.” The statute does not require the Board to mandate a minimum cancellation period. Rather, a more restrained reading of the statutory requirement is that the Board reasonably could require providers to implement and publish cancellation policies and make those policies available to senders upon request. As cancellation rights may vary by provider for numerous reasons, each provider should be permitted to impose the cancellation policy that makes sense for its business model and customer base rather than conform to a standard cancellation period. Accordingly, we urge the Board to revise Section 205.34 to eliminate any reference to a minimum cancellation period.

* * * *

Thank you for your consideration of the comments outlined above. We propose that the changes suggested above would strike the appropriate balance between improving transparency and consumer protections with respect to traditional remittance transfers and reducing the compliance burden on providers. Striking such a balance is crucial to ensuring that these services continue to be available to consumers.

If you have any questions regarding these comments, please call me at 201-352-3993.

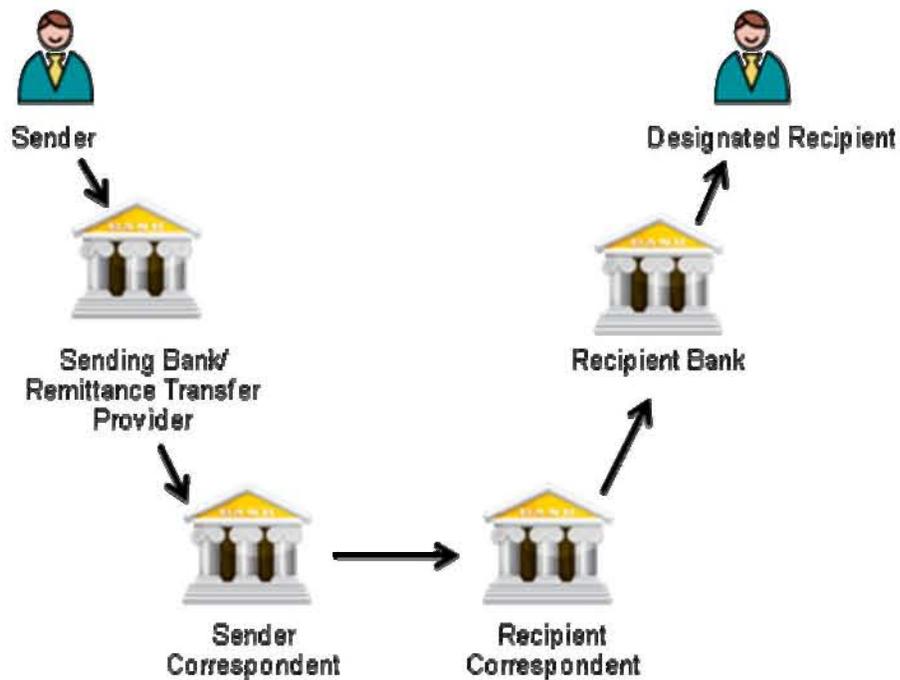
Sincerely,

Darren McSpedon
Executive Director
UBS Wealth Management Americas
Legal and Compliance Department

cc: Rachel Arnold
Director
UBS Wealth Management Americas
Legal and Compliance Department

Dave Teitelbaum
Sidley Austin LLP

Exhibit A
Typical Payment Flow



Transaction Steps

1. A customer (sender) gives instructions to UBS and UBS deducts the funds from customer's account.
2. UBS (a) sends the payment to a correspondent bank or (b) in unusual cases, converts the payment to another currency, if expressly requested by the sender and then sends.
3. The correspondent bank sends the payment to a correspondent bank of the designated recipient's institution, either directly or through one or more intermediary institutions, unless UBS and the recipient's bank have a common correspondent. Each such institution may deduct fees or taxes from the payment.
4. The recipient bank's correspondent sends the payment to the recipient's bank.
5. The recipient's bank (a) converts the payment if necessary because the designated recipient's account is denominated in a currency other than the transferred currency, and/or (b) credits the designated recipient's account, less any applicable fees and taxes.