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# SEARS HOLDINGS

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David L. Schuvie  
Vice President and General Manager

Sears Holdings Management Corporation  
3333 Beverly Road A2-375B  
Hoffman Estates, IL 60179  
(847)286-6045  
Fax (847) 286-0224  
Email [Dave.Schuvie@searshc.com](mailto:Dave.Schuvie@searshc.com)

July 22, 2011

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

Attn: Docket No. R 1419 and RIN 7100-AD76  
Comments on Proposed Regulations on Protections for Consumers Sending  
Remittance Transfers to Foreign Countries

Ladies and Gentlemen:

This letter is submitted on behalf of Sears Holdings Corporation (Sears”) in response to the Board of Governors of the Federal Reserve System (the “Board”) publishing a request for comment on proposed regulations issued in response to the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”). Based on the Board’s invitation for comments and questions posed, Sears is submitting the following comments on the proposed rules regarding international money transmittals as published in the Federal Register on May 23, 2011 (the “Proposal”).

Section 1073 of the Act added new Section 919 to the Electronic Funds Transfer Act (“EFTA”) and specifies consumer disclosures to be given prior to payment for the international money transmittal. These required pre-payment disclosures include information about the specific transfer the consumer is considering, such as the exchange rate, applicable fees and taxes, and given all that, the amount that would be received by the designated recipient. In addition, when the transaction was completed, the consumer would have to receive a receipt that includes the information on the prepayment disclosure, as well as additional information such as the date the recipient can obtain the funds, the recipient’s contact information and the transmitter’s error resolution process and a description of cancellation rights. The Proposal seeks comment on the disclosure requirements, costs and time frame for implementation as well as two alternative provisions on transmitter liability for any agent violations of the Act.

Sears Holdings Corporation is the nation's fourth largest broadline retailer with approximately 3,500 full-line and specialty retail stores in the United States and Canada. Sears Holdings is the leading home appliance retailer as well as a leader in tools, lawn and garden, consumer electronics and automotive repair and maintenance. Sears Holdings Corporation operates through its subsidiaries, including Sears, Roebuck and Co., Kmart Corporation and Lands’ End. In addition, as a convenience to its customers, Sears also

provides access to certain financial services, such as international money transmission, prepaid card purchases, electronic bill payment and check cashing at selected locations.

Sears is involved in the provision of international remittance transfer services to its customers at selected locations where it acts as the agent of a licensed money services business that actually performs the remittance transmission. As stated in the Proposal, customers typically provide basic identifying information about themselves and the recipient, and pay Sears, as agent of the money transmitter, a sufficient amount to cover the transfer amount and any fees charged by the money transmitter. The customer is then provided a confirmation code which the customer then relays to the recipient. The money transmitter sends an instruction to a specified payout location in the recipient's country where the recipient may pick up the transferred funds, often in local currency, on or after a specified date, upon presentation of the confirmation code and other identification, or in some cases, the funds will be deposited directly into a recipient's bank account.

While we believe that the Board attempted to closely track the disclosure requirements of section 1073 of the Act as written, we also note that the Proposal would allow for a combined pre-payment and receipt disclosure. To the extent that these disclosures provide consistency and uniformity to consumers in all states, Sears is in favor of providing uniform disclosures. Sears is concerned, however, that the goal of nationwide disclosure uniformity will be frustrated if states use the section 1073 requirements as a base for disclosure and add their own divergent state-specific requirements. Please note that Sears does not have independent access to the customer information at the time of the remittance transfer. Rather, as an agent, Sears must rely on the money transmitter to provide required disclosures such as the exchange rate, fees, and the amount of money the recipient will actually receive. In addition, since Sears is only a transmission agent, it cannot cancel a transaction once initiated, and must rely on the remittance transmitter to handle cancellations or error resolution.

As with most retail sales outlets that serve as agents, the only way to provide the exchange rate, fee and the amount of money the recipient will actually receive would be to provide them on a "register receipt." To do that, retailer agents would have to receive the information from the remittance transmitter, and either print a pre-payment disclosure in the middle of a sales transaction, or incorporate it with the instructions given by the consumer (such as recipient's name and contact information) and provide it prior to the time that the consumer pays for the transaction at the end of the sales transaction while still allowing the consumer to cancel the actual transmission and payment for it. There is currently no way for most point of sale systems to provide a pre-payment customized disclosure in the middle of a sales transaction prior to sale consummation. In addition, while technically conceivable to provide a combined disclosure at the end of the transaction utilizing information supplied by both the consumer and the transmitter simultaneously, there is currently no way to cancel that transaction and give the consumer a cash refund should the consumer change his or her mind. It is far more complex because under many state statutes, the money for the transmission is held in trust and does not belong to the retailer, so the retailer has no right to do refunds. In short, we believe that the consumer should contact the remittance transmitter directly to cancel the transaction and obtain any refund.

In addition, making changes to retailer point of sale systems to both receive data input from the remittance transmitter and combine it with information input at point of sale by the consumer to create a customized "combined disclosure and receipt" requires complex point

of sale programming that will be different from agent to agent, with only the more sophisticated retailers or agents having the ability to even design such programming. The lead time required for any such programming is substantial if possible at all, and the programming costs may not be justified in light of the small fees that retailers earn from doing these transactions as agent of the transmitter. This could lead to the loss of the network of retail agents upon which many remittance transmitters rely, which would be a loss of convenience and efficiency for the consumer.

The Board also requested comment on the two alternative theories of liability for agent violations of the proposed rule. Alternative "A" imposes vicarious liability on the remittance transfer provider for acts or omissions of its agent without requiring corrective action or supervision, while Alternative "B" would impose liability on the remittance transfer provider if they failed to establish and maintain written policies and procedures designed to assure compliance by the agents, including appropriate oversight, and correction of violations as appropriate.

Sears strongly supports Alternative "B" because it does not unduly and automatically punish remittance transfer providers for acts that are outside of their control and provides incentive for them to develop procedures to train and supervise agents and to correct any process errors discovered. This also provides the best opportunity for consumers to receive the benefits required by the Act through a collaborative partnership between agents and transfer providers instead of merely punishing the provider. A network of agents adequately trained and supervised can reach consumers who send remittance transfers more conveniently, effectively and efficiently as compared with providing an unintended incentive for remittance transfer providers to eliminate agents for fear of vicarious strict liability.

We appreciate the opportunity to provide these comments and remain available for further discussion.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Schuvie".

David Schuvie  
Vice President – Licensed Businesses