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Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
regs.comments@federalreserve.gov

Re: Electronic Funds Transfers – Proposed Rules Implementing Section 1073 of the Dodd-Frank Act (Docket No. R-1419)

Dear Ms. Johnson:

The Institute of International Bankers ("IIB") appreciates the opportunity to comment on the amendments to Regulation E, and the official staff commentary thereto, proposed by the Board of Governors of the Federal Reserve System (the "Board") to implement the statutory requirements set forth in Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[1] IIB member banks are headquartered outside the United States and conduct banking operations in the United States through U.S. insured depository institution subsidiaries and/or federally- or state-licensed branches and agencies. Our comments focus principally on the impact the Proposal would have on these U.S. operations, but they also address certain concerns regarding the impact the Proposal would have on our members' banking operations outside the United States.

Section 1073 adds a new Section 919 to the Electronic Fund Transfer Act (the "EFTA") prescribing new protections for consumers who send Remittance Transfers to recipients located in a foreign country. Specifically, Section 1073 requires Remittance Transfer Providers to provide Senders of Remittance Transfers certain disclosures, including information about the exchange rate applicable to a Remittance Transfer, fees and taxes imposed on the transfer and the amount of currency to be received by the Designated Recipient. In addition, Section 1073

[1] 76 Fed. Reg. 29902 (the "Proposal"). Capitalized terms used in this letter that are not otherwise defined in this letter have the meanings given in the Proposal.

provides error resolution rights for Senders and directs the Board to promulgate rules for resolving errors, recordkeeping rules and rules regarding appropriate cancellation and refund policies.

The IIB appreciates the efforts by the Board in issuing the Proposal. Our comments are directed to both the Board and the Consumer Financial Protection Bureau (the "Bureau"), which, pursuant to the transfer provisions of Title X of the Dodd-Frank Act, is responsible for the adoption of final rules under Section 1073.

Comments Regarding Aspects of the Proposal As It Applies To Foreign Banks

We have particular concerns regarding certain aspects of the Proposal as it applies to the U.S. branches and agencies of foreign banks and to foreign banks' operations outside the United States.

Application of Proposed Section 205.32 To Foreign Banks' Uninsured U.S. Branches and Agencies. Under the Proposal, the temporary exception from the disclosure requirements of proposed Section 205.31(b)(1)(iv) through (vii) which is provided in proposed Section 205.32 is limited to Remittance Transfer Providers that are either "insured depository institutions" or "insured credit unions." Proposed Section 205.32 implements the provisions of Section 1073(a)(4)(A), which specify that the term "insured depository institution" for these purposes has the meaning as defined in Section 3 of the Federal Deposit Insurance Act.[2] Thus limited to depository institutions whose deposits are insured by the Federal Deposit Insurance Corporation (the "FDIC"), the temporary exception does not apply to foreign banks' uninsured U.S. branches or agencies. However, the exception plainly applies to their "grandfathered" insured U.S. branches.[3]

There is no indication in the legislative history of Section 1073 that the exclusion of foreign banks' uninsured U.S. branches and agencies was deliberate, and we note that their exclusion is contrary to the longstanding U.S. policy of national treatment – *i.e.*, to the extent that uninsured branches and agencies provide Remittance Transfer services covered by Proposal, there is no reason why they should not likewise benefit from the temporary exception from the disclosure requirements of proposed Section 205.31(b)(1)(iv) through (vii). Regarding the former consideration, we note that, while uninsured branches and agencies typically engage in

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[2] *See also*, proposed Section 205.32(a)(3).

[3] *See* 12 U.S.C. 1813(h). "Grandfathered" branches are those whose deposits were insured by the FDIC on December 19, 1991. Eight foreign banks maintain insured branches (*see* http://www.federalreserve.gov/releases/iba/201012/bytype.htm).

wholesale banking activities, some provide wealth management services to high net worth individuals which may include Remittance Transfers (as broadly defined by the Proposal[4]). Regarding the latter consideration, we recommend that the temporary exception provided for in proposed Section 205.32 be expanded to apply as well to foreign banks' uninsured U.S. branches and agencies. We believe such action is well within the authority provided by Section 904(c) of the EFTA (15 U.S.C. 1693b(c)), as amended by Section 1073, to provide for in regulations implementing the EFTA "such adjustment and exceptions for any class of . . . remittance transfers as in the judgment of the Board are necessary or proper to effectuate the purposes of [the EFTA]."

Impact of Required Disclosures on Foreign Banks Outside the United States. As discussed below, there are serious concerns regarding the operational feasibility of the Proposal's disclosure requirements, in particular as they apply to "open network" systems. That discussion focuses on the Proposal's impact on the burdens and challenges facing Remittance Transfer Providers in the United States as a result of having to disclose information regarding the exchange rate and currency used in connection with a Remittance Transfer, as well as any fees and taxes imposed on the Remittance Transfer outside the United States. No less significant, these considerations also directly implicate foreign banks that would be involved outside the United States in processing a Remittance Transfer – we anticipate that such foreign banks would be subject to requests for such information from Remittance Transfer Providers.

Because such information is required in advance of the payment, foreign banks in many instances would be in no better position to provide it to Remittance Transfer Providers than Remittance Transfer Providers would be to otherwise obtain it. The prospect of having to develop systems and processes that would enable a foreign bank to provide such information – assuming such means are even technologically feasible – would act as a significant deterrent to the foreign bank agreeing to process U.S.-originated Remittance Transfers. The resulting decrease in channels available for effecting Remittance Transfers outside the United States likely would diminish the availability of Remittance Transfer services to consumers and increase the cost of such transfers, contrary to Congress' intent in Section 1073.[5]

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[4] As discussed below, Remittance Transfers as defined by the Proposal encompass a wide array of transactions that go far beyond the traditional understanding of what remittance transfers involve. We share the view that this narrower, traditional definition better corresponds to what Congress intended to cover in Section 1073, and we note that nothing in the legislative history of Section 1073 indicates the Congress intended that the requirements of Section 1073 apply to high net worth individuals. With specific regard to uninsured branches and agencies, we note further that federal law generally prevents foreign banks in the United States from accepting deposits in initial amounts of less than the "standard maximum insurance amount" (currently, $250,000) unless done so through a grandfathered insured branch or an FDIC-insured bank. *See* 12 U.S.C. 3105.

[5] Similar considerations arise with respect to treating as the "Agent" of the Remittance Transfer Provider a foreign bank that acts as an intermediary or correspondent bank in connection with a Remittance Transfer. Foreign banks would be no more interested in undertaking the potential liabilities resulting from such agency status than would U.S. banks. As discussed below, the final rules should confirm that the term "Agent" does not encompass Remittance Transfer Providers' relationships with intermediary and correspondent banks.

Comments Regarding Issues Raised by the Proposal That Are Common To Both Foreign Banks and U.S.-Headquartered Banking Organizations

In addition to the foregoing considerations, we note that other aspects of the Proposal raise issues that are common to both foreign banks that conduct banking operations in the United States and U.S.-headquartered banking organizations. These issues, and recommendations regarding how they may be resolved, are discussed at length in the letter submitted jointly by The Clearing House Association, L.L.C., the American Bankers Association, the Consumer Bankers Association, the Credit Union National Association, The Financial Services Roundtable, the Independent Community Bankers of America, the Mid-Size Bank Coalition of America, NACHA – The Electronic Payments Association, the National Association of Federal Credit Unions and the Securities Industry and Financial Markets Association (collectively, the "Associations"; and such letter, the "Joint Trade Association Letter").

The IIB supports the recommendations set forth in the Joint Trade Association Letter, including in particular (but not exclusively) the following:

- The need to narrowly tailor and limit the application of Section 1073's requirements to the types of traditional remittance transfer transactions contemplated by Congress, as evidenced by the legislative history of Section 1073. Accordingly, for example, funds transfer transactions initiated by high net worth individuals should not be covered by the remittance transfer rules. We agree with the Associations that the scope of transactions covered by the Proposal goes far beyond what Congress intended and will result in unintended consequences that will harm consumers.

- The incompatibility of the Proposal's requirements with open network payment systems (ACH and wire transfer systems). In this regard, we think it would be especially appropriate to exclude open network transfers from the scope of the final rules. Absent such an exclusion, we strongly urge further consultation with industry experts – prior to adoption of the final rules under Section 1073 – regarding the impact of Section 1073 on open network transfers and, based on such consultation, the development of separate, tailored rules that address the operational realities of open networks. Should this latter approach be taken, the separate rules should specify that a Remittance Transfer Provider would be required to comply with a Sender's cancellation request only if the Provider receives the request before it executes the payment instruction.

- The importance of maintaining finality of payment with respect to international wire transfers. The inapplicability of UCC Article 4A to consumer wire transfers[6] is of special

[6] *See* 76 Fed. Reg. at 29908-09.

concern, and we believe that Congress did not intend any such result under Section 1073. The Joint Trade Association Letter extensively and persuasively analyzes the interplay between UCC Article 4A and the relevant provisions of Title X of the Dodd-Frank Act and proposes a solution that we agree would, as a practical matter, resolve this question in a manner consistent with Congressional intent.

- Provide a *de minimis* exception from the definition of Remittance Transfer Provider for institutions that provide not more than 100 remittance transfers within a specified period.

- Liability for errors should not shift to the Remittance Transfer Provider if the Provider executed the Remittance Transfer correctly based on the instructions provided by the Sender.

- Confirmation that the term "Agent" does not encompass Remittance Transfer Providers' relationships with intermediary and correspondent banks.

- Where a Provider offers Remittance Transfer services in languages other than English, the final rules should permit Senders to designate the foreign language in which they prefer to receive disclosures, receipts and other materials required under Section 1073, so long as it is a language that is principally used by the Remittance Transfer Provider to advertise, solicit or market its Remittance Transfer services.

In addition, we strongly agree with the Associations that an exemption should be provided for Remittance Transfers in excess of a specified dollar threshold. We believe such an exemption is essential to the effective implementation of Section 1073. We urge the adoption of a threshold that would best mitigate the impact of Section 1073 on Remittance Transfer Providers while ensuring that Senders of traditional remittance transfers benefit from the full array of consumer protections afforded under Section 1073. The threshold proposed in the Joint Trade Association Letter would appropriately achieve this balance.

There is yet another aspect of the Proposal that should be clarified. We note that Section 3(a)(3) of the official staff commentary to Section 205.3 – Coverage – of Regulation E states:

> Regulation E applies to all persons (including branches and other offices of foreign banks located in the United States) that offer EFT services to residents of any state, including resident aliens. It covers any account located in the United States through which EFTs are offered to a resident of a state.

Consistent with the primary purpose of the EFTA – the provision of individual consumer rights[7] – this interpretation properly limits the extraterritorial application of Regulation E by excluding

[7] *See* 15 U.S.C. 1693(b).

non-resident aliens from its coverage, regardless of where they are located when initiating an electronic fund transfer. This interpretation is of particular relevance to electronic fund transfers involving high net worth individual clients of banks' wealth management operations who are non-resident aliens.

Nothing in the language or legislative history of Section 1073 suggests an intention to depart from this well-established interpretation of the applicability of the EFTA by extending the requirements of Section 1073 to remittance transfers involving non-resident aliens. However, proposed Section 205.30(f) defines the term "Sender" to mean "a consumer in a state," thereby perhaps suggesting that the location of the Sender when requesting a remittance transfer would govern regardless of whether the Sender is a non-resident alien. We recommend that Section 3(a)(3) of the official staff commentary to Section 205.3 of Regulation E be revised in connection with finalizing the rules implementing Section 1073 to clarify that the foreign applicability of Regulation E with respect to remittance transfers is the same as with respect to electronic fund transfers. Such a revision would be consistent with both the proposed revision to Section 205.3 of Regulation E to specify which subpart of the regulation applies to Remittance Transfer Providers and the provisions of Section 1073(a)(1) and (2) which amend the EFTA to reflect its expansion to include Remittance Transfers.

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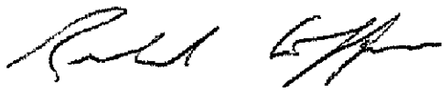
We appreciate the Board's and Bureau's consideration of our comments. Please contact the undersigned if we can provide any additional information or assistance.

Very truly yours,



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