

July 22, 2011

VIA E-MAIL

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

Attention: Regulation E; Docket No. R-1419 and RIN 7100-AD76

Re: Comments on the Notice of Proposed Rulemaking regarding Remittance Transfers

Dear Ms. Johnson:

Western Union Financial Services, Inc. ("Western Union") is pleased to submit this letter to the Board of Governors of the Federal Reserve System ("Board") (and the Consumer Financial Protection Bureau ("Bureau")) in response to the notice of proposed rulemaking regarding remittance transfers as published in the Federal Register on May 23, 2011 at 76 Fed. Reg. 29902-29962 ("NPRM" or "Proposed Rule"). Specifically, the Proposed Rule seeks to amend Regulation E, contained at 12 C.F.R. Part 205, which implements the Electronic Fund Transfer Act ("EFTA") as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

At the outset, Western Union would like to take this opportunity to commend the Board for the open, transparent, and thoughtful manner in which it conducted its outreach prior to issuing the Proposed Rule. Western Union is a leader in global money movement and payment services, providing people and businesses with fast, reliable, and convenient ways to send money and make payments around the world. The Western Union brand is globally recognized for speed, reliability, trust, and convenience. As such, Western Union is very supportive of providing disclosures that offer meaningful and useful information to consumers. We believe that our efforts to provide consumers with informative and valuable disclosures has contributed to making us a leader in this space. In light of Western Union's and the Board's shared goals, Western Union strongly agrees with the Board's decision to not propose a rule that would require the posting of model remittance transfer notices at storefront or on the Internet. In addition, Western Union strongly supports the Board's study and findings on this issue and believes that the findings demonstrate the trust and confidence that consumers currently place in remittance transfer providers ("RTPs") to send their money around the world.

Furthermore, we believe that our comments reflect our experiences with consumers and agree with the Board's study and findings demonstrating that RTP customers are savvy and well-informed consumers. The final rule should be informed and shaped by the Board's own research, studies, and reports in order to establish a consumer protection framework that provides consumers with meaningful and useful disclosures as well as the optimal customer experience when sending remittance transfers.

This letter provides Western Union's comments to the Proposed Rule and responses to certain questions raised in the NPRM, and seeks additional clarification on some areas of the Proposed Rule. Western Union appreciates the opportunity to comment on the Proposed Rule and respectfully requests that the Board consider integrating and adopting the suggestions set forth herein.

For ease of reference, the Attachment contains a table of contents for this letter.

I. MOST SIGNIFICANT COMMENTS TO NPRM

Set forth below, please find Western Union's most significant comments and concerns regarding the Proposed Rule.

A. Pre-Payment and Receipt Disclosure Requirements

1. The Proposed Rule Should Not Expand the Statutory Disclosure Requirements.

(a) *The Proposed Rule Imposes a Disclosure Requirement That is Not Expressly Required by Section 919 of EFTA.*

The NPRM would add a new disclosure that is not found in the Dodd-Frank Act amendments to EFTA. Proposed section 205.31(b)(vi) would require the disclosure of any fees and taxes imposed on the remittance transfer by unrelated third parties, regardless of whether the RTP has knowledge of the amount of such fees or taxes.

Section 919(a)(2)(i) of EFTA requires the RTP to disclose "the amount of currency that will be received by the designated recipient, using the value of the currency into which the funds will be exchanged." Some may suggest that this language requires the RTP to disclose all third party fees, known and unknown, associated with a remittance transfer.¹ We respectfully suggest a different approach.

In the United States, Western Union is currently regulated under the laws of forty-eight (48) states and four (4) U.S. territories. Among these jurisdictions, Western Union is subject to various disclosure and receipt requirements. A number of these jurisdictions require an RTP to provide a receipt which sets forth the total amount of money to be received by the designated recipient.² To our knowledge, no U.S. state has taken the position that this requirement imposes on the RTP an obligation to disclose all known and unknown third party fees and foreign taxes that may be imposed on the remittance transfer.

¹ "[T]he Board believes that the amount to be received by the designated recipient is intended to be the amount net of all fees and taxes that would affect the amount received by the designated recipient." 76 Fed. Reg. 29902, 29913 (May 23, 2011).

² See, e.g., Cal. Fin. Code § 1843; Del. Code tit. 5, § 2313(b); Haw. Rev. Stat. § 489D-20; 205 I.L.C.S. § 657/65; Tex. Fin. Code § 151.405; Tex. Fin. Code § 278.051; Rev. Code Wash. § 19.230.330(2).

Rather, states have construed such language only to require an RTP to disclose the amount of currency to be received by the designated recipient after applying the applicable exchange rate. We respectfully suggest that this precedent from the states, which is grounded in their laws and experience, be given deference. Accordingly, Western Union requests that the Board remove the requirement to disclose known and unknown third party fees and taxes.

As discussed more fully below, in some cases, RTPs would not be able to determine and would not know all of the third party taxes and fees that may apply to a remittance transfer. As a result, such information could be misleading to a consumer. At the same time, the disclosure requirement triggers various compliance obligations, including error resolution procedures, refund obligations, and liability risks. Based on the Board's study, it appears that consumers are satisfied with RTPs' existing disclosures. It appears that this disclosure requirement would impose significant regulatory compliance costs without commensurate benefits to the consumer. At a minimum, the Board should provide a clearer demonstration that the consumer protections of the Proposed Rule outweigh the compliance costs before requiring RTPs to disclose third party fees and taxes.³

(b) *RTPs Should Not Be Required to Disclose Third Party Fees that They Do Not Have Actual Knowledge Of.*

Proposed section 205.31(b)(1)(vi) requires the RTP to disclose "[a]ny fees and taxes imposed on the remittance transfer by a person other than the provider, in the currency in which the funds will be received by the designated recipient." This disclosure requirement imposes a greater obligation to disclose third party fees than the statute expressly requires. Section 919(a)(2)(A)(ii) of EFTA only requires the disclosure of "any other fees charged *by the remittance transfer provider* for the remittance transfer" (*emphasis added*).

Certain additional fees related to a remittance transfer may or may not be imposed by third parties. For example, such fees may include cash advance fees imposed by credit card issuers when a sender uses a credit card to purchase a remittance transfer online. As another example, where a prepaid card product is covered as a remittance transfer,⁴ the issuer of the prepaid card may impose certain fees and charges such that the amount of currency that the designated recipient will obtain from the prepaid card is indeterminable by the RTP. Such fees and charges may reduce the amount available to the designated recipient but are based on an agreement between the issuer of the prepaid card and the cardholder. Similarly, where the

³ See also 12 U.S.C. § 5512(b)(2)(A) ("In prescribing a rule under the Federal consumer financial laws the Bureau shall consider the potential benefits and costs to consumers and covered persons. . ."). We further note that the Board is proposing the disclosure of third party fees and taxes pursuant to its authority under section 904(a) of EFTA. 76 Fed. Reg. at 29913. The Board takes the position that the economic analysis requirements of section 904(a), which include a cost and benefits analysis and demonstration that the proposed regulation outweigh compliance costs imposed on consumers and financial institutions, are met through the section-by-section analysis, initial regulatory flexibility analysis, and Paperwork Reduction Act analysis found elsewhere in the preamble. 76 Fed. Reg. at 29906. It is unclear whether all of these and the other applicable statutory requirements, such as the consultation requirements, have been satisfied.

⁴ 76 Fed. Reg. at 29907.

designated recipient receives funds on a mobile phone, the mobile phone provider may impose charges related to the service the designated recipient has with the mobile phone provider.

Western Union requests that the Board include more examples of the types of fees contemplated by proposed section 205.31(b)(1)(vi). Specifically, the regulation should clarify that third party fees that arise from agreements the sender or receiver enters into with a third party for obtaining services offered by the third party are not meant to be covered by proposed section 205.31(b)(1)(vi).

Proposed section 205.31(b)(1)(vi) would also require traditional RTPs to disclose fees charged by financial institution intermediaries even though the RTPs have no knowledge as to the amounts of such fees or when and if such fees will be imposed on a particular remittance transfer. For example, when a sender conducts an account-to-account remittance transfer through a traditional RTP, and not a financial institution, the RTP has no knowledge of the intermediary fees imposed on the remittance transfer transaction as it travels through the correspondent bank networks to the designated recipient's account. The Board appears to recognize this in the context of international wire transfers between two account-holding financial institutions,⁵ but not necessarily in the context of a traditional RTP that offers remittance transfer products that may include, as part of the transaction, an international wire transfer. Intermediary fees are almost always unknown and undeterminable by the RTP. To the extent that a remittance transfer is subject to bank intermediary fees, traditional RTPs should not be required to disclose intermediary fees until banks have established a system to report such fees to providers.

We further note that because RTPs do not have knowledge of the fees that may be imposed on the remittance transfer by a person other than the provider, especially in the context of intermediary fees and when the sender or receiver has elected to enter into a relationship with the third party, RTPs will not know with certainty the exact amount of currency the designated recipient will receive in all cases. As a result, unless Regulation E provides greater flexibility to indicate that such amounts are anticipated amounts and may vary, our experience has been that such definite disclosures may be inaccurate for some transactions. EFTA provides, "[w]hoever knowingly and willfully gives false or inaccurate information . . . shall be fined not more than \$5,000 or imprisoned not more than one year, or both."⁶ We do not believe Congress and the Board intend such an outcome under these circumstances. We also do not believe that such a result benefits consumers. For these reasons, we urge the Board to recast the third party fee disclosure requirements to align more closely with the statutory requirements and that third party fee disclosures be limited to those "*transfer and other fees charged by the remittance transfer provider for the remittance transfer.*"

⁵ The Board notes. "[i]f the sending institution does not have a direct relationship with the intermediary or receiving institutions, it likely does not have knowledge of all fees that might be imposed on the recipient." 76 Fed. Reg. at 29903.

⁶ 15 U.S.C. § 1693n(a)(1) (EFTA § 917(a)(1)).

(c) *In Some Countries, the Designated Recipient May Receive the Remittance Transfer in a Currency Other Than the Local Currency Designated on the Receipt.*

Proposed section 205.31(b)(1)(vii) requires that the RTP disclose the amount that will be received by the designated recipient in the currency in which the funds will be received. In some countries, however, recipients of remittance transfers from the United States have the option of receiving funds in the local currency or in U.S. dollars. For example, the recipient may choose to be paid in U.S. dollars as opposed to the local currency because receiving funds in U.S. dollars is more convenient to the recipient. In addition, the recipient may choose to be paid out in currency on hand if the agent does not have a sufficient amount of local currency based on various considerations including risk analysis, fraud, or safety concerns.

Similarly, Western Union provides senders with the option of changing the designated country (and thus also, in some cases, the local currency) where the recipient can obtain the funds from the remittance transfer. This option is useful, for example, to customers who send money to designated recipients who travel. A parent may send a remittance transfer to a student who is traveling throughout Europe. The parent may initially request that the remittance transfer be sent to the United Kingdom, but the student who is traveling eventually needs to receive the remittance transfer in France. The parent can contact Western Union and change the country where the recipient will obtain the funds.

Western Union offers these options in order to provide our customers with high standards of customer service, convenience, and choice. We request the Board to clarify that these service options, which benefit consumers, are consistent with the requirements of section 919 of EFTA and the applicable provisions of Regulation E. In connection with the disclosure requirements, we believe the Board has sufficient statutory authority pursuant to the "as applicable" language in section 919(a)(2) of EFTA. Generally, the Board has discretion pursuant to the rulemaking authority under section 904(c) of EFTA. Further, the Consumer Financial Protection Act encourages the Bureau to consider the costs and benefits to consumers.⁷ Please also see Section I.B.2(c) of our comment letter for our related comments under the error resolution provisions.

2. The Estimates Provision Should Be Expanded and Clarified.

(a) *Additional Basis for Estimating Foreign Exchange Rates.*

In order to avail itself of the exemption under proposed section 205.32(b), an RTP must use one of the listed approaches in proposed section 205.32(c)(1) to estimate the exchange rate or estimate the exchange rate based on another approach "so long as the designated recipient receives the same, or a greater amount, of currency that it would have received had the estimate been based on a listed approach."⁸ For non-ACH transactions, the Proposed Rule permits an

⁷ See 12 U.S.C. § 5512(b)(2)(A).

⁸ We note that the applicability of this exception is unclear. The amount of currency the designated recipient receives is a result of the actual transaction and is independent of the estimate. Further, exchange rates fluctuate up

RTP to base the estimated exchange rate on the most recent publicly available wholesale exchange rate or the most recent exchange rate offered by the person making funds available directly to the designated recipient. The Board anticipates that the latter option would likely be used by RTPs for currencies that are not listed by a U.S. news service.

Western Union obtains foreign exchange rate information from the foreign exchange dealers with whom we conduct transactions. Currently, we provide our customers with estimates of foreign exchange rates based on the rates available to us and the rates in the marketplace. Because the foreign exchange rates available in the wholesale interbank foreign exchange market are not available to consumers, we believe that basing an estimate on such rates may be misleading to consumers.⁹ For this reason, we recommend that the Board include as an additional basis of providing exchange rate estimates "*a foreign exchange rate based on the most recent foreign exchange rate provided by the RTP to a remittance transfer receiver in the applicable country.*"

(b) *Clarification of Exemption for Authorized Dealer in Local Currency.*

In some countries with thinly-traded currencies, only an authorized dealer in local currency can set the exchange rate, and the exchange rate is set by the local dealer when the remittance transfer is received in the country. Unlike the examples in proposed comment 32(b)(1), the government of the recipient country does not set the exchange rate. Rather, the government's rules and regulations applicable to the transaction result in the authorized dealer setting the exchange rate when the remittance transfer is received. This scenario is subtly different from the examples provided, and we request clarification that this scenario would be covered under the exemption in proposed section 205.32(b)(1).

3. RTPs Should Be Given a Grace Period to Implement System Changes When a Third Party Imposes New Fees or Taxes on Remittance Transfers.

Proposed sections 205.31(b)(1)(ii) and (b)(1)(vi) generally require an RTP to disclose any fees or taxes imposed on the remittance transfer by the RTP in the currency in which the funds will be transferred or by a person other than the RTP in the currency in which the funds will be received by the designated recipient. Western Union and other RTPs will need time to implement system changes when a third party imposes new fees or taxes on remittance transfer transactions, particularly where the fees or taxes are immediately effective or effective in a short time period.

For example, the Central Bank of Haiti ("Central Bank") announced on May 20, 2011 that it was planning to impose a \$1.50 per transaction fee on all inbound and outbound

and down. It is impractical to use an approach that would, for example, always provide an exchange rate estimate that is more favorable to the consumer than an estimate based on the most recent wholesale exchange rate.

⁹ Further, we note that it is unclear what "most recent publicly available wholesale exchange rate" means in proposed section 205.32(c)(1)(ii). The proposed comment notes that the term means the rate available from a U.S. news service. It is unclear whether the proposed regulation intended to refer to the rate published in the most recent publication or to the rates that fluctuate online throughout the day.

remittance transfers beginning on June 1, 2011. Currently, under the Proposed Rule, RTPs would be expected to disclose the Central Bank's transaction fee on pre-payment disclosures and receipts (or combined disclosures) with only eleven (11) days to implement system changes necessary to make such disclosures. However, Western Union estimates that it would take several months to properly implement such system changes.

Another example is the Oklahoma fee imposed on remittance transfer transactions by the Oklahoma Drug Money Laundering and Wire Transmitter Act, which was enacted on June 2, 2009 and effective on July 1, 2009. More importantly, the regulations that implemented the fee were not effective until July 11, 2009 which created a situation where RTPs were collecting the fee beginning on the effective date while they continued to obtain formal clarification from the state on a variety of issues, including what services were covered by the statute. Irrespective of the final disclosure requirements relating to third party charges, Western Union urges the Board to adopt a grace period provision that would provide RTPs with a reasonable time to implement system changes to disclose new fees or taxes imposed by third parties to avoid a violation of the disclosure requirements under proposed sections 205.31(b)(1)(ii) and (b)(1)(vi) (or other final requirements) and liability under the error resolution provisions.¹⁰

B. Error Resolution and Cancellation Process

1. RTPs Should Be Permitted to Require Consumers to Assert Errors Directly to the RTP.

Proposed comment 33(b)-5 states that a notice of error from a sender received by an RTP's agent is deemed to be received by the provider for purposes of the 180-day time frame for reporting errors. In the NPRM, the Board notes that it believes it is appropriate to treat notices of error given to the agent as notice to the provider because in most cases, it will be the agent with which the sender has the direct relationship, and not the provider.¹¹

Western Union believes that implementing an error reporting process through its agents would be unworkable and that such a requirement would be likely to result in significant frustration for consumers and agents and significant liability for RTPs. Currently, U.S. consumers are advised to contact us directly with questions so that trained customer service staff can investigate and resolve the issue within our guidelines for error resolution. Our U.S. agents have limited history or experience in resolving errors and are not compensated to handle this process today. Under the Proposed Rule, agent locations in the United States would be required to report errors that cannot be resolved at the point of sale directly to Western Union in order for us to track receipt of the report and to determine whether the error triggers the Proposed Rule's error resolution remedies and time frames. Trained Western Union customer service staff would

¹⁰ See 12 C.F.R. Proposed § 205.33(a)(1)(iii) ("[T]he term 'error' means . . . [t]he failure to make available to a designated recipient the amount of currency stated in the disclosure provided to the sender [on the receipt or combined disclosure].").

¹¹ 76 Fed. Reg. at 29929.

then be required to contact the sender at a later time to obtain the relevant information for purposes of investigating the error.

This reporting process is not the most reliable or efficient means for resolving and investigating errors and does not create the optimal customer experience. This two-step error reporting process will be extremely frustrating to consumers. Western Union believes that requiring consumers to directly contact the trained customer services staff of RTPs to assert errors will create a more streamlined and reliable process, which will translate into a better consumer experience. For these reasons, Western Union requests that the final rule permit an RTP to require consumers to assert errors directly to the RTPs and not through agents.

2. Exclusions from the "Error" Definition Should Be Expanded.

(a) *The "Error" Definition Should Permit an RTP to Delay Transactions in Accordance with its Terms and Conditions.*

Proposed section 205.33(a)(1) defines the term "error" for purposes of the error resolution provisions and proposed section 205.33(a)(2) lists the types of transfers or inquiries that do not constitute errors. Subject to two exceptions, proposed section 205.33(a)(i)(iv) treats as an error, an RTP's failure to make funds in connection with a remittance transfer available to the designated recipient by the date of availability stated on the receipt (or combined disclosure), including if a recipient agent or institution retains the transferred funds after the stated date of availability, rather than making the funds available to the designated recipient. Western Union commends the Board for providing the exceptions to the definition of error in proposed section 205.33(a)(i)(iv), which Western Union believes are both reasonable and important exceptions.

However, Western Union believes that the exceptions do not completely address the range of circumstances when an RTP may delay a transaction. For example, we may currently delay pay-out of a transaction in the following instances:

- *When Required By Law.* We may delay a transaction to comply with Federal, state, or local laws, rules, and other applicable legal requirements. For example, when the law of the sending or receiving country prohibits us from promptly remitting funds (e.g., Office of Foreign Assets Control ("OFAC"), etc.), we delay or decline payment. Because of common names, we often receive false matches to the OFAC list on U.S. originated transactions. Western Union works to resolve these issues by requesting additional information from the sender (e.g., date of birth, passport number, etc.). In some cases where the consumer sends us additional information and we cannot resolve the issue, we send the information we receive to OFAC and request OFAC to clear the transaction or advise us to hold the funds. In other cases, the consumer simply will not respond to our requests. We will wait a certain period of time, and if we do not get a response, then often, we will block the funds due to the age of the item. In both cases, our processes and procedures may interfere with our ability to make funds available by the estimated delivery date. Western Union also notes that

funds that are the subject of a positive OFAC hit may be forwarded to the U.S. government preventing our ability to refund these funds upon an assertion of error. Other countries have similar lists and clearing processes that we use to filter all applicable transactions.

- *When We Do Not Do Business With a Particular Person For Required Institutional Risk Control.* Western Union reserves the right to not do business with a consumer for required institutional risk control in order to protect the best interests of Western Union and consumers. For example, at the request of state attorney general offices or persons acting in a fiduciary or representative capacity on behalf of the consumer, Western Union may decline transactions from consumers who have demonstrated a tendency to being fraud victims. In addition, if Western Union finds patterns of fraud, we may make independent decisions to block certain consumers from using Western Union to send money.
- *To Prevent Actual or Potential Fraud.* If we believe that we can protect against or prevent actual or potential fraud, unauthorized transactions, claims or liability, we will delay a transaction until we can adequately mitigate the risk that the transaction may be fraudulent or unauthorized.
- *When There is a High Dollar Transfer.* Western Union aggregates transactions of high dollar users, and at certain thresholds, Western Union will hold the transaction pending a personal interview with the user to ascertain the reason for the transfer and to determine if we need to file a Suspicious Activity Report (SAR) or Currency Transaction Report (CTR) under the Bank Secrecy Act and its implementing regulations (collectively, the "BSA").
- *When We are Cooperating with an Investigation or in Response to Regulatory Authorities.* We may delay a transaction to comply with a properly authorized civil, criminal, or regulatory investigation, subpoena, or summons by Federal, state, or local authorities. In addition, we may delay a transaction in connection with responding to government regulatory authorities having jurisdiction over us for examination, compliance, or other purposes as authorized by law.
- *When Required By Our BSA and Anti-Money Laundering Programs.* We are continually enhancing our BSA and anti-money laundering ("AML") programs to address emerging AML risks in certain areas of the United States. As part of this effort, our BSA and AML programs may mandate that certain transactions be declined or delayed even where such action may not be mandated by any specific law.

Accordingly, Western Union urges the Board to provide an exception or clarification that would exclude situations where a transaction is delayed resulting in funds not being available to the designated recipient by the date of availability stated on the receipt (or combined disclosure) when the transaction delay falls into the above categories and when such possibility is disclosed in the RTP's terms and conditions.

(b) *The "Error" Definition Should Provide Flexibility with Respect to Disclosing Third Party Fees Under Certain Circumstances.*

Proposed section 205.33(a)(1)(iii) defines "error" to include the failure to make available to a designated recipient the amount of currency stated in the written receipt or combined disclosure (unless estimated in accordance with the Proposed Rule). As discussed above in Section I.A.1(b) of our comment letter, certain third party fees related to a remittance transfer, such as bank intermediary fees, or the method or form of payment used to send or receive a remittance transfer, such as fees imposed by credit card issuers, prepaid card issuers, or mobile phone providers (*e.g.*, fees that arise because of arrangements between a sender and a third party), may not be within the control of the RTP and consequently are undeterminable and unknown fees that the RTP is incapable of disclosing or estimating when the transaction is initiated and purchased. In addition, as discussed above in Section I.A.3 of our comment letter, at times, fees or taxes may be imposed by states or sovereign governments on short notice, and RTPs will not be able to implement system changes for their disclosures to accurately reflect these newly imposed charges. Western Union believes that the failure to disclose third party charges under these circumstances could result in potential liability under the resolution provisions and urges the Board to create more flexible disclosure requirements relating to third party charges and/or to accordingly tailor the definition of "error" significantly to address such circumstances.

(c) *The "Error" Definition Should Contemplate that Recipients May Receive the Remittance Transfer in a Currency Other Than the Local Currency Designated on the Receipt.*

The Proposed Rule defines an "error" to include (i) the failure to make available to a designated recipient the amount of currency stated in the written receipt or combined disclosure (unless estimated in accordance with the Proposed Rule) and (ii) the failure to make funds available to a designated recipient by the date of availability stated in the written receipt or combined disclosure (unless certain exceptions apply).¹² This definition does not address the following two situations: (i) when recipients elect payment in a currency other than the local currency including when the election is due to a recipient traveling and requesting to pick-up a remittance transfer in a different country than the one disclosed on the written receipt (or combined disclosure); or (ii) when agents pay out in currency on hand if they do not have a sufficient amount of local currency based on various considerations including consumer choice, risk analysis, fraud, or safety concerns. It is impossible for Western Union to anticipate either

¹² 12 C.F.R. Proposed §§ 205.33(a)(1)(iii) and (iv).

situation when providing the sender with disclosures. Therefore, Western Union requests that the Board expressly clarify that an error cannot be asserted under the foregoing situations.

(d) *The Error Exclusion for Circumstances Outside the RTP's Control Should Be More Broadly Interpreted.*

Proposed section 205.33(a)(1)(iv) generally treats as an error an RTP's failure to make funds available to a designated recipient by the date of availability stated on the receipt (or combined disclosure), but excludes situations where the failure resulted from circumstances outside the RTP's control.¹³ The exception is limited to circumstances that are generally referred to under contract law as force majeure, or uncontrollable or extraordinary circumstances that cannot be reasonably anticipated by the RTP and that prevent the provider from delivering a remittance transfer, such as war, civil unrest, or natural disaster.¹⁴ Western Union believes that this exception should be more broadly interpreted to generally exclude errors caused by acts of a third party beyond an RTP's control. In response to the Board's request, we believe that the following additional examples should be included in the final rule to illustrate the exception: (i) when funds are not available to a designated recipient's account due to errors on the part of the recipient's bank; (ii) when funds are not available because the recipient's bank, a mobile network operator or "wallet" provider, or a third party (not only a governmental entity) intercepts the transfer in accordance with applicable law; and (iii) when funds are not available due to a bank failure.

3. RTPs with a Comprehensive Fraud Prevention Program Should Not Be Responsible for Fraudulent Pick-ups Under the Error Resolution Provisions.

An error under proposed section 205.33(a)(1)(iv) includes a circumstance in which a person other than the person identified by the sender as the designated recipient of the transfer fraudulently picks up a remittance transfer in the foreign country. This proposal does not contemplate either of the following two situations: (i) where a fraudulent pick-up occurs even though the pick-up location diligently complied with the RTP's fraud and risk management policies and procedures; or (ii) where the sender may have been negligent with the money transfer control number ("MTCN") or other information necessary to pick-up the funds.

In the NPRM, the Board notes that the proposed approach with respect to the fraudulent pick-up of a remittance transfer is consistent with the scope of unauthorized electronic fund transfers initiated through fraudulent means.¹⁵ However, the proposed approach does not take into consideration the fact that RTPs do not necessarily have account-based relationships with consumers, so preventing fraud is significantly more complex for entities like Western Union. RTPs currently invest a substantial amount of money, time, and resources into fraud prevention, but fraudulent pick-ups continue to be an issue because, in part, many countries,

¹³ 12 C.F.R. Proposed § 205.33(a)(1)(iv)(A).

¹⁴ Proposed Comment 33(a)-5; 76 Fed. Reg. at 29928.

¹⁵ 76 Fed. Reg. at 29928.

including the United States, do not issue a national identification card and fake IDs are readily available in many countries.

In light of such issues, Western Union requests that the Board reconsider its proposed approach relating to fraudulent pick-ups under the error resolution provisions. Western Union proposes that RTPs with a comprehensive fraud prevention program should not be responsible for fraudulent pick-ups under the error resolution provisions. The required elements of a comprehensive fraud prevention program could include: (i) providing consumers with awareness and education materials that send consumers a clear message about the fraud risks associated with remittance transfer services; (ii) providing fraud prevention and awareness training for new agents and refresher training for existing agents; (iii) electronically sending banner messages and newsletters to agents to provide up-to-date alerts on specific scams that may be taking place; (iv) providing incentives to front line associates at agent locations to detect and prevent fraud; (v) providing a toll-free number that consumers and agents can call to report fraud and to stop transactions that appear to be fraudulent; and (vi) actively participating with government, consumer advocacy groups, and industry members in developing partnerships to drive awareness and education to consumers and building alliances to help prevent consumer fraud.

In addition, Western Union believes that the Board should impose certain obligations on senders with respect to remittance transfers that are comparable to the existing provisions of EFTA and Regulation E that impose certain obligations on consumers in connection with unauthorized electronic fund transfers.¹⁶ For example, a sender should be required to inform the RTP if the sender lost or misplaced the receipt (or combined disclosure) or communicated the MTCN to a person other than the designated recipient.

4. RTPs Should Not Be Required to Refund the Total Amount of Transfer Fees Upon a Valid Cancellation Request.

Proposed section 205.34(b) requires an RTP to refund, at no additional cost to the sender, the total amount of funds tendered in connection with the requested transfer, including any fees imposed in connection with the requested transfer. RTPs expend time and money initiating and processing transactions and incur additional costs associated with initiating a cancellation and issuing a refund which is why many RTPs currently do not refund transfer fees upon a cancellation request. For example, once a remittance transfer is booked at an agent location, we are obligated to pay our agent its portion of the transfer fees for the transaction. Similarly, we pay our agents to process cancellation requests. We settle payments with our agents on a daily basis, so if a sender cancelled a transaction after settlement (*i.e.*, the next day), we will be required to negotiate the return of such fees from the agent or bear the total loss of the fees. Western Union believes that RTPs should not be required to refund the total amount of transfer fees upon a valid cancellation request in order to offset the costs associated with initiating a cancellation and issuing a refund. This approach is consistent with a bank's ability to

¹⁶ See 15 U.S.C. § 1693g (EFTA § 909); 12 C.F.R. § 205.6.

charge fees in connection with a stop payment order on a check to cover the bank's costs associated with having to stop payment and cancel the check.

5. The Request to Refund Third Party Fees Due to an Error or Cancellation Request Could Be Impermissible Under Local Law and Unreasonably Punitive for RTPs.

Proposed section 205.33(c)(2) may require an RTP to refund third party fees to remedy an error and proposed section 205.34(b) requires an RTP to refund, upon a valid cancellation request and at no additional cost to the sender, the total amount of funds tendered in connection with the requested transfer, including any fees imposed in connection with the requested transfer. Proposed comment 34(b)-2 further clarifies that all fees must be refunded upon a sender's valid cancellation request regardless of whether the RTP or a third party, such as an intermediary institution, imposed the fee.

We note that RTPs may not be permitted to refund certain third party fees under local law. For example, at least one U.S. jurisdiction, Oklahoma, requires RTPs to impose a fee on all remittance transfer transactions and to submit such fees quarterly to the Oklahoma Tax Commission.¹⁷ The regulations that implement this fee do not expressly allow RTPs to refund the fee if a consumer cancels a transfer.¹⁸ In the United States, we may be able to seek clarity from states, such as Oklahoma, on a case-by-case basis regarding the permissibility of issuing refunds (and a subsequent decrease in the amount we may be required to remit to the state, such as Oklahoma). We note, however, that our ability to seek such guidance may be limited to U.S. jurisdictions and potentially unavailable from other jurisdictions, like Haiti, which currently imposes fees on remittance transfer transactions as further discussed above in Section I.A.3 of our comment letter. Although guidance may be obtained from certain authorities, Western Union believes that we will not always receive a response in time to start to comply with the Proposed Rule's cancellation and refund requirements, particularly because such fees are imposed on short notice, *e.g.*, Haiti and Oklahoma fees discussed above in Section I.A.3 of our comment letter. For these reasons and subject to the limitations described in Section I.B.4 above, Western Union suggests that the final rule should only require the refund of fees or taxes to the extent permitted by applicable law.

In addition, Western Union is concerned that requiring RTPs to refund third party fees to remedy an error or upon a valid cancellation request could create a stunningly punitive result when such fees are not recoverable by the RTP. For example, if the RTP is required to refund third party fees charged by credit card or prepaid card issuers or mobile phone providers in connection with a remittance transfer, the RTP would bear the loss and have to refund such fees out of pocket. This result seems unreasonable and punitive in nature for allowing consumers the freedom to choose from various payments methods (*e.g.*, through bank accounts, credit or debit cards, etc.), particularly because the requirement to disclose third party fees is not expressly mandated by statute.

¹⁷ See Drug Money Laundering and Wire Transmitter Act, 63 Okl. St. §§ 2-503.1a-2-503.1i.

¹⁸ See Okla. Adm. Code §§ 710:95-15-1-710:95-15-6.

6. The Board Should Clarify That Complying with the Error Resolution Procedures Constitutes the Sole and Exclusive Remedy Available to the Sender in connection with Errors Related to Remittance Transfers.

A sender may assert an error based on the disclosure requirements of proposed section 205.31(b)(1). As proposed, an error includes, but is not limited to, failure to disclose a tax or fee that an RTP was unaware of, failure to make funds available by the date required to be disclosed, and a fraudulent pick-up of a remittance transfer. Under the Proposed Rule, such regulatory requirements may subject an RTP to additional civil liability risks under section 916 of EFTA.

These civil liability provisions were more appropriate under EFTA prior to the amendment made by the Dodd-Frank Act. There are, however, substantial differences between the types of consumer protections and customer relationships governed by EFTA prior to the Dodd-Frank Act amendments and those consumer protections and customer relationships contemplated for RTPs. Historically, EFTA has protected consumers from unauthorized electronic fund transfers from a consumer asset account and has required various disclosures including any charges for electronic fund transfers.¹⁹ The applicable disclosures typically have been made in comprehensive customer agreements and periodic statements. EFTA has also imposed important responsibilities on consumers, such as requiring the consumer to review periodic statements for unauthorized electronic fund transfers and to report such transfers.²⁰

The Dodd-Frank Act and the Proposed Rule establish a much different type of regulatory framework for RTPs. The Proposed Rule requires RTPs to make certain disclosures that may not be accurate and limits the amount of information an RTP can provide in order to qualify such disclosures. Rather than creating clear and conspicuous disclosures, these requirements may cause consumer confusion. Further, unlike EFTA, the Proposed Rule shifts almost all of the burdens associated with errors to the provider (*e.g.*, the RTPs).

As you know, EFTA provides an exemption from civil liability for any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board. . . .²¹ We urge the Board to clarify that compliance with certain parts of the Proposed Rule provide the necessary protection for RTPs from further liability. Further, given that the disclosure and error requirements of Section 919 of EFTA and the Proposed Rule are more prescriptive than the requirements of Regulation E, and in light of the possible risks of civil liability discussed above, the Board should clarify that complying with the error resolution procedures of proposed section 205.33 constitutes the sole and exclusive remedy available to senders in connection with errors related to remittance transfers (unless the errors were the result of knowing or willful violations by the RTP).

¹⁹ 15 U.S.C. §§ 1693a, 1693f (EFTA §§ 903, 908).

²⁰ See 15 U.S.C. § 1693g (EFTA § 909); see also *Kruser v. Bank of Am.*, 230 Cal. App. 3d 741, 750 (Cal. App. 5th Dist. 1991) ("Consumers must play an active and responsible role in protecting against losses which might result from unauthorized transfers.").

²¹ 15 U.S.C. § 1693m(d)(1) (EFTA § 916(d)(1)).

C. Vicarious Liability for Acts of Agents

1. Western Union Strongly Supports the Implementation of Alternative B in the Final Rule.

In the NPRM, the Board proposes two alternatives to implement section 919(f) of EFTA with respect to acts of agents. Under Alternative A, an RTP would be strictly liable for violations by an agent when such agent acts for the RTP.²² Under Alternative B, an RTP would not be liable under EFTA for violations by an agent acting for the RTP where the RTP establishes and maintains policies and procedures for agent compliance, including appropriate oversight measures, and the RTP corrects any violation, to the extent appropriate.²³ The Board solicits comment on both alternatives.²⁴

Western Union strongly believes that Alternative B is likely to yield the best results for consumers and industry. Because Alternative A may exculpate an agent from responsibility for its own conduct, even when an RTP trains and monitors such agent, Alternative A may have the unintended consequence of incenting inappropriate agent behavior. Alternative B offers a more balanced approach. Much like the BSA, Alternative B recognizes that RTPs and agents each have an important role to play in protecting consumers. Alternative B incents RTPs to train, monitor, and audit the compliance posture of its agents. It also recognizes that RTPs who perform these obligations should not face administrative or civil liability for the unauthorized conduct of a rogue agent employee. For companies like Western Union which have invested heavily in comprehensive agent oversight and compliance programs, this differentiation is critical. Accordingly, Western Union strongly supports the implementation of Alternative B in the final rule and applauds the Board for its inclusion in the Proposed Rule.

D. Foreign Language Disclosure Requirements

1. The Foreign Language Disclosure Requirements Contemplated by the Proposed Rule May Have the Unintended Consequence of Limiting Financial Access Because RTPs May Choose to Limit Marketing and Service Languages.

Proposed section 205.31(g)(1) contains the general requirements for foreign language disclosures and provides that written and electronic disclosures must be provided in English and either: (i) in each foreign language that the RTP principally uses to advertise, solicit, or market remittance transfer services at that office; or (ii) if applicable, in the foreign language primarily used by the sender with the RTP to conduct the transaction (or to assert an error), provided that such foreign language is principally used by the RTP to advertise, solicit, or market remittance transfer services at that office. We appreciate the clarity the Board has added to this requirement.

²² 12 C.F.R. Proposed § 205.35.

²³ 12 C.F.R. Proposed § 205.35.

²⁴ 76 Fed. Reg. at 29934.

In addition, proposed section 205.31(g)(3) would require RTPs to provide written receipts for transactions conducted entirely by telephone in English and, if applicable, in the foreign language primarily used by the sender with the RTP to conduct the transaction, regardless of whether such foreign language is primarily used by the RTP to advertise, solicit, or market remittance transfers. Alternatively, the Board notes that it could apply the general rule proposed in section 205.31(g)(1) to the written receipt provided for transactions conducted entirely by telephone, which would mean that an RTP would not be obligated to provide the written receipt in a foreign language, even if such foreign language was used to conduct the telephone transaction, unless the foreign language was principally used to advertise, solicit, or market remittance transfers during the telephone call.²⁵ In the NPRM, the Board indicates that during its outreach with industry, RTPs generally stated that providing written disclosures in a foreign language can be more costly and burdensome than providing oral disclosures in a foreign language.²⁶ As a result, the Board requests comment on whether proposed section 205.31(g)(3) might have the unintended consequence of reducing the number of foreign languages RTPs may offer for telephone transactions.

Western Union believes that proposed section 205.31(g)(3) may have the unintended consequence of reducing the number of foreign languages RTPs use for telephone transactions possibly resulting in consumers having less access to financial services. Western Union currently conducts remittance transfer transactions by telephone in fifteen (15) to twenty (20) foreign languages even though only less than 1% of telephone transactions are conducted in a language other than English or Spanish. Western Union offers telephone transactions in languages other than English and Spanish solely as a convenience and benefit to its customers. In order to comply with proposed section 205.31(g)(3), Western Union may reduce the number of foreign languages it offers for remittance transfer transactions by telephone to only English and Spanish because it would not make economic sense to expend the money, time, and resources necessary to provide written receipts in all fifteen (15) to twenty (20) languages in comparison to the volume of telephone transactions conducted in these foreign languages. Cost and expense analysis may dictate the reduction of foreign languages offered for telephone transactions to English and Spanish. We note that similar concerns apply to transactions conducted at the point of sale.

In the NPRM, the Board states that because the pre-payment disclosure will be provided orally in the language primarily used by the sender with the RTP to conduct the transaction, it believes that the same language should be used in the written receipt provided to the sender for consistency.²⁷ In Western Union's experience, most consumers can understand written English although they may prefer to conduct a transaction orally in their native language for the fluency, ease, and speed at which the transaction may be conducted when speaking in one's native language. In light of our experience, we believe that the consumer benefits of offering a variety of foreign languages for telephone transactions greatly outweigh the benefits of offering consumers a foreign language written receipt for the sake of consistency.

²⁵ 76 Fed. Reg. at 29920.

²⁶ 76 Fed. Reg. at 29920.

²⁷ 76 Fed. Reg. at 29920.

For the reasons discussed above and because proposed section 205.31(g)(3) is not statutorily mandated by section 919 of EFTA, Western Union strongly urges the Board to apply the general rule proposed in section 205.31(g)(1) to the written receipt provided for transactions conducted entirely by telephone.

2. Foreign Language Disclosure Requirements Should Not Be Triggered by General Marketing Activities.

Under section 919(h) of EFTA and proposed section 205.31(g)(1), the requirement that an RTP provide a foreign language disclosure is based on whether the foreign language is principally used to advertise, solicit, or market "at that office." Proposed comment 31(g)(1)-3 provides that an office includes any physical location, telephone number, or website of an RTP where remittance transfer services are offered to consumers and includes locations that do not exclusively offer remittance transfer services, *e.g.*, if an agent of an RTP is located in a grocery store, the grocery store is considered an office for purposes of proposed section 205.31(g)(1). Western Union is concerned that general marketing activities may unintentionally trigger the foreign language disclosure requirements. For example, Western Union believes that it is currently unclear whether the following situations would impose foreign language disclosure requirements.

- An RTP provides a website that offers online remittance transfer services to U.S. consumers and international consumers. The RTP's website requires consumers to select their country location to access the RTP's services and the website would reload in the applicable country's language. For example, our website permits a consumer in Germany to conduct a remittance transfer online through our website by choosing Germany from a drop down menu. Our website would then load in German. However, U.S. consumers conduct remittance transfers online through our website by choosing the United States from the drop down menu. Our website would then load in English or Spanish depending upon the consumer's election. We request that the Board clarify that under such circumstances the RTP is only deemed to be marketing in English and Spanish for purposes of the foreign language disclosure requirements.
- An RTP runs an advertisement in Korean in a Korean newspaper that is sold or circulated in or near an agent location, *e.g.*, at a newspaper dispenser outside of an agent location or at a grocery store that contains an agent location, but the agent location itself does not market, solicit, or advertise in Korean.
- An RTP conducts general marketing efforts involving community affairs in a Vietnamese neighborhood where several agent locations are present. The general marketing events contain informational brochures in Vietnamese and the RTP's representatives speak to consumers in Vietnamese when

explaining the RTP's services. However, none of the agent locations in the neighborhood market, solicit, or advertise in Vietnamese.

- An RTP runs a radio advertisement in Mandarin on a Chinese radio station and an agent location is playing the same radio station in its store. However, the agent location does not market, solicit, or advertise in Mandarin or Chinese.

Western Union requests that the Board expressly clarify that the foreign language disclosure requirements would not be triggered by general marketing activities and urges the Board to include specific examples in the final Official Staff Interpretations to illustrate the types of general marketing activities that would not trigger the foreign language disclosure requirements, including the examples listed above.

E. Coverage

1. The Proposed Rule Should Only Cover Remittance Transfers Sent for Personal, Family, or Household Purposes and Not for Business Purposes.

Under the Proposed Rule, the definition of "sender" is "a consumer in a state who requests an RTP to send a remittance transfer to a designated recipient."²⁸ Regulation E currently defines "consumer" as a "natural person,"²⁹ and the NPRM does not expand on the definition or add a new definition. The current definition of "consumer" is intended to leverage off of the definition of "account" (and its qualification of personal, family, or household purposes) in determining Regulation E and EFTA applicability.³⁰ However, unlike the current provisions of Regulation E, the applicability of the Proposed Rule is not dependent upon the consumer holding an "account" with an institution.³¹ Accordingly, whenever an individual is a sender, it appears that the Proposed Rule applies regardless of whether the individual is conducting the remittance transfer for personal or business purposes.

A Western Union affiliate, Custom House (USA) Ltd. d/b/a Western Union Business Solutions ("WUBS"), predominantly offers international business-to-business money transfers. Section 919 of EFTA and the Proposed Rule clearly do not apply to remittance transfers conducted by businesses,³² and accordingly, WUBS' predominant business should not be subject to either section 919 of EFTA or the Proposed Rule. However, many of WUBS' customers are sole proprietors. Under the proposed definition of "sender" and the current definition of "consumer" under Regulation E, it is unclear whether a remittance transfer is covered by the Proposed Rule when the sender is a sole proprietor.

²⁸ 12 C.F.R. Proposed § 205.30(f).

²⁹ 15 U.S.C. § 1693a(5) (EFTA § 903(5)); 12 C.F.R. § 205.2(e).

³⁰ 15 U.S.C. § 1693a(2) (EFTA § 903(2)); 12 C.F.R. § 205.2(b)(1).

³¹ See 12 C.F.R. §§ 205.3, Proposed § 205.30(c).

³² See 76 Fed. Reg. at 29909.

Therefore, Western Union requests that the Board define "consumer" for purposes of Subpart B of Regulation E to mean "a natural person who enters into or seeks to enter into a remittance transfer for personal, family, or household purposes." This definition is consistent with the general consumer protection theme of the remittance transfer provisions in the Dodd-Frank Act and parallels the purpose and coverage of section 919 of EFTA and the Proposed Rule, which do not apply to remittance transfers conducted by businesses.³³ In addition, Western Union believes that this clarification is consistent with the definition of "sender" in EFTA and the Proposed Rule, which requires that the remittance transfer be sent "for the consumer." The "for the consumer" language appears to be intended to limit senders to natural persons who request remittance transfers for a natural person, *i.e.*, personal reasons. Our proposed definition of "consumer" is necessary to more clearly articulate the implications of the "for the consumer" language and erases any doubt as to the scope and coverage of the Proposed Rule.

F. Timing

1. The Bureau Has No Authority to Issue Regulations Prior to Appointment of the Bureau Director.

As acknowledged in the NPRM, the authority to issue a final regulation transfers from the Board to the Bureau on July 21, 2011. The authority of the Bureau to issue substantive regulations is found in section 1022 of the Dodd-Frank Act. This section states that the Director of the Bureau ("Director") may "prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws."

The term "Federal consumer financial laws" includes EFTA, as well as all of the other laws transferred to the Bureau under subtitles F and 1-1 of the Dodd-Frank Act.³⁴ Section 1022 also specifies the standards and considerations that the Director is to take into account when promulgating regulations, such as the potential benefits and costs to consumers and the potential reductions in consumer access to financial products and services. Finally, section 1022 states that notwithstanding any other provision of Federal law except section 1061(b)(5) (relating to Federal Trade Commission ("FTC") authority), to the extent that a provision of Federal consumer protection law authorizes the Bureau and another agency to issue regulations, the Bureau shall have exclusive authority.

Although the Bureau was established on the day after the date of enactment of the Dodd-Frank Act³⁵ (July 21, 2010), no person has been appointed Director, and the position has not been filled. Until a Director has been appointed by the President and confirmed by the Senate, or until a Director has been appointed by the President under his authority to make recess appointments, the Bureau has no authority to issue regulations under Section 1022.

³³ See 76 Fed. Reg. at 29909.

³⁴ Dodd-Frank Act § 102(14).

³⁵ Dodd-Frank Act § 4.

We are aware that some assert that section 1066 of the Dodd-Frank Act authorizes the Secretary of the Treasury to promulgate regulations for statutes transferred to the Bureau under subtitle F.³⁶ Under this argument, the authority to issue regulations under EFTA will shift from the Board to the Secretary of the Treasury until a Director has been appointed. For a number of reasons, we believe that this position does not hold up to legal scrutiny.

Section 1066 authorizes the Secretary to perform the functions of the Bureau under subtitle F until a Director is confirmed by the Senate. Subtitle F deals with the transfer of functions and personnel from a number of regulatory agencies to the Bureau. It deals with "housekeeping" issues, such as the continuation of lawsuits, status of existing regulations and orders, protection of personnel and civil service benefits.

The authority of the Bureau to issue regulations is established in section 1022, which is not part of subtitle F. This section provides the standards and procedures for the Bureau's rulemaking, and there are no similar instructions in subtitle F for the Department of the Treasury. Further, it is apparent that Congress was very much concerned that the Bureau have as much independence as possible in its rulemaking and enforcement functions. Providing that the Secretary of the Treasury could exercise the Bureau's substantive rulemaking authority is not consistent with this overarching goal. And it certainly is not consistent with taking rulemaking authority from an independent agency, the Board in the case of EFTA, and transferring it to the Treasury Department. Finally, the Dodd-Frank Act provides that if any provision of Federal law provides that two agencies have rulemaking authority with respect to a consumer law, the Bureau is deemed to have exclusive rulemaking authority. The only exception is for section 1061(a)(5), which is the provision in subtitle F transferring the FTC's authority. There is no exception for section 1066. Thus, from a statutory construction perspective, section 1066 provides the Treasury with administrative coordination authority relating to the transfer of functions and personnel, but not the authority to issue substantive regulations under EFTA.

Any other construction of section 1066 would also run into significant constitutional problems. Under the Appointments Clause, the Congress is prohibited from appointing individuals to become officers of the executive branch. If section 1066 is interpreted as giving the Secretary of the Treasury the enormous rulemaking authority of the Director with respect to all of the transferred statutes, it would raise a significant constitutional question about the authority of the Congress to appoint the head of an independent regulatory agency. Thus, when Congress stated that the head of the Federal Home Loan Bank Board was to be the first Director of the Office of Thrift Supervision, the action was held to be unconstitutional.³⁷ If the statute is interpreted as effectively appointing the Secretary of the Treasury as the head of the Bureau, a similar result would apply.

³⁶ See Joint Response of the Inspectors General for the Department of the Treasury and the Federal Reserve Board to questions posed by Chairman Spencer Bachus (Jan. 11, 2011).

³⁷ *Olympic Fed. Savs. and Loan v. Dir. Office of Thrift Supervision*, 732 F. Stipp. 1183 (D.C. 1990).

2. The Effective Date Should Be Eighteen (18) to Twenty-Four (24) Months from the Date the Final Rule is Published.

In the NPRM, the Board solicits comment on whether an effective date of one (1) year from the date the final rule is published, or an alternative effective date would be appropriate.³⁸ We urge the Board to consider imposing an effective date of eighteen (18) to twenty-four (24) months from the date the final rule is published to accommodate the technical difficulties, complexities, and costs that RTPs will face in complying with the Proposed Rule. Specifically, Western Union anticipates that at a minimum the completion of the items listed below would most likely take between eighteen (18) to twenty-four (24) months from the date the final rule is published.

- *Amending Agent Contracts and Policies and Procedures to Cover Compliance with Cancellation and Refund Procedures.* If required by the final rule, Western Union will need to amend contracts with our global system of agents worldwide and in the United States to cover the reversal of fees paid to agents in accordance with the cancellation and refund procedures under proposed section 205.34.
- *Reprogramming at the Point of Sale and Websites to Comply With Disclosure Requirements.* Western Union will need to reprogram all point of sale terminals, kiosks, registers, and websites to comply with the proposed section 205.31 disclosure requirements, including the installation of new printers or reprogramming of current printers to print characters (e.g., Chinese characters) required for compliance with the foreign language disclosure requirements under proposed section 205.31(g).
- *Agent Training.* Western Union anticipates developing a comprehensive EFTA training program for agents and agent employees. We currently estimate that this training program will reach approximately 500,000 people. Depending on the final resolution of many of the items noted in this letter, this training will address new technologies and forms, new in-store processes for some of our offerings, and training on the agent's role in EFTA compliance.
- *Developing Systems for Record Retention and Error Resolution Procedures.* Western Union will need to develop and implement a global record retention program, an error resolution compliance program, and error resolution software to track and monitor the timeliness of responses to all consumer complaints to comply with the error resolution procedures under proposed section 205.33.
- *Host-to-Host Systems Reprogramming at Agent Locations to Support Changes Mandated by the Proposed Rule.* We work with our agents in the host-to-host

³⁸ 76 Fed. Reg. at 29906.

environment to integrate our proprietary software into their software so that the agents' employees can conduct regular sales transactions (*e.g.*, purchase of clothing or food) and a Western Union money transfer transaction at the same register. Any changes we make to our proprietary system to comply with the Proposed Rule will need to be retrofitted into the agent's system. This will involve reprogramming efforts by Western Union and the agent. In order to accomplish these changes, we will need to renegotiate our contracts with agents, to include potential reprogramming costs and coordinate with each individual agent to schedule these technological changes. We currently anticipate that the following issues may occur during this process that will make a one (1) year implementation date impracticable: (i) agents' systems may not be able to support a two-step receipt process using current technology; (ii) agents may not be able to support a refund process if a customer wants to cancel a transfer because the agent may hold customer funds in trust under state and contract law and/or the agent is concerned that the refund process may encourage bad behavior among its employees; and (iii) it is common for agents to have technological changes scheduled in advance for a year or more that, in turn, will delay our ability to implement changes in order to comply with the Proposed Rule.

In addition, Western Union believes that an extended implementation period is appropriate and consistent with the Board's prior implementation times when newly mandated Regulation E disclosures required reprogramming of terminals at the point of sale. For example, in order to minimize the implementation costs associated with reprogramming terminals at the point of sale, the Board provided a one (1) year delayed compliance date for the requirement to disclose the amount of the returned item fee under Regulation E.³⁹ The one (1) year delayed compliance date essentially provided institutions with almost two (2) years from the date the final rule was published to implement this particular disclosure requirement.⁴⁰

³⁹ 71 Fed. Reg. 69430, 69432 (Dec. 1, 2006).

⁴⁰ On January 10, 2006, the Board published the final rule addressing the requirement to disclose the amount of the returned item fee under Regulation E which established an effective date of January 1, 2007. *See* 71 Fed. Reg. 1638 (Jan. 10, 2006). On August 30, 2006, the Board published an interim final rule to clarify certain provisions in the January 2006 rule. *See* 71 Fed. Reg. 51451 (Aug. 30, 2006). Therefore, institutions initially had approximately one (1) year from the date the final rule was published. The Board then published another final rule on December 1, 2006 delaying the compliance date for institutions relating to this particular requirement. *See* 71 Fed. Reg. 69430 (Dec. 1, 2006).

II. ADDITIONAL SIGNIFICANT COMMENTS TO NPRM

Set forth below please find Western Union's additional significant comments and concerns regarding the Proposed Rule.

A. **Pre-Payment and Receipt Disclosure Requirements**

1. RTPs Should Be Permitted to Provide Written Receipts for Remittance Transfers Conducted via Text Messaging or Mobile Phone Applications by Email or Website.

In the NPRM, the Board solicits comments for purposes of determining how the disclosure requirements could be applied to transactions conducted via text messaging or mobile phone applications.⁴¹ In Western Union's experience, although using cash to send a remittance transfer is the most popular method for most consumers, there is increasing consumer demand to provide additional options for sending money, including through mobile phones. To satisfy this consumer demand, Western Union currently offers consumers a mobile phone application of its online money transfer services (www.westernunion.com). In addition, Western Union has been developing a mobile money transfer service that will offer consumers several options to send and receive funds using their mobile phones and mobile wallets. A mobile wallet is an electronic account that is linked to a person's mobile phone in which money can be electronically deposited and used the same as cash. Using Western Union's service, consumers can send funds as follows:

- *Cash-to-Mobile.* A consumer initiates a money transfer by submitting cash at a Western Union agent location. The funds are sent to a receiver whose mobile phone operator offers mobile money transfer in partnership with Western Union. Funds are deposited into the receiver's mobile "wallet," or account tied to the mobile phone. This is the only version of the service currently offered in the United States.
- *Mobile-to-Cash.* A consumer whose mobile operator offers mobile money transfer in partnership with Western Union uses his/her phone to send a cross-border money transfer. The sender notifies the receiver via text messaging or phone that the funds have been sent and provides the MTCN. The receiver then picks up the funds at a Western Union agent location. This version of the service is currently not offered in the United States, but Western Union plans to eventually offer this service to U.S. consumers.
- *Mobile-to-Mobile.* A consumer whose mobile operator offers mobile money transfer in partnership with Western Union uses his or her phone to send a cross-border money transfer to a receiver whose mobile operator also offers mobile money transfer in partnership with Western Union. The funds go directly into the receiver's mobile wallet or account tied to the mobile phone.

⁴¹ See 76 Fed. Reg. at 29910, 29915-29916.

This version of the service is currently not offered in the United States, but Western Union plans to eventually offer this service to U.S. consumers.

Western Union would like to emphasize to the Board that using mobile phones to conduct money transfers is a quickly evolving and emerging space that involves not only RTPs, but also mobile phone operators and providers. Therefore, Western Union urges the Board to take into consideration the infant stages of these types of products when issuing the final rule in accordance with its authority under section 904(a) of EFTA and to carefully balance providing the consumer protections afforded by section 919 of EFTA without stifling innovative mobile remittance transfer products.

In response to the Board's request for comments on how to satisfy the written receipt requirement for remittance transfers conducted by text messaging or mobile phone applications, Western Union believes that RTPs should be permitted to provide the written receipt for such transfers by emailing the receipt to a sender or by providing the sender with a link to a website containing the receipt. Western Union believes that providing written receipts on the sender's mobile phone via text messaging or through a mobile phone application will not provide the consumer with meaningful, consumer friendly disclosures and that consumers will not receive the written receipt in a retainable form as required by proposed section 205.31(a)(2). Western Union questions how meaningful the receipt will be to consumers when viewed on their mobile phones, particularly because of the lengthy disclosures a written receipt must contain. However, if the written receipt may be sent to a sender's email or provided via a website that the sender can access, the sender will be able to print the written receipt and will be provided with a receipt in a format that is easy to read. Western Union requests that the Board consider applying the "retainable in form" requirement under proposed section 205.31(a)(2) to only the written receipt for mobile phone transfers and not the pre-payment disclosure, particularly because the written receipt will contain the pre-payment disclosures. Western Union also believes that if the written receipt is required to be provided via text messaging or through mobile phone applications consumers may bear increased costs depending on their data plans with mobile phone providers that would be a disincentive to using such products.

For the reasons discussed above, Western Union urges the Board to permit RTPs to provide the written receipt for remittance transfers conducted via text messaging or mobile phone applications by email or making them available at a website that the consumer can access. At a minimum, Western Union requests that the Board create flexibility with respect to providing disclosures for remittance transfers conducted via mobile phones.

2. The Combined Disclosure Should Be Acceptable if Presented Following Payment.

Proposed section 205.31(e) provides that if a combined disclosure is used, it must be provided to the sender when the sender requests the remittance transfer, but prior to payment for the remittance transfer. Section 919(a)(5)(C) of EFTA does not expressly require that a combined disclosure be provided to the sender prior to payment, but only requires that the combined disclosure be "accurate at the time at which payment is made."

The combined disclosure exemption inherently causes compliance difficulties. Subsection (a)(2)(B) is a receipt requirement. Receipts typically contain the date and time of a transaction, the amount paid for goods or services and a transaction number, elements which help establish proof of payment. The combined disclosure cannot contain "accurate" receipt information prior to payment. Similarly, as the Board notes in the Proposed Rule, the requirement that the combined disclosure be accurate at the time at which payment is made appears to be superfluous if the combined disclosure could be provided after payment. This exemption is a conundrum.

Nevertheless, the exemption exists and Western Union strongly advocates in favor of a combined disclosure exemption where the combined disclosure is provided after payment and the pre-payment disclosure information is provided at the point of sale orally by an RTP's trained agent or through a toll free number, on a computer screen, or by another method (*e.g.*, through mobile phone technology). Western Union acknowledges that the Board rejected RTPs' suggestions that pre-payment disclosure information be permitted to be provided at the point of sale either orally or on a computer screen. Western Union agrees that it is appropriate and correct to reject this approach for providing pre-payment disclosure information in the context of the two-step disclosure process, *i.e.*, the provision of a pre-payment disclosure before payment and a receipt after payment. However, we urge the Board to reconsider this approach in the context of the Board's section 919(a)(5) EFTA exemption authority permitting the establishment of a combined disclosure and in light of the Bureau's duty to consider "the potential benefits and costs to consumers and covered persons."⁴²

We note that half of the participants in the Board's consumer testing preferred to receive a combined disclosure that evidenced proof of payment.⁴³ Western Union agrees with these participants. We, like the Board, have considered various options of providing proof of payment on a combined disclosure that is provided prior to payment. Options we have considered include signatures, stamps, money transfer control numbers and running the paper through the printer multiple times. We have limited practical experience with some of these options, but the comment period has not provided us with enough time to develop, implement and test any of these approaches sufficient for our various risk, fraud, AML, compliance, legal, customer service and operational teams to all gain comfort with any of the solutions we have considered. Additionally, since we have not conducted trials with such processes and procedures, we have limited experience and data to anticipate how such processes and procedures related to providing the combined disclosure prior to payment would impact our business.

Western Union urges the Board to permit RTPs to provide the combined disclosure after payment and the pre-payment disclosure information at the point of sale orally,

⁴² 12 U.S.C. § 5512(b)(2)(A)(i).

⁴³ About half of the participants in the Board's consumer testing preferred the combined disclosure rather than receiving two disclosures. And some of the participants who preferred to receive both the pre-payment disclosure and receipt expressed concern about receiving the combined disclosure without receiving proof of payment. *See* 76 Fed. Reg. at 29915.

on a computer screen, or by another method. Western Union customers are generally frequent users of our services that know and understand the costs and fees associated with sending a remittance transfer. The Board should not lose sight of this fact when implementing the combined disclosure requirement. The Board should also take into consideration the fact that the Board's study and findings indicate that requiring the disclosures prior to payment will likely not change consumer behavior, *i.e.*, the consumer will go through with the transaction regardless of whether he or she receives the combined disclosure prior of after payment.⁴⁴

Failing that, we recommend that the Board use its section 904(c) authority in conjunction with the combined disclosure exemption and, at a minimum, permit the combined disclosure to be provided after payment to those senders who have conducted a transaction with us in the past. As the Board knows from its studies, Western Union has many customers who regularly use Western Union to send remittance transfers. Where Western Union can identify such consumers who have conducted transactions with Western Union in the past, for example, through our Gold Card Rewards Program,⁴⁵ Western Union should be able to provide such consumers with the combined disclosure prior to or after payment. Pre-payment disclosure to those consumers would provide almost no consumer benefit.

3. The Board Should Provide Guidance to RTPs on Compliance Obligations Associated with New Service Offerings and Emerging Remittance Transfer Products.

One recent product innovation, the Western Union goCASH money transfer service ("goCASH"), is a product that provides additional convenience, flexibility, and choice for Western Union's customers, but does not fit neatly within the confines of the statutory requirements or the proposed regulatory requirements. goCASH is basically a two-step money transfer product that is packaged in Western Union branded materials offered at retailers that are agents of Western Union ("Retailers"). goCASH contains instructions that include, among other things, designation of the pre-denominated principal amount of funds transmission to be purchased, fee information, and information for contacting Western Union to effect the transfer.

Consumers purchase a goCASH money transfer at the Retailer point of sale using standard in-lane purchase procedures available at the Retailer. Consumers either contact Western Union by telephone or use Western Union's website to designate a recipient for the funds transfer and to effect the transfer. If the consumer contacts Western Union by telephone,

⁴⁴ Among participants who wanted to receive information before their transactions, approximately half wanted this information to be in writing (the other half thought it should be given orally or presented on a screen). Most of these participants wanted the information on paper as a record of what they had been told and only a few participants said that they would use the pre-transaction disclosures to compare providers. See Report from ICF Macro to the Board of Governors of the Federal Reserve System, *Summary of Findings Design and Testing of Remittance Disclosures*, pp. 16-17 (Apr. 20, 2011).

⁴⁵ The Western Union Gold Card Program is a loyalty rewards program that enables our customers to take advantage of unique benefits and rewards each time the customer uses his or her Gold Card at a participating Western Union location to send money. Most Gold Card members are frequent and repeat users of our services and are well informed and understand our fees, the related charges imposed in connection with sending money, and applicable exchange rates.

Western Union provides various disclosures to the consumer at this time, including applicable foreign exchange rates based on the location of the recipient, and gives consumers the option to hear and ask questions about the refund procedure if they do not agree to the rates. Following execution of the transfer, Western Union sends the goCASH purchaser a receipt that includes relevant information about the transaction. Such receipts are sent by e-mail or regular mail, at the consumer's option. If the consumer uses the Internet to effect the transfer, information related to the exchanges rates, refund procedures, and receipt information are provided on Western Union's website.

Based on the provisions of section 919 of EFTA and the Proposed Rule, goCASH would not be covered as a remittance transfer at the point of sale because the purchaser does not designate a recipient at the point of sale. Moreover, the purchaser may not have decided where the transfer may be directed (inside or outside the United States) or in what currency the transfer may be made when goCASH is purchased at the point of sale. Once the purchaser initiates the transfer via telephone or the Internet by designating a recipient in a foreign country, the product would appear to be covered as a remittance transfer. Accordingly, although the goCASH product is purchased at a Retailer, if the transaction is initiated by telephone, the transaction would appear to be conducted entirely by telephone for purposes of proposed section 205.31(a)(3)(i) because until that point there was no remittance transfer, and the consumer could have used the goCASH product to initiate a transfer to someone inside or outside the United States. Consistent with the consumer protection theme of EFTA, payment would be deemed made for purposes of proposed section 205.34 upon the consumer designating a recipient in a foreign country and agreeing to go forward with the goCASH transaction after hearing the relevant disclosures, since any earlier deemed payment under proposed section 205.34 would not afford consumers the full benefit of the refund and cancellation period intended by proposed section 205.34. Western Union's position is that it is the designation of a recipient in a foreign country coupled with payment for purposes of proposed section 205.34 that constitutes the entire transaction for purposes of proposed section 205.31(a)(3)(i).

goCASH illustrates the difficulty of applying the requirements of section 919 of EFTA and the Proposed Rule to certain money transfer products, especially newer and more innovative products. Western Union also anticipates similar difficulties with applying these requirements to its various prepaid product offerings that are either in a market today or being contemplated to enhance the pay-out methods available to designated recipients. While the primary objective of EFTA is individual consumer rights, the purpose of EFTA and Regulation E is to establish a basic framework establishing the rights, liabilities, and responsibilities of participants in remittance transfer systems taking into consideration the evolution of electronic banking services and technology.⁴⁶ Western Union firmly believes that protecting consumer rights and product innovation are entirely compatible. We urge the Board, however, to use its authority under EFTA section 904(c) to allow a remittance transfer provider to request a staff

⁴⁶ "It is the purpose of this title to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. The primary objective of this title, however, is the provision of individual consumer rights." 15 U.S.C. § 1693(b) (EFTA, § 902(b)). "In prescribing such regulations, the Board shall . . . take into account, and allow for, the continuing evolution of electronic banking services and the technology utilized in such services." 15 U.S.C. § 1693b(a)(1) (EFTA, § 904(a)(1)).

interpretation on a case-by-case basis as a safe harbor for compliance and to clarify such procedure by regulation.

4. Disclosure of State Regulatory Agency Contact Information Should Be Permitted by Reference to the Websites and Toll-Free Telephone Numbers of the RTP and the Bureau.

Section 919(a)(2)(B)(ii)(II)(bb) of EFTA requires that an RTP provide "appropriate contact information" for its state regulator. Proposed section 205.31(b)(2)(vi) requires an RTP to disclose (1) a statement that the sender can contact the state regulatory agency that regulates the RTP for questions or complaints about the RTP and (2) the telephone number and website of the state regulatory agency that regulates the RTP.

Western Union is licensed in forty-eight (48) states and four (4) U.S. territories and believes that the technical difficulties, complexities, and costs associated with programming systems, terminals, and registers at the point of sale to print state-by-state receipts containing the specific applicable state regulatory agency information will greatly outweigh the benefits to consumers. In addition, any changes to state regulatory agency information will require time sensitive and costly reprogramming of such systems, terminals, and registers at the point of sale. Because many state regulators have offered Western Union guidance on the prominence and placement of their contact information on our website, we also suggest that the Board consult with the various state agencies for insight and recommendations on how such agencies may prefer to have this information disclosed. Western Union further notes that many states have posting or signage requirements that require RTPs to provide applicable state regulatory agency contact information at brick and mortar locations and on the websites of RTPs with respect to online transactions. Many state regulatory agencies typically want consumers to contact the licensee before contacting the agency for questions and complaints. These state regulatory agencies typically advise licensees to provide disclosures in a manner that directs consumers to contact the licensee prior to contacting the state regulatory agency.

For the reasons discussed above, Western Union urges the Board to interpret the phrase "appropriate contact information" contained in section 919(a)(2)(B)(ii)(II) of EFTA to include a statement that would refer the sender to such information through other sources. Specifically, Western Union requests that the Board permit the disclosure of state regulatory agency contact information by including a statement that would refer the sender to the website or toll-free telephone number of the RTP to obtain contact information for the sender's state regulatory agency. In addition, Western Union believes that the Bureau should also maintain contact information for state regulatory agencies so that the information is centrally stored at one location for consumers.⁴⁷ Western Union proposes that receipts should also contain a statement directing senders to contact the Bureau to obtain such information. Western Union believes that

⁴⁷ We note that this recommendation is consistent with provisions of the Consumer Financial Protection Act, which provide, "The Director shall establish a unit whose functions shall include establishing a single, toll-free telephone number, a website, and a database . . . to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services. . . . To the extent practicable, State agencies may receive appropriate complaints from the systems established." 12 U.S.C. § 5493(b)(3).

providing consumers with state regulatory agency contact information in this manner is just as useful to consumers as providing the state regulatory agency's contact information in accordance with proposed section 205.31(b)(2)(vi).

B. Error Resolution and Cancellation Process

1. The Requirement to Refund Within Three (3) Business Days Should Not Require the RTP to Have the Refund in the Hands of the Sender Within Three (3) Business Days.

Proposed section 205.34(b) requires an RTP to refund the total amount of funds tendered in connection with the requested transfer within three (3) business days of receiving the sender's valid cancellation request. Western Union requests the Board to clarify that an RTP is only required to initiate, issue, or make funds available at a pick-up location within three (3) business days, but the funds do not necessarily have to be in the hands of the sender within three (3) business days. Western Union believes this clarification is necessary to address the following situations: (i) an RTP issues and mails a refund check within three business days but it can take several days for the refund check to be delivered to the sender; (ii) for cash transactions, an RTP will make the refund available for pick-up at an agent location, but the sender may take several days before picking up his refund; or (iii) for credit/debit card transactions, an RTP will issue a chargeback to the sender's credit/debit card account, but the credit can take several days to appear due to credit/debit processing systems.

2. The Proposed Cancellation Rights Should be Clarified.

(a) *RTPs That Act as an Agent of Billers for International Bill Payment Services Do Not Have the Ability to Cancel Payments.*

Under proposed section 205.30(d), international bill payments will fall within the scope of the Proposed Rule,⁴⁸ and proposed section 205.34 permits senders to cancel a remittance transfer received no later than one business day from when the sender makes payment to the RTP. We currently provide the Western Union Quick Pay service ("Quick Pay") to consumers and companies which, for purposes of the Proposed Rule, allows U.S. consumers to send bill payments to participating international companies ("Billers"). U.S. customers of the Billers will go to a Quick Pay participating Western Union agent location, complete a form providing certain identifying Biller information, and send his or her payment for a bill via Quick Pay. Western Union accepts payment from consumers on behalf of and as agent of the Billers. Technically, we are obligated to the Biller for the funds when we send data to the Biller, and we do not have the ability to cancel the transaction and refund the amount of payment. Western Union requests that the Board clarify the Proposed Rule such that the cancellation rights relating to RTPs that act as agents of international billers for purposes of collecting and sending bill payments for customers of such international billers.

⁴⁸ See 76 Fed. Reg. at 29908.

(b) *Request for Reasonable Opportunity to Act on Cancellation Requests.*

Proposed section 205.34 permits senders to cancel a remittance transfer received no later than one business day from when the sender makes payment to the RTP provided that the transferred funds have not been "deposited into an account of the designated recipient." Unlike cash-to-cash remittance transfer transactions, RTPs may not have the ability to cancel certain transactions within 24 hours, such as cash-to-account remittance transfer transactions. We recommend that the regulation clarify that the cancellation request can only be honored if the RTP has a reasonable opportunity to act upon the cancellation request.⁴⁹

C. Definitions

1. The "Business Day" Definition Should Exclude Saturdays, Sundays, and Holidays.

Proposed section 205.30(b) defines "business day" to mean any day on which an RTP accepts funds for sending remittance transfers, and proposed comment 30(b)-1 explains that a business day includes the entire 24-hour period ending at midnight. Western Union accepts funds for sending remittance transfers seven (7) days a week, including holidays. Therefore, for purposes of Western Union's business, the term "business day" means seven (7) days a week and 24 hours a day. Although we operate seven (7) days a week and 24 hours a day, the U.S. postal service does not maintain the same hours, and we will need to rely on the U.S. postal service to mail certain disclosures required under the Proposed Rule.

Western Union is concerned that the proposed definition of "business day" does not under any circumstances exclude Saturdays, Sundays, or holidays. Under certain situations, it will be impossible for Western Union to comply with the requirement to mail a receipt no later than one business day after the date on which payment is made for a remittance transfer transaction conducted entirely by telephone in accordance with section 919 (a)(5)(B) of EFTA and proposed section 205.31(e)(2). For example, if a remittance transfer transaction is conducted entirely by telephone on a Saturday at 5:00pm, Western Union is required to mail or deliver a written receipt to the sender no later than one business day after the date on which payment is made. Because the U.S. postal service does not operate after 5:00pm on Saturday or on Sunday, Western Union will not be able to mail the written receipt until Monday (if that Monday is not a nationally recognized holiday).

Western Union recognizes that the requirement to mail a written receipt no later than one business day after the date on which a transaction is conducted entirely by telephone is statutorily mandated.⁵⁰ Therefore, amending the definition of "business day" is the only means by which the Board can address the issue described above. Western Union requests that the Board exclude Saturdays, Sundays, and holidays from the definition of "business day."

⁴⁹ This is consistent with the treatment of stop payment orders under the 2011 NACHA Operating Rules and Guidelines. *See, e.g.*, NACHA Rules, OG 190, OG 219-220.

⁵⁰ *See* 15 U.S.C. § 1693o-1(a)(5)(B) (EFTA § 919(a)(5)(B)).

Western Union acknowledges that by amending the definition of "business day," other timing requirements under the Proposed Rule relating to error resolution and cancellation procedures will be affected.⁵¹ However, unlike the timing requirement for the provision of written receipts for transactions conducted entirely by telephone, the Board has flexibility in drafting timing requirements for error resolution and cancellation procedures (*i.e.*, the Board is not required by statute to use the term "one business day" or "business day").⁵² In the event the Board defines "business day" to exclude Saturdays, Sundays, and holidays, the Board should consider whether use of the term "business day" is the appropriate term to use with respect to the timing requirements under error resolution and cancellation procedures. For example, if a business day does not include Saturdays, Sundays, and holidays, Western Union believes the term "business day" should not be used to establish timing requirements for the cancellation and refund of remittance transfers because the sender could potentially have a longer cancellation time frame than currently contemplated under proposed section 205.34(a). Western Union strongly agrees with the Board's current cancellation time frame of one business day and urges the Board to incorporate that time frame in its resolution of the issue discussed above.

2. The "Remittance Transfer" Definition Should Expressly Exclude the Sale or Issuance of Money Orders, Checks, or Other Paper Instruments.

The Proposed Rule applies to "any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person."⁵³ A "remittance transfer" is defined as "any electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider."⁵⁴ Proposed comment 30(d) states that "non-electronic remittance methods are not remittance transfers," but notes that there may be an electronic transfer of funds if a provider makes an electronic book entry between different settlement accounts to effectuate the transfer.⁵⁵

Western Union offers a retail money order service by which customers use Western Union branded money orders for making purchases, paying bills, and as an alternative to checks that can be deposited directly into bank accounts or cashed at check cashers, some banks, and some retailers. Western Union is concerned that proposed comment 30(d) creates ambiguity as to whether a money order sold to a consumer is considered a "remittance transfer" under proposed section 205.30(d)(1). Western Union urges the Board to expressly exclude the sale or issuance of money orders, checks, or other paper instruments from the definition of "remittance transfer." Such a bright line is also consistent with the exemption for checks from the definition of "electronic fund transfer" under Regulation E.

⁵¹ See, e.g., 12 C.F.R. Proposed §§ 205.33(c), 205.34.

⁵² See 15 U.S.C. § 1693o-1(d) (EFTA § 919(d)).

⁵³ See 12 C.F.R. Proposed §§ 205.3, 205.30(c).

⁵⁴ 12 C.F.R. Proposed § 205.30(d)(1).

⁵⁵ 76 Fed. Reg. at 29954.

D. Additional Comments

1. Model Forms A-30 through A-32.

Appendix A to the Proposed Rules ("Appendix A") contains Model Forms A-30 through A-32 which demonstrate how an RTP could provide the required disclosures for a remittance transfer exchanged into local currency.⁵⁶ Proposed instruction 4 to Appendix A provides that additional information not required by the Proposed Rule may be presented consistent with the segregation requirement of proposed section 205.31(c)(4),⁵⁷ which requires that the Proposed Rule's disclosures be segregated from everything else and must contain only information that is directly related to the disclosures required under the Proposed Rule. Any additional information not required by the Proposed Rule must also be presented consistent with the clear and conspicuous requirement of proposed section 205.31(a)(1).⁵⁸ RTPs that make revisions that do not comply with the proposed instruction 4 to Appendix A will lose the benefit of the safe harbor for appropriate use of the model forms.⁵⁹

Western Union is concerned that Model Forms A-30 through A-32 do not include certain disclosures relating to exchange rates that are necessary in order for them to be accurate. First, Model Form A-30 for pre-payment disclosures should contain a statement that the exchange rate changes throughout the day to clearly convey to consumers that the exchange rate quoted or estimated on the pre-payment disclosure is not fixed and may change if the consumer returns to the RTP an hour or more after receiving the pre-payment disclosure to conduct and complete the subject remittance transfer. Second, Model Forms A-30 through A-32 should contain the following (or substantially similar) statement: "We also make money from foreign currency exchange." Accordingly, Western Union requests that the Board amend Model Forms A-30 through A-32, as applicable, to include these suggested disclosures.

2. Western Union Supports the Board's Proposal to Permit Itemized Disclosures.

Proposed section 205.31(b)(1)(ii) provides that the applicable disclosure related to fees and taxes imposed by the RTP may use the term "Transfer Fees," "Transfer Taxes," or "Transfer Fees and Taxes" or a substantially similar term. Proposed comment 31(b)(1) permits itemized disclosures. The Board requests comment on the language used to describe the fees and taxes imposed on the remittance transfer by the remittance transfer provider pursuant to proposed section 205.31(b)(1)(ii). Western Union notes that at least one U.S. jurisdiction, Oklahoma,⁶⁰ requires RTPs to impose a fee that is not a tax. In order to comply with the requirement that the disclosures be clear and conspicuous and in order to provide consumers with meaningful disclosures related to the remittance transfer fee imposed by the RTP, Western Union supports

⁵⁶ See 76 Fed. Reg. at 29943-29945.

⁵⁷ 76 Fed. Reg. at 29962.

⁵⁸ 76 Fed. Reg. at 29962.

⁵⁹ 76 Fed. Reg. at 29962.

⁶⁰ See Drug Money Laundering and Wire Transmitter Act, 63 Okl. St. §§ 2-503.1a - 2-503.11.

the proposed language to the extent the applicable fees and taxes imposed by the RTP can be clearly and accurately itemized.

3. The Bureau's Contact Information Should Always Be Provided on Disclosures.

Proposed section 205.31(b)(2)(vi) requires a statement that the sender can contact the Bureau for questions or complaints about the RTP. The Board requests comment on whether it is appropriate to require the disclosure of the contact information of the Bureau in all circumstances or whether it is appropriate to instead require the contact information of the appropriate Federal regulator of the RTP for consumer complaints.⁶¹ Western Union believes that the Bureau's contact information should always be provided to ensure that the Bureau has a better line of sight into consumer complaints and issues in the remittance transfer space rather than having consumer complaints and issues spread across several Federal regulators. Western Union believes that this approach is more consistent with the intent of the Dodd-Frank Act.

4. Requirement Related to Rounding the Exchange Rate.

Proposed section 205.31(b)(1)(iv) requires that the exchange rate used be rounded "to the 1/100th of a decimal point." We note that for certain currencies, such as the Indonesian Rupiah and the South Korean Won, using the hundredth of a decimal point for foreign exchange quotes adds *de minimis* value to a consumer transaction and may result in a transaction amount being quoted in the foreign currency for which no coins are available to precisely complete the transaction. Providing such a precise amount that the designated recipient will receive in the foreign currency may cause confusion. Technically, such foreign exchange quotes could trigger frivolous error resolution complaints. We recommend a *de minimis* exemption for error resolution requirements that are triggered based on rounding. We also note that, while the language mimics the statutory language in section 919(a)(2)(A)(iii) of EFTA, the language itself is stilted. We recommend that the regulation refer to the exchange rate being rounded "to the nearest two decimal places," or other appropriate language.

5. Disclosure of the Amount of Funds Transferred.

The Proposed Rule at sections 205.31(b)(1)(i), (ii) and (iii) require certain disclosures "in the currency in which the funds will be transferred." This is not clear. If a sender gives the RTP dollars, the electronic transfer may be in the form of dollars, may be in the form of the currency used in the foreign country of the recipient, or may even be in the form of a third currency, such as Euros. The regulatory language could be interpreted to mean any of these currencies. We would suggest that the regulatory text be amended to clarify that the disclosure relates to the currency given by the sender to the RTP.

6. Taxes Imposed by the RTP.

Proposed section 205.31(b)(1)(ii) requires the disclosure of any fees and taxes imposed on the remittance transfer by the RTP. A tax is imposed by a government, not by an

⁶¹ 76 Fed. Reg. at 29914.

RTP. We suggest deleting the word "taxes" to avoid confusion as to what information must be disclosed under this section.

7. Eight Point Font and Equal Prominence.

Proposed section 205.31(c)(3) requires that written and electronic disclosures must be in a minimum eight point font. In an electronic communication, the size of font that a reader sees is often determined by the settings on the consumer's computer or email system. The RTP cannot necessarily control the size of the font set by the consumer.

This section also requires that the written and electronic disclosures must be in "equal prominence to each other." Since electronic disclosures are an alternative to written disclosures, this requirement is inexplicable.

III. CONCLUSION

Western Union wants to thank the Board for giving it the opportunity to provide comments to the proposals and issues discussed in the NPRM. Western Union supports the goals of the Board's Proposed Rule and respectfully urges the Board to consider all of the comments and suggestions set forth herein.

If you have any questions, or if Western Union may be of any additional service, please feel free to contact the undersigned. Western Union would also be very pleased to meet with the Board or Bureau at its convenience to further discuss the issues addressed in these remarks.

Very truly yours,



Joseph Cachey III
Acting General Counsel
Chief Compliance Officer

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