



July 22, 2011

*Via Electronic Delivery*

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

Re: Docket No. R-1419 and RIN 7100-AD76; Proposed Amendments to Regulation E to Implement Section 1073 of the Dodd-Frank Act

Dear Ms. Johnson,

The Clearing House Association L.L.C., the American Bankers Association, the Consumer Bankers Association, the Credit Union National Association, The Financial Services Roundtable, the Independent Community Bankers of America, the Mid-Size Bank Coalition of America, NACHA – The Electronic Payments Association, the National Association of Federal Credit Unions, and the Securities Industry and Financial Markets Association (collectively, the “Associations”)<sup>1</sup> respectfully submit to the Board of Governors of the Federal Reserve System (“the Board”) this comment letter in response to the Board’s proposed rule relating to remittance transfers, which was published in the Federal Register on May 23, 2011 (“Proposed Rule”).<sup>2</sup> The Associations appreciate the opportunity to comment.

The Proposed Rule was introduced to carry out the requirements of Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act” or “the Act”). Section 1073 of the Dodd-Frank Act (“Section 1073”) amends the Electronic Fund Transfer Act (“EFTA”) to add a new Section 919 that is intended to establish protections for consumers sending remittances from the United States to other countries and provides the Board with authority to promulgate

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<sup>1</sup> Information regarding each of the Associations is provided in Appendix A to this comment letter.

<sup>2</sup> Electronic Fund Transfers, 76 Fed. Reg. 29902 (May 23, 2011).

regulations to implement these provisions. Section 1073 requires, among other things, that financial institutions provide consumers with detailed disclosures regarding remittance transfers both before and after a transaction, pursuant to rules prescribed by the Board. Section 1073 also provides consumers with error resolution procedures for remittance transfers and instructs the Board to promulgate error resolution standards, as well as rules regarding appropriate cancellation and refund policies. In addition, Section 1073 requires the Board to establish standards of liability for remittance transfer providers, including providers that act through agents.

The Proposed Rule would carry out these statutory requirements through amendments to Regulation E, the regulation that implements the EFTA. In connection with the Proposed Rule, the Board requested comments on all aspects of its proposal, including the alternatives set forth in the Proposed Rule and the projected costs of implementation and compliance with its requirements. As the Dodd-Frank Act transfers rulemaking authority for the EFTA to the Consumer Financial Protection Bureau (“Bureau”) effective July 21, 2011, the Associations recognize that the Bureau will issue final rules implementing Section 1073 and that all comment letters will be forwarded to the Bureau. For ease of reference, in this letter we have directed our comments to the Board since it is the agency that issued the Proposed Rules and the agency to which the Proposed Rules specify comments should be directed. However, we respectfully direct these comments to both the Board and the Bureau, as appropriate.

The Associations value the efforts of the Board in developing remittance transfer rules that reflect the needs of participants in the remittance transfer industry. The Associations and their respective members are committed to ensuring that senders of remittance transfers are provided with adequate protections in the funds transmission process. To achieve this objective, the Associations believe it is essential that the remittance transfer rules ultimately adopted by the Board are narrowly tailored to cover only remittance transfer transactions, as traditionally defined, and to afford adequate protections to consumers while ensuring that remittance transfer services remain a viable line of business for remittance transfer providers.

If final rules are not strictly focused on the types of transactions that Congress intended, remittance transfer payments could become too costly, both for consumers and providers, which could have a negative impact on the very consumers that Section 1073 was intended to protect. Furthermore, certain aspects of the Proposed Rule could cause a financial institution to delay the transmission of remittance transfers, which would harm consumers in situations where immediate payment is required. Moreover, it is critical that the Proposed Rule does not unintentionally disrupt the ability of financial institutions to offer services that have *not* traditionally been considered remittance transfers, but that would be covered by the Proposed Rule due to its broad application. To this end, it is especially important that final rules not disrupt the application of laws governing finality of payment.

Accordingly, the Associations respectfully submit this comment letter and welcome future dialogue on this matter.

## I. Introduction

The purpose of the remittance transfer provisions contained in the Dodd-Frank Act is to protect senders of remittance transfers, who are “not currently provided with adequate protections under federal or state law.”<sup>3</sup> The Senate Report on The Restoring American Financial Stability Act of 2010 (“the Senate Report”), the Senate bill that became the Dodd-Frank Act, discusses these protections in the context of immigrants who “send substantial portions of their earnings to family members abroad.”<sup>4</sup> The Senate

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<sup>3</sup> S. Rep. 111-176, at 179 (2010).

<sup>4</sup> In particular, the Senate Report states that the new remittance transfer rules will “establish minimum protections

Report further states that these senders of remittance transfers “face significant problems with their remittance transfers, including being overcharged or not having the funds reach intended recipients.”<sup>5</sup>

The Associations recognize the importance of the objectives underlying Section 1073 and support the goal of protecting consumers who send remittance transfers abroad to family and loved ones. In addition, the Associations strongly support the efforts of the Board and the Bureau to develop effective remittance transfer rules that satisfy the consumer protection requirements set forth in the Dodd-Frank Act. The Associations support clear and understandable disclosures by remittance transfer providers to consumers of fees or other charges assessed by the providers. We believe the Board has developed samples of clear disclosures that would provide consumers using traditional remittance transfer systems with understandable and meaningful disclosures.

However, the Associations believe that the Proposed Rule, as drafted, is likely to have harmful and unintended consequences and therefore is unlikely to achieve its intended goal. Among these potential unintended consequences are that the Proposed Rule will likely:

(i) Impose disclosure requirements on transfers made via “open networks” (ACH and wire transfer systems) with which remittance transfer providers cannot comply: As described in more detail in Section II of this letter, open network providers will be severely limited in their ability to provide the disclosures required by the Proposed Rules. In some cases, compliance may be unattainable. Hence, the Associations urge the Board or Bureau to further examine the significant impacts the Proposed Rule would have on open network providers and either exclude open network transfers from the scope of final rules, or develop separate rules that address the operational realities of open networks.

(ii) Seriously harm the ability of financial institutions to provide international wire and ACH transfer services: With respect to international wires, the Proposed Rule undermines the long-established legal framework that determines the respective rights and obligations of the parties to a wire transfer by rendering UCC Article 4A inapplicable to international wire transfers initiated by consumers. To mitigate the impact that would result from the displacement of Article 4A, and for other reasons, we recommend the term remittance transfer be limited to an amount that is consistent with the value of a remittance transfer as it is traditionally understood.

Furthermore, the Proposed Rule will affect international wires and ACH transfers as it will:

- cause a significant disruption in wire transfer services by superimposing rules that will inevitably cause delays in the execution of international wire transfers due to (a) the likely decision of most institutions to hold transfers until the cancellation period has passed and (b) the time it will take to obtain information from unaffiliated parties that is necessary to make the prepayment and receipt disclosures;
- expose depository institutions that provide remittance transfer services to increased liability risk in regard to wire and ACH transfers as a result of disclosure and error resolution rules that make these institutions responsible for matters that are beyond their control; and

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for remittances sent by consumers in the United States to other countries.” *Id.*

<sup>5</sup> Ironically, ICF Macro, the company retained by the Board to help design disclosures, found that “[m]ost participants said they were satisfied with their experience sending remittances...” *Summary of Findings: Design and Testing of Remittance Disclosures*, April 20, 2011, p. ii available at [http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110512\\_ICF\\_Report\\_Remittance\\_Disclosures\\_\(FINAL\).pdf](http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110512_ICF_Report_Remittance_Disclosures_(FINAL).pdf).

- significantly increase the cost of wire and ACH transfer services due to system and operational enhancements needed to achieve compliance and manage increased risk.

(iii) Create restrictions that are overly broad and impact a range of transactions that are not truly remittance transfers: As acknowledged by the Board and other remittance authorities, the term remittance transfer typically means a cross-border person-to-person payment of relatively low value sent to a family member or loved one.<sup>6</sup>

In contrast, the Proposed Rule, as drafted, covers a wide range of transactions beyond transfers that have historically been thought of as remittance transfers, such as transfers to overseas accounts; transfers related to stock purchases or other investments; transfers made in connection with overseas real estate transactions; and other transactions that do not involve immigrants “send[ing] substantial portions of their earnings to family members abroad.” The nature and purpose of these kinds of funds transfers are different from remittance transfers and are outside the scope of what Congress intended. Finality and immediacy are the key concerns of the consumers who send these transfers. Because the Proposed Rule emphasizes disclosure over speed and prolonged and broad error resolution over finality, these types of transfers should not be covered by remittance transfer rules.

The application of the Proposed Rule to transfers that are not true remittances could result in unintended consequences, including making it no longer possible for consumers who need to promptly conduct a transfer of funds to send wire transfers on the same day. Furthermore, the Proposed Rule may encourage sophisticated clients to move their business to offshore banks that can better accommodate their need to conduct transactions that would now fall within the remittance transfer regulatory regime.

(iv) Harm consumers by creating a compliance environment that will discourage certain institutions from providing remittance transfer services to their customers or make such funds transfers more costly: As noted throughout this comment letter, the compliance responsibilities and implied risks to remittance transfer providers associated with the Proposed Rule are likely to cause significant cost and pricing issues throughout the remittance transfer industry. Specifically, the Proposed Rule is likely to result in the imposition of unproductive compliance costs and obligations on financial institutions that provide ACH and wire transfer services that are not remittance transfer services as they are traditionally understood. As a result, we expect that some financial institutions may exit the market.

This risk is relevant to all institutions. However, smaller institutions that do not have the resources to monitor international developments, foreign tax laws, or changes in fees charged by unrelated financial institutions appear particularly vulnerable to being unable to continue offering international funds transfer services.<sup>7</sup> Accordingly, we expect that consumers’ access to remittance

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<sup>6</sup> The Board acknowledged in the preamble to the Proposed Rule that “traditional remittance transfers often consist of consumer-to-consumer payments of low monetary value.” 76 Fed. Reg. 29902. Furthermore, in its report to Congress on the use of the ACH system for remittance transfers to foreign countries, the Board noted that the majority of sources that compile data on remittance transfers focus on transactions that meet this definition. See Board of Governors of the Federal Reserve, Report to the Congress on the Use of the Automated Clearinghouse System for Remittance Transfers to Foreign Countries (July 2011) (citing *International Transactions in Remittances: Guide for Compilers and Users*, available at [www.imf.org/external/np/sta/bop/2008/rcg/pdf/guide.pdf](http://www.imf.org/external/np/sta/bop/2008/rcg/pdf/guide.pdf)).

<sup>7</sup> The Associations also note that the Proposed Rule’s impact upon financial institution participation in the remittance market would not be limited to smaller institutions. First, with respect to their traditional wire transfer operations, larger institutions would need to expend considerable resources to comply with the requirements of the Proposed Rule. In addition, with respect to other lines of business also covered by the broad application of the Proposed Rule, larger institutions that offer wire transfer services to high net worth, or private banking, clients may conclude that the costs of imposing a set of consumer oriented rules designed to protect remittances upon a

transfer services, as well as the possibility of sending remittances to many countries, may decrease as a result of the significant compliance burden the rule would impose. In addition, remittance transfer providers that remain in the marketplace will likely be forced to increase fees charged for remittance transfer transactions. In the Associations' view, a reduction in access to remittance transfer services and an increase in remittance transfer fees would contradict the spirit of Section 1073, but nonetheless are the likely outcome under the Proposed Rule in its current form.

RECOMMENDATIONS: To mitigate the unintended consequences discussed above and throughout this letter, the Associations recommend that:

- before issuing final rules, the Board or Bureau should meet with open network experts from the industry to gain further understanding of the complexities of open network transfers and the implementation and compliance costs of the Proposed Rule;
- based on the information it gathers from the industry, the Board or Bureau should either exclude open network transfers from the scope of final rules or develop a separate, tailored rule set that addresses the operational realities of open networks; and
- the term "remittance transfer" should be limited to transactions that fall within the traditional value and purpose of remittance transfers.

These recommendations, along with the Association's other comments, are discussed in further detail below. But first, it is critical to address the differences between closed and open network systems and the challenges that the latter would face in complying with the Proposed Rule. The Associations are concerned that without changes to the proposal, the final rule could impede consumer access to open network systems for international transfers.

## II. Application of the Proposed Rule to Closed and Open Network Providers

Typically in closed networks, funds remain within one network and are controlled from end-to-end by the same remittance transfer provider and its agents in privity of contract. Hence, the funds transfer provider has complete control over all aspects of the funds transfer and is fully informed with respect to relevant information regarding the transaction.

In contrast, an open network<sup>8</sup> involves funds being transferred out of the sending institution to their ultimate destination at an unaffiliated recipient institution. Along the way, those funds may pass through one or more intermediary institutions before arriving at the final destination. The open network funds transfer provider, thus, has significantly less control over or information regarding the ACH or wire transaction. In particular:

- (a) the open network provider will have the right to access only the information relevant to its direct correspondent banks; however those correspondents will have their own correspondent banks, which, in turn, will have their own correspondent banks, and so on – and the open network

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commercial transaction with a sophisticated customer are too great, and, therefore, will no longer offer the service. Similarly, an institution (large or small) might view the compliance requirements involved with sending money to a particular country to be too burdensome (due to a particular country's laws, the number of intermediaries needed to accomplish the transfer, or other reasons), and accordingly may cease sending remittance transfers to such locations.

<sup>8</sup> The term "open network" includes, but is not limited to, various payment infrastructures, such as the SWIFT messaging network, as well as domestic and foreign market clearing infrastructures, such as ACH, Fedwire, CHIPS, India's NEFT, and others.

provider is not in contractual privity with these attenuated correspondents (*i.e.*, intermediary banks) and therefore does not have a contractual or other legal right to their rates and fees;

(b) the open network provider often will not know the identity of the intermediary institutions that will be involved in the funds transfer until after its completion, especially when numerous intermediaries are involved in a transfer, and thus the open network provider will have difficulty requesting the requisite information from all relevant parties;

(c) correspondent, intermediary and recipient institutions may consider their pricing information to be proprietary and may refuse to reveal it;

(d) correspondent and intermediary institutions usually will not be subject to U.S. law, and therefore have no responsibility for complying with the information or error resolution requirements of the Proposed Rule;

(e) open network providers in many cases will not know the currency in which the funds will be received because a recipient's account may be denominated in local currency, U.S. currency, or some other currency, and the recipient institution may not be willing to provide that information due to privacy concerns (and notably, privacy laws differ significantly by country and locality);

(f) all categories of information that the open network transfer provider must monitor routinely in order to provide accurate disclosures (including, but not limited to, fees, taxes and other costs that may be charged by intermediaries) are subject to change without notice and are entirely beyond the control of the funds transfer provider; and

(g) The various open network infrastructures, such as the SWIFT messaging network as well as domestic and foreign market clearing infrastructures, are typically one-way message systems that cannot readily and expeditiously communicate pricing disclosure information back to a financial institution; significant modifications to these infrastructures or additional communication channels must be established before information can flow in an automated manner between an originating financial institution and other institutions, which are changes that providers are not in a position to effect.

For these and other reasons articulated throughout this letter, the Associations believe that the Proposed Rule is oriented towards closed network, cash-based remittance models and does not adequately reflect the operational realities of open network transactions. Although Section 1073 provides certain exceptions intended to make disclosure requirements workable for open network transfers, the Proposed Rule implements those exceptions too narrowly. The exceptions also largely ignore the operational realities associated with such transfers; even if a provider took the extraordinary steps called for to take advantage of the limited provisions that permit estimates, the provider would still be unable to provide a sender with timely, accurate and useful information. As a result, despite the proposed exceptions that permit providers to provide an estimate of certain amounts, the fundamental characteristics of open networks remain at odds with the disclosure regime that the Proposed Rule would apply to many international wire and ACH payments.

Without substantial changes, the Proposed Rule poses considerable obstacles to compliance by providers who send transfers through open network systems and, in some cases, compliance may be unattainable (*e.g.*, because an intermediary considers the requisite information to be proprietary or nonpublic personal information).

Furthermore, for those open network providers that have the resources to comply, doing so would involve a severe competitive disadvantage with respect to closed network providers. For open network providers, attempting to collect the data would entail significant cost and burdens in order to monitor the intermediary relationships maintained by each and every correspondent bank (and the relationships that such intermediaries may, in turn, maintain); the fees that all such parties may charge; the taxes in every relevant jurisdiction; the privacy laws in all relevant jurisdictions; and so on. This compliance burden and corresponding competitive disadvantage is exacerbated by the fact that all of the foregoing is subject to change without notice and such change is entirely outside of the control of the open network provider.

Accordingly, because of the operational realities of open network systems, the Associations recommend that the Board exclude open network wire and ACH transfers from the final remittance transfer rule. In the alternative, the Board should develop a separate set of open network disclosure, error resolution, and cancellation requirements that reflect the functionality and capabilities of open network systems. Notably, the Board has the authority to issue regulations under the EFTA that contain “classifications, differentiations, or other provisions...as in the judgment of the [Board] are necessary or proper to effectuate the purposes of [the EFTA]...”<sup>9</sup>

In addition, the Board has the authority to tailor the rule to address the issues raised by this letter under Section 1073. Specifically, the Board may grant an exception to the disclosure requirements under Section 1073 when the method by which transactions are made in a recipient country does not allow the provider to know the timing or amount of currency that will be received by the designated recipient.<sup>10</sup> Open network wire and ACH systems are methods where it is particularly difficult to know the exact amounts of taxes, fees, exchange rates, and other charges imposed by correspondent banks and governments.

Without accounting for the characteristics of open networks, the Proposed Rule imposes costs and liabilities on providers for elements that are neither known nor subject to a financial institution’s control, which is contrary to all predicates of safe and sound banking operations and puts consumer access to the open network channels at risk.

The Associations think that excluding ACH and wire transfers of more than \$1,000 would help to limit the costs and risks that result from the Proposed Rule to the relatively small dollar transfers that warrant the consumer protection measures provided for in the EFTA. We recommend \$1,000 because it is consistent with general understanding of remittance transfers being, on average, below \$400,<sup>11</sup> and

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<sup>9</sup> EFTA § 904(c).

<sup>10</sup> See Section 1073(a), amending the EFTA to add Section 919(a)(4)(A)(ii).

<sup>11</sup> In fact, a variety of sources, including the United States Treasury Department, indicate that remittance transfer transactions are, on average, in the range of \$300 or less. *See, e.g.*, U.S. Department of Treasury, The Dodd-Frank Wall Street Reform and Consumer Protection Act Provides Federal Oversight for Remittance Transfers With the Creation of the Consumer Financial Protection Bureau (Oct. 2010)(citing Sistema Económico Latinoamericano y del Caribe, Migration and remittances in times of recession (May 2009)).

<http://www.treasury.gov/initiatives/wsr/Documents/Fact%20Sheet%20-%20Provides%20Federal%20Oversight%20for%20Remittance%20Transfers.%20Oct%202010%20FINAL.pdf>.

Additionally, a 2007 report on remittance transfers from the United States to Mexico by Jesus Cervantes, the

Director of Economic Measurement at Banco de Mexico, stated that the “average value of individual transactions has remained steady between US\$300 and US\$360 in the last decade.” Jesus Cervantes, Improving Central Bank Reporting and Procedures on Remittances, May 11, 2007,

[http://www.dallasfed.org/news/research/2007/07crossborder\\_cervantes.pdf](http://www.dallasfed.org/news/research/2007/07crossborder_cervantes.pdf). A report by the International Fund for Agricultural Development (IFAD) stated “150 million migrants worldwide...sent some US\$300 billion to their families in developing countries during 2006, typically US\$100, US\$200 or US\$300 at a time.” Sending Money Home, Worldwide Remittance Flows to Developing and Transition Countries, December 2007,

includes a cushion to cover remittance transfers that are higher than the average. However, the Associations recognize that further study may be necessary to determine an amount that would best capture the correct set of international transfers that are true remittances.<sup>12</sup>

In light of the issues discussed above, the Associations urge the Bureau to further study the potentially devastating impact the Proposed Rules will have on the ability of financial institutions – including non-depository institutions – to conduct open network wire and ACH transfers. Such a study would be consistent with the approach the Board took when it conducted extensive consumer testing regarding the use of overdraft services prior to amending Regulation E to prohibit a financial institution from charging overdraft fees on ATM and one-time debit card transactions unless a consumer consents, or opts in, to the overdraft service for those forms of transactions.<sup>13</sup>

The Associations' goal is to work as closely with the Board and Bureau as possible to help develop rules that allow our members to continue serving consumers in a safe and sound manner while avoiding barriers that would disrupt the payment system or cause financial institutions to reduce remittance transfer services. Thus, we would welcome the opportunity to engage the Board or Bureau in a dialogue regarding any of the issues raised in this letter, and in particular, the complexity of open network funds transfers. We believe that such a dialogue could provide the Bureau with constructive assistance that would help it to formulate final rules that accurately reflect the open network funds transfer process.

### III. Effective Date and Projected Costs of Implementation and Compliance

In the Proposed Rule, the Board specifically requested comment on the length of time that remittance transfer providers will need to implement the Proposed Rule, and whether an effective date of one year from the date the final rule is published, or some other date, is appropriate.

The Associations believe that the effective date should be at least 18 months from the date the final rule is published. Depending on the provisions of the final rule, the payments systems used by remittance transfer providers (e.g., the ACH system, wire transfer systems and the SWIFT messaging system) to accept, transmit, clear and settle covered transactions will need to evaluate and possibly amend, among other things, their operating rules, message formats, contracts and participant agreements.<sup>14</sup> This process of review and amendment will take time and should be considered when establishing the effective date of a final rule.

The Board provided estimates of the amount of time it projects remittance transfer providers will require to implement necessary operational changes to comply with the requirements of the Proposed Rule, as well as estimates of the time that will be required for ongoing compliance. For example, the Board has estimated that, on average, it will take remittance transfer providers:

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<http://www.ifad.org/remittances/maps/brochure.pdf>. Finally, while discussing previous proposed legislation to regulate remittance transfers, Senator Jon Corzine noted that the typical remittance is “around \$250 to \$300 a month.” 149 Cong. Rec. S 8732 (2003) (statement of Senator Corzine).

<sup>12</sup> There are other federal consumer regulations that exclude larger value transactions. For example, see Regulation Z, 12 C.F.R. 226.3(b).

<sup>13</sup> Electronic Fund Transfers, 74 Fed. Reg. 59033 (November 17, 2009) (codified at 12 C.F.R. Part 205).

<sup>14</sup> For example, the ACH Network is governed through the *NACHA Operating Rules*, which might have to be amended through an established and deliberative process to address formatting and other requirements for international ACH transactions (IATs). This need may extend to the two ACH Operators and their participant agreements, as well as to the federal government, which has adopted the *NACHA Operating Rules* through 31 C.F.R. part 210. Similarly, wire transfer system rules, formats and SWIFT message use may also be impacted.

- 120 hours (or three business weeks) to update their systems to comply with the disclosure requirements contained in proposed § 205.31;
- 8 hours (or one business day) monthly to comply with the disclosure requirements under proposed § 205.31;
- 1.5 hours (monthly) to address a sender's notice of error as required by proposed § 205.33(c)(1);
- 40 hours (or one business week) to develop written policies and procedures designed to ensure compliance with respect to the error resolution requirements applicable to remittance transfers under proposed § 205.33;
- 8 hours (or one business day) annually to maintain the requirements under § 205.33 (procedures for resolving errors);
- 40 hours (or one business week) to establish policies and procedures for agent compliance as addressed under proposed § 205.35; and
- 8 hours (or one business day) annually to maintain the requirements under § 205.35 (acts of agents).

The Associations believe that the Board has significantly underestimated the compliance burden the Proposed Rule would impose and the amount of time that will be required to implement necessary operational changes to comply with the requirements of the Proposed Rule. Not only does the proposal significantly underestimate the time and effort needed to comply, it also appears to disregard the fact that these changes are being proposed at a time when many other systems changes mandated by the Dodd-Frank Act are also underway, placing additional demands on limited resources. The changes contemplated by the rules must therefore be placed into context and not considered in isolation.

For many institutions, compliance with the Proposed Rule would require changes to be made across a range of services and business lines, including retail operations, private banking, wire transfer, ACH, home/online banking systems, global wealth management, investment management, foreign exchange and related activities. Furthermore, compliance costs include building and/or modifying information technology systems; updating policies, procedures, and controls; renegotiating agreements and revising contracts with correspondent banks and other third parties; training employees and, in some cases, training third parties; drafting new service descriptions, disclosures and related materials (including, among others, paper communications, online communications, customer service scripts, and other consumer correspondence); translating all necessary disclosures and related materials; printing; ongoing compliance and monitoring; overseeing correspondents and other third parties; and other expenses. In addition, for open network remittance transfer providers, compliance costs will be substantially increased by the need to, among other things, identify and monitor changes to intermediaries used by their correspondents and their correspondents' correspondents (and so on), monitor the fees charged by these unaffiliated institutions (if they are willing to provide this information), track tax and privacy laws in all relevant jurisdictions, and determine (on an ongoing basis) the jurisdictions where obtaining the requisite disclosure information would be feasible.

Furthermore, the financial impact of compliance with the Proposed Rule is likely to be significant and impact the ability of institutions to offer remittance transfer services. Thus, rather than increasing access to remittance transfer services, the costs and burdens associated with the Proposed Rule may cause institutions to narrow their remittance transfer services or discourage institutions from offering these services altogether. Such a result would reduce consumer access to remittance transfers and, in effect, run counter to the policy objectives underlying Section 1073 by reducing consumer choice. Accordingly, the Associations believe that the Proposed Rule, as drafted, would have the unintended consequence of reducing the availability of safe, timely and effective remittance payment solutions to the unbanked and under-banked communities in the United States and could lead many consumers to use more costly services outside of the highly regulated, safe and efficient banking system.

The Associations encourage the Board and/or Bureau to conduct a study to more accurately gauge the amount of time and expense that would be involved in complying with the requirements of the Proposed Rule, including the unique costs to open network providers.<sup>15</sup> In addition, the Associations request that the Board take into consideration the myriad of other new regulatory requirements brought about by the Dodd-Frank Act – in addition to the remittance transfer rules called for by Section 1073 – that require financial institutions to fundamentally restructure certain internal systems and controls.

#### IV. Proposed Section 205.30 – Remittance Transfer Definitions

##### A. Agent

Section 205.30(a) of the Proposed Rule defines “agent” to mean an agent, authorized delegate, or person affiliated with a remittance transfer provider, as defined under state or other applicable law, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

The Associations request that the Board provide additional clarity on the meaning of agent. Specifically, the Association believes that a remittance transfer provider’s relationships with intermediary and correspondent banks are not agency relationships, and seeks confirmation from the Board that the term “agent” would not encompass such relationships.

##### B. Business Day

Section 205.30(b) of the Proposed Rule defines “business day” to mean any day on which a remittance transfer provider accepts funds for sending remittance transfers. Further clarification is provided in the proposed commentary. For the following reasons, the Associations believe that business day should be clarified and defined as any day on which a remittance transfer provider is open to execute a payment instruction in order to initiate a remittance transfer.

One of the problems with the proposed definition is that it is unclear when an institution “accepts funds” in the context of this proposal. For example, the definition could be interpreted to mean that a remittance transfer provider accepts funds when the sender gives the provider the instruction to send a remittance transfer or, alternatively, when a debit or hold posts to the sender’s account with the remittance transfer provider.

This ambiguity is of particular significance to institutions that can offer remittance transfers by debiting or holding funds in a customer’s account, a form of remittance transfer that could occur on a holiday or over the weekend. Notably, if a remittance transfer provider is considered to “accept funds” on the date the debit or hold posts to the sender’s account, every day could be a business day under the Proposed Rule.

Many financial institutions offer online services at any time of day, on any day of the week, but business days for processing transfers are typically determined by the institution. Generally, as with the

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<sup>15</sup> While we have not conducted a controlled study, some members of the Associations estimate that compliance costs would exceed \$1 million and that it would take thousands of hours to comply with the Proposed Rule. Thus, we strongly urge the Board and/or Bureau to conduct a study in order to gain an understanding of the time and costs that would be involved *throughout the industry*, including the impact the rule would have on small banks and credit unions, which would be consistent with the spirit of Section 1100G of the Dodd-Frank Act, which requires the Bureau to consider the impact its rules will have on the cost of credit for small businesses and to evaluate alternatives to minimize those increases.

payment of checks, an institution may process transactions Monday through Friday (excluding bank holidays). Financial institutions require flexibility to differentiate between the hours that their systems can be accessed by their customers and the hours when an institution will process the transaction. To achieve this, financial institutions should be afforded the ability to establish their own business days and cut-off times in their service agreements with their customers, including different cut-off times for different products, provided that these cut-off times are reasonable, as is the case, for example, with respect to funds availability when establishing the day of deposit pursuant to Regulation CC.

Accordingly, the Associations request that in the final rule, the Board define “business day” to mean any day on which a remittance transfer provider executes payment instructions in order to initiate a remittance transfer.

### C. Designated Recipient

Section 205.30(c) of the Proposed Rule defines “designated recipient” to mean any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country. The preamble to the Proposed Rule states that the definition reflects the Board’s recognition that a remittance transfer provider will generally only know the location where funds are to be sent, rather than where a designated recipient is physically located.

Proposed comment 30(c)–2 provides that a remittance transfer is received at a location in a foreign country if funds are to be received at a location physically outside of any state. However, it is unclear how a remittance transfer provider is to determine the location where funds are to be received. For example, the location where funds are to be received could be determined based on the location of the receiving institution or based on the information associated with the designated recipient’s account. Further, if the receiving institution or entity through which the remittance transfer will be made available to the designated recipient operates in multiple locations through, for example, different branches and storefronts, the possible locations can be many and varied. Accordingly, the Associations believe the Board should clarify that for account-to-account transfers a remittance transfer provider may determine the location by relying on the information associated with the designated recipient’s account at a foreign institution, such as the information that an originating bank must retain pursuant to the Treasury Department’s Travel Rule.<sup>16</sup> For cash pick-up remittances, the recipient’s location should be the pick-up location. Clarifying this ambiguity is of particular importance to financial institutions, as they will need to develop operational systems with the capability of distinguishing between remittance transfers and other transfers of funds.

### D. Remittance Transfer

#### 1. General Definition

Section 205.30(d) of the Proposed Rule defines “remittance transfer” as the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The Associations request that the Board clarify that transfers not destined to a natural person outside of the United States do not qualify as remittance transfers. The Associations also request the Board to explicitly provide in the definition of remittance transfer or related commentary that a deposit into a domestic account *specifically does not qualify* as a remittance transfer even if a person in a foreign country has exclusive access to the account. In these cases, funds are not being remitted to a location outside of the United States. Furthermore, in many cases, the remittance transfer provider will not know the location of

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<sup>16</sup> The Travel Rule requires banks that originate funds transfers of \$3,000 or more to retain certain information regarding the recipient, including name and address and account number. 12 C.F.R. § 1020.410(a).

the person that has access to the account. In other words, to qualify as a remittance transfer, the provider must be actively and knowingly engaged by the sender to initiate a transaction to natural persons outside the United States.

Additionally, the Associations urge the Board to use its authority under section 904(c) of the EFTA to carry out Congressional intent, as evidenced by the Senate Report, by limiting the scope of the rule to traditional remittances and applying the rule to transactions that Congress meant to cover, as described in the Senate Report. Therefore, the final rule should exclude from the definition of “remittance transfer” any transaction (a) not destined to a natural person at a location outside the U.S., or (b) denominated for more than \$1,000.<sup>17</sup>

As one of the Associations previously noted in a letter to the Board dated April 8, 2011,<sup>18</sup> the EFTA provides the Board with the authority to make exceptions in its regulations for certain classes of remittance transfers when, among other reasons, those exceptions are necessary or proper to effectuate the purposes of the EFTA. Section 904(c) of the EFTA states that the regulations the Board issues under the EFTA “may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers or remittance transfers, as in the judgment of the [Board] are necessary or proper to effectuate the purposes of [the EFTA]. . . .”<sup>19</sup> The purpose of the EFTA, including the new remittance transfer rules contained in Section 919, is consumer protection.<sup>20</sup>

However, the EFTA directs the Board to weigh the consumer protections of the regulations it prescribes under the EFTA with the compliance costs those regulations will impose upon consumers and financial institutions.<sup>21</sup> Specifically, in prescribing regulations under the EFTA, the Board must “to the extent practicable . . . demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions.” Remittance transfers are typically defined as “cross-border person-to-person payments of *relatively low value*” that are “for the maintenance and support of the recipient and/or other relatives” (rather than payments to businesses or payments made in exchange for goods or services).<sup>22</sup> The Associations believe that the burden of complying with the

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<sup>17</sup> See footnote 11 of this letter and the corresponding text.

<sup>18</sup> See Letter from The Clearing House Association L.L.C. to Ky Tran-Trong and Samantha J. Pelosi (Apr. 8, 2011) (regarding Forthcoming Remittance Transfer Rules Issued Pursuant to Section 1073 of the Dodd-Frank Act).

<sup>19</sup> EFTA § 904(c).

<sup>20</sup> Specifically, section 902(b) of the EFTA states that the EFTA’s “primary objective” is “the provision of individual consumer rights.” Furthermore, as previously noted, the Senate Report on the Dodd-Frank Act bears out that the underlying objective of Section 1073 was consumer protection, stating that “senders of remittance transfers are not currently provided with adequate protections under federal or state law” and that the new rules will “establish minimum protections for remittances sent by consumers in the United States to other countries.”

<sup>21</sup> EFTA § 904(a)(3). The extent of compliance costs could be very significant and the Associations, thus, strongly recommend that the Board and/or Bureau study these costs prior to developing final rules. As noted earlier in this letter, compliance costs will include building and/or modifying information technology systems; updating policies, procedures, and controls; renegotiating agreements with correspondent banks and other third parties; training employees and, in some cases, training third parties; drafting new service descriptions, disclosures and related materials (including, among others, paper communications, online communications, customer service scripts, and other consumer correspondence); translating all necessary disclosures and related materials; printing; ongoing compliance and monitoring; overseeing correspondents and other third parties; and any other expenses. In addition, for open network remittance transfer providers, compliance costs are likely to include, among other things, the cost of identifying intermediaries, monitoring the fees charged by these unaffiliated institutions (if they are willing to provide this information), tracking tax and privacy laws in all relevant jurisdictions, and determining (on an ongoing basis) the jurisdictions where obtaining the requisite disclosure information would be feasible.

<sup>22</sup> Letter to Senators Dodd & Akaka, Apr. 22, [http://www.cuna.org/download/congress\\_letter\\_042210.pdf](http://www.cuna.org/download/congress_letter_042210.pdf) (citing Committee on Payment and Settlement Systems, The World Bank, General Principles for International Remittance

requirements of the Proposed Rule would *significantly* exceed the consumer benefits of including transactions of greater than \$1,000 within its scope. In addition, having such transactions be covered by the final rule may impose a new burden on consumers who may no longer be able to send final payments overseas due to service changes by their financial institutions.

Furthermore, the legislative history of the Dodd-Frank Act reflects that the remittance transfer provisions contained in Section 1073 were intended to address the need for protection of immigrants who send substantial portions of their earnings to family members abroad.<sup>23</sup> However, the Proposed Rule would create restrictions and requirements that will apply to a much broader range of cross-border transactions than those reflected in the stated Congressional intent. These include cross-border purchases, account transfers, and bill payments initiated through a financial institution (as opposed to transfers initiated through the billing party located outside the United States). By covering an overly broad range of transactions, the proposal would create “protections” that are unnecessary and in fact will not be helpful or relevant to many individuals who make transfers that would fall within the definition of remittance transfer, such as wealthy individuals who transmit funds overseas, or individuals who make use of cross-border ACH or wire transfers for other common reasons, such as to make investments or large purchases or to transfer funds from a domestic bank account to a foreign bank account.

The broad application of the proposed definition to cross-border transfers in excess of \$1,000 is unnecessary to protect consumers who send remittance transfers as traditionally understood and, furthermore, would create compliance challenges and legal uncertainties that far outweigh the benefits of any protections that would be achieved. Properly focusing the coverage of the regulation in this manner would accomplish the legislative objective of protecting the consumers that Congress intended to protect while preserving the established legal principles that have long governed large-value wire transfers and ACH transactions. Such a limitation would mitigate the risks that institutions will face in the absence of the UCC 4A regime and would help to avoid the disruption of services that may result if the Proposed Rule is adopted in its current form. Accordingly, the Associations strongly urge the Board to use the discretion it is granted under section 904(c) of the EFTA to exclude from the definition of remittance transfer in the final rule funds transfers not destined to a natural person outside the United States or that are of more than \$1,000.

## 2. Online Bill Payment and Recurring Wire Transfers

The Board specifically requested comment on whether it should exclude online bill payments made through a sender’s institution (including preauthorized bill payments). For a variety of reasons, the Associations urge the Board to exclude online bill payments, as well as recurring wire transfers and other cross-border payments to commercial entities. Online bill payment and other commercial payments fall well outside the traditional meaning of remittance transfers and we believe are outside the scope intended by Congress. As a practical matter, these transactions are already typically covered by other provisions of Regulation E as well as payments network rules. Furthermore, by not excluding cross-border bill payments, different coverage will apply to bill payments initiated through a financial institution, which would be covered as remittance transfers, versus bill payments initiated directly with the billing party, which would not be covered. This divergent coverage will favor one form of online bill payment over another. Differing rules not only act as a detriment to consumers and U.S.-based institutions but will confuse consumers about their rights when sending funds overseas.

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Services (January 2007) (emphasis added), available at [http://siteresources.worldbank.org/INTPAYMENTREMITTANCE/Resources/New\\_Remittance\\_Report.pdf](http://siteresources.worldbank.org/INTPAYMENTREMITTANCE/Resources/New_Remittance_Report.pdf).

<sup>23</sup> S. Rep. 111-176, at 179 (2010).

Covering online bill payments as remittance transfers also exacerbates the difficulties of complying with the disclosure and error resolution provisions of the Proposed Rule since:

- The remittance transfer provider in the United States is unlikely to be in a position to know or control how a foreign commercial entity processes and applies the bill payment in terms of timing, amount, and other relevant details, and
- For recurring bill payments, it is difficult to see the relevance or capability to provide meaningful pre-payment disclosures related to individual transactions with the recurring payment stream as exchange rates, fees, taxes, and other relevant details, particularly since such details will change over time.

It is also important to recognize that, payments made through an online bill payment service are not consistent with (i) the traditional concept of a remittance transfer as a one-time arrangement to transfer funds abroad (as opposed to an ongoing arrangement to make payments to a merchant); and (ii) the notion of an electronic transfer “requested by the sender” (as called for by the definition of “remittance transfer”) because an institution may reserve the right to make the payment being requested by electronic means or by check. The decision regarding whether to make the payment electronically is then at the discretion of the financial institution and many institutions will not decide how to make the payment until immediately prior to the transfer. The payment method is selected based on various factors, including the particular merchant involved in the transaction and the customer’s payment history and account activity. Under those circumstances, a sender has not *requested* an electronic transfer of funds, but only requested that an amount be paid out of an account.

Moreover, the Associations believe that Congress intended to focus on single transactions and not ongoing or recurring payments. The disclosure and error resolution provisions contemplated in section 1073 clearly emphasize traditional remittance payments and single transactions. To expand the coverage to pre-authorized, recurring payments does not fit with either traditional understanding of remittances or, in fact, the disclosures and error resolution mechanisms established by Congress. For example, the Associations encourage the Board to recognize the difficulty of providing the disclosures required by the Proposed Rule in connection with online bill payments and recurring funds transfers. In addition, the Proposed Rule requires that prepayment and combined disclosures be provided at the time “the sender requests the remittance transfer, but prior to payment for the remittance transfer.” However, at the time the sender requests a recurring transfer, an institution will not be able to provide an estimate of the conversion rates that might apply in the future, especially with respect to recurring bill payments and wire transfers that may be established so as to repeat indefinitely.

### 3. Application of the EFTA; Relation to the Uniform Commercial Code

The Board’s Proposed Rule unnecessarily disrupts the long-standing legal framework governing wire transfers under state laws that conform to UCC Article 4A. In the preamble to the Proposed Rule, the Board recognized that consumer wire transfers that are also remittance transfers will now be governed in part by the EFTA and that by operation of Article 4A–108, which states that Article 4A does not apply “to a funds transfer, any part of which is governed by the [EFTA],” Article 4A will no longer apply to consumer wire transfers that are remittance transfers.

In order to send remittance transfers using open wire networks, insured financial institutions must be able to rely on the well-established rules allocating risks among financial institutions for wire transfers. These rules have significantly influenced banking industry standards and practices relating to wire transfers and other funds transfers that are not governed by the EFTA. Without these rules in place, financial institutions that send wire transfers will face significant legal uncertainty as to their rights and

responsibilities in relation to other parties involved in a wire transfer and will be unable to enforce the risk of loss provisions based on UCC Article 4A.

In the preamble to the Proposed Rule, the Board indicated that it declined to preempt provisions of state law that prevent a remittance transfer from being treated as a funds transfer under UCC Article 4A based solely upon the inclusion of the remittance transfer provisions in EFTA Section 919. While it is clear that the intent of Section 1073 was to alter the EFTA such that consumer protections afforded to remittance transfers would also be applicable to wire transfers,<sup>24</sup> nothing in the language of Section 1073 or of the EFTA indicates that Congress intended to completely pre-empt UCC Article 4A for remittance transfers that are also wire transfers.

The Board noted that “Congress amended the EFTA’s preemption provision to specifically include a reference to state gift card laws when it enacted new EFTA protections for gift cards as part of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act)” and that, in contrast, “Congress did not amend the EFTA’s preemption provision with respect to state laws relating to remittance transfers, including those that are not electronic fund transfers, when it enacted the Dodd-Frank Act.”

However, Congress did address the issue of preemption of state laws in the context of the application of Title X of the Act (which includes Section 1073). Specifically, Section 1041(a) of the Dodd-Frank Act provides that Title X of the Act “may not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that any such provision of law is inconsistent with the provisions of [Title X of the Dodd-Frank Act], and then only to the extent of the inconsistency.” Furthermore, Section 1041(b) states that “No provision of [Title X] . . . shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.” The list of “enumerated consumer laws” is defined in Section 1002(12)(c) of the Dodd-Frank Act as including the EFTA, *except* with respect to Section 920 of the EFTA (the EFTA pre-emption provision).<sup>25</sup> In other words, the pre-emption provision of the EFTA may be construed as modified, limited, or superseded by Section 1041 and/or Section 1073 of the Dodd-Frank Act.

Accordingly, Congress did in fact express its intent for the provisions of the Dodd-Frank Act, including Section 1041, to be allowed to modify, limit, or supersede the pre-emption provision of the EFTA, including as it may be relevant to the interplay between Section 1073 and UCC Article 4A.

However, the Board has declined to participate in the resolution of this issue. It has indicated its view that states may amend UCC Article 4A to restore the article’s application to consumer international wire transfers or that wire transfer systems could amend their operating rules to incorporate UCC Article 4A. The Associations do not think that either of these suggestions is viable.

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<sup>24</sup> Section 919(g) of the EFTA states that a “remittance transfer” “(A) means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) transfer of funds requested by a sender located in any State to a designated recipient that is initiated by a remittance transfer provider, whether or not the sender holds an account with the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 903. . . .”

<sup>25</sup> This preemption provision was enumerated as Section 920 of the EFTA at the time of enactment of the Dodd-Frank Act. It was then renumbered by that same Act to be EFTA Section 921. The reference to Section 920 of the EFTA in Dodd-Frank Act Section 1002(12)(c) is to this preemption provision at the time of the enactment of the Dodd-Frank Act.

With respect to the suggestion that states amend their enactments of UCC 4A, the Associations stress to the Board that it is very unrealistic to expect that the Uniform Law Commission will be able to draft and approve a UCC 4A change and that all states will enact the change before final rules become effective. Likewise, it is unrealistic to expect the respective legislatures of each state, the District of Columbia and U.S. territories to draft and adopt their own language restoring the application of UCC 4A before the final rules become effective. With respect to the suggestion that wire system rules can address the problem, the Associations question whether such rules can bind entities other than those that participate directly in the system.

As neither of the Board's suggested non-federal solutions are viable, the Associations believe it is incumbent on the Board to resolve the conflict between UCC 4A and the provisions of Section 1073. If the conflict is not addressed, the Proposed Rule in its current form is an invitation to litigation and ongoing uncertainty that is antithetical to the needs of a safe and efficient payment system.

In light of Section 1041 of the Dodd-Frank Act and the significant risks that eliminating the applicability of UCC Article 4A would create, the Associations respectfully request the Board to use its authority under section 904(c) of the EFTA to exclude from the definition of "remittance transfer" any transaction more than \$1,000 from the final rule. Such an exclusion, we believe, is the simplest solution that would allow the rules to accomplish the legislative objective of protecting consumers who send remittance transfers as they have traditionally been defined, while preserving for large value transfers, for which finality and speed are key, the established legal principles under UCC Article 4A.

#### E. Remittance Transfer Provider

Section 205.30(e) of the Proposed Rule defines "remittance transfer provider" to mean 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. Proposed comment 30(e)-1 clarifies that agents are not deemed remittance transfer providers by merely providing remittance transfer services on behalf of the remittance transfer provider.

The Associations believe the definition of remittance transfer provider should include a *de minimis* exemption for institutions that provide only a small number of remittance transfers as such institutions do not provide remittances "in the normal course of business," but rather as an occasional service to customers. Specifically, the Board should exclude institutions that have provided fewer than 100 remittance transfers during the prior month and that do not act through non-depository institution agents. Alternatively, the Board could provide a similar exclusion for remittance transfer providers that have provided fewer than 100 remittance transfers during the current month.

An exemption for institutions that send a small number of remittance transfers would be consistent with the legislative intent underlying Section 1073, which was to provide protections for senders of remittance transfers who do not currently have adequate protection under state and federal law. Banks and other depository institutions that do not regularly send "remittance transfers" offer these funds transfers services as a courtesy to their customers. Existing law provides customers of these institutions with numerous protections, in contrast with individuals who send remittance transfers outside of the heavily regulated banking system.

#### F. Sender

Section 205.30(f) of the Proposed Rule defines "sender" to mean a consumer in a state who requests a remittance transfer provider to send a remittance transfer to a designated recipient. The Associations request clarification on what it means for a consumer to be "in a state." In particular, for

individuals who are not U.S. residents but who have accounts in the United States, the Associations ask the Board to confirm that such individuals are not “senders” even if they use funds from their U.S. account to fund a transfer.

Further, a remittance transfer provider may not know the location of a sender and specifically, whether the sender is “in a state.” For example, when transfers are initiated online, a remittance transfer provider may not be able to determine the location of the sender. Similarly, transfers initiated by telephone, facsimile, e-mail, text, mobile device transmission, or other electronic means will not generally permit the provider to know the locations of the sender. Accordingly, the Associations request that the Board clarify that:

- for remittance transfers in which a sender physically visits a remittance transfer provider’s location, or his or her physical location is apparent to the remittance transfer provider, a provider may rely on that physical location to determine whether the sender is in a state; and
- for account-based remittance transfers, a provider may rely on information on record with the provider for the account from which the remittance transfer is made to determine whether the sender is “in a state.”

Similarly, the Associations ask the Board to clarify how a remittance transfer provider can know the location of a sender when the remittance transfer is requested via email, facsimile, or over the internet.

Finally, in determining whether a sender is a consumer, the Associations recommend that the Board should clarify that no transfer sent from an account designated as a business account, including the account of a sole proprietor or other small business, can be deemed a remittance transfer. This approach is consistent with the definition of “account” under Regulation E, which covers accounts “established primarily for personal, family, or household purposes.”<sup>26</sup> Further, the Associations believe that remittance transfer providers should be able to rely on the account designation (as either a consumer or business account) when determining whether the Proposed Rule would apply. Likewise, the Associations believe that the Proposed Remittance transfer rules should not apply to transfers to or from *inter vivos*, revocable trusts or other fiduciary accounts, including estate and guardian accounts, and request that the Board clarify the applicability of this definition to such accounts. This approach would also be consistent with the definition of “account” under Regulation E in that Regulation E defines an account as being “...established primarily for personal, family, or household purposes,” and specifically excludes an account established pursuant to a *bona fide* trust agreement.<sup>27</sup>

#### V. Proposed Section 205.31 – Disclosures

Section 205.31 of the Proposed Rule implements the disclosure requirements of Section 1073, including the requirement that a remittance transfer provider provide a prepayment disclosure to a sender with information about the sender’s remittance transfer and a written receipt that includes the information provided on the pre-payment disclosure, as well as certain additional information (e.g., the promised date of delivery and information regarding the sender’s error resolution rights).

##### A. Written and Electronic Disclosures

Section 205.31(a)(2) of the Proposed Rule contains the requirements for written and electronic disclosures, including the requirement that a provider provide electronic disclosures in a retainable form.

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<sup>26</sup> 12 C.F.R. § 205.2(b)(1).

<sup>27</sup> 12 C.F.R. § 205.2(b)(3). *See also* EFTA § 903(2).

In connection with this requirement, the Board specifically requested comment on how that requirement could be applied to transactions conducted via text messaging or mobile phone application. The Associations stress that it will be challenging to provide the required disclosures in the required format electronically in the first place and that these difficulties will be further amplified with respect to transactions conducted via text message or mobile phone application. As a result, the proposed specificity or lack of flexibility in formatting could foreclose the availability of certain delivery channels for transactions covered by the definition of remittance services, which mandates two significant changes to the Proposed Rule: a narrow definition that specifies the transactions that are covered and increased flexibility for formatting the delivery of disclosures, especially for alternative, non-traditional delivery channels.

The Board's proposed comments are intended to clarify the interplay between the provision of electronic disclosures under the Proposed Rule and the Electronic Signatures in Global and National Commerce Act ("ESign Act"). Specifically, electronic disclosures required by proposed section 205.31(b)(1) (*i.e.*, the prepayment disclosures) may be provided without regard to the consumer consent and other applicable provisions of the ESign Act. In contrast, however, receipts required by proposed section 205.31(b)(2) may be provided to a consumer electronically but must comply with the consumer consent and other applicable provisions of the ESign Act. The Associations recognize that Section 1073 does not provide the Board with authority to exempt electronic receipts from the requirements of the ESign Act, in contrast with Section 919(a)(5)(D) of the EFTA, which enables the Board to issue a rule that permits a remittance transfer provider to provide the prepayment disclosure "without compliance with section 101(c) of the [ESign] Act, if a sender initiates the transaction electronically...." However, the Proposed Rule and associated commentary do not address the applicability of the ESign Act to the combined disclosure permitted by proposed section 205.31(b)(3), and the Associations request that the Board clarify that the permissibility for providing the pre-payment disclosure includes the combined disclosure, too. The Associations note that typically an institution will receive permission to provide disclosures electronically (in accordance with ESign) and then provide all subsequent disclosures electronically. The Associations seek clarification from the Board on whether that permission will apply to the receipt required by proposed section 205.31(b)(2). The Associations believe that reconciling this conflict will provide consumers with better service and better information for these transactions than the proposed disconnection between prepayment disclosures and post-transaction receipts contemplated by the Board's Proposed Rule.

Furthermore, the Associations request that the Board clarify why proposed comment 31(a)(2)-3 states "Electronic disclosures *may not* be provided through a hyperlink or in another manner by which the sender can bypass the disclosure." The Associations believe that a remittance transfer provider should be permitted to meet the requirements under the Proposed Rule for electronic disclosures through various methods, including a hyperlink.

#### B. Prepayment Disclosure

The Proposed Rule generally requires a remittance transfer provider to give a sender a written pre-payment disclosure that contains certain information about the remittance transfer (*e.g.*, the exchange rate, applicable fees and taxes, and the amount to be received by the designated recipient). The Proposed Rule also permits oral pre-payment disclosures when a remittance transfer transaction is conducted entirely by telephone.

One item that must be disclosed on the prepayment disclosure is the exact amount to be received by the designated recipient. Proposed comment 31(b)(1)(vii)-1 states that the disclosed amount to be received by the designated recipient must reflect all charges that affect the amount received. However, the Associations note that it will be particularly difficult, if not impossible, for institutions that use open

network wire and ACH systems to know all such charges. As described in more detail in the above, because a sending institution does not directly transmit funds to the receiving institution in an open network and does not control the transaction from start to finish, a sending institution often will not know, and will not be able to know, the exact amounts of taxes, fees, exchange rates, and other charges imposed by intermediary banks and governments. The Proposed Rule does not reflect this operational reality. Furthermore, *even when* the sending institution has a relationship with the receiving bank, the sending bank does not know the amount of fees that the receiving bank will charge its own customer (*i.e.*, the designated recipient in a remittance transfer transaction), as those fees originate from the relationship between the customer and the receiving bank.<sup>28</sup>

The Associations recognize that the Proposed Rule permits estimates *under certain circumstances*, but to the extent that a remittance transfer is conducted via an open network and the exceptions permitting estimates of this amount do not apply, the provider will not be able to comply with this requirement. Furthermore, even if an exception applies, a provider would still be unable, in many cases, to collect the information called for by the provisions of the rule regarding bases for estimates. Despite its two exceptions, the Proposed Rule, as drafted, essentially forecloses certain transfer channels for remittances inasmuch as the provider cannot disclose all the information mandated. The Associations, therefore, recommend that the Board exclude open network wire and ACH transfers from the final remittance transfer rule, or, as part of a separate, tailored open network rule set, to incorporate a good faith element into the final rule so that if a provider discloses the fees *to the best of its ability and to the extent that it is able to provide that information*, it will have met the appropriate compliance standard.

Additionally, the Associations request that the Board clarify the statement that “a provider must disclose the transfer amount in the currency in which the funds will be transferred to show the calculation of the total amount of the transaction.” Specifically, it is unclear what is meant by “the currency in which funds will be transferred” and whether this requirement applies based on the currency denomination of the consumer’s account or whether it applies only where the remittance transfer provider, itself, performs the conversion. In keeping with what the Associations believe to be the Board’s intent, we urge the Board to clarify that this means that the provider disclose the transfer amount (i) the sender presents to the remittance transfer provider, or (ii) the denomination of the account, used to fund the transfer.

Furthermore, the Associations ask that the Board clarify when the disclosure regarding exchange rate is required because open network providers in many cases will not know the currency in which the funds will be received because a recipient’s account may be denominated in local currency, U.S. currency, or some other currency, and the recipient institution may not be willing to provide that information due to privacy concerns. As part of a separate, tailored open network rule set, the Board may consider requiring the sender to designate the appropriate currency since the sender is in a better position to get this information from the recipient than the sender’s financial institution.

### C. Receipt

Proposed Section 205.31(b)(2) requires a remittance transfer provider to provide a sender with a written receipt when payment is made for the remittance transfer. The receipt must contain the same information that must be provided in the prepayment disclosure required by proposed Section 205.31(b)(1), and also contain additional information, such as a statement that the sender can contact the state agency that regulates the remittance transfer provider and the Bureau for questions or complaints

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<sup>28</sup> In addition, in some instances a receiving institution could set off against the amount remitted and a remittance transfer provider will not know when this may occur. This is a further example of an instance in which a provider will not have all of the information concerning a remittance transfer that is sent through an open network system, such as an understanding of the relationship between the receiving institution and the designated recipient.

about the remittance transfer provider. Regarding contact information for regulators, the Associations urge the Board to clarify that federally chartered depository institutions only need to provide contact information for their primary regulator and will not be required to provide contact information for state regulators.

In addition, the receipt must disclose the date of availability of funds to the designated recipient. The Associations agree with the point the Board makes in the preamble to the Proposed Rule: because remittance transfer providers are not permitted to provide a range of dates that the remittance transfer may be available, they are likely to be very conservative when providing the date of availability and presumably will disclose the latest date that the funds will be available, even if the funds become available sooner most of the time.

The Associations request that the Board clarify what it means by the “date of availability.” The Associations note that remittance transfer providers that send remittance transfers through open network systems will often be unable to know when the remitted funds will arrive at the receiving institution. Further, the provider often will not know the receiving institution’s funds availability schedule or the compliance screening requirements of local regulators. While providing a date of availability may make sense in the context of a closed network transfer, funds availability to a recipient cannot be known or controlled in an open network.

If the Board does not exclude open networks transfers from the final rule, it should alternatively develop separate rules for open networks. As part of such separate rules tailored to open networks, the Associations request that remittance transfer providers be required to estimate only the date that funds will be made available to the recipient institution rather than the date the funds will be made available to the designated recipient. If the Board adopted this approach, the Associations recommend that remittance transfer providers be permitted to include in the receipt a statement that the actual date of availability of the funds may be determined by the receiving institution.

#### D. Format

Section 205.31(c) of the Proposed Rule contains requirements relating to the format of required disclosures. The Board specifically requested comment on how the grouping and proximity requirements in proposed Sections 205.31(c)(1) and (2) could be applied to transactions conducted via text messaging or mobile phone application.

Currently, communications sent by text and mobile phone are limited in many ways, which could adversely impact the ability of a remittance transfer provider to deliver the required disclosures and receipts to the sender. Specifically, these constraints include, among others: limitations on the amount of information that can be sent in one message; limitations on a remittance transfer provider’s ability to format a message and the risk that, even in cases where a provider can format the message, such formatting may be stripped from the message before it is delivered by service agencies outside the control of the remittance provider; restrictions on the volume of messages that may be sent or received from a particular account, which involve the risk that disclosures and/or receipts sent by text or mobile phone may not be received because the consumer’s messaging plan has been exhausted for the relevant time period (typically a month); and other restrictions on text and phone messaging that may differ by individual mobile service plans. A remittance transfer provider’s ability to provide disclosures and receipts via text and phone messaging may further be limited by technological and resource constraints within the institution, which can be significant given that text and mobile phone messaging, and the respective functionality they offer, are continuing to evolve and would require financial institutions to make continuous systems modifications to ensure that full and accurate disclosures would be delivered to consumers.

Accordingly, the Associations believe that, in general, remittance transfer providers should be permitted to provide disclosures for mobile-to-mobile transactions via the provider's preferred method – be it text or mobile messaging, email, online, or by mail – provided that the consumer is capable of receiving disclosures and receipts via the desired delivery avenue. This would afford remittance transfer providers maximum flexibility in delivering full and accurate disclosures to the sender that are formatted in a clear and concise fashion. The Associations also believe that some senders may prefer to receive disclosures in a certain way and that providers should be able to honor that preference. For example, a sender who initiates a remittance transfer using a mobile telephone may prefer that disclosures be provided online at the provider's online banking site or via email so that the sender may more easily read, print and store the disclosures. Fundamentally, though, the important element to meet Congressional intent and to satisfy the statutory requirement is to provide the requisite information and not to mandate a particular format.

In addition, the Proposed Rule contains specific format requirements relating to the prominence and size of required disclosures. The Associations note that a specific font size requirement may not create consistency across the board, as font sizes may display differently on different screens and printers and may be affected by other technological issues. In addition, the imposition of font size requirements could create an unnecessary expense that does not involve a corresponding consumer benefit. Prescriptive formatting requirements may also create difficulties as new technologies arise, as it may be challenging or impossible to adapt certain formatting requirements to those technologies. Accordingly, the Associations believe the Board, consistent with Regulation E parameters,<sup>29</sup> should call for a “clear and readily understandable” standard (rather than requiring a specific font size). A “clear and readily understandable” standard would permit remittance transfer providers to satisfy applicable disclosure requirements in a way that assures senders are provided with adequate disclosures and receipts that are clearly and conspicuously presented.

Similarly, the Proposed Rule states that the required written and electronic disclosures must be segregated from other disclosures and must contain only information that is directly related to the disclosures required under the Proposed Rule. The Associations suggest that an additional piece of information that should be considered “directly related” to the required disclosures would be details regarding retrieval of the funds, such as for a cash pick up remittance that the recipient has a set number of days to retrieve the transfer, and if the recipient fails to retrieve the funds in the allotted time, that the funds will be sent back to the remittance transfer provider and ultimately the sender. The Associations further note with respect to the segregation requirement that while segregation makes sense in the context of a paper disclosure, it would be challenging to achieve in the context of an electronic disclosure. The Associations recommend that the final rule not be designed or constrained by paper formatting concepts; to do so would defeat the purpose of providing consumers with the best information possible in the most efficient and effective manner.

For example, the Associations believe that the disclosure and receipt requirements could be satisfied where a disclosure or receipt is presented on a screen with other self-contained disclosures (such as an ESign disclosure and consent, or a privacy policy). While not fully segregated (because they may appear on a screen at the same time), these disclosures can be presented in an isolated or self-contained fashion (because the remittance transfer provider has purposefully designed its electronic disclosures to ensure such clear and conspicuous isolation). This approach is consistent with disclosure practices used today throughout the industry regarding various disclosures required to be made under federal law. It is also noteworthy to consider efficiency and the trend within the financial services industry to adopt more paperless communication processes. For example, billing statements are increasingly being delivered in

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<sup>29</sup> 12 C.F.R. 205.4(a)(1).

electronic format. Thus, the Associations strongly advocate that the final remittance transfer rule afford remittance transfer providers maximum flexibility in presenting electronic disclosures in an isolated, clear and conspicuous (although not fully segregated) fashion.

#### E. Timing of Disclosures

The Proposed Rule permits a provider to mail a receipt required under proposed Section 205.31(b)(2) on or with the next regularly scheduled periodic statement if the remittance transfer transaction is conducted entirely by telephone and involves the transfer of funds from the sender's account held by the provider. The Associations ask for clarification on two points here.

First, the Associations request that the Board clarify that disclosures may be sent in the same envelope as other consumer account-related mailings. In other words, that the segregation requirement discussed above would not mandate separate envelopes. The Associations believe that permitting remittance transfer providers to include numerous items in one envelope would help to minimize some of the compliance costs and burdens associated with new remittance transfer requirements. We further note that this approach is consistent with disclosure practices used today throughout the industry regarding various legally-required disclosures and would serve to avoid customer confusion as to why they are receiving numerous mailings with respect to one account.

Second, the Associations ask the Board to clarify that a remittance transfer provider may mail a receipt required under proposed Section 205.31(b)(2) contemporaneously with an account statement rather than on or with the statement.

Additionally, the Associations urge the Board to clarify that a provider may consider a mixed communication (such as faxed request with a follow up telephone call) to constitute either a written request or a transfer conducted by telephone at the provider's discretion. The Associations also ask for clarification regarding the reason why the timing requirements for the required receipt are different if a customer uses the telephone to request a remittance transfer from an account held by the provider as opposed to requesting the transfer in some other way, such as by sending an email.

#### F. Foreign Language Disclosures

The Proposed Rule contains requirements relating to foreign language disclosures. Specifically, proposed Section 205.31(g)(1) provides that disclosures required under Subpart B, other than oral disclosures and written receipts for telephone transactions, must be made in English and either:

- (i) in each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at that office; or
- (ii) if applicable, in the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction (or for written or electronic disclosures made pursuant to § 205.33, in the foreign language primarily used by the sender with the remittance transfer provider to assert the error), provided that such foreign language is principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at that office.

The Associations request further clarification on the "principally used" and "primarily used" standards. In particular, the proposed commentary provides two examples for "principally" used: one

being a full sentence in an advertisement and the other being one word. The proposed standards appear to be subjective and lack the necessary clarity for compliance.

Although proposed comment 31(g)(1)–2 provides both positive and negative examples of advertising, soliciting, or marketing in a foreign language, it is unclear whether the terms “market” and “solicit” mean something different than “advertise.” The term “advertisement” is defined in the Board’s Regulation DD.<sup>30</sup> If “market” and “solicit” are intended to have a different meaning, however, the Associations request that the Board provide definitions for these terms.

Where providers offer services in languages other than English, the Associations believe that customers should be able to designate the language in which they prefer to receive disclosures, receipts and other materials, so long as it is a language that is principally used by the provider to advertise, solicit or market remittance transfer services. The Associations believe that having a consumer elect his or her preferred language is a more “consumer friendly” approach than requiring a remittance transfer provider to give a consumer disclosures in both English and the language primarily used by the sender when communicating with the remittance transfer provider. We further note that the latter option would be burdensome to the institution, and would certainly make disclosures, receipts and other materials less clear and conspicuous. Moreover, the Associations are concerned that the expense of providing disclosures in two languages would have the unintended consequence of reducing the number of foreign languages that providers may offer.

The Proposed Rule requires that for telephone transactions, disclosures and receipts must be presented in the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction. The Associations do not believe that remittance transfer providers should be required to provide disclosures in any language other than those that are principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services. In its current form, the Proposed Rule could hurt consumers by reducing the number of languages that a provider will be willing to use to conduct a transaction. For example, if a remittance transfer provider is located in a Greek community and an employee happens to speak Greek, a provider may discourage the employee from helping a customer in their native language if the provider does not have receipts available in that language.

The Associations urge the Board and the Bureau to take steps to facilitate and encourage disclosures in languages other than English, including providing model disclosures in foreign languages that providers may use to comply with the foreign language disclosure requirements contained in proposed section 205.31(g). Many of the consumers that the statutory provision are designed to protect are likely to have a language other than English as their primary language and this can inhibit their ability to conduct financial transactions.<sup>31</sup> In some instances, financial services providers are reluctant to incur the potential liability for imprecise translations, especially where technical terminology is involved. The more restrictive the final rules are for providing disclosures in languages other than English, the less likely providers are to offer disclosures in languages other than English. This produces a double disservice to consumers: first, it prevents them from receiving information in the best and most effective way possible; second, it is likely to encourage them to turn to less-well supervised or regulated providers that offer information in their preferred language.

#### VI. Proposed Section 205.32 – Estimates

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<sup>30</sup> 12 C.F.R. § 230.2(b).

<sup>31</sup> See Government Accountability Office, Factors Affecting the Financial Literacy of Individuals with Limited English Proficiency (May 2010) available at [www.gao.gov/new.items/d10518.pdf](http://www.gao.gov/new.items/d10518.pdf).

The Proposed Rule contains exceptions that permit a remittance transfer provider to provide estimates of the amount to be received by a designated recipient under certain circumstances in which the provider does not know the applicable exchange rate or the applicable fees or taxes that may be deducted from the amount transferred. Specifically, the Proposed Rule provides for a “temporary exception” for insured institutions and a “permanent exception” for transfers to certain countries.

A. Temporary Exception for Insured Institutions

Section 205.32(a)(1) of the Proposed Rule permits estimates to be provided for the disclosures required by proposed Sections 205.31(b)(1)(iv)–(vii), if:

- (1) a remittance transfer provider cannot determine exact amounts for reasons beyond its control;
- (2) a remittance transfer provider is an insured institution; and
- (3) the remittance transfer is sent from the sender’s account with the insured institution.

This exception expires on July 20, 2015, though the Board may decide to extend this sunset date if the termination of this exception would harm the ability of insured institutions to send remittances to foreign countries. The Board indicates that the intention behind this exception is to provide insured depository institutions with time to reach agreements and modify systems to provide accurate disclosures so as to avoid immediate disruption of remittance transfer services by insured institutions that use international wire transfers. However, the Associations note that other remittance transfer providers that are not insured depository institutions, such as uninsured federal branches of foreign banks and broker-dealers, will face similar difficulty. The Associations urge the Board to consider broadening the exception, particularly for open-network wire transfer and ACH transactions, to avoid disruption of international wire transfer services to consumers.

Proposed comment 32(a)(1)–1 states that an insured institution cannot determine exact amounts “for reasons beyond its control” when the exchange rate required to be disclosed under proposed Section 205.31(b)(1)(iv) is set by a person with which the insured institution has no correspondent relationship after the insured institution sends the remittance transfer.

This proposed comment does not reflect the operational realities of the correspondent relationship in an open network system. The Associations note that a financial institution’s correspondent relationship with another financial institution does not necessarily give the financial institution any more knowledge or control over the exchange rate that the correspondent will use. For example, typically an institution will debit a client’s account in dollars and transmit those funds in dollars to an overseas correspondent. It is the responsibility of the overseas correspondent, in turn, to credit the beneficiary in local currency. In such cases, the sending institution will not know what the correspondent exchange rate is going to be as that rate often changes multiple times per day. *In fact, as previously noted, in many cases, the sending institution will not even know the currency in which the funds will be received.* That is, the beneficiary might have an account denominated in USD rather than in the local currency, a multicurrency account that can accept deposits in USD or local currency, or in some other currency altogether, and the remittance transfer provider in an open network system will not have access to that information, which is another reason that transfers made through open networks should be excluded from the Proposed Rule.

In addition to the issues referenced above, some institutions may treat exchange rates as proprietary information and could refuse to disclose the applicable rates. And financial institutions that use “indicative” foreign exchange rates *will not know* the exact foreign exchange rate applied before making the remittance transfer as the rate is subject to change based on fluctuations in the market. When

an indicative rate is used (often in connection with an ACH transfer, where a wait time is required before funds can be disbursed and the applicable foreign exchange rate applied), the effective foreign exchange rate is determined by the receiving agent or institution when it receives the funds. Accordingly, the Associations believe that if the Board does not exclude open network transfers from the final rule, as part of a separate, tailored open network rule set, the Board should address these points.

## B. Permanent Exception for Transfers to Certain Countries

### 1. Laws of the Recipient Country

Proposed Section 205.32(b)(1) would permit a remittance transfer provider to provide estimates for the disclosures required by proposed Sections 205.31(b)(1)(iv)–(vii), if the provider cannot determine exact amounts because the laws of the recipient country do not permit such a determination. The commentary explaining circumstances in which the “laws of the recipient country” do not permit a remittance transfer provider to determine exact amounts references *the person making funds directly available to the designated recipient*, which indicates that this exception appears to apply only to the last institution in the transaction chain. The Associations believe this exception should not be so limited and should apply to all institutions that may apply exchange rates.

As a practical matter, it will be very challenging for a remittance transfer provider to stay abreast of the full extent of countries that have laws that would trigger this exception. The Associations strongly recommend that the Board, Bureau or other federal entity establish and update a database or some other source of information upon which remittance transfer providers may rely in order to determine whether the permanent exception applies. We believe that the federal government is in the best position to monitor this information in order to make the exception workable.

### 2. Methods by which Transactions are Made in Recipient Country

Proposed Section 205.32(b)(2) would permit a remittance transfer provider to provide estimates for the disclosures required by proposed Sections 205.31(b)(1)(iv)–(vii), if a remittance transfer provider cannot determine exact amounts because the method by which transactions are made in the recipient country does not permit such a determination. The Board explicitly excluded international wire transfers from this exception as it interpreted the exception to apply only to remittances sent via international ACH on terms negotiated by the U.S. government and the government of a recipient country where the exchange rate is set after the transfer is sent. Our understanding is that this limited exception would apply in practice to certain destination countries supported through the Federal Reserve Banks’ global ACH clearing services but would extend no further than that.<sup>32</sup> Consequently, the Associations take issue with both the exclusion of international wires and other ACH transactions from the exception and the very limited application of the exception to certain international ACH services offered by the Federal Reserve Banks.

The Associations believe the Proposed Rule is too restrictive with regard to this “permanent exception,” effectively undermining its use, and that the Board has the authority to implement a broader exception. Under Section 1073, the Board is authorized to grant an exception when the method by which

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<sup>32</sup> Specifically, the permanent exception would apply, for example, to Directo a México, which is a Federal Reserve Bank-provided international ACH service that works together with Banco de Mexico (the Mexican central bank) to provide a low-cost mechanism through which Mexican immigrants may safely remit money to Mexico. This service includes a method by which exchange rates are set by the Mexican central bank after the remittance is sent. The Associations note that only Federal Reserve Banks can offer international ACH services that have terms negotiated between the U.S. government and a foreign central bank.

transactions are made in a recipient country does not allow the provider to know the amount of currency that will be received by the designated recipient. “Open network” wire and ACH systems, which involve the use of intermediary institutions to complete a funds transfer, are methods where it is particularly difficult to know the exact amounts of taxes, fees, exchange rates, and other charges imposed by correspondent banks and governments, because the sending institution often does not directly transmit funds to the receiving institution. Accordingly, this method by which a transaction is made to a foreign country does not allow a sending institution to know the amount of currency that will be received by the designated recipient. However, as noted above, the Board interpreted Section 1073 such that the “permanent exception” would be inapplicable to international wire transfers, stating in the preamble to the Proposed Rule that it “does not believe that the permanent exception in EFTA Section 919(c) applies to international wire transfers because wire transfers are not a method by which transactions are made that are particular to a specific country or group of countries.” The Associations believe that this approach fails to properly implement an important element of the statute established by Congress.

The Associations recognize that while most international ACH services are currently particular to specific countries, this is simply because international ACH has not gained the ubiquity of international wire. Wire transfers, like international ACH transfers, have the same operational characteristics that prevent providers from knowing exact exchange rates and fees, regardless of whether wires can be sent to only particular countries or every country. Further, international ACH transactions are now beginning to expand with recent changes to the *NACHA Operating Rules*.<sup>33</sup> As use of the ACH expands, both through the Federal Reserve Banks and through other clearing intermediaries, the same factors will apply with respect to sending banks. The Associations, therefore, urge that the permanent exception be extended to wire transfers and all forms of cross border ACH initiated through open systems, regardless of the clearing entity, since they are a method by which remittances are made that prevent the provider from knowing the exact amount that a recipient will receive.

As previously noted, the permanent exception as it is currently drafted appears to favor the Federal Reserve Banks’ own offerings. The Associations are concerned with the unintended consequence of favoring one service provider or method over other competing services, particularly as this would work at cross purposes to the statutory intent to expand access to remittance transfer services. The Associations recognize that Section 1073 directs the Board to work with the Federal Reserve Banks and the Treasury Department to expand the use of the ACH system and other payment mechanisms for remittance transfers to foreign countries. The Associations also recognize that the application of the permanent exception to the Federal Reserve Banks’ global ACH services will help to achieve this goal, but that a broader application of the permanent exception would not impact the Board’s objectives and would be consistent with the intent of Section 1073.

#### C. Bases for Estimates

Section 205.32(c) of the Proposed Rule provides a list of bases upon which the estimates permitted by the exceptions contained in proposed Section 205.32(a) and (b) must be predicated. Proposed Section 205.32(c) also provides, however, that if a remittance transfer provider bases an estimate on an approach that is not listed, the provider complies with proposed Section 205.32(c) so long as the designated recipient receives an equal or greater amount of currency than it would have received if the estimate had been based on an approach listed in 205.32(c).

The Associations believe that the Board has been too prescriptive in outlining acceptable bases for estimates and should allow remittance transfer providers to have greater flexibility in determining estimated amounts. The Associations recognize that the Board has stated that the use of an approach other

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<sup>33</sup> NACHA Operating Rules, Subsection 2.5.8, “Specific Provisions for IAT entries.”

than one listed in proposed 205.32(c) would not result in a violation of the Proposed Rule, to the extent that the sender is not harmed by such use. However, the Associations urge the Board to establish a “reasonably accurate” standard, which would permit such flexibility while also allowing remittance transfer providers to provide customers with useful and helpful estimates.

Furthermore, the Associations believe that the prescribed bases are impractical and unworkable as they do not reflect the operational realities of many remittance transfer services and that, in certain instances, these bases will not provide consumers with accurate information. The Associations again urge the Board to exclude open network wire and ACH transfers from the final remittance transfer rule or to significantly revise the rule to add a separate, tailored open network rule set.

#### 1. Exchange rate

Proposed Section 205.32(c)(1) outlines the acceptable approaches upon which a remittance transfer provider may base an estimate of the exchange rate required to be disclosed under proposed Section 205.31(b)(1)(iv). Proposed Section 205.32(c)(1)(ii) states that for transfers that do not qualify for the exception contained in proposed Section 205.32(b)(2) (*i.e.*, the exception based on the method by which transactions are made in the recipient country), the estimate must be based on the most recent publicly available *wholesale* exchange rate. However, providing an estimate to a customer based on a wholesale rate will not be useful to a consumer, whose exchange will instead be based on a *retail* exchange rate, and may lead senders to believe that a designated recipient will receive a greater amount than he or she will, which could lead to consumer confusion or unnecessary claims that an error has occurred.

Proposed Section 205.32(c)(1)(iii) would permit a remittance transfer provider to use as a basis for its estimate the most recent exchange rate offered by the person making funds available directly to the designated recipient. The Board recognizes that this aspect of the Proposed Rule may require a provider to communicate with the designated recipient’s institution or payout location to obtain this rate. The Associations point out that a remittance transfer provider often will not have a relationship with the final institution in a remittance transfer transaction, particularly when the provider sends a remittance transfer through an open network ACH or wire transfer system. Accordingly, it is unrealistic to expect a provider to obtain accurate and timely information from the final institution involved in a remittance transfer transaction, as communicating through an intermediary institution would be burdensome and may lead to unreliable or inaccurate information. Contacting the final institution to obtain this information would also cause an unnecessary delay in executing a remittance transfer, which could be confusing to consumers who would be forced to wait while a provider obtains this information so that they may disclose it both at the time the sender requests the transfer and at the time of payment.

As a practical matter, it will be very challenging for a remittance transfer provider to monitor applicable retail foreign exchange rates that fluctuate widely between the date the remittance transfer is requested versus when it is delivered and made available to the designated recipient. Furthermore, when currency rates fluctuate significantly, the only workable option available to a remittance transfer provider under the Proposed Rule is to discontinue remittance transfer services in those markets until the currency exchange rates stabilize. Accordingly, if the Board does not exclude open network transfers from the final rule, the Associations advocate that the Board, Bureau or other federal entity establish and update a database or some other source of exchange rate information upon which remittance transfer providers may rely in order to comply with the disclosure requirements contained in the Proposed Rule. We believe that the federal government is in the best position to monitor this information and having a central database on which remittance transfer providers could rely would ensure the most accurate and reliable estimates.

## 2. Other Fees Imposed by Intermediaries

Proposed section 205.32(c)(3) sets forth two alternative approaches for estimating the fees imposed by intermediary institutions in connection with a remittance transfer, which are required to be disclosed under proposed section 205.31(b)(1)(vi). If a remittance transfer provider uses the first approach, the estimate must be based on provider's most recent transfer to an account at the designated recipient's institution. If a remittance transfer provider uses the second approach, the estimate must be based on the representations of the intermediary institutions along a representative route upon which the requested transfer could travel.

In order to satisfy the first approach, individual institutions would have to construct and maintain databases of all transactions, including the many permutations and variations of routes that the remittance could and would transit while in process. The cost for constructing such databases would far exceed the miniscule potential benefit for consumers, especially since it is highly likely that no two transactions will transit the same route.<sup>34</sup> However, the costs will be passed along to the users of the systems in the form of higher fees. Fundamentally, this approach posits a system where the benefits are greatly exceeded by the costs.

Furthermore, the second approach does not reflect the operational realities of a remittance transfer, particularly ones that are sent through open networks, wires or ACH systems. Providers using open network, wire or ACH systems, will often not know all of the institutions involved in the transfer (including the final recipient institution) at the time the remittance transfer is initiated, and thus will not be able to contact all of the institutions involved in the transfer in order to check on their fees; even if contacted the intermediary bank may not be willing to provide such information because the institution considers its pricing information to be proprietary or for other reasons.

Thus, this serves as another example of a reason that transfers made through open network systems should be excluded from the requirements of the Proposed Rule or that the rule should be significantly revised to include a separate set of open network requirements that would apply to remittance transfer providers that make such transfers.

## 3. Other Taxes Imposed in the Recipient Country

Proposed Section 205.32(c)(4) states that for an estimate of the taxes imposed in the recipient country that are a percentage of the amount transferred to the designated recipient, an estimate must be based on the estimated exchange rate provided in accordance with proposed 205.32(c)(1) and the estimated fees imposed by institutions that act as intermediaries in connection with an international wire transfer provided in accordance with proposed 205.32(c)(3).

As a practical matter, it will be very challenging, if not impossible, for a remittance transfer provider to monitor foreign tax laws. Furthermore, even if a remittance transfer provider were able to track all foreign tax laws that could apply to remittance transfers that it sends, those laws, as well as their related interpretations, are subject to change. In addition, the Proposed Rule assumes that remittance transfer providers have a certain base knowledge of foreign tax laws, which is not likely to be the case for most providers, and that remittance transfer providers have the resources to monitor legislative and regulatory developments in every country to which the provider's customers might request to transmit funds. Hence, the Associations believe this element of the proposal is unrealistic.

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<sup>34</sup> This would be similar to assuming that a traveler going from New York to Los Angeles must only go by air travel and can only make the trip by a direct flight between the two cities.

Accordingly, if the Board does not exclude open network transfers from the final rule, the Associations strongly advocate that the Board, Bureau or other federal entity establish and update a database or some other source of foreign tax law information upon which remittance transfer providers may rely in order to comply with the disclosure requirements contained in the Proposed Rule. We believe that the federal government is in the best position to monitor this information and having a central database on which remittance transfer providers could rely would ensure the most accurate and reliable estimates.

#### VII. Proposed Section 205.33 – Procedures for Resolving Errors

Proposed Section 205.33 implements new error resolution requirements for remittance transfers and establishes certain error resolution procedures, where appropriate. Before responding to the specific requirements of this section of the Proposed Rule, the Associations assert the following general principle: *liability for errors should not shift to the remittance provider if the provider executed the transfer correctly based on the instructions provided by the sender.* Where non-agent intermediaries have mishandled a remittance transfer after the provider executes it, the remittance transfer provider should intercede and assist in resolving errors, as is the case today, but should not incur liability for errors outside its control.

The Proposed Rule in several places inappropriately shifts liability to a remittance transfer provider that has neither erred nor controlled the circumstances that caused an error, but there is no underlying basis or rationale for such a shift in liability to the remittance provider. This clearly illustrates the dichotomy between the well-established rules under UCC 4A and the results under the Proposed Rule. If the Board does not exclude open network transfers from the final rule, the Associations strongly recommend that the commentary to the final rule clarify that providers in the U.S. generally are not responsible or liable for errors due to factors beyond their control; to require financial institutions to assume strict liability for these transactions when there are so many variables they cannot control would undermine the safety and soundness of these systems and lead financial institutions to consider the elimination of remittance transfer services.

##### A. Definition of Error

Proposed Section 205.33(a)(1) defines the five categories of remittance transfer errors that would be subject to the Proposed Rule. The Associations strongly urge changes be made to the fourth proposed error. Proposed Section 205.33(a)(1)(iv) provides that, in general, a remittance transfer provider's failure to make funds available to the designated recipient by the date of availability stated on the receipt (or combined disclosure) would constitute an error. Notwithstanding the two conditions to this proposed error discussed below, the Associations believe that the Board should exempt remittance transfer providers that send remittance transfers through open network systems.

Proposed comment 33(a)(4) provides the following relevant examples of a provider's failure to make funds available by the stated date of delivery:

- late or non-delivery of a remittance transfer;
- delivery of funds to the wrong account;
- the fraudulent pick-up of a remittance transfer in a foreign country by a person other than the designated recipient; and

- the recipient agent or institution's retention of funds in connection with a remittance transfer, instead of making the funds available to the designated recipient.

The Proposed Rule does not reflect the operational realities of remittance transfers sent through an open network ACH or wire transfer system. The Associations believe that a provider should not be liable in circumstances in which funds are delivered late or deposited into the wrong account that result from the fault of another institution involved in the transaction.

In the preamble to the Proposed Rule, the Board states that it believes it is appropriate for the fraudulent pick-up of a remittance transfer to constitute an error under the Proposed Rule because the remittance transfer provider, rather than the sender, is in the best position to ensure that a remittance transfer is picked up only by the person designated by the sender. The Associations strongly urge the Board to reconsider this view as it does not reflect the reality of transfers made through an open network. Specifically, the Associations do not believe that a provider should be responsible for fraud that results in the pickup of a remittance transfer by a person other than the designated recipient where a provider is unlikely to know all of the intermediary institutions involved in a transfer or the validation policies of the final institution that will make the funds available to the designated recipient. Indeed, under such circumstances, the provider would not be in a better position to ensure that a remittance transfer is picked up by the appropriate person. The remittance transfer provider is not in a position, nor does it have the ability, to determine that the designated recipient is the individual who actually receives the funds when another institution, often with no connection to the provider, disburses the funds.

By imposing such a strict liability on providers, the Proposed Rule controverts long-standing legal premises of responsibility and liability in financial transactions, and would cause the cost of such transactions to increase substantially – for both providers and consumers. The Associations also ask the Board to clarify that the Board's commentary regarding errors involving the fraudulent pick-up of a remittance transfer applies only to remittances that are intended to be picked up by the designated recipient (*i.e.*, where a designated recipient picks up cash from the institution making the funds available to the recipient) and not to account-to-account or cash-to-account transfers.

As noted above, there are two conditions inherent in the Proposed Rule to this strict liability. First, under proposed Section 205.33(a)(1)(iv)(A), the delivery of funds after the date of availability stated on the receipt (or combined disclosure) would not constitute an error if the failure to make the funds available resulted from circumstances outside the remittance transfer provider's control. The proposed commentary provides that this exception is meant to apply only to circumstances that are generally referred to under contract law as force majeure, or to other uncontrollable or extraordinary circumstances (*e.g.*, war, civil unrest, or a natural disaster). The Associations believe that this interpretation is too narrow and that the exception should apply to any set of circumstances outside of the provider's control that causes the funds to be delivered after the stated date of availability.

Second, under proposed Section 205.33(a)(1)(iv)(B), the delivery of funds after the stated date of availability would not qualify as an error if the failure to make the funds available resulted from the sender providing incorrect information to the remittance transfer provider, as long as the provider gives the sender the opportunity to correct the information and send the transfer at no additional cost. The Associations ask the Board to concur that in this context, "cost" refers only to the fees the provider charges in connection with a remittance transfer and would not include fees charged by intermediaries, fluctuations in exchange rates that adversely impact a sender, or any other costs outside the provider's control.

Furthermore, the Associations question the propriety of mandating that a provider give a sender the opportunity to correct the information and send the transfer at no additional cost in order for this

exception to apply. Here, it is highly unlikely that a remittance transfer provider will be in a position to determine that the information provided by the sender is incorrect. Moreover, this caveat ignores all the costs that an institution incurs when a sender provides an institution with incorrect information and in effect, requires the provider and its other customers (since these costs will be distributed in general fees) to bear responsibility for the sender's mistake. In particular, there are costs that a provider should not reasonably be expected to bear under these circumstances, including the provider's investigation costs where a provider has precisely followed the sender's instructions, as well as the investigation costs or other fees or charges imposed by a recipient institution in connection with an amendment to a payment instruction. A provider should be able agree to assist the sender in recovering the funds but a provider should not incur any liability when it acted in accordance with the sender's instructions. Furthermore, the approach contained in the Proposed Rule does not address situations where funds may have been deposited into an erroneously provided bank account and the remittance provider is not able to recall the funds (either because they have been removed from the account or the account owner refuses to provide a debit authorization).

Because of the costs associated with amending or resending a remittance transfer, the Associations believe a remittance transfer provider should only be responsible for providing a sender the opportunity to correct the information and resend the transfer at no additional cost when the sender has provided correct information, and that a provider should not be held liable if the sender fails to provide correct information or the resent transfer fails in spite of the provider's best efforts. The Associations note that many financial institutions offer remittance transfer services simply as an accommodation to their customers and that requiring financial institutions, and in particular smaller institutions, to absorb all costs associated with resending a transfer is likely to lead many to discontinue offering remittance transfer services.

The Associations recognize that Section 1073 contains statutory language requiring a provider to make certain remedies available to a sender at no additional cost,<sup>35</sup> but the Proposed Rule would inexplicably extend this concept to apply to an exception where a provider had not committed an error. This would result in significant expenses to remittance transfer providers, and accordingly would result in higher risk-based pricing for all covered transactions. The Associations recommend that the final rule state that a remittances transfer provider may rely on the information provided by a sender (including the recipient's name and account number), and that there would be no error if funds are delivered to the account designated by the sender.

The Associations suggest that when a sender provides a recipient name and account number that identify different persons, the Proposed Rule should adopt the customary rule that, in the absence of knowledge that the name and account number do not correspond, a financial institution may rely upon the account number. This is consistent with financial institutions' straight through processing of wire transfers and with current laws governing wire transfers. In this circumstance there would be no error if funds are delivered to the account designated by the sender.

Finally, Section 205.33(a)(2) of the Proposed Rule identifies circumstances that would not qualify as remittance transfer errors. The Associations believe this list should also include the situation where the recipient institution is unable to make the full amount of the funds available for any reason. Alternatively, the Board could provide that this situation would be covered by proposed Section 205.33(a)(1)(iv)(A) (instances in which the failure to make funds available by the stated date results from circumstances outside the provider's control).

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<sup>35</sup> EFTA 919(d)(1)(B)(ii) (requiring a provider to make available to the designated recipient, without additional cost to the designated recipient or to the sender, the amount appropriate to resolve the error).

#### B. Notice of Error

Section 205.33(b) of the Proposed Rule would establish timing and content requirements for an error notice provided by a sender in connection with a remittance transfer. In addition to providing information that allows the provider to identify the remittance transfer in question, the Associations believe a sender should be required to provide the account number if the remittance transfer was sent from an account held with the provider. The final rule also should provide that a notice of error is only valid when a sender has followed the institutions instructions for filing a notice of error, including providing the information specified by the remittance transfer provider on the receipt or long form error disclosure.

Proposed Section 205.33(b)(2) states that when a notice of error is based on documentation, additional information, or clarification that the sender requested under proposed 205.33(a)(1)(v), the sender's notice of error is timely if received by the provider no later than 60 days after the provider sends the requested documentation, information, or clarification. The Associations ask the Board to clarify the interplay between this provision and the general 180 day timeframe for reporting errors under proposed section 205.33(b)(1)(i); specifically that this provision does not extend the timeframe for a provider to comply with the proposed error resolution requirements.

#### C. Time Limits and Extent of Investigation

Section 205.33(c)(1) of the Proposed Rule would require a remittance transfer provider to promptly investigate a notice of error to determine whether an error occurred within 90 days of receiving the sender's notice of error, and also to report the results of the provider's investigation to the sender within three business days after completing the investigation. The Associations seek clarification on the meaning of "completing the investigation."

Section 205.33(c)(2) of the Proposed Rule contains three possible remedies and permits a sender to designate his or her preferred remedy in the event of an error and solicits comment regarding whether the rules should provide for a default remedy. The Associations believe that the final rules should allow a provider to select a default remedy that it may offer in situations in which there may be a problem with communication between the sender and the provider and the sender is, for whatever reason, unable to communicate his or her remedy election to the provider.

#### D. Relation to Other Laws

Section 205.33(f)(3) of the Proposed Rule addresses the relationship between the Proposed Rule and other laws with respect to unauthorized remittance transfers. The preamble to the Proposed Rule states that where a person makes an unauthorized electronic funds transfer or unauthorized use of a credit card to send a remittance transfer (e.g., when an unauthorized ACH transaction or a stolen debit or credit card is used to send funds to a foreign country), the consumer holding the asset account or the credit card account is not the sender of the remittance transfer, and thus the error resolution provisions under proposed Section 205.33 do not apply.

Along those same lines, the Associations strongly recommend that the Board make clear that if an unauthorized wire transfer is made from a consumer's account, that consumer is also not a sender. If there is no sender, under the definition contained in proposed Section 205.30(d) (i.e., the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider), there could be no remittance transfer. Accordingly, the provisions of UCC Article 4A would continue to apply to that unauthorized transfer, as Section 4A-108 of the UCC, which states that Article 4A does not apply to a funds transfer any part of which is governed by the EFTA, would be inapposite. Under the

circumstances identified above, it would appear that Article 4A would continue to determine the respective rights and obligations of the financial institution sending the transfer and its consumer customer and allocate the risk of loss as between those parties with respect to the unauthorized transfer of funds from the consumer's account. The Associations request that the final rules confirm this understanding of the applicability of the provisions addressing the relationship between the rule and other laws with respect to unauthorized remittance transfers.

#### VIII. Proposed Section 205.34 – Procedures for Cancellation and Refund of Remittance Transfers

##### A. Sender Right of Cancellation and Refund

Section 205.34(a) of the Proposed Rule states that a remittance transfer provider must comply with a sender's oral or written request to cancel a remittance transfer received no later than one business day from when the sender makes payment in connection with the remittance transfer provider. It is important the Board recognize that the only way for providers to satisfy the right to cancel is to delay transmittal of the funds until the right to cancel has expired.

If the Board does not exclude open network remittances from the final rule, the Associations believe that, as part of a separate, tailored open network rule set, a provider should only be required to comply with a sender's request to cancel up until the time the provider executes the payment instruction. Under prevailing laws and payment system rules, remittance transfers sent by ACH or wire transfer cannot be cancelled and generally cannot be recalled once the payment order has been accepted by the sending institution; "acceptance" of a payment instruction is typically a defined process that imposes on the accepting institution responsibilities to the sender and subsequent parties in the transaction chain once that instruction is acted on and "sent."<sup>36</sup> For both ACH and wire transfers, the sending institution is financially obligated to make the payment and liable for its proper handling once transmitted. Consequently, out of prudence, many institutions will choose to wait to execute a payment order until the cancellation period has passed. For purposes of the rule and to provide consumers with the appropriate protections, these elements must be reflected in the final rule.

The Associations also believe that our suggested modification to allow cancellation until the transfer has been executed would better address the risk that the value of the currency in which the remittance transfer is sent will fluctuate between the time the transfer is sent and the time the sender makes a request to cancel. More importantly, the Associations believe that this would avoid unnecessarily inconveniencing consumers by delaying their transactions. The Associations note that there are many instances where consumers will need to send funds abroad, such as to pay for a medical emergency, however, the Proposed Rule would prevent providers from offering prompt transfers. The Associations believe that permitting a consumer to waive his or her right to cancellation is another possible way the final rule could resolve this issue.

Furthermore, the Associations believe that if a sender cancels a transfer, the sender should be entitled to the amount of the transfer in the currency in which the funds were to be transferred, to reflect the possibility that a remittance transfer provider exchanged the funds ahead of transferring them as the sender requested. Specifically here, where a remittance transfer provider has converted currency, but cannot send funds immediately (which would be the case for certain foreign jurisdictions), the remittance transfer provider has undertaken significant foreign exchange risk. If a sender cancels the transaction before the funds are transmitted, and the remittance transfer provider is required to convert the funds back into the original currency, then the remittance transfer provider could be forced to suffer losses with

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<sup>36</sup> Under UCC Article 4A, a wire is "accepted" when the payment order is executed, in this case, by the remittance transfer provider. UCC § 4A-209.

respect to such conversions (depending upon fluctuations in currency). Forcing remittance transfer providers to face conversion risk in these circumstances will result in higher prices, across the board. Accordingly, the Associations advocate that the final rules allow funds that have been converted prior to transmission in a cancelled transaction, to be returned to the sender as converted or for a value equivalent to the converted amount (less any additional value exchange rate differences that may impact conversion back into the original currency).

The Associations further note that a likely unintended consequence of this extended right to cancel a remittance transfer is that individuals making funds transfers that would qualify as remittance transfers under the Proposed Rule may no longer be able to send wire transfers on the same day (or ACH credits on an expedited basis), meaning that available remittance transfer services may lose their utility for expedited payments and drive customers to move their business to overseas banks. This impact would affect the broad spectrum of consumer-initiated cross-border transactions – ranging from workers in the U.S. needing to send funds home on an urgent basis, to a client managing accounts or investments overseas.

#### B. Time Limits and Refund Requirements

Section 205.34(b) would require a remittance transfer provider to refund, at no additional cost to the sender, the total amount of funds tendered by the sender in connection with the remittance transfer, including any fees imposed in connection with the requested transfer, within three business days of receiving the sender's valid cancellation request. The refund requirement must be revised to reflect the operational realities of open network funds transfer systems. As drafted, this requirement calls for financial institutions to refund the total amount of funds tendered by the sender even in circumstances where the sending institution is unable to recover the funds from the subsequent institution involved in the transfer chain. Such liability raises significant safety and soundness concerns.

The Associations also believe that a remittance transfer provider should not be held responsible for any loss that results from a fluctuation in currency values and that the sender should be entitled to the amount of the transfer in the currency in which the funds were to be transferred, to reflect the possibility that a remittance transfer provider exchanged the funds ahead of transferring them as the sender requested. As stated above, once a remittance transfer is accepted by the recipient institution it may not be possible to recall the funds or it may involve an extended time period. Three days is not reflective of the time needed to recall the funds if this can be done. In an open network with finality of payment such as wire transfers and for all practical purposes ACH credit transactions, reversing transactions is simply not practical and remittance transfer providers will be more likely to hold the funds until the cancellation period has passed.

Finally, requiring a provider to refund the total amount tendered by the sender (and in effect make the sender whole for any loss that occurs because of a fluctuation in currency values), is likely to lead remittance transfer providers to increase their prices for remittance transfer services, as described in more detail above.

#### IX. Proposed Section 205.35 – Acts of Agents

Section 205.30(a) of the Proposed Rule defines “agent” to mean an agent, authorized delegate, or person affiliated with a remittance transfer provider, as defined under state or other applicable law, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

As noted above, the Associations believe that a remittance transfer provider's relationships with intermediary and correspondent institutions are not agency relationships. Accordingly, the Associations

seek confirmation from the Board that intermediary and correspondent institutions would not qualify as agents of the remittance transfer provider.

\* \* \* \* \*

Thank you for your consideration and review of these recommendations. As we expressed above, the Associations' goal is to work as closely with the Board and Bureau as possible to help develop rules that allow our members to continue serving consumers in a safe and sound manner, including adequate consumer protection, while avoiding barriers that would disrupt the payment system or cause financial institutions to reduce remittance transfer services.

Thus, we would welcome further dialogue on any other matter related to the Proposed Rule. If you have any questions or wish to discuss the Associations' comments, please do not hesitate to contact any of the undersigned using the contact information provided below.

Yours very truly,

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**Appendix A – Association Descriptions**

Presented below is information regarding the eight signatories to the comment letter. We would be glad to provide additional information upon request.

### **The Clearing House**

Established in 1853, The Clearing House is the nation's oldest payments company and banking association. The Clearing House is owned by 21 of the largest commercial banks in America, which employ 1.4 million people domestically and hold more than half of all U.S. deposits. The Payments Company within The Clearing House clears and settles approximately \$2 trillion daily, representing nearly half of the U.S. volume of ACH, wire and check image transactions. The Clearing House Association is a nonpartisan advocacy organization within The Clearing House that represents, through regulatory comment letters, amicus briefs and white papers, the interests of its owner banks on a variety of systemically important bank policy issues.

### **American Bankers Association**

The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$165 million in assets.

### **Consumer Bankers Association**

The Consumer Bankers Association ("CBA") is the only national financial trade group focused exclusively on retail banking and personal financial services — banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation on retail banking issues. CBA members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the industry's total assets.

### **Credit Union National Association**

The Credit Union National Association ("CUNA") is the largest credit union advocacy organization in the country, representing approximately 90 percent of the nation's 7,400 state and federal credit unions, which serve approximately 93 million members. CUNA benefits its members by partnering with its state leagues to provide proactive representation, the latest information on credit union issues, economic reports, regulatory analyses, compliance assistance, and education.

### **Financial Services Roundtable**

The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.

**Independent Community Bankers of America**

The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever changing marketplace. With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1.2 trillion in assets, \$960 billion in deposits, and \$750 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).

**Mid-Size Bank Coalition of America**

The MBCA is a non-partisan financial and economic policy organization of 24 mid-size banks doing business in the United States. Founded in 2010, the MBCA was formed for the purpose of providing the perspectives of mid-size banks on financial regulatory reform. As a group, the MBCA banks do business through more than 3,350 branches in 41 states, Washington D.C. and three U.S. territories. The MBCA's members' combined assets exceed \$343 billion (ranging in size from \$7 to \$25 billion). Together, our members employ approximately 60,000 people. Member institutions hold nearly \$258 billion in deposits and total loans of more than \$205 billion.]

**NACHA – The Electronic Payments Association**

NACHA manages the development, administration, and governance of the ACH Network, the backbone for the electronic movement of money and data. The ACH Network serves as a safe, secure, reliable network for direct consumer, business, and government payments, and annually facilitates billions of payments such as Direct Deposit and Direct Payment. Utilized by all types of financial institutions, the ACH Network is governed by the *NACHA Operating Rules*, a set of fair and equitable rules that guide risk management and create certainty for all participants. As a not-for-profit association, NACHA represents nearly 11,000 financial institutions via 17 regional payments associations and direct membership. To learn more, visit [www.nacha.org](http://www.nacha.org), [www.electronicpayments.org](http://www.electronicpayments.org), and [www.payitgreen.org](http://www.payitgreen.org).

**National Association of Federal Credit Unions**

The National Association of Federal Credit Unions exclusively represents the interests of federal credit unions before the federal government. NAFCU represents nearly 800 federal credit unions, accounting for 63.9 percent of total FCU assets and 58 percent of all FCU member-owners. NAFCU represents many smaller credit unions with limited operations as well as many of the largest and most sophisticated credit unions in the nation, including 82 out of the 100 largest FCUs. Learn more at [www.nafcu.org](http://www.nafcu.org).

**Securities Industry and Financial Markets Association**

The Securities Industry and Financial Markets Association (“SIFMA”) brings together the shared interests of hundreds of securities firms, banks and asset managers. Together, SIFMA's industry employs almost 800,000 people nation-wide. These individuals are engaged in communities across the country to raise capital for businesses, promote job creation and lead economic growth. SIFMA's mission is to develop policies and practices which strengthen financial markets and which encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry.