



July 22, 2011

Ms. Jennifer J. Johnson  
Secretary, Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20551  
Via email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

**RE: Docket No. R-1419; Proposed rules regarding global remittance services.**

Dear Secretary Johnson:

This letter is submitted on behalf of PayPal, Inc. ("PayPal") in response to the proposed rule published in the Federal Register on May 23, 2011, regarding consumer initiated remittances to foreign recipients. The rule was proposed by the Board of Governors of the Federal Reserve System (the "Board") pursuant to authority granted under Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Section 1073") which was signed into law on July 21, 2010 (Pub. L. No. 111-203, 124 Stat. 1376 (2010)).

PayPal is a leading online payments company, available in 190 countries, with more than 94 million active user accounts, supporting payments in 25 currencies. Headquartered in San Jose, California, PayPal has offices in several states in the United States, along with its international headquarter in Singapore and European headquarter in Luxembourg. PayPal's payments solution connects into and leverages the traditional payment networks (whether ACH, bank card networks, or PIN networks) enabling its users to make and receive both personal and purchase payments in a safe, efficient and cost effective manner.

Currently licensed in 42 U.S. states and two territories as a money transmitter, PayPal enables cross-border person-to-person payments as well as cross-border commercial payments. In this capacity, PayPal facilitates both the ability of merchants to accept payments creating a more global economy, and the ability of consumers to economically transfer funds to friends and family domestically and abroad. The vast majority (more than 94%) of the payments that PayPal processes are for commercial purposes.

PayPal appreciates the opportunity to submit the following comments about the potential implications of Section 1073 and the proposed rule on money transmitters and alternative payment providers and thanks the Board for its consideration of the concerns and suggestions set forth below.

**I. General Comments**

A. The definition of remittance transfers should be limited to consumer-to-consumer transactions.

The World Bank, in setting forth its General Principles for International Remittance Services, defines a “remittance” as a cross-border person-to-person payment of relatively low value.<sup>1</sup> PayPal recommends that the Board adopt a similar approach in defining remittances in its final rule. Specifically, PayPal suggests that the Board limit its definition of remittances to person-to-person payments, and expressly exclude from coverage payments made by a consumer to a business. This position is extremely important when considering payments companies such as PayPal which provide a global ecosystem in which users can exchange money almost instantaneously for the purchase of goods or services, or for a variety of personal reasons.

Today, approximately 84% of the cross-border payments initiated by PayPal users in the United States are payments for the purchase of goods or services (“purchase payments”), approximately 10.6% are business-to-business or business-to-consumer payments, while approximately 5.4% are personal payments. When a transfer is made, PayPal’s system moves funds from the sender’s funding source (which may include a balance in the sender’s PayPal account) to the account of another user(s) (the recipient(s)). In terms of how the payment is treated, payments made at a merchant/receiver’s Website are identified as commercial payments, and the receiver always pays the applicable fee. In payments made through PayPal’s Website, the sender has the ability to identify the payment as a person-to-person payment or as a commercial payment. The sender also has the ability to identify the currency in which the transfer should take place, and, for personal payments, to choose whether the sender or receiver will pay the transaction fee. Based on these characteristics, PayPal applies the relevant fees.

If the Board concludes that a cross-border payment made by a consumer in the United States to a business in a foreign country is subject to the final remittance transfer rules, PayPal customers would be adversely impacted. For one, all cross-border transfers would now be subject to the disclosure and error resolution requirements of Section 1073 and the proposed rule. This could result in increased costs to customers as PayPal and other similar primarily commercial payment services would have to build out the infrastructure to support these requirements. Further, PayPal and other similar services, faced with significant negative consequences under the rules if they miss the designated date for delivering the payment to the recipient, may set longer delivery periods, resulting in delay and potential confusion for both buyers and sellers in completing their transactions. And, all of this for no apparent benefit, because in the case of a commercial payment, it is the merchant that pays the fees associated with the transaction and therefore, if fee disclosures to the sender are required, the sender has been provided with a lot of information that is generally meaningless to him or her.

This position becomes even more untenable in the bill payment context (which the Board acknowledges may be included within the scope of a remittance under the EFTA). If a consumer initiates a cross-border bill payment and then decides to cancel the payment (perhaps due to a dispute with the merchant), PayPal as the party facilitating the remittance transfer is the party

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<sup>1</sup> World Bank, Payments and Remittances,  
[http://siteresources.worldbank.org/INTPAYMENTREMMITTANCE/Resources/New\\_Remittance\\_Report.pdf](http://siteresources.worldbank.org/INTPAYMENTREMMITTANCE/Resources/New_Remittance_Report.pdf)

that bears the financial cost of the canceled payment under the proposed rule. While PayPal understands that the Board may be looking to serve the consumer interest in traditional person-to-person payments, this analysis and protectionism does not make sense in the context of commercial payments.

In addition to the above, the Board should clarify that the rules don't apply to transfers that cannot be identified by the remittance transfer provider as cross-border at the time the transfer is requested, irrespective of whether the recipient is a person or a business. By specifically soliciting comment on whether there may be situations where a remittance transfer provider only has access to the recipient's email address and no other information, the Board has indicated that it is aware of some of the more technologically advanced remittance forms (such as a transfer using an email address or a mobile number) and the fact that remittance transfer providers may not always be able to determine whether a payment is going cross-border. In these "unilateral" payments, remittance providers such as PayPal do not know the location of the recipient until they claim the payment (and in some cases the intended recipient never claims the payment, which is returned to the sender). Applying the disclosure and error resolution requirements of Section 1073 in these situations would create an undue and unjustified burden on remittance transfer providers. This is particularly true for remittance transfer providers that don't impose any cross-border fees on these types of unilateral payment transactions.

Finally, the Board should clarify that where funds are going from one account to another account, the location of the recipient's account and not the temporary location of the actual recipient will determine whether a payment is going cross-border. For providers that offer global services using the Internet, such as PayPal, funds are simply flowing from one PayPal account to another PayPal account. There is no physical location that a customer walks into to receive its funds. Thus, a recipient can access its funds from most countries in the world if he or she has Internet access, but when the transfer is initiated, PayPal would only know the location of the recipient from the region/country in which it established its account and provided its address. Many customers based in the U.S. visit other countries on vacation or business. Accordingly, PayPal and other similar services would not know to provide the disclosures required by the proposed rule when initiating a transfer from a US account holder to another US account holder who is temporarily visiting another country and PayPal would treat the transaction as a domestic transaction (including for purposes of applying fees).

These points are extremely important when balancing the consumer protection objectives of Section 1073 with the ability of remittance transfer providers to continue to provide cost effective, competitive remittance transfer services. This is particularly true for companies such as PayPal that are engaged in providing cross-border payments as part of their core business, but have priced and treated person-to-person payments as distinct from commercial payments, with lower fees for personal payments. Forcing a consumer protection statute on a commercial payment in the context of a company such as PayPal may in fact negatively impact consumers making traditional remittance payments, because they may now find their prices increasing to help absorb the cost associated with compliance for commercial payments.

**B. The Board should carefully consider the disclosure requirements for remittance transfers, particularly in the context of alternative payment providers and new technological developments.**

Section 205.31 of the proposed rule sets forth various disclosure requirements applicable to remittance transfer providers. Included within these are requirements as to the form, timing and content of disclosures.

Specifically, Section 205.31(b)(1) of the proposed rule requires that pre-payment disclosures setting forth the following information must be provided to consumers sending remittance transfers prior to their payment for a remittance transfer: (i) the amount that will be transferred to the designated recipient in the currency in which the funds will be transferred; (ii) any fees and taxes imposed on the remittance transfer by the provider, in the currency in which the funds will be transferred; (iii) the total amount of the transaction, in the currency in which the funds will be transferred; (iv) the exchange rate used by the provider rounded to the nearest 1/100<sup>th</sup> of a decimal point; (v) the amount that will be transferred in the currency in which the funds will be received; (vi) any fees and taxes imposed on the remittance transfer by a person other than the provider in the currency in which the funds will be received by the designated recipient; and (vii) the amount that will be received by the designated recipient in the currency in which the funds will be received.

Section 205.31(b)(2) further sets forth requirements for receipts provided to senders which, in addition to the information required by Section 205(b)(1)(i)-(vii), must also set forth: (i) the date of availability of the funds to the recipient, (ii) the name and telephone number and or address of the designated recipient (if provided); (iii) a statement regarding error resolution and cancellation rights; (iv) the name, telephone number and Web site of the remittance transfer provider, and finally (v) a statement that the sender can contact the state agency that regulates the remittance transfer provider and the Consumer Financial Protection Bureau for questions or complaints about the remittance transfer provider.

Per Section 205.31(a)(2), the information required by Sections 205.31(b)(1) and (b)(2) must be in writing, unless the sender electronically requests the remittance transfer provider to send the remittance transfer, and must be made "in a retainable form". By way of example, the Board states that a disclosure provided via the Internet is retainable so long as the consumer is able to print the disclosure.

- 1. The Board should allow exchange rate disclosures to be rounded to the nearest 100<sup>th</sup> decimal or better so that remittance transfer providers have the option to provide more accurate and detailed exchange rate information.*

PayPal encourages the Board to expand the exchange rate disclosure required by Section 205.31(b)(iv). Specifically, proposed Section 205.31(b)(iv) requires the remittance transfer provider to disclose the exchange rate used by the provider for the remittance transfer to the nearest 1/100<sup>th</sup> of a decimal point. PayPal assumes that this disclosure requirement is based on a desire to provide senders with detailed and consistent information regarding the rate that will

apply to their transfer so that they may compare it to rates provided by others providing similar services.

PayPal currently discloses the exchange rate used for remittance transfers to the nearest 1/10,000<sup>th</sup> of a decimal point. For example, if the exchange rate used for a particular remittance transfer is \$0.0987, PayPal will disclose this rate, which provides greater specificity than is required or permitted under the proposed rule (under which PayPal would have to round up the rate to \$0.10). While not all remittance transfer providers may have the ability to provide the exchange rate disclosure beyond 1/100<sup>th</sup> of a decimal point, PayPal would recommend that in its final rule, the Board clarify that the exchange rate disclosure must be to the nearest 1/100<sup>th</sup> of a decimal point "or better". This will allow remittance transfer providers that can provide more accurate disclosures with the ability to do so, without placing an undue burden on other providers. At the same time, this language will ensure that senders are provided certain minimum information and are able to engage in meaningful comparison shopping.

2. *The Board should make clear in its final rule that disclosures are "retainable" as long as they may be saved or stored by the consumer.*

PayPal supports the Board's objective of providing consumers with documentation that can be kept by the consumer, whether for accounting purposes, to assert errors, or otherwise. However, PayPal is concerned that the Board's interpretation of what it means for a disclosure to be "retainable" is too narrow. Specifically, it is important for the Board to consider more recent technological developments as well as consumer behavior when considering data retention. Many consumers today are technologically savvy, and to the extent that they are making an electronic transfer of funds using either the Internet or a mobile phone (smart phone), it is fair to believe that they are more inclined to use these tools to help them manage information electronically rather than printing and storing a paper receipt or disclosure.

In this regard, PayPal would suggest to the Board that it provide examples of data retention capabilities that include taking and saving a screen shot, or downloading a PDF or HTML file that can be saved on a computer. It is also recommended that for a transfer initiated via a mobile phone, the Board allow for disclosure to be available on the phone, accompanied by delivery of the retainable version of the same disclosure through the Internet, as mobile phones typically do not allow for printing to an offline device. PayPal believes that the Board is a proponent of innovation in the payments space and encourages the Board to consider these options which allow users that choose to leverage technology to make a remittance transfer to also use technology to retain information related to that transfer.

- C. The Board should narrow the definition of an error, introduce consistency in error resolution processes, and revisit the sender's rights to cancel a remittance.

1. *The Board should clarify that an error does not result from funds not being available on the stated funds availability date if the non-availability is due to action or inaction by the recipient or due to a remittance transfer provider's compliance with regulatory or risk requirements.*

Section 205.31(b)(2)(ii) of the proposed rule provides that a remittance transfer provider must disclose on the receipt provided to the sender the date by which funds will be made available to the recipient. PayPal is generally supportive of this disclosure requirement and understands the need for certainty associated with when the recipient will get its funds, particularly in the traditional person-to-person remittance context. That said PayPal is concerned with the broad definition of “error” when used in the context of a recipient not receiving funds by the availability date stated on the receipt. In particular, PayPal notes that there may be instances where a recipient will not receive funds by the stated date due to some necessary action on the part of the recipient or because of risk and compliance considerations on the part of the remittance transfer provider. In these contexts, the failure to meet the funds availability date should not be considered an error.

By way of example, if a remittance transfer provider has to retain funds without making them available to the recipient because there is a hold on the account of the recipient or as a result of the transaction being marked as suspicious by an intermediary or by the remittance transfer provider’s own risk management processes, it may not be able to make funds available by the stated availability date. In all of these instances, the delay may be considered to be “within the control” of the remittance transfer provider (thus not subject to the force majeure safe harbor provision of the rule), but the outcome could not have been anticipated with certainty at the time that payment was accepted and a receipt provided to the sender. However, under the proposed rules, the remittance transfer provider would be liable for refunding to the sender both the amount of the transfer as well as any associated fees, even in the absence of fault or control, and apparently even if the recipient has subsequently received the payment a day or two later than the stated funds availability date.

In these situations, PayPal is confident that the Board along with any other impacted regulatory agencies would want PayPal (and other remittance transfer providers) to engage in the appropriate risk management and regulatory compliance practices in which they would normally engage and are usually required by law to engage. Failure to do so would create greater liability for the remittance transfer provider and present risk to the financial markets generally. Additionally, consumers may find themselves disadvantaged as remittance transfer providers provide themselves with lengthy timeframes to deliver funds to recipients – something that undermines the business model of many remittance providers who are trying to facilitate quick payments between family and friends.

In order to better balance these various interests, the definition of error should be limited to arbitrary delays in the availability of funds, and the safe harbor language proposed by Section 205.33(a)(1)(iv)(A) of the proposed rule should be expanded to include delays resulting from documented compliance requirements and risk practices.

2. *The Board should shorten the time frame during which a sender can assert an error from the proposed 180 days to 60 days.*

Section 205.33(b)(1)(i) of the proposed rule provides the sender of a remittance transfer with 180 days from the stated date of availability of the transfer to assert an error. PayPal questions the need for such a lengthy period of time for asserting an error.

Specifically, PayPal notes that Regulation E, Section 205.11(b)(1), which also deals with errors involving electronic fund transfers, provides a consumer with 60 days from the date the institution sends the periodic statement on which the error appears to report the error.<sup>2</sup> While the commentary to Section 205.11(b)(1) does not provide the rationale for the 60 day period, the Board has clearly determined this time period as being a reasonable amount of time for a consumer to notice and report an error. In fact, running the 60 day period from the date of the periodic statement is logical because the consumer has been provided with documentation that reflects the erroneous account activity and has reason to know that an error has occurred. This interest is balanced, however, with the institution's need to move forward with certainty that a specific transaction is accurate and that it can close its books with respect to the transaction.

The 60 day window in Section 205.11 better strikes this balance than the 180 day window in proposed Section 205.33 because remittance transfer providers are being asked to hold the liability associated with a transaction for half a year, a full three times longer than what Regulation E would normally require. Further, to the extent that the remittance transfer provider is also the provider of non-remittance electronic fund transfers subject to Section 205.11, the Board is asking these providers to put in place a whole new infrastructure for dispute resolution of remittance transfers rather than letting them leverage their existing Regulation E compliant processes.<sup>3</sup>

PayPal questions the efficacy and need of tripling this timeline for remittance transfers. In particular, it should be noted that the Board is already requiring remittance transfer providers to comply with various disclosure and receipt requirements, ensuring that the sender receives all applicable information at the time that it makes payment and sends a remittance. Included on this receipt is information regarding the time at which the remittance transfer will be made available to the recipient, the exact amounts that are going to be sent and received, as well as the exchange rate that the provider will use. In the case of a majority of remittances, certainly person-to-person remittances where family members are trying to get money to a friend or family member quickly, the recipient is highly motivated to notify the sender if the remittance is not received in a timely manner or in the expected amount. Further, for online services such as PayPal, the sender can check at any time the status of their transaction including, for unilateral payments, whether the recipient has claimed the payment, and PayPal automatically returns unclaimed payments to the recipient after 30 days. PayPal cannot identify any scenario in the transactions that it processes where the sender would reasonably not know for more than 60 days whether PayPal has made funds available to the recipient.

It is, therefore, neither necessary nor justifiable that a remittance sender would have so much longer to report an error than a consumer sending another Regulation E covered electronic

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<sup>2</sup> 12 CFR 205.11

<sup>3</sup> This requirement is even further challenging for remittance transfer providers who may also be the issuers of credit subject to the Truth in Lending Act and Regulation Z, 12 CFR 226.13, which has its own error resolution provisions.

fund transfer. PayPal respectfully requests the Board to re-consider and shorten this time period in its final rules to be consistent with Section 205.11 of Regulation E.<sup>4</sup>

*3. Remittance transfer providers should be allowed to recover the costs associated with a canceled transaction.*

Section 205.34 of the proposed rule allows a sender to cancel a remittance transfer within one business day after making payment so long as (1) the sender's cancellation request enables the provider to identify the sender's name and address or telephone number along with the particular transfer to be cancelled and (2) the transferred funds have not been picked up by the designated recipient or deposited into the recipient's account.

PayPal supports the ability of a sender to cancel a remittance transfer if funds have not already been transferred to the designated recipient. That said PayPal is concerned about the Board's proposed requirement that when a legitimate cancellation request is received, the remittance transfer provider refund the amount of funds tendered by the sender for the "cancelled" transfer "including any fees imposed in connection with the remittance transfer".

In particular, PayPal is concerned that remittance transfer providers are being asked to absorb hard dollar costs associated with sending remittance transfers prior to receiving cancellation requests. Typically, a provider incurs costs for accepting a remittance transfer request (which costs will now increase with the Board's proposed disclosure and receipt requirements) even if the sender subsequently decides to cancel the transfer and funds are not actually moved from one customer to another. While these costs may not equal the full amount of fees that are associated with a completed remittance transfer, the amounts incurred by the remittance transfer provider should in fact be retainable by it. To require the refund of all fees, including actual costs incurred by the remittance transfer provider, may serve as a deterrent to offering these services, as senders bear no accountability for initiating a transfer and providers take all the financial burden of providing the remittance transfer service to senders who change their minds about sending funds. This is particularly unjust where the remittance transfer provider bears no fault for the cancellation. PayPal recommends that the Board re-consider this requirement and instead require only that remittance transfer providers have to refund that portion of any fees which are not attributable to costs incurred by them prior to receiving a cancellation request.<sup>5</sup>

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<sup>4</sup> It is also important to distinguish remittance transfers where funds may be sitting at the receiving location for a period of time, awaiting pick up by the recipient, from those situations where the funds are transferred from a sender's account to a recipient's account, such as would be the case with PayPal initiated transfers other than unilateral payments. In this latter situation, most transfers would occur almost instantaneously and therefore having a 180 day window for asserting an error is neither necessary nor justifiable.

<sup>5</sup> It is also important to note that the Board's proposed rule places undue risk on the remittance transfer provider. On the one hand, the remittance transfer provider bears liability under proposed Section 205.33 if it fails to make funds available by the designated date (thereby incenting the provider to build a buffer around this date) and on the other hand, the provider is liable for all costs associated with accepting a transfer if it is canceled and funds are still in the provider's possession (thereby incenting the provider to remit funds to the recipient as quickly as possible). PayPal recommends that the Board give due consideration to balancing the risk and responsibility of each participant in the transaction and not place an unjustified amount of the burden on the remittance transfer provider.

4. *The Board should offer guidance reconciling the potential conflict between a remittance transfer provider's role as the provider of credit, electronic fund transfers, and remittance transfers.*

As noted above, the error resolution provisions of proposed Section 205.33 create a new set of dispute resolution requirements for remittance transfer providers. And, while the new remittance transfer provisions are included in Regulation E, these new requirements differ from those typically set forth with respect to electronic fund transfers under Regulation E.<sup>6</sup> This disparity also exists with respect to the error resolution provisions of Regulation Z governing the extension of credit.<sup>7</sup> While it may make sense to have different requirements for errors related to each of these types of transactions, it is imperative that the Board provide guidance as to what set of rules will apply in what circumstances, because there will be situations where the provider of a remittance transfer is also the provider of the credit line or the electronic fund transfer that was used to fund the remittance. Thus, these providers will need clarity as to what requirements apply, both so that they are in compliance and so that they can help mitigate any customer confusion that is sure to arise from these differing error resolution provisions.

Consider, for example, a US\$100 remittance transfer initiated through the PayPal system by a consumer to her mother in Guatemala. The transfer may be funded in part by a transfer from the sender's PayPal balance and in part using a credit card linked to the sender's PayPal account or an ACH transfer from the sender's bank account linked to their PayPal account. In this situation, if the funds are not received by the recipient, and the sender asserts an error, what set of error resolution rules govern?

Under proposed Section 205.33(f)(1), a remittance transfer provider must comply with the error resolution provisions of Section 205.11 governing electronic fund transfers if an alleged error involves an incorrect electronic fund transfer from the sender's account. However, if the remittance transfer provider also happens to be the party holding the account from which the electronic fund transfer is initiated, then the requirements of Section 205.33 will apply. Section 205.33(f)(2) goes on to provide that with respect to errors involving an incorrect extension of credit in connection with a remittance transfer, Section 226.13 of Regulation Z will apply if the sender provides notice of the error to the creditor holding the credit card account (even if the creditor is also the remittance transfer provider). If, however, the sender provides notice of the error to the remittance transfer provider, then the error resolution provisions of Section 205.33 will apply. Finally, Section 205.33(f)(3) provides that if the alleged error involves an unauthorized electronic fund transfer for payment in connection with a remittance transfer, then Sections 205.6 and 205.11 of Regulation E will apply instead of Section 205.33. Similarly, if the alleged error involves an unauthorized use of a credit card for payment in connection with a remittance transfer, then Section 226.13 of Regulation Z will apply.

Based on the above, the rights of the remittance transfer sender in the example above will ultimately depend on what number she decides to call to report the alleged error. If she calls the customer service number on her remittance receipt, it seems she would get the 180 day window provided for in Section 205.33(b) of the proposed rule. But, if she called the customer service

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<sup>6</sup> See 12 CFR 205.6 and 205.11

<sup>7</sup> 12 CFR 226.13

line for her PayPal account generally, then she may only have the 60 days provided for in Section 205.11 to report the error. This result seems confusing and PayPal encourages the Board to try to drive some clarity and consistency in the application of the remittance transfer error resolution provisions. Specifically, PayPal would recommend that where multiple funding sources are used for a remittance transfer the Board make clear that the error resolution provisions of Section 205.33 will govern. Second, if a remittance transfer provider is serving multiple roles (for example, providing credit as well as the remittance transfer), then the remittance transfer provider should have the choice of which set of error resolution provisions to apply, as long as that choice is clearly disclosed to the sender up front.

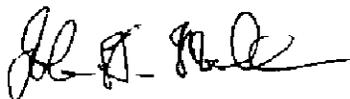
This clarity will help with the receipt disclosure requirements set forth in Section 205.31(b)(2)(vi) which may generate some confusion when a customer's receipt notifies them that they have 180 days to report an error, but they call the provider and report an unauthorized electronic fund transfer only to learn that they only had 60 days to report it. If remittance transfer providers are able to determine up front what set of rules will apply (ideally these rules being consistent as set forth in Section I.C.2 of this letter above), they would be able to provide clearer disclosure as to the error resolution rights of a consumer, mitigating this customer confusion.

## **II. Conclusion.**

PayPal appreciates the opportunity to submit this letter for the Board's consideration in drafting its final rule. As a major participant in consumer cross-border payments, PayPal is committed to serving the payments needs of its users in a cost effective and customer friendly manner. However PayPal has significant concerns that the Board's proposed rule is too broad and covers transactions that were neither part of the Congressional intent nor necessary from a consumer protection perspective. Further, PayPal is concerned that the rule places a greater burden on non-banks than it does on depository institutions. Given that the private payments industry (and in particular the alternative payments industry) is still relatively young and in a state of tremendous growth, PayPal would urge the Board to consider all of the comments and suggestions herein, and to promulgate a final rule that more concisely balances consumer and industry interests as related to remittance transfers.

If you have any questions or would like to discuss any of the issues raised herein, please do not hesitate to contact me at (408) 967-1233 or [jmuller@PayPal.com](mailto:jmuller@PayPal.com).

Sincerely,



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