

**Rabobank N.A.**  
Corporate Compliance Division



**Rabobank**

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**Fax**

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Subject Regulation E – Docket No. R-1419

Please accept this response to the Notice of Proposed Rulemaking – Docket No. R-1419. Our original submission made on July 21, 2011 via email to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov) was returned today as “undeliverable.”

We wish to have our comments considered. As the original submission was made in accordance with written instructions, and returned for reasons unknown to us, we hope you will accept this filing and include our comments in your assessment prior to issuing the final rule.

Kind regards,

Laura Akahoshi  
SVP/Chief Compliance Officer

**Rabobank, N.A.**



**Rabobank**

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Date: July 22, 2011

Subject: Regulation E - Docket No. R-1419  
Response to Notice of Proposed Rulemaking

Rabobank, N.A. is a national bank headquartered in Roseville, California ("Rabobank"), serving consumers in small- and medium-sized communities throughout California (it is an "insured institution" as defined in § 12 USC 1813(a)(1)). Rabobank provides its customers with the ability to make remittance transfers. The proposed changes to Regulation E will have a profound impact on the way Rabobank serves its customers. If the proposed rule becomes final as written, Rabobank may be forced to reconsider providing remittance transfer services to its customers in light of considerable risks offering such services would impose on the institution.

We respectfully submit the following comments for your review and consideration:

**Error Resolution**

The Board has requested comment on whether a national bank should be required to provide the customer with the contact information for the state agencies that regulate money transfers. Providing the contact information to the state agencies would be confusing and ineffective. If a customer has a complaint with the service provided at a national bank, they should contact the Office of the Comptroller of the Currency (OCC). The OCC has an established customer resolution procedure which would ensure that the complaint is handled in the appropriate manner.

**Disclosures- Estimates**

The proposed rule allows a remittance transfer provider, like a national bank, to provide estimates of fees, taxes, and other costs associated with transfer that are beyond the control of the transfer provider. However, the exemption still requires the transfer provider to conduct research and contact the parties associated with the transfer to gain a semi-accurate accounting of the fees charged by all of the institutions. Therefore, even though there is an allowance for estimates, the rule essentially requires the transfer provider to obtain all the information required to be included on the disclosure. Section 205.32 would simply allow the transfer provider the relief from strict compliance if there is a fee or tax that it could not have known at the time of the transaction.

The ultimate problem with the disclosure rules is that it creates liability for the transfer provider for events and acts that are not in its control. There is a unique difference between sending a remittance transfer via a wire or ACH, through a transfer provider, versus placing currency inside of an envelope and sending that package via UPS or FedEx. In the later example, those companies have the responsibility of ensuring that the package is delivered to the ultimate intended recipient. If they fail to deliver the package, as promised, then the company is liable to the sender for its failure to fulfil its obligation. In the present example, insured institutions are not delivery services (In fact, we are also distinct from companies such as Western Union, who, in most cases, own, control or have contracts with the foreign companies where the recipient picks up the transferred funds). As a community bank, we send out our money via a larger insured depository institution, which will then send the funds to the required destination. Our



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responsibility, as a transfer provider, is to send money to a financial institution abroad, not deliver the funds to the specific recipient.

Therefore the responsibility for liability should only extend to the point that the transfer provider should ensure the wire or ACH is received by the foreign financial institution. If the transfer provider does not have control of, or a contractual agreement with, the intended recipient's financial institution, it does not stand to reason that the transfer provider would be in a position to guarantee the actions of that financial institution. As such, it is impossible for a transfer provider to guarantee a specific date that a recipient's financial institution will make the funds available to the recipient.

Additionally, fees charged by foreign countries and institutions are impossible to know unless the financial institution contacts the recipient's institution and obtains that information from that institution. It is doubtful that the intention of Congress, or the Board, was to promulgate rules that would require a financial institution to contact a foreign company to obtain their entire rate and fee information. This raises a host of issues. Most clearly, there are issues of language barriers in addition to the reliability of the information.

A reasonable requirement is for the transfer provider to disclose any fees or taxes that it would charge, and to provide an estimate of what the general exchange rate would be at the time of the wire. However, it is not reasonable to request that the transfer provider exert the effort to obtain the fee schedules and tax rates charged by foreign companies and governments. Not only is this cumbersome, it is also impossible to have staff available who would speak all the possible languages necessary to obtain this information or would work the extended hours corresponding to the business hours of the foreign companies.

Lastly, even assuming that the transfer provider was able to gather all the information from recipient institution, if the recipient institution makes a mistake in the exchange rate used, or fails to make the funds available on the exact day disclosed on the receipt, then the transfer provider would be liable to the customer who transferred the funds. The transferring institution should not be liable for anything that is beyond its control.

If the Board requires national banks to obtain this level of information, many small and large institutions are no longer going to offer remittance transfers to foreign jurisdictions. If the goal of the Board is to limit the number of companies that offer these services, then this requirement would certainly serve that goal.

**Necessary Change: Do away with the requirement that the transferring institution must provide a date that funds are available to the recipient. Instead, the requirement should be that the transferring institution provides a date that funds should arrive at the recipient's financial institution. As for fees and exchange rates, the transferring institution should only be responsible for providing estimates. It is unreasonable to expect the transferring financial institution to ever know the exact exchange rate or fees a receiving institution is going to charge.**

#### **Cancellation and Refunds**

If the final rules are promulgated with a requirement the financial institution allow a sender to cancel a transaction within one business day, the institution could be forced to make a refund without recourse to enforce restitution from the foreign institution, even when the exception is applicable. To mitigate this risk, the originating institution would be forced to implement a waiting period prior to initiating the transfer. As such, the promulgation of a universal cancellation period would eliminate same-day and one day transfer of funds. In effect, if a customer chose to have a remittance issued on a given week, they would have to initiate the transfer by close of business on Wednesday so that it could be sent out by



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Friday. Any wire request made on Thursday or Friday would not get processed until the following Monday. Based on our experiences, there are is a very low volume of customers that request a cancellation of their remittance transfer. Most of our customers are looking for an efficient, low cost means to transfer funds. The proposed rules, as written, will certainly hurt customers who would need to have monies transferred quickly in the event of emergency.

**Necessary Change:** We propose the Board issue a rule which excludes, from the one (1) day cancellation provision, transactions submitted for processing the same day or next day business day. Therefore, if a customer request that the remittance occur that same day, or next day, the customer should only be allowed to cancel the transaction within 30 minutes of processing, provided that the customer has not left the premises.

For remittance transfers that are set up for non-same day or next day processing, we request the final rule provides a two-day cancellation period. Our banking department requires a full 24 hours to ensure the cancellation request has been received and properly processed. Therefore, a notice must be received by close of business two days before the funds are scheduled for transfer (i.e. notice must be received by close of business Wednesday if the wire is to be sent Friday). Wires are sent out throughout the day. Each day, wires are sent out as early as 6:00 a.m. PST. It would be impossible to let the customer know the status of their wire transfer in the queue and the exact time the wire is to be sent. Therefore, this two day period provides a general level of fairness and accuracy for the customers and the financial institution.

Thank you for your consideration of these issues.

Sincerely,

Laura Akahoshi  
Senior Vice President  
Chief Compliance Officer

Chester Lee McGensy III  
Vice President  
Legal Counsel