



January 20, 2011

*Via Electronic Delivery*

Financial Stability Oversight Council  
c/o United States Department of the Treasury  
Office of Domestic Finance  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Attention: Comments

Re: Advance Notice of Proposed Rulemaking Regarding Authority to Designate Financial Market Utilities as Systemically Important

Dear Sir or Madam:

The Clearing House Association L.L.C. ("Association") and The Clearing House Payments Company L.L.C. ("PaymentsCo," and together, with the Association, "The Clearing House")<sup>1</sup> appreciate the opportunity to provide comments to the Financial Stability Oversight Council ("Council") in response to its Advance Notice of Proposed Rulemaking ("ANPR") regarding the Council's authority under Section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA") to designate financial market utilities ("FMUs") as systemically important.<sup>2</sup> Based on that designation, The Clearing House understands that systemically important FMUs will be subject to enhanced examination, supervision, enforcement, and reporting standards and requirements, in accordance with the provisions of Title VIII of the DFA. Our comments only address the criteria for designating systemically important payment systems ("SIPS"), and not clearing or settlement systems for other financial transactions.

#### SUMMARY

The Clearing House supports the purposes of Title VIII; however, The Clearing House believes that only the largest interbank payment systems pose the type of systemic risk contemplated in the DFA. As such, only the largest interbank payment systems should be designated systemically important. The

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<sup>1</sup> Established in 1853, The Clearing House is the nation's oldest banking association and payments company. It is owned by the world's largest commercial banks, which collectively employ 1.4 million people in the United States and hold more than half of all U.S. deposits. The Association is a nonpartisan advocacy organization representing – through regulatory comment letters, amicus briefs, and white papers – the interests of its owner banks on a variety of systemically important banking issues. PaymentsCo provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost \$2 trillion daily and representing nearly half of the funds-transfer, automated-clearing-house, and check-image payments made in the United States. For additional information, see The Clearing House's web page at [www.theclearinghouse.org](http://www.theclearinghouse.org).

<sup>2</sup> 75 Fed. Reg. 79982 (December 21, 2010).

risk of “widespread disruption” and other risks in lower-value payment systems are adequately addressed through the current supervisory process. Thus, the designation of lower-value payment systems under Title VIII would only add additional layers of regulatory oversight without commensurate benefits in mitigating systemic risk. Respectfully, The Clearing House believes that such a designation is beyond the scope of Title VIII. In sum, The Clearing House responds to the ANPR with the following comments:

1. Systemic importance should be the basis for designation.
  - Designation should be reserved only for those systems in which credit or liquidity events could spread because of market participants’ loss of confidence in, or refusal to deal with, each other.
2. The Title VIII regulatory regime should build upon the existing and effective payment system oversight and supervisory regime in the United States.
  - The regime should strengthen and codify the existing oversight and supervisory regime for SIPS and preserve the oversight and supervisory regime for non-SIPS.
3. SIPS share certain key characteristics, including but not limited to large-value settlement, interconnectedness, real-time finality, and few reliable and timely alternatives.
4. Retail payment systems (e.g., ACH systems and check clearing systems) do not possess the key characteristics of SIPS.
5. The ANPR identifies a gap in the federal supervisory regime regarding non-interbank non-SIPS (e.g., Internet-based, person-to-person (“P2P”) payment systems).

#### DETAILED COMMENTS

##### 1. Systemic importance should be the basis for designation.

Title VIII of the DFA directs the Council to designate FMUs that it “determines are, or are likely to become, systemically important.”<sup>3</sup> Congress defines systemic importance as “a situation where the failure of or disruption to the functioning of a financial market utility . . . could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States.”<sup>4</sup> Based on this statutory language it appears that the Council’s designation of systemic importance is reserved for only those FMUs that could spread liquidity or credit disruptions through financial markets and destabilize the U.S. financial system.

In practice, reference to “threaten[ing] the stability of the financial system” is not completely clear, and therefore defining that threshold with meaningful criteria is complex,

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<sup>3</sup> 12 U.S.C. § 5463(a)(1).

<sup>4</sup> *Id.* at § 5463(9).

even in the comparatively straightforward world of payments. To arrive at such criteria, The Clearing House believes that the Council may wish to look to the regulatory scheme preexisting and underlying Title VIII for guidance. In addition, The Clearing House believes that the Council should balance the risks posed by payments systems against the costs that may arise from establishing a new regulatory and supervisory regime, which, for interbank payment systems, may duplicate existing regimes.

In cases where there is an existing regulatory regime, the incremental benefit of designation under Title VIII in terms of risk reduction may be outweighed by the incremental cost of the new regime, unless the Title VIII regime addresses risks that cannot be addressed effectively under the current regime. One way to think of weighing these costs is to recognize that, because of the fundamental role that payments play in our economy, any increase in the cost of making interbank payments is effectively a general tax on the economy. In this regard the compliance costs of a new regulatory regime can be weighed against other expenditures to address similar issues (e.g., enhancing existing regulatory regimes that are under the control of the respective agencies that are members of the Council) to determine whether imposing such compliance costs is appropriate. In weighing these costs, it is helpful to recognize that the DFA preserves existing regulatory and supervisory regimes including, for example, those regimes under the jurisdiction of the Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC"). Thus, while section 805 of the DFA generally commits regulation of FMUs to the Federal Reserve Board of Governors ("Board"), in the first instance it defers to the CFTC and the SEC for FMUs under their jurisdiction.

Although not expressly recognized in Title VIII in the same way that commodities and securities clearing and settlement systems are recognized, payment systems operations are already subject to regulation, examination, and, in the case of payment systems owned by insured banking institutions, direct supervision by the federal bank regulatory agencies. These regulatory and supervisory powers are derived from the federal regulators' existing authority to regulate, examine, and supervise the banks themselves and, in addition, under the Board's inherent authority to set the terms under which the Federal Reserve Banks will provide essential settlement services to private-sector payment systems. Therefore interbank payment systems, including those operated by PaymentsCo, are already subject to a supervisory regime that is used to address risks posed by payments system activities between insured banks. This regime is not repealed by the DFA and will continue.

In order to avoid duplicating efforts and replicating costs, the Council may wish to reserve designation for only those payment systems where independent supervision of the payment system is necessary to ensure that the goals of Title VIII (namely, to reduce systemic risk and to support the stability of the broader financial system) are met. As discussed in greater detail below, The Clearing House believes a system is only systemically important if a failure to settle the system's activity would lead to a broad loss of confidence in the system's participants, the size and number of which are sufficient to destabilize the broader United States financial system.

With respect to this last point, The Clearing House believes that temporary operational disruptions or outages do not rise to the level of systemic importance because remedies to these problems are usually readily identifiable and can be implemented within a predictable period of time. In these cases, a broad loss of confidence in the system's participants is unlikely.

The Clearing House believes that systemic designation should be reserved for those systems in which credit or liquidity events could spread because of market participants' loss of confidence in, and refusal to deal with, each other. These events require the restoration of confidence in order to restore

normal market activity. This loss of confidence, and the challenge of restoring it, is the hallmark of systemic events. Events such as the Currency Panic of 1907, the Great Depression, and the recent recession beginning in 2007, involved broad losses of confidence in the financial system that required months or years to reverse. In each of these cases, the loss of confidence resulted in either a reluctance or outright refusal of financial institutions to deal with one another. This loss in confidence ultimately spread to bank customers, leading to liquidity pressures that threatened to convert sound institutions into failing institutions, by forcing institutions to liquidate assets at fire-sale prices in order to meet their liquidity needs.

The Clearing House believes that the authority vested in the Council under Title VIII should be used to designate only those SIPS that hold the potential to trigger, or to seriously exacerbate, such broad and fundamental losses in confidence. Some of the key characteristics of these SIPS include the settlement of a very large aggregate value on a regular basis, interdependencies among FMUs, real-time settlement, and a lack of timely and reliable alternatives. Very few payment systems possess such characteristics, and disruptions outside of those few payment systems would not result in the broad loss of confidence in the financial system that Title VIII is intended to address. A failure to settle in most payments systems would not generally threaten the solvency, or even the liquidity, of large participants and most, if not all, smaller participants, and certainly would not trigger a general loss in confidence in the participants. Such a failure would have the limited effect of forcing financial institutions to find alternative ways of completing settlement, which is better addressed under the existing bank supervisory structure, as discussed below.

## **2. The Title VIII regulatory regime should build on the existing U.S. payment system oversight and supervisory regime.**

The Board and other federal bank regulators have existing oversight policies and risk management standards for SIPS in the United States. These policies and standards are codified in existing bank regulatory guidance, as well as in the Board's Payment System Risk Policy ("PSR Policy"). The standards are examined for and enforced under the federal banking supervisory mechanism through which federal bank supervisors have the power to prevent banks from participating in *inappropriate* payment systems. Moreover, the Board, in coordination with other federal regulators, has already made risk-based determinations regarding the degree to which regulators should apply the standards to each system. The Clearing House believes that codifying this approach for SIPS represents the most effective approach to implementing Title VIII. At a high level, the PSR Policy constructs a tiered oversight structure for payment systems: SIPS, non-SIPS subject to the PSR Policy, and payment systems beyond the scope of the PSR Policy.<sup>5</sup>

### *2.1. The Title VIII regulatory regime should codify and strengthen the existing oversight and supervisory regime for SIPS.*

In its PSR Policy, the Board incorporates the Core Principles for Systemically Important Payment Systems ("Core Principles"). The Core Principles were developed by the international central banking community, including the Board, in the early 2000s to address legal, credit, liquidity, and operational

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<sup>5</sup> The scope of the PSR Policy is limited to public- and private-sector payment and settlement systems that expect to settle a daily aggregate gross value of U.S. dollar-denominated transactions exceeding \$5 billion on any day during the next 12 months.

risks in payment systems.<sup>6</sup> The Board has stated that the Core Principles are “widely recognized, supported, and endorsed by U.S. authorities as integral to strengthening the stability of the financial system.”<sup>7</sup> The Board, coordinating at times with other supervisory agencies, applies these minimum standards to SIPS. When determining whether a payment system should be designated systemically important, the Board considers, among other things, the following factors: (i) whether the system has the potential to create significant liquidity disruptions or dislocations should it fail to perform or settle as expected; (ii) whether the system has the potential to create large credit or liquidity exposures relative to participants’ financial capacity; (iii) whether the system settles a high proportion of large-value or interbank transactions; (iv) whether the system settles transactions for important financial markets; (v) whether the system provides settlement for other systems; and (vi) whether the system is the only system or one of a very few systems for settlement of a given financial instrument.

In addition to oversight and supervision under the PSR Policy, SIPS may be subject to the supervision of the federal banking agencies under the Bank Service Company Act (“BSCA”).<sup>8</sup> The BSCA authorizes the federal banking agencies to regulate and examine those functions performed by a bank services company, as if such services “were being performed by the depository institution itself on its own premises.”<sup>9</sup> This examination power can be very broad. For example, the Office of the Comptroller of the Currency (“OCC”) may, for a service provider to a national bank, “make a thorough examination of all the affairs of the [service company] and . . . to administer oaths and to examine any of the officers, directors, employees, and agents thereof under oath.”<sup>10</sup> In practice, BSCA exams will give attention to the operational and structural risks that the Core Principles address. The BSCA also provides that a bank service company is subject to the provisions of section 8 of the Federal Deposit Insurance Act directly “as if the bank service company were an insured depository institution.”<sup>11</sup>

*2.2. The existing oversight and supervisory regime for non-SIPS is adequate and effective.*

Systems that fall within the scope of the PSR Policy but are not considered systemically important are subject to the PSR Policy’s general policy expectations, as well as federal banking supervision. The expectations for these systems include clearly identifying risks and setting sound risk management objectives, establishing sound governance arrangements, establishing clear and appropriate rules and procedures, and employing the resources necessary to achieve the system’s risk management objectives and effectively implementing rules and procedures. The

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<sup>6</sup> See Bank for International Settlements (“BIS”), Committee on Payment and Settlement Systems (“CPSS”), Core Principles for Systemically Important Payment Systems (January 2001), available at [www.bis.org/publ/cpss43.pdf](http://www.bis.org/publ/cpss43.pdf). We note that the CPSS has announced a comprehensive review of existing standards for financial market infrastructures with a view to issuing draft revised standards for public comment in early 2011. See Press Release, Committee on Payment and Settlement Systems, Bank for International Settlements, Standards for Payment, Clearing and Settlement Systems: Review by CPSS-IOSCO (Feb. 2, 2010), available at [www.bis.org/press/p100202.htm](http://www.bis.org/press/p100202.htm).

<sup>7</sup> The Core Principles are also part of the Financial Stability Forum’s Compendium of Standards that have been recognized, supported, and endorsed by U.S. authorities as integral to strengthening the stability of the financial system.

<sup>8</sup> 12 U.S.C. § 1867.

<sup>9</sup> 12 U.S.C. § 1867(c)(1).

<sup>10</sup> *Id.* at § 481.

<sup>11</sup> *Id.* § 1867(b).

compliance of non-SIPS with these expectations may be evaluated through the supervision of the federal banking agencies under the BSCA, as described above. It is worth noting that during the recent recession that began in 2007, payment systems, including both large- and small-dollar payment systems, performed as expected, and continued to operate uninterrupted despite the failure of numerous retail payment system participants. Because operational risks are already adequately addressed through the bank supervisory process, The Clearing House believes that non-SIPS should not be the focus of systemic risk regulation under Title VIII.

### *2.3. International approaches to regulating SIPS parallel the proposed approach.*

Internationally, banking regulators have addressed the supervision and regulation of non-SIPS in similar ways. For example, the Governing Council of the European Central Bank adopted the Core Principles as minimum standards for its oversight of large-value payment systems operating in the Euro Zone. Retail Payment Systems that do not have systemic implications, but could nonetheless have a severe impact on the functioning of the real economy, are subject to a subset of the Core Principles, including Core Principles I (legal basis), II (understanding financial risks), VII (security and operational reliability), VIII (efficiency), IX (access criteria), and X (governance) (collectively, the "Retail Standards"). The Retail Standards are limited to those Core Principles that address operational and structural risks, to the exclusion of the Core Principles that address credit and liquidity issues that may give rise to systemic risk. The Clearing House believes that designation for interbank retail payment systems in the United States under Title VIII is unnecessary to achieve this level of oversight, because such risks are already supervised under the bank supervisory process.

### **3. SIPS share certain key characteristics.**

The Clearing House believes that SIPS share certain key characteristics, which closely track factors that the Board considers in designating SIPS under the PSR Policy: large-dollar values, system interdependencies, reliance on immediate finality, and a lack of timely and reliable alternatives. The Clearing House Interbank Payment System ("CHIPS"), for example, is typically regarded as a SIPS.

CHIPS is a real-time final settlement, large-value funds transfer system that transmits and settles payment orders in U.S. dollars for some of the largest and most active banks in the world. On an average day, CHIPS transmits and settles more than 360,000 payment messages with an aggregate value of approximately \$1.45 trillion. The average value of each payment on CHIPS is approximately \$4.0 million.

To enable CHIPS participants to manage their liquidity, CHIPS employs an intraday final settlement system so that each payment is settled as it is released. This intraday finality ensures that a minimal number and value of transactions remain unreleased before end-of-day processing, thereby minimizing the disruption that could be caused if a participant is unable or unwilling to fund its end-of-day position. In addition, no overdrafts are permitted on CHIPS which further reduces liquidity risk. Nevertheless, The Clearing House recognizes that a failure to complete and settle all payments sent through CHIPS could have the potential to create significant liquidity disruptions for participants, as well

as credit or liquidity disruptions relative to participants' financial capacity outside of the system.<sup>12</sup> Other characteristics that lead to the conclusion that CHIPS is systemically important are the high percentage of international interbank funds transfers denominated in U.S. dollars settled on the system and the fact that CHIPS is one of only two large-value payment systems in the United States; the Federal Reserve Banks' Fedwire Funds Service ("Fedwire") is the other. For these reasons, The Clearing House acknowledges CHIPS's systemic importance in financial markets.

Because of CHIPS's systemic importance, The Clearing House has ensured that CHIPS meets or exceeds all of the minimum standards of the Core Principles. Moreover, as required by the PSR policy, CHIPS regularly assesses its performance against those standards and discloses publicly the results of its assessment. CHIPS's compliance with these standards is validated through Federal Financial Institutions Examination Council ("FFIEC") examinations. PaymentsCo also invites other federal regulators, including the OCC, the Board, the Federal Reserve Bank of New York, and the New York State Banking Department to conduct examinations of its information technology operations. These examinations are conducted in accordance with the guidelines and procedures established by the FFIEC.

As indicated above, The Clearing House fully expects that CHIPS will be designated a systemically important FMU; however, The Clearing House believes that designation should be limited to CHIPS, as a system. The Clearing House believes that the Core Principles represent the extent to which it is appropriate to regulate the PaymentsCo governance structure. At the entity level, PaymentsCo should not be designated as systemically important. Furthermore, as discussed in greater detail below, retail payment systems, including PaymentsCo's electronic payments network ("EPN") and image clearing network ("IPN") should not be designated as systemically important FMUs because they do not possess the characteristics described above.<sup>13</sup>

#### **4. Retail payment systems do not possess such characteristics, and therefore should not be designated systemically important.**

As stated above, The Clearing House believes that the DFA limits the designation of systemic importance to those payment systems whose failure can threaten the stability of the U.S. financial system. That limitation on designation is validated by our collective experience managing payment system risk. The ANPR, however, requests comment on whether payment systems that transfer relatively low aggregate values (i.e., retail payment systems) should be considered by the Council for designation as systemically important.<sup>14</sup> The Clearing House believes, for the reasons discussed both

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<sup>12</sup> As noted in the text, CHIPS payment messages are finally settled at the time they are released. There may be a small number of payment messages that cannot be released during ordinary processing and must be settled through an end-of-day process. Payment messages released and settled through the end-of-day process are a small fraction of the total value and number of payments that CHIPS processes. For 2010, the total number of payment messages that were not released and settled at the CHIPS Cutoff (5:00 p.m. ET) averaged 123 payment messages or 0.03 percent of the total processed per day and \$15.8 billion or 1.09 percent of the gross value settled per day. These payment messages are released upon funding of participants' closing positions.

<sup>13</sup> The Clearing House understands that the statutory term "financial market utility" is defined as a "person" and, therefore, a designation of CHIPS could be viewed as applying to the entirety of PaymentsCo, including EPN and IPN. The Clearing House does not believe that the use of the term "person" compels this result and does not believe that the failure to designate EPN or IPN would in any way jeopardize CHIPS's ability to conform to any requirement that would be imposed on CHIPS under Title VIII.

<sup>14</sup> 75 Fed. Reg. at 79983.

above and below, that retail payment systems, such as EPN and IPN, should continue to be subject to the Board's general policy expectations, but should not be subject to the Core Principles or an enhanced regulatory regime by virtue of designation under Title VIII.

*4.1. Retail payment systems settle relatively low aggregate monetary value.*

A settlement failure in a system settling limited value will not generally threaten the solvency or liquidity of system participants or even lead to market concerns about their solvency. In such systems, a settlement failure would most likely be confined to the system itself, and would not likely lead to liquidity or credit problems spreading through the financial institution or to financial markets, more broadly. Therefore the Council should consider the size of a participant's credit and liquidity exposure on net payments due from the system in designating SIPS. For example, in 2010, EPN settled an average daily value of \$71.5 billion, or less than 5.0 percent of the daily average value settled on CHIPS. Similarly, in 2010, IPN cleared an average daily value of \$40.4 billion, or less than 2.8 percent of the average daily value settled on CHIPS. These settlement values do not result in the kinds of credit or liquidity exposures possible on large-value payment systems. Both because of the limited values involved and because of the nature of the payments being settled, an EPN or IPN settlement failure would not likely raise doubts about the solvency of the participants in these systems other than the participant failing to settle.

*4.2. ACH and check payments do not guarantee final settlement.*

Credit transactions on ACH systems, such as EPN, do not carry the expectation of finality that is characteristic of other electronic payment transactions subject to Article 4A of the Uniform Commercial Code ("Article 4A"). First, Article 4A does not apply to "any funds transfer any part of which is governed by the Electronic Funds Transfer Act of 1978 [(the "EFTA")],"<sup>15</sup> and the EFTA covers consumer transfers of funds "processed by automated clearinghouse."<sup>16</sup> Therefore, for consumer ACH credit payment transactions (e.g., salary and benefit payments), the bank receiving the payments should have no expectation that such payments are final until settlement for the payments is actually completed. In addition, under Section 4A-405(d), ACH credit payments are not subject to the receiver finality rule under which a beneficiary's bank cannot recover payments made to a beneficiary because the bank itself does not receive payment. Thus, the finality guarantee in Article 4A does not apply to ACH credit transactions. Without this expectation of finality, participants will not immediately rely on the liquidity of an ACH credit transaction to discharge other obligations outside of the ACH system.

The systemic effect of ACH debit transactions is similarly limited because of finality expectations. ACH debit transactions are returnable as a matter of right. For example, if a bank has failed, the Federal Deposit Insurance Corporation ("FDIC"), as receiver, is likely to stop paying on debit transactions in the pipeline that have not been paid prior to the cutoff hour established by the institution. Even for transactions received before the cutoff, the FDIC could, although it generally does not, return all of the debit transactions received on the day of the failure.

Finally, because ACH and check transactions are either explicitly or implicitly time-dated, giving participants more time to react to settlement failures, there is limited risk of contagion in ACH and

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<sup>15</sup> U.C.C. § 4A-108.

<sup>16</sup> 15 USC § 1693a(6).



check-clearing systems. Even for transactions to be settled almost immediately after a failure, such that there is limited time to react, the lack of any expectation of settlement finality reduces the likelihood of severe disruption due to a settlement failure. In real-time final settlement systems, such as CHIPS, participants manage their liquidity with an expectation of incoming credits settling immediately, making the liquidity available for pending outgoing payments.

*4.3. Retail payment systems do not generally settle transactions for important financial markets or other payment systems.*

The failure of a system that settles transactions for important financial markets or completes settlement for other systems may have broader implications on financial markets. Large-value payment systems often serve important financial markets, such as the foreign exchange, and the failure of such systems will significantly impair these markets. In addition, large-value payment systems generally provide final settlement for other systems. Settlement payments from other systems often represent net positions and significant underlying activity, which may need to be unwound in the event of a settlement failure. For example, Fedwire settles activity from other large-dollar and retail payment systems. Thus, a Fedwire failure would have repercussions throughout financial markets. While retail payment systems, such as EPN or IPN, regularly settle payments that are important to individuals, such transactions will not affect the inner workings of important financial market or other payment systems.

*4.4. There are reliable and timely alternatives for retail payments.*

Finally, although question 4(e) of the ANPR raises the question of whether “a widespread disruption” of payments to the general public should give rise to designation under Title VIII, The Clearing House believes that a disruption of retail payment systems does not hold the potential to lead to the type of disruption contemplated by the DFA. The failure of such systems may, in the short term, lead to a degree of inconvenience. However, this inconvenience should not be confused with a loss of confidence in financial institutions and a refusal to deal between financial institutions. Moreover, employers, consumers, and merchants have reliable and timely alternatives, including other ACH systems and check-clearing providers, and other forms of payment, including substituting wire transfers for check or ACH payments, substituting check payments for ACH payments, and substituting ACH payments for check payments.

Even for cases where retail payment systems are used to provide salary or benefit payments that consumers depend on, there are alternative channels for those payments, many of which will introduce only minimal delay. Critically, for the purpose of systemic designation, such a delay would not result in a systemic event, because the failure to make payment would almost certainly result from an operational disruption, which can be resolved, as opposed to a credit event, which may be more difficult to resolve. Moreover, these transactions are typically distributed monthly or bi-monthly. In that respect, alternative means of payment could be found during a prolonged disruption. In any event, these operational disruptions are adequately addressed through the existing supervisory mechanism (e.g., under the BSCA) and do not require creating a new layer of regulation under Title VIII.

**5. The ANPR identifies a gap in the federal supervisory regime regarding non-interbank non-SIPS.**

The Clearing House would like to draw the Council’s attention to a supervisory gap in existing supervision of retail payment systems. As discussed above, operational risks in interbank retail systems are addressed under the existing supervisory structure, including FFIEC/BSCA exams and the supervisory exams of participating banks. Therefore, operational risks are generally well managed in the interbank

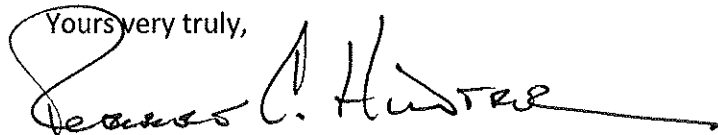
retail payment systems. There is no comparable supervision, however, of the risks presented by the growing Internet-based payment systems, including P2P payment systems. While Internet-based payment systems typically are subject to state money transmitter laws that require the segregation of funds to meet payment obligations, state oversight of these systems falls far short of the regime of insured deposits and regular examinations that ensure the safety and reliability of interbank systems. The Clearing House believes that Internet-based payments represent an effectively unsupervised operational risk to consumers.

Moreover, layering additional regulation on supervised, interbank retail payment systems will not only disadvantage such systems as compared to the Internet-based systems, but will also directly lead to more consumers depending on these lower-cost unsupervised alternatives, resulting in increased risk for consumers. Regulators have traditionally taken steps to avoid regulatory distortions to the highly competitive retail payment markets. Given the fierce competition in retail payments, an uneven regulatory burden could inadvertently weaken the payment system by forcing from the market those systems that have been strengthened by the existing regulatory regime.

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Thank you for your consideration and review of our comments. If you have any questions or wish to discuss The Clearing House's comments, please do not hesitate to contact me at (336) 769-5314.

Yours very truly,

A handwritten signature in black ink, appearing to read "Robert C. Hunter", with a long horizontal line extending to the right.

Robert C. Hunter  
Senior Vice President & Senior Counsel