April 27, 2012

Richard Cordray, Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Implementation of Remittance Transfer Rules under Section 1073 of the Dodd-Frank Act

Dear Director Cordray:

The Clearing House Association L.L.C. ("The Clearing House") respectfully submits this letter in an effort to continue to work collaboratively with the Bureau of Consumer Financial Protection ("Bureau") to implement Section 1073 of the Dodd Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") in a way that satisfies the dual statutory objectives of providing consumer protections while ensuring the continued availability of international transfer services.[1]

The Clearing House's owner banks are firmly committed to continuing to serve their customers by providing the maximum possible range of remittance transfer services that their customers may need. In addition, The Clearing House's owner banks are equally committed to honoring the disclosure and consumer protection regime reflected in Section 1073 of the Dodd-Frank Act. However, we are gravely concerned that the final remittance transfer rule (the "Final

[1] 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. 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 the interests of its owner banks on a variety of systemically important bank policy issues. Because of these attributes, The Clearing House is uniquely positioned to provide the Bureau with meaningful input regarding the impact of the final remittance transfer rule.

The Clearing House Association has been studying Section 1073 and issues related to its implementation for almost two years. We have submitted comment letters to both the Bureau and Board of Governors of the Federal Reserve System (the "Board"), some of which we prepared on behalf of our own members, as well as jointly with nine other trade associations that have significant interests in Section 1073. We have also met with staff from the Bureau and the Board, surveyed our members about their remittance transfer products and provided the Bureau with the resulting data, met with members of Congress to discuss the impact of Section 1073, and dedicated hundreds of hours to studying the application of the Final Rule's requirements to transfers made through open networks. These efforts demonstrate The Clearing House's firm commitment to aiding in the development of a final rule that effectively accomplishes the goals of Section 1073 without diminishing services to international transfer customers.

Rule")[2] reflects an unnecessary, and at times arbitrary, expansion of the statute that is likely to have the unintended consequence of significantly diminishing the availability of international transfer services, and thus, counter to the Bureau's purpose, causing considerable harm to consumers.[3] Specifically, we believe that the compliance challenges posed by the Final Rule will cause many financial institutions to severely limit their international transfer product offerings or exit the market altogether, resulting in reduced competition among providers and reduced consumer access to international transfer services. Moreover, providers that remain in the market are likely to increase fees charged for international transfer services to cover the costs of complying with the Final Rule and to address the significant risk of principal loss the Final Rule imposes on providers.

The considerable harm that the Final Rule will cause to consumers is magnified when applied to the unbanked and underbanked markets in the U.S. The reduced availability and increased cost of international transfer services that will result from the Final Rule will drive unbanked and underbanked populations to rely increasingly on unregulated – and often underground – financial services providers. Such an outcome greatly increases the risk of money laundering and terrorist financing, and undercuts the ability of regulated financial institutions to integrate these populations into the mainstream banking system.

To promote cooperation and clarify the need for certain modifications to the Final Rule, The Clearing House respectfully submits this letter. However, the suggestions we offer here are not a comprehensive remedy that will prevent all of the unintended consequences many in the financial services industry expect to result from the Final Rule. Rather, we offer these suggestions as a means to mitigate *some* of these negative outcomes, including harm to consumers. In this context we offer our suggestions.

We note that in addition to this letter we intend to submit a separate letter to the Bureau requesting clarification on certain points of ambiguity that The Clearing House and our owner banks have identified while reviewing the Final Rule. As you know, agency guidance is a customary regulatory practice and will be critical to the efforts of financial institutions to fully understand the requirements of the Final Rule, manage regulatory and compliance risk, and develop procedures, protocols and systems to comply with the Final Rule. We welcome the Bureau's response to the issues raised by industry participants that will clarify legal uncertainties within the Final Rule, which will be critical to enabling institutions to understand the parameters of the Rule, manage risk, and develop compliance functions.[4]

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[2] Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6194 (Feb. 7, 2012).

[3] Specifically we note the importance of the Bureau's authorities under 904(a) and 904(c) of the Electronic Fund Transfer Act (the "EFTA") to limit the scope of the Final Rule. The Bureau elected to exercise its authority under these sections to limit the scope of the Final Rule in certain areas. However, the Bureau declined to do so in other critical areas where doing so would have reduced the Final Rule's negative impacts to consumers.

[4] We note that Stephen Shinn (Counsel in the Bureau's Research, Markets and Regulations Division) indicated in a Webinar on April 11, 2012 to the California Bankers Association that the Bureau is not

I. Executive Summary

As discussed in further detail below, The Clearing House welcomes the Bureau's consideration of the following:

- The Final Rule, as currently written, will cause substantial and far-reaching harm to consumers that rely on international transfer services. This harm could in large measure be alleviated through carefully crafted modifications to the Final Rule. The Clearing House recommends that the Bureau consider, at a minimum, a *partial* phase in of the Final Rule to facilitate a more deliberative application of the requirements of Section 1073 and the Final Rule. This would provide the Bureau with a better opportunity to assess the likely unintended consequences and negative impacts of the Final Rule to consumers while also providing financial institutions adequate time to accommodate the *structural business model changes* necessary to implement the Final Rule.

- The Final Rule imposes a strict liability standard on remittance transfer providers causing a considerable risk of financial loss, which providers will be largely unable to mitigate or manage other than through a cost mutualization framework passed along to customers. The Clearing House recommends that the Bureau modify the Final Rule to minimize the extraordinary and asymmetrical risk of loss that the Final Rule unreasonably imposes upon financial institutions *in the limited circumstances* where the provider has reasonably relied on incorrect information provided by the sender.

- The requirement that foreign taxes be incorporated into the disclosures mandated by the Final Rule is practically impossible to comply with in a cost effective manner. Given that foreign taxes levied on a remittance transfer will not vary from one provider to the next, and, hence, serve no comparison shopping function, the costs of complying with the foreign tax disclosure requirements would seem to far outweigh any consumer benefit from disclosure of this information. Accordingly, The Clearing House strongly advocates that the Bureau eliminate the foreign tax disclosure requirement.

- The Final Rule includes a "permanent exception" to the disclosure requirements in the limited circumstances in which the laws of the recipient country do not permit the provider to determine the exact amounts that must be disclosed. The Bureau indicated that it intends to publish a safe harbor list of countries to which this permanent exception applies. Because the safe harbor list is of critical importance to financial institutions as they build the technical systems and implement the fundamental business model changes necessary to comply with the Final Rule, The Clearing House urges the Bureau to develop a process by which financial institutions

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planning to issue formal guidance regarding the Final Rule. There are a significant number of issues and ambiguities raised by the Final Rule. Thus, we believe guidance from the Bureau is imperative.

may recommend that countries be added to the Bureau's "safe harbor" list of countries to which the "permanent" exception applies.

- When the Final Rule takes effect, wire transfers that are also "remittance transfers" will lose the legal safeguards that currently exist under state law per Uniform Commercial Code ("UCC") Article 4A. Currently, the New York Uniform Law Commission is working to amend Article 4A of the New York Commercial Code to address the void in UCC 4A coverage created by Section 1073 and the Final Rule. The Clearing House requests that the Bureau express its support for the efforts of the New York Uniform Law Commission to reestablish the legal safeguards that UCC Article 4A provided to wire transfers in New York.

II. Specific Concerns

A. Ensuring Effective Implementation of Final Rule with Minimal Harm to Consumers

i. More Deliberate Assessment of Unintended Consequences

We believe the Final Rule will result in considerable harm to consumers, particularly the unbanked and underbanked. Remittance transfer providers that remain in the market after the effective date of the Final Rule are likely to pass on to consumers the significant compliance costs associated with the Final Rule. For some consumers, these increased costs will result in bank-provided international transfer services that are prohibitively expensive. In addition, consumers are also at risk of losing the ability to send funds account to account in many parts of the world as even the largest financial institutions that remain in the market are unlikely to solve for the lack of information about third party fees, exchange rates, and foreign taxes in every country (or to every institution) to which they can send funds today. Finally, the Final Rule's complexity, unreasonable liability, and misalignment with open network infrastructure will likely cause many financial institutions to exit the market, reducing the availability of remittance transfer services and diminishing competition.

The Clearing House strongly encourages the Bureau to undertake a more deliberative assessment of the unintended consequences of the Final Rule on consumers. We believe that such an assessment should examine, among other things, the number of remittance transfer providers that intend to remain in the market, whether there are corridors or countries to which consumers will no longer be able to send money using an account-to-account method, what the changes in the cost of remittance transfer services will be and whether consumers believe the new disclosures they receive are worth the cost and service reductions that follow from the Final Rule. In the Final Rule, the Bureau stated that it will "continue dialogue with industry regarding implementation issues,"[5] which The Clearing House believes will be critical to achieving effective implementation of Section 1073 that ensures minimal negative impacts are felt by the very consumers it aims to protect. To that end, The Clearing House is willing to assist

[5] Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6194, 6277.

the Bureau in such a study by collecting information from our owner banks and presenting such information in an aggregate, anonymous form.

ii. Phased Implementation

The undertaking required to technically, operationally, and systemically implement the Final Rule should not be underestimated. This is because the Final Rule is *fundamentally misaligned with open network infrastructure and international correspondent banking practices as they currently exist*. The existing cross-border payments infrastructure and market practices employed by financial institutions for international transfers does not support and never anticipated the types of disclosures called for by the Final Rule. Moreover, the success of efforts to modify this structural business model is by no means guaranteed since it necessitates the cooperation of foreign financial institutions (including intermediaries with which U.S. providers have no formal relationship today). These institutions may be unwilling or unable (due to legal constraints) to make the requested concessions.[6] Accordingly, time is needed to appropriately assess and navigate these issues and, where possible, to establish new contractual relationships or re-negotiate existing ones with foreign financial institutions.

As the Bureau recognized in the preamble to the Final Rule, there is a stark difference in the way in which international transfers are processed over closed and open networks, making compliance by open network providers significantly more burdensome. 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[7] involves funds

[6] For example, the European Union's Payment Services Directive requires that banks publish their *generally applicable* fees or "tariffs." However, as a practical matter these published tariffs are the highest amount that may be charged for certain services. The actual amount a bank charges a particular customer will be dependent upon the legal status of the customer, such as whether the customer is a corporate entity or natural person. Further, these fees are subject to negotiation between the bank and its customers. For example, corporate customers may have a tiered pricing model, based on the volume of transfers they receive. Natural persons may have different packages of services and fees that they can choose from. These individually negotiated arrangements are typically non-disclosable under European privacy laws, such as Article L. 511-33 of France's Monetary and Financial Code. In addition, Article 101(1) of the Treaty on the Functioning of the European Union prohibits competitors from disclosing information to other competitors that could influence future pricing behavior. The disclosure of lifting fees and exchange rates among competitors could have the effect of influencing pricing among competitors in violation of this treaty. These and other factors make it impossible for U.S. financial institutions to ascertain or anticipate the rates that will apply to a particular open network transfer in each jurisdiction. Moreover, it is worth reiterating that each remittance transfer could involve numerous financial institutions in multiple countries with varying laws.

[7] 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.

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. One of the primary benefits to consumers of the open network system is that it enables customers to send funds from any point of origination to virtually anywhere in the world, however remote, because of the vast infrastructure of interconnected financial institutions. Nonetheless, because of way in which the funds transmission process works, open network funds transfer providers have significantly less control over or access to information regarding international transfer. 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 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;
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> (b) the open network provider in almost all cases 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;
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> (c) correspondent, intermediary and recipient institutions may consider their pricing information to be proprietary and may refuse to reveal it;
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> (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 Final Rule;
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> (e) 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
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> (f) 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 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.

Accordingly for financial institutions, compliance with the Final Rule will require extensive structural changes to the existing cross-border transfer infrastructure, including the development of new commercial relationships and a new international messaging protocol that

ensures (1) the requisite information flow from correspondents, intermediaries and recipient institutions to the open network provider, and (2) that such information is received by the open network provider within an appropriate timeframe to enable the provider to generate and give disclosures to the sender within the time parameters required by the Final Rule. Development of this protocol, and the associated framework, will require meaningful and widespread international cooperation, as well as the development of direct contractual relationships by remittance transfer providers with intermediaries and recipient institutions. Making these foundational changes will be very time intensive and will necessitate a careful study of the laws of other countries and localities (including privacy, bank secrecy, consumer protection, and other laws), as well as education of counterparties, and contract development and negotiation (which could be a lengthy process).

In addition, financial institutions that will be acting as remittance transfer providers under the Final Rule must make extensive changes to their own systems and protocols, as well as agreements with partners and service providers, across a number of business areas, including retail operations, private banking, wire transfer, ACH, online banking systems, global wealth management, investment management, and foreign exchange and related activities. These changes must be consistently implemented throughout the enterprise and must be tested to ensure that they are appropriately constructed. Furthermore, financial institutions will not be able to fully implement these changes until the Bureau resolves the issues regarding preauthorized remittance transfers that are explored in the proposed rule that was published in the Federal Register in February ("Proposed Preauthorized Remittance Transfer Rule").[8]

Thus, while the owner banks of The Clearing House are committed to compliance with the Final Rule, we ask that the Bureau adopt a phased-in approach for compliance that reasonably recognizes the distinction between circumstances in which the remittance transfer provider has control over the process and access to the information needed for disclosures, and those situations in which the remittance transfer provider does not have such control over the process or access to information. To be clear – The Clearing House believes that the objectives of Section 1073 are important to accomplish and should not be abandoned, but for the latter category of remittance transfer providers, such objectives will need to be accomplished in a rational progression that reflects the operational realities of the open network transfer system, and the time it will take to make the appropriate structural changes to this framework.

We recommend that as of February 7, 2013 (the date the Final Rule is currently scheduled to take effect), financial institutions be required to disclose information that the institution controls and/or information to which the institution has access. In particular, providers would disclose the "transfer amount" (in the currency in which the transfer is funded), "transfer fees" and "transfer taxes" (fees imposed and taxes collected on the transfer by the provider), the "total" (the total amount of the transaction, which is the sum of the transfer amount and the transfer fees or taxes), and, if the provider performs the foreign exchange, the "exchange rate" (the exchange rate applied to the transfer). We also recommend that the error resolution procedures only apply to the extent that the associated disclosure requirements have

[8] Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6310 (Feb. 7, 2012).

been phased in. (For example, senders should not be able to assert errors relating to the "total to recipient" or the "date available" until those items are required to be disclosed.)

We request that financial institutions that use open networks be afforded additional time to build the compliance structure that will be required to disclose information that an institution does not currently control and/or have access to, including the exchange rate if a person other than the provider performs the exchange, "other fees" and "other taxes" (any fees and taxes imposed on the transfer by a person other than the provider), "total to recipient" (the amount that will be received by the designated recipient, which must reflect the imposition of other fees and taxes), and the "date available" (the date in the foreign country on which funds will be available to the designated recipient). Thus, we suggest that the Bureau make the requirements regarding the disclosure of such information effective February 7, 2014.

Employing a phased-in approach that reflects a reasonable, measured progression to full implementation based upon the degree of provider control over disclosable information is critical to preserving the intentions of Congress in enacting Section 1073 while minimizing negative impacts to remittance transfer customers, and the industry at large.[9]

B. Strict Liability and Principal Risk for Incorrect Information from a Sender

The Final Rule holds remittance transfer providers liable for the principal amount of a transfer that is not received by the designated recipient even *when a financial institution has acted in accordance with a sender's precise instructions*. This strict liability principle in the Final Rule places financial institutions unfairly at risk for the entire principal amount of a remittance transfer where an error occurs in connection with the transaction, including an error that is *wholly outside of the provider's control and that could not reasonably be detected by the provider regardless of the amount of due diligence the provider may undertake*.

For example, in situations where a sender gives incorrect or insufficient information about the recipient (such as the wrong recipient bank account number) and the funds are delivered to the incorrect account as a result of this information, under the Final Rule liability for the entire principal amount of the remittance transfer transaction is likely to fall on the remittance transfer provider. The result is particularly troubling because a sending institution often will not have the ability to recall funds that have been erroneously deposited into the wrong account (either because they have been removed from the account or the account owner refuses to provide a debit authorization). What's more, the provider has no reasonable ability to protect itself against much of this risk because privacy laws often prevent foreign institutions

[9] We recognize that in the comment letter we submitted jointly with five other trade groups on April 9, 2012 we requested that the Bureau delay the effective date of the Final Rule to one year from the date that the final rule regarding the "normal course of business" safe harbor and preauthorized remittance transfers is published in the *Federal Register*. Our request in this letter is for a phased implementation that would enable consumers to receive the benefits of enhanced disclosures beginning next February while providing sufficient time for financial institutions to make the structural business model changes needed to provide consumers with the information that the financial institutions do not currently access or control.

from confirming that the account number given by the sender is the correct account number for the designated recipient. Thus, remittance transfer providers cannot mitigate the risk that the sender will give the wrong account number, but remain liable under the Final Rule for the entire principal amount if such an error occurs.

It is also important to note that it is already in the interest of every financial institution to provide a high level of customer service in order to ensure that the financial institution retains its current customer base and attracts new customers. Thus, financial institutions currently work closely with customers when issues arise (such as a customer giving an incorrect account number), in order to try to get the customer's funds back from the foreign financial institution and incorrect recipient. In other words, financial institutions, in large measure, do attempt to recover funds for their customers even when the institution is not legally liable. Imposing an overlay of strict liability to these current practices only serves to harm the consumer as providers may refuse to send transfers over a certain amount or substantially increase the cost of services based on the principles of risk based pricing.

Requiring a financial institution to make a sender whole when the information provided by the sender is the cause of the loss is also inconsistent with the Bureau's stated rationale underlying the liability allocation approach in the Final Rule. The Bureau has stated that "consistent with other error resolution procedures in Federal financial consumer protection laws, the Bureau believes that where neither a sender nor a remittance transfer provider are necessarily at fault, a provider generally is in a better position than a sender to identify, and possibly recover from, the party at fault."[10] Although the Bureau states that it "does not believe that whether a particular circumstance constitutes an error should necessarily depend on whether a provider is at fault," the Bureau has adopted a rule allocating to the provider full liability for an error caused by the sender. We also note that Section 1073 of the Dodd-Frank Act does not require the Bureau to take the position that it did; rather, Congress gave the Bureau broad authority to establish "clear and appropriate" error resolution rules.[11] From this statutory authority, the Bureau in a seemingly arbitrary fashion developed a strict liability approach to allocating responsibility for errors that, as described above, is unfair, overly broad and likely to cost consumers more for remittance transfer services.

Requiring a financial institution to resend a transfer when the sender provides incorrect or insufficient information also increases the risk that the error resolution provisions of the Final Rule will be abused. People motivated to commit fraud may be able to take advantage of the system, for example, by deliberately providing erroneous information resulting in delivery of funds to the account of a cohort, rather than the designated recipient named on the receipt. Although the Final Rule provides that non-delivery is not an error if the failure resulted from the transfer being made with fraudulent intent by the sender or any person acting in concert with the sender, The Clearing House believes that, in practice, it will be extremely difficult for a provider to establish that fraudulent intent existed.

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[10] 77 Fed. Reg. 6194, 6249.

[11] EFTA § 919 (d)(2).

The Bureau should also consider modifying the Final Rule to reflect the industry practice of processing transfers in reliance on account numbers as opposed to a recipient's name and provide that there is no error when a financial institution relies on the account number provided by the sender (even if there is a discrepancy between the account number and the name of the recipient). We note that financial institutions in the U.S. and abroad rely on account numbers as opposed to names for a variety of reasons, including that there may be variations in the way an individual spells his or her name (for example, Becky Smith as opposed to Rebecca Smith) and that a spelling variation may not correspond with the recipient's account number, that there may be issues relating to language translation (for example, translations from Latin languages to languages with different characters) and that there may be limitations in the length of the name field that prevent a person's full name from being entered. Further, reliance on account numbers enables the very important objective of automated processing.[12]

C. Foreign Tax Disclosures

Although not required by Section 1073, the Final Rule mandates that remittance transfer providers disclose the amount of taxes imposed on the transfer by persons other than the remittance transfer provider. It will be practically impossible in a cost effective manner for financial institutions – and for smaller institutions in particular – to monitor all of the foreign tax laws that may apply to an international funds transfer. Such an effort will require significant resources and even if an institution is able to catalogue the tax laws of every foreign country, those laws are subject to change. Thus, to comply, financial institutions will be required to constantly monitor numerous tax laws in every foreign country and locality to which they offer remittance transfer services, and to understand and appropriately apply these laws to a wide range of transactions. The cost of this effort is likely to be passed along to consumers in the form of higher fees. Furthermore, to comply with the foreign tax disclosure obligation, financial institutions may be required to question their customers on various aspects of the transfer, including, among other things, the purpose of the transfer and the status of the designated recipient. This will make the process of requesting a transfer more cumbersome and intrusive for consumers.

The Clearing House notes that a significant purpose behind the Final Rule is to provide consumers with the ability to comparison shop among available remittance transfer providers.[13] Disclosing foreign taxes in no way furthers this purpose as those taxes will be the same regardless of which provider sends the transfer. Given the very significant cost of surveying, constantly monitoring, and applying the tax laws and rates of every jurisdiction (including at the

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[12] Most payment orders issued to a beneficiary's bank by another bank are processed by automated means using machines capable of reading payment orders on standard formats that identify the beneficiary by an identifying number or the number of a bank account. The processing of the payment order by the beneficiary's bank and the crediting of the beneficiary's account are accomplished by use of the identifying or bank account number without human intervention (i.e., without any person's read of the payment order itself).

[13] "The new protections will significantly improve the predictability of remittance transfers and provide consumers with better information for comparison shopping." 77 Fed. Reg. 6194.

national, state or local level) to which a financial institution sends remittance transfers, and the fact that foreign taxes are not a mandatory disclosure under Section 1073, we do not think there is sufficient consumer benefit to justify this part of the Final Rule. Accordingly, The Clearing House believes that the requirement to disclose foreign tax information should be eliminated altogether.

D. Safe Harbor Countries

Under the Final Rule, the "permanent exception" to the disclosure requirements permits a provider to disclose estimates (rather than exact figures) where the laws of the recipient country do not permit the provider to determine the exact amounts that must be disclosed. The Bureau indicated in the Final Rule that to facilitate compliance it will publish a safe harbor list of countries to which this permanent exception applies. However, the Bureau has not yet done so. Because the safe harbor list is of critical importance to financial institutions as they build the technical systems necessary to comply with the Final Rule, The Clearing House looks forward to working with the Bureau in a collaborative effort to compile this list.

We also note that the Bureau has inexplicably limited the "laws" exemption to laws that apply to national currencies (e.g., a law or regulation in a recipient country that requires the person making the funds available to the designated recipient to apply an exchange rate set by the government after the provider sends the transfer). However, we believe there are other foreign laws that will prevent providers from determining the amount that a recipient will receive. For example, antitrust and privacy laws may prevent foreign institutions from sharing their fees or rates with other financial institutions. Thus, we encourage the Bureau to establish a process by which providers may request inclusion of countries on the safe harbor list based on any laws that prevent the provider from determining disclosure amounts (for example by providing legal opinions or statements from foreign authorities that information required by the Final Rule cannot be shared). This would be consistent with the plain meaning of the exemption in Section 1073.

E. UCC 4A

When the Final Rule takes effect, wire transfers that are also "remittance transfers" will be governed by the EFTA and UCC Article 4A will no longer apply to those wire transfers. The Clearing House respectfully requests that the Bureau express its support for the efforts underway in New York to address the legal uncertainty under Article 4A of the Uniform Commercial Code that was created by Section 1073 and the Final Rule.

UCC 4A-108 states that Article 4A does not apply "to a funds transfer, any part of which is governed by the [EFTA]." Thus, financial institutions that provide remittance transfer services by wire will lose the well-established legal framework that sets the rights, responsibilities and liabilities of financial institutions that participate in a wire transfer. [14] The Bureau declined to

[14] In the preamble to the Final Rule the Bureau acknowledged that "one consequence of covering remittance transfers under the EFTA could be legal uncertainty under the UCC for certain remittance transfer providers. Of particular importance, to the extent that providers of international wire transfers

resolve this issue in the Final Rule stating that "the best mechanisms for resolving this uncertainty rests with the states, which can amend their respective versions of UCC Article 4A, with the purveyors of rules applicable to specific wire transfer systems, which can bind direct participants in the system, and with participants in wire transfers who can incorporate UCC Article 4A into their contracts."[15] The Clearing House, together with the New York's Uniform Law Commission, is working with legislators in New York to amend the New York Uniform Commercial Code to address the issue and respectfully requests that the Bureau express its support for this legislative effort to resolve the legal uncertainty created by Section 1073.[16]

III. Conclusion

The Clearing House appreciates the opportunity to work with the Bureau to address some of the compliance challenges posed by the Final Rule. We remain concerned that the Final Rule will cause many institutions to exit the market and remaining institutions to significantly limit the international transfer services available to consumers. This may have a detrimental impact on competition and pricing in this market. Specifically, we believe that in its current form the Final Rule is likely to have unintended and harmful consequences for consumers, including that they will have to pay more for remittance transfer services, will have fewer remittance providers to choose from, and may have difficulty identifying providers that will make transfers to certain foreign countries.

Absent changes to the Final Rule that go beyond the suggestions made in this letter, we do not think the consequences mentioned above can be entirely avoided. However, we believe that reasonable technical modifications to the Final Rule can provide some measure of relief that will enable better service offerings to consumers when the rules become effective. Such an improvement would be in the common interest of consumers, the Bureau, and financial institutions. Moreover, we reiterate that a phased-in approach that reflects a reasonable, measured progression to implementation will be critical to preserving the intentions of Congress in enacting Section 1073 while minimizing negative impacts to remittance transfer customers, and the industry at large. Thus, it is our sincere hope that this letter will serve as the beginning of an ongoing dialogue between our organizations about how best to implement the goals of Section 1073.

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Thank you for your consideration and review of these comments. If you have any questions or wish to discuss this letter, please do not hesitate to contact either of the undersigned, or Robert C. Hunter, Senior Vice President & Deputy General Counsel at (336)

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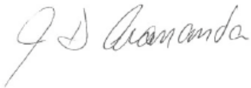
were previously able to rely on UCC Article 4A's rules governing the rights and responsibilities among the parties to a wire transfer, they may no longer be able to do so." 77 Fed. Reg. 6194, 6212.

[15] *Id*.

[16] New York law is significant because the CHIPS Operating Rules incorporate New York law. We note that Fedwire was able to address the UCC 4A issue in Regulation J.

769.5314 or Rob.Hunter@theclearinghouse.org or Alaina Gimbert, Vice President & Counsel at (336) 769.5302 or Alaina.Gimbert@theclearinghouse.org.

Yours very truly,



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The Honorable Tim Johnson, Chairman
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House Committee on Financial Services

The Honorable Barney Frank, Ranking Member
House Committee on Financial Services

The Honorable Jeb Hensarling, Vice Chairman
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