White paper on Dodd Frank Section 1073 – Cross-border Remittance Transfers

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A partnership initiative between The Clearing House Association, L.L.C. and the PMPG

Note: Relevant regulations and any applicable legislation take precedence over the guidance notes issued by this body. These guidelines represent an industry's best effort to assist peers in the interpretation and implementation of the relevant topic(s). The PMPG - or any of its members - cannot be held responsible for any error in these guidelines or any consequence thereof.

The PMPG acknowledges the international dialogue which is now underway as the industry begins to prepare for compliance with the Dodd Frank 1073 requirements. As an example, several U.S.-based institutions are requesting overseas correspondents to complete surveys in an effort to collect certain disclosure information required by the new regulations. The initial objective of the PMPG is to provide information which will enhance the global market's awareness and understanding of the new regulatory requirements. PMPG will update this white paper as additional information becomes available and is assessing the publication of global market practice guidance by the end of 2012.

This White Paper has been drafted by US banking community members of the PMPG in cooperation with The Clearing House and as such represents their interpretation of the regulation. The goal of the document is to provide education and information to the global SWIFT community. The PMPG as an international body does not participate in its interpretation, though it may evaluate if a Market Practice Guideline may be needed to manage the possible bilateral impacts of this regulation. We encourage foreign correspondents to work with their US bank partners towards obtaining further information related to how Dodd Frank 1073 may affect their payments relationship and its related processing requirements.

1 Introduction

The Payments Market Practice Group (PMPG) is an independent body of payments subject matter experts from Asia Pacific, Europe and North America. The mission of the PMPG is to:

- take stock of payments market practices across regions,
- discuss, explain, and document market practice issues, including possible commercial impact,
- recommend market practices, covering end-to-end transactions,
- propose best practice, business responsibilities and rules, message flows, consistent implementation of ISO messaging standards and exception definitions,
- ensure publication of recommended best practices,
- recommend payments market practices in response to changing compliance requirements

The PMPG provides a truly global forum to drive better market practices which, together with correct use of standards, will help in achieving full STP and improved customer service.

Established in 1853, The Clearing House is the United States' oldest banking association and payments company. It is owned by the world's largest commercial banks, which employ 1.4 million people in the U.S. and hold more than half of all U.S. deposits. The Clearing House 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. The Clearing House Payments Company 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 automated clearing-house, funds-transfer, and check-image payments made in the U.S. See The Clearing House's web page at www.theclearinghouse.org.

2 Dodd Frank Section 1073

Purpose and Timeline

Section 1073 of the Dodd Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank 1073") establishes a new regulatory framework governing cross-border electronic transfer payments originated by US consumers.

The intent of the regulation is to provide US consumers with end to end transparency over costs and delivery terms related to international payments. The current open network environment

used by most depository financial institutions to execute payments does not typically provide the remitter or the beneficiary of a payment complete transparency in terms of execution and cost. This is because in many cases a payment may travel through several unaffiliated banks, intermediaries, countries or clearing systems prior to reaching the final beneficiary, each imposing its own fees, taxes and delivery terms. Dodd Frank 1073 creates certain disclosure requirements which obligate US based remittance transfer providers to know the exact costs and delivery terms for consumer initiated international payments. The drafters of Dodd Frank 1073 assumed that these disclosures would drive down costs for international electronic payments by enabling US consumers to comparison shop between providers. The drafters also tied the disclosures to consumer error resolution rights so that almost any deviation from disclosed costs and delivery terms will result in liability to the US remittance provider.

The Final Remittance Rule was published in the Federal Register on February 7, 2012, with a mandatory compliance date of February 7, 2013. The regulation provides certain temporary exemptions that allow insured depository institutions to estimate certain disclosure amounts under special circumstances. These temporary exemptions expire in July 2015 (unless extended by the regulator).

A new regulatory agency, the Consumer Financial Protection Bureau ("CFPB"), established by the Dodd Frank Act in 2010, has the sole purpose of implementing and enforcing Federal consumer financial laws. The CFPB has rule making authority for Dodd Frank 1073.

Scope

The obligations created by this regulation apply only to international electronic payments originated by US natural persons that are for personal, household or family use. They do not apply to payments originated by US corporate clients. For transfers funded from an account (i.e., not funded by cash), the funding account must be "located" in the United States. The recipient of the payment must be located in a foreign country. For transfers sent to an account this means that the recipient account must be "located" in a foreign country. For cash pick up transfers this means the pickup location is in a foreign country. The recipient can be a natural person, corporation or government entity

The regulation applies to any consumer initiated international electronic transfer above $15 including those that are traditionally executed through correspondent relationships utilizing SWIFT, local RTGS and other high value clearing systems (also known as: "funds transfers", "money transfers" or "wire transfers"). It also applies to international ACH payments, closed network remittance payments, online bill (push) payments to foreign payees, and loads onto certain prepaid cards.

The obligations of the regulation apply to any provider of international transfer services located in the United States that sends more than a de minimis amount of transfers.[1] Besides money transfer businesses the regulation also applies to domestic US depository financial institutions (banks, credit unions, savings banks, etc), broker-dealers, as well as subsidiaries of foreign banks in the United States that provide international payment services to US consumers. These are collectively referred to in this paper as "US remittance transfer providers".

Disclosure Requirements

Dodd Frank 1073 requires that US remittance transfer providers present a consumer with two disclosure documents. The first, known as a "pre-payment disclosure" is to be provided to the consumer at the time the consumer requests an international electronic payment, but before the consumer pays or authorizes it. The second, known as a "receipt disclosure" generally must be provided to the consumer at the time the consumer pays or authorizes the transfer. The following table outlines the information required within each disclosure:

Prepayment Disclosure	Receipt Disclosure
• Transfer Amount (originated amount) • Fees charged by the US Remittance Transfer Provider and associated taxes • Full FX Rate by which the payment will be converted (regardless of which bank converts it) • All fees charged by all banks in the payment chain that are either deducted or charged to the beneficiary • All taxes to be applied on the payment • Amount to be received by the beneficiary (in receipt currency)	• Restate all of the information included in the Prepayment Disclosure • The promised date of delivery to the recipient. • The phone number or address of the recipient • Error resolution rights • Contact information for the remittance provider, the provider's state regulator and the CFPB's toll-free number for consumer complaints.

Foreign Currency Rate Disclosures

Under certain circumstances the US remittance transfer provider may not need to disclose the foreign exchange rate applicable to a payment. A US remittance transfer provider needs to disclose the rate **if they have specific knowledge that a foreign exchange conversion will take**

[1] In a supplementary final rule published by the CFPB in August 2012, providers that sent 100 or fewer consumer initiated international electronic transfers in the prior year and 100 or fewer of such transfers in the current year will be exempt from the requirements of the rule.

place. According to the regulation, if the US remittance provider does not have specific knowledge of the currency that the beneficiary needs to receive, **the provider may rely on a US consumer's representation regarding the currency in which the funds will be received by the beneficiary**. If the US consumer represents that the beneficiary's account is denominated in a different currency than the funding currency, the provider must disclose the foreign exchange rate. If the US consumer does not know if the recipient's account is denominated in a different currency, the provider may assume that the receipt currency is the same as the funding currency in which case no foreign exchange rate needs to be disclosed.

Based upon the wording of this section of the regulation many US remittance providers are re-evaluating the methodology by which they determine the currency of the transfer. Certain providers may opt to convert all of their Dodd Frank transfers within their own FX business (or through a contracted FX provider), while others may opt to send all Dodd Frank transfers as US Dollars. More commonly, many US remittance transfer providers may opt to specifically ask US consumers during the transfer origination process if the consumer knows the currency the beneficiary needs to receive or the currency the beneficiary's account is denominated in. As explained above, in the event that the US consumer's response indicates that the currency the beneficiary needs to receive is different than the funding currency the US remittance transfer provider will know that a foreign exchange conversion will occur:

1) If the US consumer states that the currency the beneficiary needs to receive is US Dollar, the US remittance provider may decide to execute the transfer in USD, without converting it. In the event the US consumer was incorrect and a foreign exchange conversion was conducted by another bank, the US remittance provider can claim that they determined the currency of the transfer based upon the representation of the US consumer and as such would not need to remedy any foreign exchange rate related errors.
2) If the US consumer states that the currency the beneficiary needs to receive is the beneficiary's local currency (or any currency other than the funding currency), the US remittance transfer provider will most likely opt to perform the foreign exchange conversion themselves, executing the transfer in the foreign currency. By doing so they will have the ability to disclose an accurate foreign exchange rate.
3) Finally, if the US consumer does not know what currency the beneficiary needs to receive, the regulation states that the provider may assume the currency the beneficiary needs to receive will be the same as the funding currency, in which case no foreign exchange rate needs to be disclosed. This may mean that in most cases where the US consumer cannot make currency representations the payment will be executed in US Dollars, since most US financial institutions only offer US deposit accounts to consumer clients. In the event another bank has to convert the payment in order to apply the funds to the beneficiary, again, the US remittance transfer provider does not have any error resolution liability related to foreign exchange rate disclosure.

Cancellation and Error Resolution

The regulation also outlines rights, obligations and timelines regarding cancellations, the investigation of disputes and errors and specific remedies in the event of an error. The timelines for these rights are as follows:

- ***30 Minutes -*** US consumer will have 30 minutes from the time of making payment or authorizing the transfer to cancel the payment. The US remittance provider must refund to the consumer within 3 business days from receiving the cancellation request all the amounts paid for the transfer. However, as a practical matter, refunds will not be necessary for account based transfers as most US remittance providers will hold a transfer for 30 minutes before releasing it. Hence, if the US consumer cancels the transfer, the held transfer will be cancelled and no funds will deducted from the US consumer's account so that a refund is unnecessary.

- ***180 Days –*** US consumers also have up to 180 days from the disclosed date of funds availability to claim an error. There are two main forms of error: (1) amount errors, which occur when the recipient receives less or more than the disclosed amount to be received; and (2) delay errors, which occur when the funds arrive later than the disclosed date or do not arrive at all.

- ***90 Days -*** US remittance providers have up to 90 days to investigate an error. Upon conclusion of their investigation US remittance providers have 3 days within which they need to notify the US consumer of their conclusions and, if there was an error, inform the US consumer of available remedies.

    - For amount errors, a US consumer can choose for the US remittance provider to either refund the amount appropriate to resolve the error or to send a second transfer to the recipient in the amount appropriate to resolve the error, at no additional cost to the US consumer.

    - For delay errors, a US remittance provider must refund all the fees applied to the transfer, including fees charged by other entities.

Dodd Frank 1073 amends the Electronic Funds Transfer Act ("EFTA") with a new section dedicated to remittance transfers. Due to the mutual exclusivity of EFTA and UCC 4A, it replaces UCC 4A, the generally adopted uniform state law applicable to wires for the past 20

years, as the body of law governing wires that are remittance transfers.[2] This change of legal governance creates new liabilities for US remittance transfer providers related to beneficiary identification. According to UCC 4A as well as some foreign regulations, the primary identifier for a beneficiary is the beneficiary's account number. As such the long standing rule has been that account number takes precedence over the beneficiary's name.

Dodd Frank 1073 effectively reverses the account number over name rule as US remittance providers will be responsible to pay the correct beneficiary as identified by their name, not their account number. This means that **in the event funds are paid to the incorrect beneficiary, the US remittance provider is obligated to refund to the US consumer (or resend to the beneficiary) the full principal amount of the transfer, even if the error occurred because the US consumer provided an incorrect account number for the beneficiary.** Even if the US remittance provider cannot recover the principal because the funds were paid to an incorrect account number, the provider is still obligated to refund to the US consumer (or resend to the recipient) the full principal amount of the transfer. The only exception is when the US remittance provider can prove fraud by the US consumer. However, there is broad-based acknowledgement in the industry that it will be challenging to establish a case for fraud within the 90 day time frame US remittance transfer providers are allowed to investigate the error claim.

Exceptions and Estimations

Dodd Frank 1073 defines one temporary and two permanent exceptions which allow US remittance transfer providers to estimate some of the disclosure data under certain circumstances.

The Temporary Exception for ***US government insured depository financial institutions*** permits estimates of certain disclosures for transfers in which exact amounts are unknown for reasons beyond the sending institution's control. Among the data that may be estimated under the temporary exemption are the exchange rate, the transfer amount, other fees and taxes, and the total to be received by the designated recipient. **However, estimates are not allowed for fees or FX rate amounts charged by a foreign bank if the US remittance provider has a correspondent relationship with that foreign bank.** The regulation does not define a "correspondent relationship", but the official interpretation of the regulation indicates a regulatory expectation that US remittance transfer providers can adjust contractual arrangements with foreign banks with which they have correspondent relationships so that accurate fee, exchange rate and tax information is provided to the US remittance transfer provider.

[2] Wires that are not remittance transfers, i.e., commercial wires and domestic consumer wires remain governed by UCC 4A.

The Temporary Exception expires on July 21, 2015 after which US depository institutions that are remittance providers will no longer be able to avail themselves of this exception.

The two permanent exceptions permit US remittance providers to estimate the foreign exchange rate and amounts dependent upon the foreign exchange rate (such as the transfer amount in the receipt currency) in limited circumstances. Third party fees must still be accurately disclosed and applicable foreign taxes must also be known.

The first exception applies to transfers to countries that have foreign currency control laws that prevent a US remittance provider from knowing the foreign exchange at the time that disclosures must be given. The second exception applies to certain international ACH services offered by the Federal Reserve Banks.

In September 2012 the CFPB has published a list of "safe harbor" countries that the agency has determined have currency control laws that prevent a US remittance provider from knowing the foreign exchange rate that will apply to a transfer. The countries on the list are Aruba, Brazil, China, Ethiopia and Libya. Providers may estimate the foreign exchange rate and any amounts dependent upon the foreign exchange rate when they send transfers to these countries. The CFPB has also committed to publish a list of FedACH services that will qualify for the ACH exception. In addition, the US financial institution industry is gathering information about countries that could qualify for the currency control exception even though the countries were not included in the "safe harbor" list.